

# FMBX **Company** Usage Agreement & Disclaimers 2020-2021

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**Company:** \_\_\_\_\_

Welcome to the Fargo Moorhead Builders and Traders Exchange Online Planroom. The Fargo Moorhead Builders and Traders Exchange (hereinafter "FMBX") makes available for your employees use and access to the FMBX Online Planroom (the "Site") information, documents, software and products (collectively, the "Materials") and various services (the "Services") subject to the terms and conditions set forth in this Usage Agreement and Disclaimers (the "Usage Agreement"). By accessing this Site, you agree to the Usage Agreement. FMBX reserves the right to change the Usage Agreement from time to time at its sole discretion, and your use of the Site will be subject to the most current version of the Usage Agreement posted on the Site at the time of such use.

## **1. GRANT OF LICENSE:**

FMBX grants, and your company accepts, a non-exclusive, non-transferable, non-sublicensable license, to use the Site for only your company's business purposes. The license shall only be effective while your company is an FMBX member in good standing. This license may be renewed from year to year for members in good standing who exhibit continued compliance with the terms of this Agreement.

## **2. USE OF SITE INFORMATION:**

The license described in Section 1 above is subject to the following conditions:

- A.** The documents and information may be used solely for your company use in preparing cost estimates for those construction projects provided on the Site and/or for your reference during the construction process of the same and for no other purpose.
- B.** Downloading, copying, transmitting or printing of any project information and/or project documents for purposes of reselling and or redistributing information by any party is not allowed.
- C.** The documents and information may not be disseminated, in any format, to anyone who is not a member of FMBX.
- D.** The documents and information may not be modified or altered in any way.
- E.** You may not remove any copyright or other proprietary notices contained in the documents or information.

## **3. PROPRIETARY RIGHTS:**

You acknowledge that the Site contains confidential and trade secret information that is the exclusive property of FMBX.

## **4. MODIFICATIONS TO SERVICE:**

FMBX reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Site (or any part thereof) with or without notice. You agree that FMBX is not liable to you or to any third party for any modification, suspension or discontinuance of your access to or use of the Site.

## **5. NO WARRANTIES:**

Use of the Site is at your own risk. The site is provided on an "as is" and "as available" basis. Efforts have been made to assure the accuracy of the information reported, but the FMBX provides no expressed, implied or statutory warranty. For instance, due to the high volume of documents in various file formats FMBX receives, it is necessary to convert documents to a usable online format and in the conversion and data entry process errors may occur. FMBX expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. The actual plans and specifications from the official plan issuer are the best source of information for projects (i.e. architect, engineer, agency, university, general contractor etc.). No advice or information, whether oral or written, obtained by your company from FMBX or through or from the Site shall create any warranty not expressly stated in this Agreement.



## **6. ACCOUNT, PASSWORD AND SECURITY:**

**YOU ARE NOT ALLOWED TO SHARE LOGIN CREDENTIALS BETWEEN EMPLOYEES OR TO NON-EMPLOYEES.** Your employee's login credentials are owned by your company and are non-transferrable. You agree to take responsibility for maintaining the confidentiality of your employee's password and account, and further agree to be fully responsible for all activities that occur under those passwords and/or accounts. You agree to immediately notify FMBX of any unauthorized use of your passwords or accounts or any other breach of security. FMBX cannot and will not be liable for any loss or damage arising from your failure to comply with this section. You agree to notify FMBX when a user leaves your company.

## **7. TERMINATION OF PASSWORD, ACCOUNT OR USE:**

You agree that FMBX, in its sole discretion, may terminate your passwords, accounts (or any part thereof) or use of the Site for any reason, including, without limitation, if FMBX believes that any employee of your company has violated or acted inconsistently with the letter or spirit of this Agreement. FMBX may also, in its sole discretion, and at any time whatsoever, discontinue providing the Site, or any part thereof, with or without notice. You agree that any termination of your company's access to the Site under any provision of this Agreement may be affected without prior notice, and acknowledge and agree that FMBX may immediately deactivate your account. Further, you agree that FMBX shall not be liable to you or any third -party for any termination of your access to the Site.

## **8. COPYRIGHT LAWS:**

The United States copyright laws prohibit the unauthorized reproduction, preparation of derivative works, or distribution of copyrighted works. FMBX will not tolerate any use of the Site that in any way violates the United States copyright laws. You must report to FMBX any use of the Site that may constitute copyright infringement. If FMBX, in its sole discretion, determines that any material added to the Site may violate the copyright laws, FMBX may delete the material. Anyone who adds material to the Site that may or does violate the copyright laws shall indemnify, defend and hold harmless FMBX, its officers, directors, employees, and agents for any and all damages, losses, costs or expenses (including the payment of litigation costs and attorney fees) that arise from, are related to or concerning any material that may or does violate the copyright laws.

## **9. LIMITATION OF LIABILITY:**

In no event shall FMBX or any of its affiliates, subsidiaries or agents be liable to any entity for any direct, indirect, special, consequential or other damages (including, without limitation, any lost profits, business interruption, loss of information or programs or other data on your information handling system) that are related to the use of, or the inability to use, the content, materials, services and functions of the site, even if FMBX is expressly advised of the possibility of such damages.

## **10. NO CONSEQUENTIAL DAMAGES:**

**IN NO EVENT SHALL FMBX, OR ITS AFFILIATES, SUBSIDIARIES OR AGENTS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES AND LOSS OF PROFITS, EVEN IF THE FMBX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

## **11. INDEMNIFICATION:**

You agree to indemnify, defend and hold harmless the FMBX, its officers, directors, employees, and agents from any and all damages, losses, costs or expenses (including the payment of litigation costs and attorney fees) that arise from, are related to or concerning your use and/or operation of the Site.

## **12. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of North Dakota without regard to conflict of law provisions or choice of law rules. You also agree that this Agreement is entered into between you and FMBX, in North Dakota, which shall be the venue for any legal actions. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

## **13. ASSIGNMENT:**

This Agreement shall not be assigned without the express written permission of FMBX.

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**14. SEVERABILITY:**

If any provision of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, this Agreement shall be revised in order to most closely effectuate the original Agreement. All terms, not otherwise found to be illegal or unenforceable, shall survive and remain in full force and effect.

**15. NO WAIVER:**

A waiver by either you or FMBX of any term, condition or breach of this Agreement shall not subsequently waive that term, condition or breach of this Agreement.

**16. ENTIRE AGREEMENT:**

This Agreement is the entire agreement related to this matter and shall supersede all prior agreements or understandings with regard to this matter. This Agreement may only be modified by a writing signed by both you, as a legal representative of your company and FMBX.

I HAVE READ, UNDERSTAND, AND AGREE TO THE TERMS AND CONDITIONS OF THIS COMPANY USAGE AGREEMENT.  
**(Must be signed by an owner/officer of the member company)**

<b>Company Name:</b>	
<b>Officer/Owner Signature:</b>	
<b>Printed Name:</b>	
<b>Position/Title:</b>	
<b>Date:</b>	