

TERMS OF SERVICE



Shelter Buddy

By executing (by signature or click agreement) these Terms, you agree to the terms, which together with any mutually agreed addenda, form a binding agreement (the "**Agreement**").

1. Definitions

- 1.1 "**Data**" - available data collected in connection with your use of the System.
 - 1.2 "**Fees**" - Fees for the Service and Associated Services we provide under an Order.
 - 1.3 "**Management System**" - our cloud and app-based shelter management system for use under the Agreement. The Management System includes Mobile Apps.
 - 1.4 "**Mobile App**" - a downloadable software application and associated Updates for accessing and using the Management System via a Mobile Device.
 - 1.5 "**Mobile Device**" - a smart phone, tablet or handheld device you supply, compatible with our Mobile App, for use with the System.
 - 1.6 "**Optional Services**" - optional services (e.g. program management, analytics, custom reporting, enhanced support, etc.) we provide at additional charge for use with the Service.
 - 1.7 "**Order**" - a binding order covering the provision of Services under these Terms. An Order will result from a mutual written agreement by the parties in the form of a Contract, Scope of Work, or Quote
 - 1.8 "**Service**" - the service we provide for management of shelter operations through our Management System.
 - 1.9 "**Subscription Term**" - the Subscription Term will begin upon electronic availability of System elements and have a term of 12 months, unless otherwise specified in an Order. The Subscription Term will be subject to successive automatic renewals for periods of 1 year unless either party provides notice of non-renewal at least 90 days before expiration of the then-current term.
 - 1.10 "**System**" - the Shelter Management System we make available under these Terms.
2. **Subscription.** During the Subscription Term and subject to the terms of this Agreement, you subscribe to the Service (and applicable Optional Services outlined in an Order) and we grant you a non-transferable, non-exclusive license to access and use the Management System (including applicable Mobile Apps).

3. **Software.** All software is owned by us or a third party licensor who will retain exclusive right, title and ownership of the software. You are granted a limited, personal, non-exclusive license, without the right to sublicense, to use the software only with the specific System elements covered by the applicable Order.

4. **Other Support.**

4.1 **Software Updates.** When reasonably practical, we will alert you and other customers in advance of major Updates. We will automatically install minor and general Updates as they become available to the Management System and, when reasonably practical, cause Updates to automatically install in Mobile Apps. If an Update requires you to download the Update to your Mobile Device(s), we will inform you of the required download procedure and you will complete the download. The term "Software **Updates**" means maintenance releases, error corrections, additions, changes, modifications, extensions, new versions and new releases of software for the System, excluding new products or services we elect to sell separately.

4.2 **Support Services.** We will provide you with access to our then-current standard support services for Shelter Buddy subscribers ("**Support**").

5. **Fees & Payment Terms.**

5.1 **Fees & Payment Terms for Management System.** The fees and payment terms for the Management System will be according to your signed Order.

6. **Data.**

6.1 **Your Access.** You may access your available Data during the Subscription Term and successive renewal periods through the reporting features of the Management System per our then current data-retention practices.

6.2 **Our Use.** We may use Your Data to provide the Service and associated Support, but we will not otherwise use or disclose Your Data (unless all identifying information unique to You has been removed at our expense). We may use Data of users who have provided user consent to receive updates on our products and services.

6.3 **Credit Card Processing.** When applicable, credit card payments will be processed by a PCI compliant organization.

7. **Confidentiality.**

7.1 **Confidential Information.** "Confidential Information" means any technical or non-technical information related to the operations, products, technology, services, or business of a party disclosed or otherwise provided in any manner by such party to the other

party, or to which the receiving party may gain access while performing under the Agreement, whether disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential. Your Confidential Information includes your Data, confidential reports, financial and operational information, and other matters relating to the operation of your business. Confidential Information also includes the terms and conditions of the Agreement and proprietary or confidential information of any third party that may be in the disclosing party's possession. Our Confidential Information includes the Management System, the system documentation, and pricing of the Management System and other System elements.

7.2 Nondisclosure. During the term of this Agreement and for a period of 3 years thereafter, each party will: (a) hold the other's Confidential Information in confidence, using the same degree (but no less than a reasonable degree) of care and protection that it exercises with its own confidential information of a similar nature; (b) not directly or indirectly disclose, copy, distribute, republish or allow access to any Confidential Information of the other party to a third party; and (c) not use the other party's Confidential Information for any purpose other than as necessary to fulfill such party's obligations or exercise its rights under this Agreement. Notwithstanding the above, either party may disclose Confidential Information if so required by applicable law or regulation (including court order or subpoena or other governmental decree or authority), provided that the receiving party, if required by governmental authority to reveal Confidential Information of the disclosing party will, if allowed by applicable law, notify the disclosing party promptly upon learning of the government requirements and before making such disclosure, and will provide the disclosing party with an opportunity (at the disclosing party's own expense) to seek a protective order or other appropriate procedure so that the disclosure, if required, can be made in a manner than preserves the confidentiality of the Confidential Information.

8. Additional Terms.

8.4 Intellectual Property. The Management System and other System elements are our intellectual property. As between you and us, we retain title to and ownership of all right, title and interest in such assets, including all intellectual property and other proprietary rights therein. All rights not expressly granted herein are reserved by us. You will not: (a) provide access to or use the Management System for any purpose separate from the System covered by these Terms; (b) disassemble, reverse engineer, decompile, disassemble or otherwise attempt to derive the source code of the Management System or any other System element; modify, port, adapt, translate or create any derivative work based upon the Management System or any System elements.

8.5 No Transfer. Unless you have been granted rights as an authorized partner, you will not copy, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, use, offer on a service bureau basis, deliver or otherwise transfer the Management System, in whole or in part.

8.7 Use Obligations. You (A) will access and use the Management System only in accordance with the Agreement, (B) will not knowingly upload or permit the Management System to be used to upload any data that (1) infringes the intellectual property rights or other proprietary rights of any third party, (2) is unlawful or objectionable material or (3) contains software viruses or other harmful or deleterious computer code, files or programs

8.8 **No Conflicts.** You represent and warrant that (i) the Agreement has been duly entered into and constitutes a valid and binding agreement enforceable against you in accordance with its terms; (ii) no authorization or approval from any third party is required in connection with your entering into or performance of the Agreement; and (iii) the entering into and performance of the Agreement does not violate the terms or conditions of any other agreement to which you are a party or by which you are otherwise bound

8.9 **Compliance.** You will comply with all applicable laws and regulations in your use of the System. You, not we, are responsible for any applicable vertical or industry-specific regulation compliance.

9. Limitations of Liability

9.1 **Exclusions.** NEITHER YOU NOR WE WILL BE LIABLE TO EACH OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE OR DATA, OR WILL SEEK THOSE TYPES OF DAMAGES.

9.2 **Liability.** OUR AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, INDEMNITY OR OTHERWISE) FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT WILL NOT FOR ANY REASON EXCEED THE AMOUNT YOU HAVE PAID US IN FEES FOR SERVICES UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD PRIOR TO THE INCEPTION OF THE CLAIM. THE PRICING FOR GOODS AND SERVICES HEREUNDER IS BASED ON THESE LIMITATIONS OF LIABILITY.

9.3 **Force Majeure.** We will not be in breach of the Agreement or liable for damages from any circumstances beyond our reasonable control, including (without limitation) fires, floods, natural disasters, power outages, cybercrime, delays or disruptions by third parties (including without limitation, communications providers or third party service providers).

10. Termination

10.1 Where Services are to be provided by Shelter Buddy (as specified in a signed Order), they will be supplied for the Term.

10.2 Without prejudice to any other rights either party may have under this Agreement or at law, and notwithstanding any other provision herein, either party ("**Non-Defaulting Party**") may terminate this Agreement immediately by notice in writing, if the other party ("**Defaulting Party**") is in breach of any material term and every endeavour is not made to ensure such breach is remedied to the reasonable satisfaction of the Non-Defaulting Party within 30 days of receipt of written notice by the Defaulting Party.

10.3 Either party may terminate this Agreement as follows:

- (a) upon the other party becoming insolvent, bankrupt, or making an assignment, proposal or an arrangement for the benefit of its creditors or becoming the subject of liquidation or

winding up proceedings (other than for the purposes of re-organization or amalgamation);
or

- (b) upon a receiver, trustee, liquidator, administrator or custodian being appointed over the undertaking assets of the other Party.

10.4 We may terminate this Agreement effective on written notice to you, if you fail to pay any amount when due in an Order, and such failure continues more than 30 days after we deliver written notice thereof.

10.2 **End of Management System and Access to Data.** When the Agreement and Support terminates, you will no longer have access to the Management System or the ability to generate reports containing your available Data. If you desire to use the Management System to create reports containing your available Data when the Agreement is scheduled to expire or terminate, you may continue to pay all Fees until you no longer desire access to the Management System (after the Agreement terminates, all remaining Data will eventually be deleted under our data retention policy) unless termination is due to failure to pay fees when they are due or a breach of the Agreement terms.

10.3 **Survival.** The rights and obligations which are continuing in nature (including Sections 5, 6, 7, 8, 9, 10 and 12) will survive any suspension or termination of the Agreement.

11. **Applicable Terms.** These Terms will apply and (except as mutually agreed in writing) remain unchanged during the Subscription Term. The Terms in effect at the time of renewal (posted at www.shelterbuddy.com/tos) will apply to any renewal.

12. General.

12.1 **Notices.** All “notices” must be in writing and delivered electronically or by other method with proof of delivery. All other communications, requests or alerts may be provided by email, website or other electronic means.

12.2 **Assignment.** Neither party will assign this Agreement, in whole or in part to a third party, without the written consent of the other party; provided that (a) either party may assign this Agreement to an affiliate or to the surviving legal entity in the case of its merger or consolidation, or to an entity to which such party transfers all, or substantially all, of its business and assets relevant to this Agreement, and (2) the party making the assignment will promptly notify the other party of such assignment. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

12.3 **Governing Law.** This Agreement and any related sales will be governed by the laws of the Delaware, USA. The United Nations Convention on Contracts for the International Sale of goods will not apply.

12.5 **Disputes.** The parties agree that the courts of the State of Delaware will have exclusive jurisdiction over any claim, or dispute or controversy arising out of or related to this Agreement. You may not initiate any litigation or other legal claim against us if you have

known of the claim for more than one year. Each party will pay (without reimbursement from each other) any attorney's fees and expenses it incurs in connection with any dispute.

- 12.6 **Severability.** Any waiver of or modification to the terms of the Agreement will be ineffective unless executed in writing and signed by both parties. If any provision of these terms and conditions are held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this document.
- 12.7 **Complete Agreement.** The Agreement (as described above) contains the complete agreement between the parties (and supersedes any prior agreements) relating to the subjects of this Agreement. Any terms in any of your purchase orders or other ancillary documents that are in conflict with or in addition to the terms of the Agreement are rejected and will be of no effect unless expressly agreed to in writing by both parties.