

## **BUILDINGADVICE, INC. PROGRAM RENEWAL LICENSE AGREEMENT**

**Parties; Scope.** This BuildingAdvice Program Renewal License Agreement (this "**Agreement**") is between the company described on the applicable purchase agreement ("**Purchase Agreement**") ("**Company**") and BuildingAdvice Inc., a Delaware corporation ("**BuildingAdvice**") with respect to a software and browser based solution known as "BuildingAdvice" (collectively, the "**Technology**"). The Technology consists of three elements: (a) application software in object code form (the "**Application Software**"), which contains a graphical user interface and is accessed via a web browser; (b) the right for the Authorized User to access via an internet browser information about third party data and other information (the "**BuildingAdvice Web Services**"); and (c) hardware and other devices previously purchased and used to collect environmental readings (the "**Hardware**"), which communicates with the Application Software and the BuildingAdvice Web Services. Company has asked BuildingAdvice to license and support that Technology, and BuildingAdvice is willing to do so subject to Company's acceptance of this Agreement and any other attachments.

**License Fees.** Company agrees to pay BuildingAdvice the License Fees and Implementation Costs as detailed in the Purchase Agreement.

**Entire Agreement; Amendments.** This Agreement replaces and supersedes all prior and contemporaneous proposals, understandings and agreements, written, electronic or oral, as well as all other communications between Company and BuildingAdvice concerning the subject matter of this Agreement. To the extent any proposal, invoice, acknowledgement, confirmation or any other document issued by Company after the Effective Date contains any terms that are inconsistent with, in addition to, or different from, those in this Agreement, those terms will be deleted and the terms of this Agreement will control unless (a) that document expressly references the section of this Agreement to be amended; and (b) a duly authorized representative of each party signs that document.

**THE SOFTWARE AND THE TECHNOLOGY IS PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION, MODIFICATION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.**

## STANDARD TERMS AND CONDITIONS

### 1. License.

**1.1 Grant of License.** Subject to Company's compliance with the terms of this Agreement, including payment of the fees and costs described in Section 2 below (collectively, the "Fees"), BuildingAdvice grants to Company, a limited, nonexclusive, nontransferable license (the "**License**") for the Term described in Section 1.4 below to: (a) use the Technology; (b) to access the BuildingAdvice Web Services; and (c) make archival copies of report files and related documentation (the "**Documentation**") in accordance with Company's normal backup procedures; (d) use the Training Modules (as defined below);

**1.2 Restrictions.** Company will not at any time: (a) use the Technology, the Training Modules, or the Documentation except for the purpose described in Section 1.1 above; (b) use the Application Software in any unauthorized way; (c) access the BuildingAdvice Web Services from any method other than the Application Software; (d) allow any person other than its employees and independent contractors (the "**Authorized Users**") to access or use the Technology, the Training Modules, or the Documentation, and then only if they have a need to know and are bound to comply with Section 4 (Confidentiality) below; (e) copy, modify, adapt, translate or create derivative works of the Technology, the Training Modules, or the Documentation or permit any other person to do so; (f) reverse engineer, disassemble, decompile or otherwise attempt to derive the source code for the Technology or permit any other person to do so; (g) rent, lease, loan, distribute, resell, sublicense or transfer the Technology, the Training Modules, or the Documentation or use the Technology to provide services to or for any unrelated third party; (h) bypass or delete any copy protection methods that are for preventing unauthorized copying or use of components of the Technology, the Training Modules or the Documentation; or (i) infringe any third party rights, including privacy, confidentiality and/or other intellectual property rights.

**1.3 Disabling Code.** Company acknowledges that the Technology includes "disabling code" that if activated by BuildingAdvice will prevent the Technology from operating normally. The purpose of the disabling code is to limit Company's ability to use the Technology after the end of the term.

**1.4 Term and Termination of the License.** The License will renew on the Effective Date and will continue for one year, and will be automatically renewed for successive one-year periods on the anniversary of the Effective Date thereafter. Notwithstanding the foregoing, the term will terminate upon the first of the following to occur (the "**Term**"): (a) BuildingAdvice may terminate the License at its sole discretion (i) immediately if Company breaches Section 1.2, Section 2.4, Sections 4, 5 or Section 6 of this Agreement; (ii) if Company fails to pay any Fees within 10 days after they are due; (iii) if Company fails to cure a breach of any other provision of this Agreement within 30 days after BuildingAdvice gives Company notice of that breach (and upon the cure of any breach described in subsections (a)(ii) or (iii) above, BuildingAdvice may, at its sole discretion,

reinstate the License upon payment of a reinstatement fee of \$75.00); and/or (iv) for any reason by giving Company 45 days' prior notice, and (b) Company may terminate this Agreement by providing 30 days written notice prior to the end of an annual renewal date, provided the Agreement is in good standing and all sums owed by the Company have been paid.

**1.5 Ownership of Application Software, BuildingAdvice Web Services, Training Modules and Documentation.** Company does not own the Application Software, the BuildingAdvice Web Services, the Training Modules, or the Documentation, and BuildingAdvice retains all rights to the Application Software, the BuildingAdvice Web Services, the Training Modules, and Documentation except those expressly licensed to Company under this Agreement. As between the parties, Company owns all data generated from Company's use of the Software (the "**Company Data**"), and BuildingAdvice owns all other data in, available through or related to the BuildingAdvice Web Services (the "**BuildingAdvice Data**"). In order to provide benchmark data and other information to Company, BuildingAdvice aggregates certain information related to the use of the Technology; therefore, Company hereby grants BuildingAdvice an irrevocable, perpetual, royalty free, nonexclusive license to copy, use, modify and distribute Company Data except to the extent that Company Data contains confidential information of Company or its customers, in which case BuildingAdvice will comply with Section 4 with respect to that confidential Company Data.

## **2. Payment; Payment Terms.**

**2.1 License Fees.** Company will pay BuildingAdvice the Fees set forth in the Purchase Agreement. Payments are made in advance, and are considered to be fully earned and non-refundable once paid.

**2.2 Payment.** BuildingAdvice will invoice Company for all sums due and payable to BuildingAdvice under this Agreement. Those amounts are due and payable when specified under the Purchase Agreement, or if not specified, then 30 days after the date of the invoice. Any sums not paid within 10 days of the date due will be deemed Past Due Charges.

With each billing BuildingAdvice will submit an invoice and a report regarding the calculation of the Charges to Company by email or regular mail. If BuildingAdvice discovers a discrepancy or underpayment of any Charges for any prior billing period, BuildingAdvice may submit an invoice and report regarding that discrepancy or underpayment, reverse any credits to any Company account, or seek reimbursement from Company by any other lawful means. Based on BuildingAdvice credit policies, as amended from time to time, (the "**Designated Account**") failure to deliver a valid Secondary Credit Card Account number to BuildingAdvice upon request may be deemed a breach of this Agreement and may result in the termination of this License under the terms of this Agreement. Company will immediately notify BuildingAdvice of any change to the Secondary Credit Card Account. BuildingAdvice does not expect to submit

any Charges to the Secondary Credit Card Account; however, if any Charges become Past Due, Company authorizes BuildingAdvice to submit those Charges to the Secondary Credit Card Account, reverse any credits to any Company account, or seek payment from Company by any other lawful means.

**2.3 Generally.** All sums payable under this Agreement are payable in United States dollars. None of the Charges includes any sales, use, excise or similar taxes or any export or import tariffs, duties or fees, and Company will be responsible for payment of those taxes, tariffs, duties and fees. Past Due amounts will be subject to a late fee equal to one and one-half percent (1.5%) of the past due amount per month, to a maximum of 18.0% percent per year. Company may direct questions regarding charges to BuildingAdvice's Customer Service Department at (888) 629-4162.

**2.4 Credit Application, Credit Limit and Sharing of Credit Information.** If requested, Company will submit a credit application to BuildingAdvice for review and processing. Company also agrees to periodic credit reviews over time. Company hereby authorizes BuildingAdvice to set a Credit Limit for Company that is an amount, payable in United States dollars, that is the maximum account balance that Company may accrue. Any misrepresentations made by Company in its Credit Application will be deemed a breach of this Agreement and may result in the termination of this License under the terms of this Agreement.

**2.5 International Communications.** Fees established in the Purchase Agreement provides for operation of the communications hardware via U.S. based cellular networks only. If Company operates the system, intentionally or unintentionally in a location that causes communications to route through a non-U.S. based cellular carrier, BuildingAdvice may invoice Company for a communications surcharge in an amount not to exceed actual charges incurred for international communications.

**3. Support and Training.** BuildingAdvice shall provide Company with support of the Application Software. Additionally, Company shall provide access to technical and sales related training modules in order to train Company's Authorized Users (the "**Training Modules**"). From time to time, Company personnel will require and be provided with the support of BuildingAdvice technical support personnel to troubleshoot Hardware, software, or communications issues.

**4. Confidentiality.** Company will not at any time disclose the pricing or any other terms of this Agreement or any features of the Technology to any person other than to Company's legal and financial advisors, and then, only if they agree to be bound by this Section or as required by law. BuildingAdvice will not at any time disclose any information that is personally identifiable to Company or its customers to any person other than to BuildingAdvice's legal and financial advisors, and then, only if they agree to be bound by this Section or as required by law.

**5. Nondisparagement.** Neither party will impugn the other party's character, ethics, integrity or products.

**6. Indemnity.**

**6.1 By BuildingAdvice.** BuildingAdvice will indemnify, defend and hold Company harmless from any suit brought by an unrelated third party against Company and will pay all damages finally awarded in that suit or contained in any settlement agreement insofar as that suit is based on a claim that the Technology or the Documentation as provided by BuildingAdvice to Company infringes a United States patent, copyright, trademark, trade secret or other intellectual property right, but only if (a) Company promptly notifies BuildingAdvice of that claim (except that failure to promptly notify BuildingAdvice of a claim will not limit, impair or otherwise affect Company's rights under this Section unless BuildingAdvice is prejudiced by that failure and then only to the extent of the prejudice); and (b) Company gives BuildingAdvice full and complete authority (including settlement authority) and reasonable assistance, at BuildingAdvice's expense, (including reasonable access to information in Company's possession) for that defense. BuildingAdvice will not settle any such claim without Company's consent unless that settlement includes a full and final release of all claims against Company and does not impose any obligations on Company. If the Technology or the Documentation is held in any such suit to infringe such a right and its use is enjoined, or if in the opinion of BuildingAdvice the Technology or Documentation is likely to become the subject of such a claim, BuildingAdvice at its election and expense will either (i) procure for Company the right to continue using the Technology and/or the Documentation, as appropriate, or (ii) modify or replace the Technology and the Documentation so they become non-infringing while giving substantially equivalent performance. If neither (i) nor (ii) above is, in BuildingAdvice's sole determination, obtainable using reasonable commercial efforts, then BuildingAdvice may terminate this Agreement immediately. BuildingAdvice's indemnification obligation will not apply to infringement actions or claims to the extent they are based on or result from: (x) modifications to the Technology or Documentation made by a party other than BuildingAdvice or its authorized representatives; (y) the combination of the Technology and/or the Documentation with items not supplied by BuildingAdvice; and/or (z) Company's failure to use the most recent version of the Technology or Documentation provided by BuildingAdvice to Company. THIS SECTION AND THE LIMITATIONS SET FORTH IN SECTION 11 STATE COMPANY'S EXCLUSIVE REMEDY AND BUILDINGADVICE'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT.

**6.2 By Company.** Company will indemnify, defend and hold BuildingAdvice harmless from any suit brought by an unrelated third party against BuildingAdvice and will pay all damages finally awarded in that suit or contained in any settlement agreement insofar as that suit is based on Company's misuse of the Technology or Company's sale of goods or services that infringe any third party intellectual property, privacy or publicity right, violate any law or breach any agreement, but only if (a) BuildingAdvice promptly notifies Company of that claim (except that failure to promptly notify Company of a

claim will not limit, impair or otherwise affect BuildingAdvice 's rights under this Section unless Company is prejudiced by that failure and then only to the extent of the prejudice); and (b) BuildingAdvice gives Company full and complete authority (including settlement authority) and reasonable assistance, at Company's expense, (including reasonable access to information in BuildingAdvice's possession) for that defense. Company will not settle any such claim without BuildingAdvice's consent unless that settlement includes a full and final release of all claims against BuildingAdvice and does not impose any obligations on BuildingAdvice. Company's indemnification obligation will not apply to infringement actions or claims to the extent they are based on or result from any action or claim to be indemnified by BuildingAdvice under Section 6.1 above.

**7. Disclaimer of Warranties; Warning.** Company accepts the Technology and Documentation **AS IS**. BuildingAdvice does not warrant that the Technology is error free or that Company will be able to access or use the Technology without problems or interruptions. BuildingAdvice's support obligations are void if the Technology or Documentation has been altered, transferred or exported without BuildingAdvice's express written authorization, or has been damaged, abused or misused. **BuildingAdvice expressly disclaims all warranties relating in any way to the Technology and/or the Documentation, express, implied and statutory, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title and noninfringement.** No statements of BuildingAdvice, its agents or employees, will create any new warranties unless they are made in writing and are signed by an officer of BuildingAdvice. The installation, inspection, maintenance, repair and removal of Technology may result in service outages, loss of use, loss of sales, loss of information, or damage to Company's computers. Company assumes responsibility for impacts to or loss of any of the preceding. Company is solely responsible for backing up all of its computer files and data.

BuildingAdvice Hardware components are warranted during the license period to operate within their design specifications. Should Company, in consultation with BuildingAdvice support personnel, determine that component(s) are not operating correctly, Company will secure a RMA number from BuildingAdvice support personnel and ship, at Company's expense, the faulty component(s) to BuildingAdvice. Upon receipt, BuildingAdvice will inspect component(s) and determine the best course of corrective action to fix the identified malfunction. At its sole discretion, BuildingAdvice may elect to repair, recalibrate or replace the component(s) at no additional charge to the Company. BuildingAdvice will incur the cost of shipping component(s) via standard ground shipping to Company.

During the License period, it may be necessary to recalibrate BuildingAdvice Hardware components. Company will follow the procedure identified in the paragraph immediately above to schedule the return of components to BuildingAdvice. Company will only be responsible for the cost of shipping components to BuildingAdvice. Recalibration services are included in the cost of the annual License agreement.

From time to time, Company personnel may require the support of BuildingAdvice technical support personnel to troubleshoot Hardware, software, or communications issues. These services are including in the annual License and this Agreement.

**8. Limited Liability.** To the maximum extent permitted by law, neither party will be liable for any loss of information, for the loss of any sales, for the inability to use the Technology or any of its other hardware, software or peripherals, for the cost of substituted products or for any consequential, special, incidental, punitive or indirect damages of any kind arising out of the sale, license or use of, or inability to use, all or any part of the Technology or Documentation, even if it has been advised of the possibility of those damages or even if those damages are foreseeable. In no event will BuildingAdvice's liability exceed the Fees received by BuildingAdvice during the three-month period immediately preceding the date the cause of action arose, whether BuildingAdvice's liability arises under or relates to this Agreement, any other contract, any tort, statute or otherwise.

**9. Notices.** All notices required or permitted under this Agreement may be (a) sent by e-mail; (b) deposited in the mail and sent first class certified, return receipt requested; (c) sent via a recognized overnight courier service; or (d) delivered in person, in each case to the address set forth below.

Accounting Department  
BuildingAdvice, Inc.  
333 SE 2<sup>nd</sup> Ave.  
Portland, OR 97214  
[accounting@BuildingAdvice.com](mailto:accounting@BuildingAdvice.com)

Properly addressed e-mail notices will be deemed notice for all purposes for which notice may be required and will be deemed received the business day after transmission. Properly addressed first class certified mail will be deemed received three business days after it is deposited in the mail. Properly addressed notices sent by overnight courier or delivered in person will be deemed received when personally delivered to the intended recipient or to a person with apparent authority to receive such delivery on behalf of the intended recipient.

**10. Force Majeure.** Neither party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, terrorism, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or its employees, agents or contractors; provided, however, that lack of funds will not be deemed to be a reason beyond a party's reasonable control. The parties will promptly

inform and consult with each other as to any of the above causes that in their judgment may or could be the cause of a delay in the performance of its obligations under this Agreement.

## **11. Miscellaneous.**

**11.1 Assignment.** Company may not assign or otherwise transfer, whether voluntarily or by operation of law, this Agreement or any of its rights or obligations under this Agreement without BuildingAdvice's prior written consent.

**11.2 Governing Law; Jurisdiction; Attorney Fees.** This Agreement will be construed and interpreted according to the laws of the State of Oregon without respect to its conflict of laws principles, except that in no event will this Agreement or any disputes between the parties related to the Technology or Documentation be construed, interpreted or governed by the Convention for the International Sale of Goods.. If any arbitration, suit, action or other proceeding (including under the US Bankruptcy Code) is initiated in connection with any controversy arising out of this Agreement or if either party becomes the subject of any bankruptcy proceeding, the prevailing party in that arbitration, action or proceeding, and in any appeal, will be entitled to its reasonable attorney, paralegal, accountant and other expert fees, and all other fees, costs and expenses actually incurred, in addition to any other relief to which it may be entitled by law.

**11.3 WAIVER OF JURY TRIAL.** To the fullest extent permitted by law, both parties waive any right to trial by jury in any proceeding in connection with this Agreement.

**11.4 Waiver; Severability.** The waiver by either party of any breach or right under this Agreement must be in writing and any such waiver will not constitute a waiver of any other or subsequent breach or right. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, that provision will be severed from the remainder of this Agreement, which will remain in full force and effect unless enforcement of this Agreement without the invalid or unenforceable clause would be grossly inequitable under the circumstances or would frustrate the primary purpose of this Agreement.

**11.5 Headings; Interpretation.** The paragraph headings in this Agreement are for convenience of reference and will not limit or otherwise affect the interpretation of any provision of this Agreement. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. Both parties have had the opportunity to have this Agreement reviewed by their attorneys; therefore, any ambiguous provision will not be construed for or against either party. To the extent any provision of this Agreement conflicts with the terms of any other agreement, exhibit or attachment, the terms of this Agreement will control.



**11.6 US Government Restricted Rights.** The Technology is "commercial computer software" and the related documentation is "commercial computer software documentation" under 48 CFR 12.212 and is provided to US Government licensees with restricted rights. Use, duplication, reproduction or transfer of this commercial Technology is restricted in accordance with FAR 12.212 and DFARS 227.7202 and this Agreement.

**11.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or other image of an authentic original signature shall also be deemed an original.