

## **TERMS OF USE**

This policy was last modified on September 10, 2018.

## **TERMS OF USE**

These Terms of Use set forth the terms and conditions that apply to your use of the Eugene Builders Exchange (“EBE”) website, <http://ebe.org/> (“Site”).

### **1. Definitions**

“Access” means to use or view the Site or otherwise obtain information from the Site.

“Account” means a collection of data related to a Member that is first created upon a User submitting an application for membership to EBE.

“Affiliated Member” means a User who is an employee of a Member and who has been granted permission from that Member to Access the Site through the Member’s Account.

“Content” means all text, videos, graphics, data, programs, services, documents, software and other materials made available on the Site by EBE, as well as all applications and web platforms available through the site and the “look and feel” of the Site.

“EB Parties” means EBE’s officers, directors, employees, agents, and assigns.

“Member” means a User, including a person or entity, who purchases a membership plan from EBE that permits the User to Access or use of the Restricted Content through an Account.

“Restricted Content” means that Content that is only accessible to Members, including information regarding projects in the Exchange such as specifications, drawings, addenda, plan holders lists and bid results.

“User” means any party who accesses the Site, including you.

“We” and “our” means EBE.

“You” means the User who is reading these Terms of Use. If you are accessing the Site as an Affiliated Member, “You” refers to you and the Member that granted you permission to Access the Restricted Content.

### **2. Your License to use the Site; Our Retention of Ownership in Intellectual Property**

By using the Site, you agree to comply with all of the Terms of Use set forth herein. The right to use the Site is personal to you and is not transferable to any other person or entity. Upon your acceptance of the terms and conditions set forth herein, EBE hereby grants you a non-exclusive limited license to Access and use the Site for the uses described in these Terms of Use and the Other Agreements (if any). Notwithstanding this limited license, the Site itself, as well as all Content, are the property of EBE or its third party providers. No title to the Content will pass to you hereunder. Further, the Content is protected by copyright, trademark, and other intellectual property law and, without the express written consent of EBE, you may not copy, reproduce, modify, reverse-engineer,

disassemble, decompile, store in a retrieval system, retransmit in any form through any means, translate into any language or computer language, or distribute, transmit, republish, remove, alter, display, perform or use the Content, including the proprietary and intellectual property notices within the Site, for any other purposes than allowed herein. Without limiting the foregoing, you do not have the right to make commercial use of the Site or Content, to charge others for access to the Site or Content, or to use the Site or Content in any manner that may be construed as an express or implied endorsement by EBE of any party, product or service.

Each Member may only allow Affiliated Members to access the Restricted Content according to the terms and conditions set forth in the Other Agreements. If the Member's membership expires or is terminated by EBE, then neither the Member nor its Affiliated Members may continue to access the Project Information.

You hereby grant EBE a limited, royalty-free, fully paid up, perpetual, nonexclusive, transferable license to use any material, information, text, graphics, comments or other data that you post or upload on or to the Site ("User Content") as necessary to provide the appropriate services for you. The forgoing license grant shall allow EBE to aggregate and otherwise use User Content to improve EBE's services and for EBE's research and development purposes.

### **3. Membership Plans**

EBE offers the following membership plans (together, the "Plans"):

#### **Associated Membership – Level 1:**

Associated Membership is for informational purposes only. Associated Members will receive a weekly newsletter and may advertise in the newsletter. Associated Members may not access project information at the physical plan center and may not access any Restricted Content through the Site. Associated Members do not qualify for health insurance.

#### **Standard Membership – Level 2:**

Standard Members have full access to EBE's physical plan center and limited access to the Restricted Content on the Site. Standard Members will receive a weekly newsletter and may advertise in the newsletter. Standard Members qualify for health insurance.

#### **Premium Membership – Level 3:**

Premium Members have full access to our physical plan center and full access to Restricted Content on the Site. Premium Members will receive a weekly newsletter and may advertise in the newsletter. Premium Membership qualifies for health insurance.

Members shall be subject to the terms and conditions set forth in Other Agreements regarding the fee and billing of membership and regarding the number of Affiliated Members each Member is entitled to have.

### **4. Violation of These Terms of Use**

If EBE determines in its sole discretion that you are violating any of these Terms of Use, we may: (i) notify you or (ii) use technical measures to block or restrict your access or use of the Site (or both). In either case, you agree to immediately stop accessing or using in any way (or attempting to access or use) the Site and you agree not to circumvent, avoid, or bypass such restrictions, or otherwise restore or attempt to restore such access or use. We reserve the right to immediately terminate or restrict your account or your use of the Site at any time, without notice or liability, if EBE determines

in its sole discretion that you have breached these Terms of Use, violated any law, rule, or regulation, engaged in other inappropriate conduct, used the Site in a way that places an undue burden on our networks or servers, or for any other business reason.

## **5. User Responsibility Guidelines**

You will not use the Site to do any of the following:

- Introduce any viruses, computer code, files or programs that interrupt, destroys, limits functionality, disables, overburdens, impairs or otherwise gains unauthorized access that causes harm to the Site (including but not limited to EBE's hardware, software, equipment and network).
- If you are an Affiliated Member, exceed the scope of or otherwise violate any terms and conditions of these Terms of Use or any Other Agreements applicable to the Member that granted you permission to use the Site.
- Use technology or other means to access, index, frame or link to Site that is not authorized, including removing, disabling, bypassing, or circumventing any content protection or access control mechanisms intended to prevent the unauthorized download, stream capture, linking, framing, reproduction, access to, or distribution of the Content.
- Post or link to content that is obscene or otherwise objectionable, in EBE's sole discretion.
- Engage in, promote or encourage in any way any illegal activities or content.
- Pretend to be someone you are not or claim or use false credentials.
- Interfere with the use and/or enjoyment of others' use of the Site.
- Upload or place any User Content, either your own or that of a third party, on the EBE site which infringes or violates the rights of any third party, including but not limited to third-party copyrights, trademarks, trade secrets, patents, proprietary and/or confidential information, public and professional reputation, and personal right to privacy.

EBE does not regularly monitor or edit User Content, but EBE retains the right to remove any content that EBE deems inappropriate, illegal, or which may infringe upon the rights of any third party. Violations of any of the above user responsibility guidelines could lead to the suspension or deactivation of your Account. If you believe that any proprietary, intellectual property and/or personal rights are violated by any posting on the Site, you must contact EBE immediately at [info@ebe.org](mailto:info@ebe.org).

## **6. EBE's Limited Liability; Disclaimer of Damages; No Warranties**

THE CONTENT COMES FROM SOURCES BELIEVED TO BE ACCURATE, BUT MAY CONTAIN INACCURACIES OR TYPOGRAPHICAL ERRORS. THE USE OF THE SITE IS AT YOUR OWN RISK.

THE SITE IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. EBE, TO THE FULLEST EXTENT PERMITTED BY EQUITY AND LAW, DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE. EBE MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, CURRENTNESS OR TIMELINESS OF THE CONTENT PROVIDED ON OR THROUGH THE SITE, OR ABOUT THE RESULTS TO OBTAINED FROM USING THE SITE.

EBE MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS NECESSARY TO ENSURE THAT ANY CONTENT YOU MAY OBTAIN FROM THE SITE IS FREE OF VIRUSES AND ANY OTHER POTENTIALLY DESTRUCTIVE COMPUTER CODE.

IN NO EVENT SHALL EBE OR THE EBE PARTIES BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES) RESULTING FROM THE USE OF OR INABILITY TO USE THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR THEORY OF EQUITY. FURTHER, IN NO EVENT SHALL EBE OR THE EBE PARTIES BE LIABLE FOR ANY DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION.

BY USING THIS SITE, YOU ACKNOWLEDGE THAT INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE, INTER-EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND OTHER DEVICES OWNED, MAINTAINED AND SERVICED BY THIRD-PARTY LOCAL EXCHANGE AND LONG DISTANCE CARRIERS, UTILITIES, INTERNET SERVICE PROVIDERS, "CLOUD" STORAGE SERVICE-PROVIDERS AND OTHERS, ALL OF WHICH ARE BEYOND THE CONTROL AND JURISDICTION OF EBE. EBE ASSUMES NO LIABILITY FOR OR RELATING TO THE DELAY, FAILURE, PERFORMANCE, NON-PERFORMANCE INTERRUPTION, INFECTION OR CORRUPTION OF ANY DATA OR OTHER INFORMATION TRANSMITTED IN CONNECTION WITH USE OF THE SITE.

IF, NOTWITHSTANDING THIS SECTION 6, EBE SHOULD BE FOUND LIABLE FOR ANY LOSS OR DAMAGE WHICH ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH ANY OF THE ABOVE DESCRIBED FUNCTIONS OR USES OF THE SITE, THE TOTAL LIABILITY OF EBE AND THE EBE PARTIES, IF ANY, FOR LOSSES OR DAMAGES SHALL BE LIMITED TO THE AMOUNT OF YOUR ACTUAL DAMAGES, NOT TO EXCEED THE AMOUNT ACTUALLY PAID BY YOU WITHIN THE THREE MONTHS PRECEDING THE DATE YOUR CLAIM WAS MADE. IN NO EVENT SHALL EBE OR THE EBE PARTIES BE LIABLE TO YOU FOR ANY LOSSES OR DAMAGES OTHER THAN THE AMOUNT DESCRIBED ABOVE.

## **7. Indemnification**

By your use of the Site, you agree to defend, indemnify and hold EBE and the EBE Parties harmless from and against any claims, losses, damages, actions or demands, liabilities and settlements including without limitation, reasonable accounting fees, attorney's fees and court costs resulting from, or alleged to result from, your use of the Site in a manner that violates or is alleged to violate these Terms of Use and/or federal and state law. EBE shall provide notice to you promptly of any such claim, suit, or proceeding and shall reasonably cooperate with you, at your expense, in your defense of any such claim, suit or proceeding.

## **8. Jurisdiction**

EBE is based in Eugene, Oregon in the United States of America. You expressly agree that exclusive jurisdiction for any dispute with EBE, or in any way relating to your use of the Site, resides exclusively in the courts of the State of Oregon and you further agree and expressly consent to the exclusive exercise of personal jurisdiction in the courts of the State of Oregon in connection with any such dispute including any claim involving you and EBE. These Terms of Use are governed by the internal substantive laws of the State of Oregon, without respect to its conflict of laws principles. If any provision of these Terms of Use is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect. No waiver of any of these Terms of Use shall be deemed a further or continuing waiver of such term or condition or any other term or condition.

## **9. Links to Third Party Licensed Software; Links to the Site**

EBE may provide hyperlinks to third-party licensed software as a convenience to Users. EBE may post, alter or remove third-party links at any time. EBE does not control third-party websites or software and is not responsible for the contents of any linked-to third-party website or software or any hyperlink in a linked-to website.

## **10. Complete Agreement**

In combination with one or more membership, license, maintenance and support or other similar agreements (“Other Agreements”) entered between EBE and you (or, if you are an Affiliated Member, between EBE and the Member that granted you permission to Access the Restricted Content), these Terms of Use constitute the entire agreement between you and EBE with respect to your use of the Site. In the event that a provision of the Other Agreements conflicts with the terms and conditions set forth herein, the terms set forth in the Other Agreements shall supersede the conflicting term or condition set forth in these Terms of Use.

## **11. Contact Information**

If you have questions about these Terms of Use, please contact us at:

Eugene Builders Exchange  
2460 West 11<sup>th</sup> Ave.  
Eugene, OR 97402  
(541) 484-5331

## **12. Changes to These Terms of Use**

EBE reserves the right to change these Terms of Use at any time by posting new Terms of Use at this location. The date of each revision will appear at the top left below the “Terms of Use” heading. Any questions relating to the Terms of Use may be submitted by contacting EBE through customer support at [info@ebe.org](mailto:info@ebe.org).