



Membership Agreement

This Membership Agreement, hereinafter referred to as "Agreement," is entered into and made effective as of _____, 20__ by and between the following parties:

buildingSMART USA Inc. ("bS-USA"), a not-for-profit corporation, incorporated under the laws of the state of North Carolina, having its principal place of business at the following address:

Address: PO Box #609
Denver, NC 28037
Website: www.buildingSMARTusa.org
Email: USA@buildingSMART.org

And

Company Name: _____

Company Address: _____

Company Website _____

Number of Employees (including contract staff) _____

Company Primary Contact Person:

Name _____

Title _____

Email _____

Office Phone _____

Cell Phone _____

Office Location (if different from the Company Address above; such as a Branch office)

bS-USA and Member may be referred to individually as "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, buildingSMART USA (bS-USA) is the US Chapter of buildingSMART International (bSI) established to bring open standards efforts into focus in the USA as major global market through recruiting the support and participation of US Companies, Professionals, Industry Associations, Research Organizations, Academic Institutions and Government Agencies. bS-USA's membership will represent the voice of US Industry in the 'bSI Process' working alongside international peers and leaders of industry to achieve international consensus on how open standards for information exchange, process optimization and protocols for managing digital data are being defined for the design, construction and operation of built assets (which includes both buildings and infrastructure).

WHEREAS, Member would like to join bS-USA and acknowledges and agrees to be bound by the terms and conditions listed herein and the guidelines described in the 'US Chapter Charter' developed in accordance with the buildingSMART International Chapter Membership Agreement;

NOW, therefore, in consideration of the promises and covenants contained herein, as well as other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties do agree as follows:

Article 1 - MEMBERSHIP:

This Agreement forms a legally binding agreement between Member and bS-USA and governs the Member's access and use of the bS-USA's services (the "Membership Services"). This Agreement also covers bS-USA's provision of services (the "Membership Services"). Hereinafter, "you" and other third-person pronouns will refer to Member.

BY ACCESSING OR USING ANY OF THE MEMBERSHIP SERVICES, YOU AGREE TO BE BOUND AND ABIDE BY THIS AGREEMENT AND ANY AMENDMENTS THERETO. READ THIS AGREEMENT CAREFULLY BEFORE USING ANY OF THE MEMBERSHIP SERVICES, ESPECIALLY SINCE THIS AGREEMENT MAY AFFECT YOUR LEGAL RIGHTS, SUCH AS REQUIRING BINDING INDIVIDUAL ARBITRATION, AND LIMITING YOUR RIGHT TO BRING A LAWSUIT OR CLASS ACTION. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY CEASE USE OF ANY OF THE MEMBERSHIP SERVICES.

Article 2 - MEMBERSHIP SERVICES:

The Membership Services provided by bS-USA are designed to promote buildingSMART International's mission and values and to actively recruit participation in support of the development and deployment of open standards in the US. bS-USA's communications, events and professional certification efforts will be aimed at raising awareness and driving use of open standards on building and infrastructure projects by facility owners, design and engineering consultants and contractors. bS-USA will encourage US Companies to attend bSI international summits, participation in bSI 'Rooms' and solicit sponsorship and in-kind resource contributions for bSI projects.

bS-USA will disseminate buildingSMART International marketing materials (e.g. Annual Report, Case Studies, Awards, etc.) and secure speaking engagements all toward building awareness of the importance and benefits of open standards at industry conferences. bS-USA will collaborate with other buildingSMART International Chapters and contribute to the technical development of buildingSMART International defined open standards (IFC, BCF, openBIM, etc.). bS-USA will support adoption, localization and implementation of open standards by US industry and coordinate/partner with other relevant US industry standard organizations (including OGC, GS1, etc.) bS-USA will create demand for software applications from commercial software vendors that support open standards and assist them in providing use cases, test data and validation trials.

Article 3 - FEES:

Member will be responsible for the payment of an Annual Membership Fee ("Fees") to bS-USA according to then current published rates based upon the total number of staff employed (including contract employees)

The first Fee payment is due upon signing. Thereafter, Fees are due annually.

Fees should be paid via check made payable to "buildingSMART USA Inc." and sent to the address shown above.

Article 4 - TERMINATION:

This Membership Agreement shall continue until the next annual renewal becomes due and payable.

This Agreement may also be immediately terminated in the event that there is a breach of the terms of this Agreement by either Party. This Agreement will also immediately terminate upon the inability of the Member to pay the Fees required, the liquidation, dissolution or discontinuance of the Member Company or bS-USA in any manner, or the filing of any petition by or against bS-USA under federal or state bankruptcy or insolvency laws.

Article 5 - LIMITED LICENSE:

Member acknowledges and agrees that bS-USA's name, services, and any logos, designs, text, graphics, software, content, files, materials, and any other intellectual property rights contained therein, including without limitation, any copyrights, patents, trademarks, proprietary or other rights arising thereof, are owned by either bS-USA or buildingSMART International, and their affiliates, licensors, or suppliers.

Member acknowledges and agrees that the source and object code of certain Membership Services and the format, directories, queries, algorithms, structure, and organization of the same are the intellectual property, proprietary, and confidential information of bS-USA or buildingSMART International, and their affiliates, licensors, and suppliers.

Member expressly agrees not to do anything inconsistent with bS-USA's or buildingSMART International's ownership of all of the intellectual property discussed herein. Member further agrees that there are no rights, title, or interest in or to any Membership Services, except as stated in this Agreement. In addition, except as expressly set forth in this Agreement, Member is not conveyed any right or license by implication, estoppel, or otherwise in or under any patent, trademark, copyright, or other proprietary rights of bS-USA or any third party.

Article 6 - RESTRICTIONS:

You are prohibited from, and expressly agree that you will not:

- (i) circumvent or disable any content protection system or digital rights management technology used with any Membership Services;
- (ii) decompile, reverse engineer, disassemble or otherwise reduce any Membership Services to a human-readable form;
- (iii) remove identification, copyright, or other proprietary notices in or on the Membership Services;
- (iv) access or use any Membership Services in an unlawful or unauthorized manner, or in a manner that suggests an association with our content, products, services or brands, unless you have an executed agreement with us that allows for such activity;
- (v) use, alter, copy, modify, store, sell, reproduce, distribute, republish, download, publicly perform, display, post, transmit, create derivative works of, or exploit any Membership Services or any part thereof, except as expressly authorized in this Agreement or as part of the Membership Services provided to you;

(vi) introduce a virus or other harmful component, or otherwise tamper with, impair, or damage any Membership Services or connected network, or interfere with any person or entity's use or enjoyment of any of the Membership Services;

(vii) access, monitor, or copy any element of the Membership Services using a robot, spider, scraper or other automated means or manual process without our express written permission; or

(viii) sell, resell, or make commercial use of the Membership Services, unless you have an executed agreement with us or permission in writing that expressly allows for such activity.

Article 7 - THIRD PARTY SERVICES:

Certain Memberships Services may integrate, be integrated into, or be provided in connection with third-party websites, services, content, and/or materials ("Third-Party Services"). We do not control any Third-Party Services. We additionally make no claim or representation regarding the third-party services and accept no responsibility for, the quality, content, nature, or reliability of Third-Party Services accessible from our websites, application, software or any other element of the Membership Services. There is no implied affiliation, endorsement, or adoption by bS-USA of these Third-Party Services and we shall not be responsible for any content provided on or through these Third-Party Services. You should read the terms of use and legal agreements that apply to these Third-Party Services.

Article 8 - MEMBER CONSENTS:

Member agrees to hold bS-USA, its owners, affiliates, and representatives, harmless from any damage, whether tangible or intangible, that may happen to Member while participating in the Membership Services.

Member agrees that bS-USA offers its membership program with no guarantee of results of any kind. Member agrees that any results that occur during their membership, whether positive or negative, are the effects of Member's own personal choices.

Member agrees and verifies that all of the information they have given bS-USA and its representatives is accurate, up to date, and without the omission of any requested information.

Member agrees and verifies that even if they have omitted any necessary personal information, whether knowingly or unknowingly, they will hold bS-USA harmless against all liability for any damages that may occur to Member or others because of Member's actions or inactions.

Member agrees to notify bS-USA of any changes or upcoming changes concerning their company or primary contact information.

Article 9 - ASSUMPTION OF RISK:

Member agrees and understands that their participation in the Membership Services may involve risks. These risks may lead to tangible or intangible harm, and Member agrees that these risks may result not only from their own actions but also from the actions of others. With the knowledge and understanding of these risks, Member chooses, of their own will and volition, to continue participating in the Membership Services.

Article 10 - INDEMNIFICATION:

Member agrees to defend and indemnify bS-USA and any of its affiliates (if applicable) and hold them harmless against any and all legal claims and demands, including reasonable attorney's fees, which may arise from or relate to Member's use or misuse of the activities, Member's breach of this Agreement, or Member's conduct or actions. Member agrees that bS-USA shall be able to select its own legal counsel and may participate in its own defense, if so desired.

Article 11 - REPRESENTATION:

Member agrees that they are over 18 (eighteen) years of age and may legally consent to and enter into this Agreement.

Article 12 - ENTIRE AGREEMENT:

This Agreement constitutes the entire understanding between the Member and bS-USA with respect to any and all use of Member Services, activities and facilities. This Agreement supersedes and replaces all prior or contemporaneous agreements or understandings, written or oral, regarding the Parties' relationship.

Article 13 - COUNTERPARTS:

This Agreement may be executed in counterparts, all of which shall constitute a single agreement. The Agreement shall be effective as of the date set forth above.

Article 14 - SURVIVAL:

Any provision of this Agreement which by its terms imposes continuing obligations on either of the parties shall survive termination of this Agreement.

Article 15 - SEVERABILITY:

If any part or subpart of this Agreement is held invalid or unenforceable by a court of law or competent arbitrator, the remaining parts and sub-parts will be enforced to the maximum extent possible. In such condition, the remainder of this Agreement shall continue in full force.

Article 16 - DISPUTE RESOLUTION:

In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in the county and state noted in the GOVERNING LAW provision of this Agreement. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the provisions of this Agreement, award punitive damages, or certify a class. The arbitrator shall be bound by applicable and governing federal law as well as the law of North Carolina. Each Party shall pay their own costs and fees. Claims necessitating arbitration under this section include, but are not limited to: contract claims, tort claims, claims based on federal and state law, and claims based on local laws, ordinances, statutes or regulations. Intellectual property claims by the Organization will not be subject to arbitration and may, as an exception to this sub-part, be litigated. The Parties, in agreement with this sub-part of this Agreement, waive any rights they may have to a jury trial in regard to arbitral claims.

Article 17 - GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the internal laws of North Carolina without giving effect to any choice or conflict of law provision or rule. Each Party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in the following county: Lincoln.

Article 18 - NOTICES:

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement. All notices shall be delivered by email or at the address which the parties may designate to each other, personal

delivery, nationally recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving Party has received the Notice and (b) the Party giving the Notice has complied with the requirements of this Section.

Article 19 - HEADINGS:

Headings to this Agreement are for convenience only. Headings shall in no way affect the provisions themselves and shall not be construed in any way that would limit or otherwise affect the terms of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Membership Agreement as follows:

Member (Company) Name: _____

Authorized Representative Printed Name: _____

Authorized Representative Signature: _____

buildingSMART USA Inc.

bS-USA Representative Printed Name: _____

bS-USA Representative Signature: _____