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BuildingMinds Platform Terms of Use

BuildingMinds Technology AG, Seestrasse 55, 6052 Hergiswil, Switzerland ("**BMT**") and its corporate affiliates (together with BMT, the "**BM Group**") including BuildingMinds GmbH, Schindler-Platz, 12105 Berlin, Germany ("**BMB**") offer services relating to intelligent building and portfolio management. For this purpose, BMB operates the BuildingMinds cloud-based platform ("**BuildingMinds Platform**") which is used by customers of BM Group ("**Customer(s)**") for intelligent building and portfolio management. BMB makes the BuildingMinds Platform available either on its own account to its own Customers or as a subcontractor of other BM Group entities to their respective Customers (each such Customer of another BM Group entity than BMB, a "**Group Customer**").

These BuildingMinds Platform Terms of Use ("**Terms**") establish certain rules and limitations for the use of the BuildingMinds Platform by all Customers (including Group Customers) and all individuals accessing and using the BuildingMinds Platform on behalf of, or through, a Customer (each such individual, a "**User**"). Customers are responsible to ensure that their Users consent to, and comply with, these Terms, but these Terms do not give rise to a direct contractual relationship between such Users and BuildingMinds.

For ease of reference, the term "**BuildingMinds**" or "**we**" is used in these Terms to refer to BMB in relation to the operation of the BuildingMinds Platform, and to each respective BM Group entity (including BMB) with respect to its contractual relationship with its own Customers. These Terms will not give rise to a contractual relationship between BMB and any Group Customers, rather in such cases BMB will act as a subcontractor of each BM Group entity with respect to such entity's Group Customers.

These Terms do not grant any rights to access or use the BuildingMinds Platform, but supplement the separate subscription agreement for services related to the BuildingMinds Platform between BuildingMinds and the Customer ("**Subscription Agreement**") and apply with respect to a Customer and its Users only if and to the extent that they do not conflict with any deviating agreements made in the Subscription Agreement.

User Conduct

It is important to us to provide a transparent, safe, and fair service to all Customers and Users and in particular to avoid that any data or information which Customers or Users upload to the BuildingMinds Platform, make accessible for upload on the BuildingMinds Platform or create on the BuildingMinds Platform ("**Content**") is, in itself or in relation to an activity, in breach of applicable laws or infringes third party rights (collectively "**Illegal Content**").

For this purpose (and not limiting any additional or further restrictions under the Subscription Agreement), all Customers and Users are required to comply with the following rules:

1. We reserve all right and title in, and with respect to, all existing and future parts of the BuildingMinds Platform, including software, images, trademarks etc. ("**Proprietary Content**"). Proprietary Content may be used and reproduced only during the applicable subscription term, only as required for the legitimate use of the BuildingMinds Platform as contemplated in the Subscription Agreement and these Terms and may not be otherwise used or reproduced. Customers and Users shall at no time access components of the BuildingMinds Platform (including solutions, modules, features and/or add-ons) that are not in scope of the Subscription Agreement or generally not intended for direct user access (including the back-end systems of the BuildingMinds Platform).
2. When using the BuildingMinds Platform, all Customers and Users are required to refrain from inhibiting or overburdening the technical operation of the BuildingMinds Platform and/or from negatively affecting use by other Customers and Users.
3. All credentials required to access the BuildingMinds Platform are personal and confidential. They must be kept strictly secret and may not be shared. Any loss or unauthorized access or other security breaches or incidents relating to the BuildingMinds Platform must be reported immediately to BuildingMinds.

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4. Customers and Users must at all times refrain from introducing Illegal Content to the BuildingMinds Platform. Use of the BuildingMinds Platform and Content may not violate applicable statutes, regulations and other legislation, the common law and/or law of equity, binding court orders, judgements or decrees, and/or administrative decisions, rules, practices or requirements and/or any third-party rights (including intellectual property rights).
5. Content may not contain obscene, offensive or fraudulent information or advocate violence, discrimination or racism and may not give rise to any cause of action against BuildingMinds.
6. Customers and Users shall not modify the BuildingMinds Platform and, unless and to the extent permitted under mandatory applicable law, shall refrain from reverse engineering the BuildingMinds Platform.
7. Customers and Users shall not introduce illegal or malicious Content to the BuildingMinds Platform (including viruses, worms, Trojan horses, spyware, ransomware and any other form of malware or components thereof ("**Malware**") and shall ensure an adequate level of IT security on their IT infrastructure that is connected to the BuildingMinds Platform. An adequate level of IT security includes the use of up-to-date filters and firewalls with an adequate level of protection to prevent infections by Malware and penetration by third parties and installation of the respective current software versions recommended by the manufacturers (including all current security patches).
8. Customers are obligated to ensure that all of their respective Users are aware of, and fully comply with, the Subscription Agreement, these Terms and applicable laws ("**Compliance**"). By using the BuildingMinds Platform, all Users authorize the Customer to represent them vis-à-vis BMB and the respective BM Group entity holding the Subscription Agreement in all matters relating to use of the BuildingMinds Platform and to make and receive all declarations and communications on their behalf in this context.

Any Content which violates the standards set in these Terms, or which is introduced by a Customer or User to the BuildingMinds Platform contrary to these Terms, shall also be considered, and treated as, Illegal Content in the context of these Terms.

Monitoring

For the purposes of enforcing Compliance and preventing or suppressing Illegal Content, as well as for the purposes of ensuring product and service quality, gaining further insights in our products and services and their use and improvement and further development thereof, we reserve the right, at any time, to monitor and analyze the Content and the use of the BuildingMinds Platform, both by algorithmic decision-making and by human monitoring. We are, however, not obligated to actively monitor the Content or the use of the BuildingMinds Platform, and we undertake no legal obligation to regularly conduct such monitoring.

Single Point of Contact, Communications

Our **Single Point of Contact** for Customers, Users, Flaggers (as defined in the chapter "Illegal Content") and public authorities and for all matters relating to these Terms is: legal@buildingminds.com. The Single Point of Contact can be contacted in the English or the German language. With respect to Subscription Agreements with Group Customers, BMB acts as a subcontractor and representative of the respective BM Group entity holding the Subscription Agreement. For this purpose, BMT has appointed BMB as its legal representative in the EU.

Customers are obligated to monitor and enforce their Users' Compliance. All communications with Customers relating to the implementation of these Terms, including monitoring and the identification and suppression of Illegal Content will be made through the Single Point of Contact to the contact person designated by the Customer for this purpose, and not the individual User. The Customer will make and receive all communications on behalf of its Users and is responsible to inform its Users where this is legally required or deemed expedient by the Customer. BuildingMinds may, however, contact the individual User directly at any time, if it considers this appropriate or expedient, e.g. due to the urgency of the issue.

Illegal Content

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While we are not obligated to actively monitor Content in order to identify Illegal Content or otherwise to actively to seek facts or circumstances indicating illegal activity, it is highly important for us to provide a transparent, safe, and fair service to all Customer and Users.

For this purpose, we have put mechanisms in place to allow Customers, Users and/or other individuals or entities wishing to notify us of the presence of Content which they consider Illegal Content ("**Flagger(s)**") to report Illegal Content in order to allow us to ensure that the BuildingMinds Platform remains free of Illegal Content, and, where Illegal Content is uploaded, such Illegal Content is expeditiously removed (to "**Delete**" or "**Deletion**") or access thereto is expeditiously disabled ("to **Block**" or "**Blocking**").

This chapter of the Terms describes how notices of alleged Illegal Content ("**Report(s)**") and orders of the competent judicial or administrative authorities ("**Authorities**") to act against Illegal Content or to provide information ("**Orders**") can be submitted and how we will act upon Reports and/or Orders.

In enforcing these Terms, we will at all times strive to act in a timely, diligent, non-arbitrary, proportionate and objective manner.

Reporting Illegal Content

Reports can be submitted through our online form available here. Alternatively Flaggers can contact our Single Point of Contact identified in the chapter "Single Point of Contact, Communications" by any means to make a Report.

Each Report must include a sufficiently substantiated explanation of the reasons why the Flagger alleges the Content to be Illegal Content ("**Complaint**"); a clear indication of the exact electronic location of the Content, such as the exact URL or URLs, and, where necessary, additional information enabling the identification of the Illegal Content; and a statement confirming the Flagger's bona fide belief that the information and allegations contained in the Report are accurate and complete.

If reporting Illegal Content concerning the sexual abuse or sexual exploitation of a child, the solicitation of children for sexual purposes, or child pornography, Flaggers have the right to submit their Report anonymously. Otherwise, or if Flaggers wish to receive updates about their Report, they will need to provide a name and e-mail address.

Users wishing to make an anonymous Report are invited to log out of their user account before making the Report to ensure that our system does not connect the Report to their user account.

All Reports are processed by BMB through the Single Point of Contact (see chapter "Single Point of Contact, Communications"). All communications with Customers relating to Illegal Content will be made through the Single Point of Contact to the contact person designated by the Customer for this purpose, and not the individual User. BuildingMinds may, however, contact the individual User, if it considers this appropriate or expedient, e.g. due to the urgency of the issue.

Content Moderation, General Principles, Transparency

Where Illegal Content is identified (either through a Report or through monitoring), it may be temporarily Blocked, but, in order to protect the rights of our Customers and Users (such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms), final Blocking or Deletion will take place only subject to the procedures set forth in these Terms which are intended to establish timely, diligent, non-arbitrary, objective and proportionate measures with respect to the enforcement of Compliance and the prevention or suppression of Illegal Content.

At least once per year, we publish a transparency report on any content moderation that we engaged in during the reporting period ("**Annual Transparency Report**"). Our Annual Transparency Reports are published here.

Notice and Action Mechanism

Upon receipt of a Report, we will act upon the Report as follows:

1. Flaggers having provided contact information will, without undue delay, receive a confirmation of receipt of the Report.

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2. Our staff will then make an initial assessment of the completeness of the Report and the validity of the Complaint and may temporarily Block the Content until a final assessment of the validity of the Complaint has been made.
3. In the event of a temporary Blocking or in other cases where we consider this appropriate, we will notify the relevant Customer (also as recipient on behalf of a User that has uploaded the Content) that the Content is subject to a Complaint and may encourage the Customer to proactively assuage the Complaint by Deleting the Content or agreeing to a Deletion of the Content. In the event of a temporary Blocking we will provide a full Statement of Reasons (see below). We may not notify the Customer if we believe this inappropriate, e.g., because such notification would jeopardize public prosecution action or expose the Flagger to potential reprisals or because the Illegal Content in question is deceptive high-volume commercial content.
4. We will disclose the identity of the Flagger only if it is strictly necessary or where the Flagger has agreed thereto. In such case we may ask the Flagger and the Customer to resolve the issue swiftly and amicably and to the satisfaction of both parties, by modifying or removing the Content which is the subject matter of the Complaint.
5. We may report the Complaint to the Authorities (a) where we are obligated to do so or (b) where we consider this appropriate and we are authorized to do so under applicable data protection laws.
6. If the Customer does not agree to Delete the Content, and the Flagger and the Customer are unable to agree an alternative solution, we will decide on the validity of the Complaint and either Delete the Content or, if we have determined the Complaint to be unjustified, close the review and, as the case may be, un-Block the Content.
7. If the Content is Deleted or un-Blocked, or if the Customer has been notified of the Complaint earlier, we will notify the relevant Customer (also as recipient on behalf of a User that has uploaded the Content) with a full Statement of Reasons (see below), and, if the Flagger has provided its contact information, also the Flagger, of our decision and the action (to be) taken, providing information on the possibilities for redress in respect of that decision. Where we have used automated means for our decision-making, information on such use will be included in the notification.

Where we identify Illegal Content through other means than a Report or an Order, in particular through voluntary own-initiative investigations, the foregoing procedure and the redress procedure below will apply mutatis mutandis in relation to the relevant Customer (also as recipient on behalf of a User that has uploaded the Content).

Statement of Reasons

Where we notify Customers of any temporary or permanent Blocking or Deletion of their Content and/or of any sanction imposed against a Customer in relation to Illegal Content, we will provide to the Customer (provided that the Customer has been identified) a clear and specific statement of reasons ("**Statement of Reasons**") containing, as a minimum, the following information on the decision we have made:

a) Communication of our determination and decision with respect to the Illegal Content or sanction including its scope and its duration;

b) the facts and circumstances relied on in taking the decision, including, where relevant, information on whether the decision was taken pursuant to a Report or based on voluntary own-initiative investigations and, where strictly necessary, the identity of the Flagger;

c) where applicable, information on the use made of automated means in taking the decision, including information on whether the decision was taken in respect of Content detected or identified using automated means;

d) a reference to the legal ground relied on in determining whether the Content is Illegal Content and explanations as to why the Content is considered to be Illegal Content on that ground;

e) where the decision is based on the alleged breach of the Subscription Agreement or these Terms, a reference to the contractual ground relied on and explanations as to why the Content is considered to be incompatible with that ground; and

f) information on the possibilities for redress available in respect of the decision.

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Redress and Disputes

If Customers, Users or Flaggers believe that any action taken, or decision made, by BuildingMinds under these Terms does not comply with the terms of the Subscription Agreement or these Terms, or otherwise breaches their contractual or statutory rights, they can lodge a request for redress with our Single Point of Contact.

The request for redress will be reviewed and we will issue a decision after careful consideration of all facts and legal grounds cited by the requester.

If the requester does not agree with our decision on its request for redress, it may seek to resolve the dispute through the dispute resolution procedures specified in the Subscription Agreement and/or individually agreed between BuildingMinds and the Customer.

Orders by Authorities and Reporting to Authorities

Orders to Act against Illegal Content

Upon receipt of an Order to act against Illegal Content, we will, without undue delay, review the Order, if it is determined legal and binding, act upon the Order, and inform the Authority issuing the Order, or any other Authority specified in the Order, of any effect given to the Order without undue delay, specifying if and when effect was given to the Order.

At the latest when effect is given to the Order or, where applicable, at the time provided by the issuing Authority in its Order, we will inform the Customer concerned of the Order received (also as recipient on behalf of a User that has uploaded the relevant Content), the grounds provided by the Authority and the effect given to it with a Statement of Reasons limited, in addition to the foregoing information, to the possibilities for redress that exist and a description of the territorial scope of the Order.

Orders to Provide Information

Upon receipt of an Order to provide specific information about one or more specific Customers or Users, we will, without undue delay, review the Order, if it is determined legal and binding, act upon the Order, and inform the Authority issuing the Order, or any other Authority specified in the Order, of any effect given to the Order without undue delay, specifying if and when effect was given to the Order.

At the latest when effect is given to the Order or, where applicable, at the time provided by the issuing Authority in its Order, we will inform the Customer concerned (also as recipient on behalf of its Users) of the Order received and the effect given to it with a Statement of Reasons limited to the possibilities for redress that exist, and a description of the territorial scope of the Order.

Reporting to Authorities

If we become aware of any information giving rise to a suspicion that a criminal offence involving a threat to the life or safety of a person or persons has taken place, is taking place or is likely to take place, we will promptly inform the Authorities of the suspicion and provide all relevant information available.

We may also inform the Authorities in the event of a suspicion of other criminal or administrative offenses where we are obligated to do so under applicable laws or where we consider this appropriate and we are authorized to do so under applicable data protection laws.

Sanctions

If Content has been determined as Illegal Content, one or more of the following sanctions may be imposed against the Customer responsible for the upload of such Content:

a) suspension or permanent deactivation of the User account of the User having committed the breach, and/or a temporary or permanent ban of such User from the BuildingMinds Platform;

b) suspension or permanent deactivation of access to the BuildingMinds Platform in whole or part by the Customer or a subgroup of Customer’s Users;

c) temporary or permanent limitation of access to, or use of, the BuildingMinds Platform in whole or part by a User, Customer or a subgroup of Customer’s Users;

d) termination, in whole or part of the contractual relationship with the Customer.

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We will decide on the specific level of sanction based on the frequency and severity of breaches imputable to the Customer.

Changes to these Terms

We reserve the right to modify or amend these Terms at any time and for any reason. When these Terms are amended, updated Terms will be published on this webpage.

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