

# USG Boral - BIMWIZARD End User Licence Agreement

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The terms and conditions of this end user licence agreement (“**EULA**”) govern your access to and use of the Application and any database, information, content or other materials (such as product specifications) that are incorporated into, form part of or made available through or in connection with the Application (together with the Application, referred to herein as the “**Licensed Materials**”) by USG Boral (or its licensors).

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To the fullest extent permitted by applicable law but subject to the paragraph immediately below, USG Boral excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees).

Nothing in this EULA is intended to exclude, restrict or modify any rights that you may have under the *Competition and Consumer Act 2010* (Cth) or any other applicable legislation which may not be excluded, restricted or modified by agreement and the exclusions of and limitations on USG Boral's liability in this EULA do not apply in respect of any such statutory rights.

Where USG Boral's liability with respect to any statutory rights may not be excluded, but may be restricted or modified by agreement, USG Boral's liability is limited to: (a) in the case of a supply of goods, USG Boral (at its election) doing any one or more of: replacing the goods or supplying equivalent goods; repairing the goods; paying the cost of replacing the goods or of acquiring equivalent goods; or, paying the cost of having the goods repaired; and (b) in the case of a supply of services, USG Boral (at its election) doing either or both of: supplying the services again; or, paying the cost of having the services supplied again.

### **Limitation of liability :-**

Except to the extent that the same may not be excluded or limited as a matter of applicable law, USG Boral is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of USG Boral), suffered by you or any other person (including your employer or any third party you represent) under or in connection with this EULA or your access to or use of the Licensed Materials.

Without limiting the immediately foregoing paragraph: (a) USG Boral will not be liable to you or any other person (including your employer or any third party you represent), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this EULA for: any indirect, consequential or special loss or damage; or any loss of profits, loss of sales, loss of business or agreements, loss of goodwill, loss of or wasted management of staff time, loss of use or corruption of software, loss or corruption of data or loss of anticipated savings, even if USG Boral has been advised of the possibility of such loss or damage; and (b) USG Boral's total maximum liability to you and any other person (including your employer or any third party you represent) for all claims, actions, proceedings, losses, liabilities or costs (including legal expenses) sustained, incurred or suffered by you or any other person (including your employer or any third party you represent) (a "**Claim**") arising under or in connection with this EULA, whether in contract, tort (including negligence),

breach of statutory duty, or otherwise, is limited for all Claims in aggregate to one hundred dollars (\$100).

**Indemnity by you :-**

You must indemnify and hold harmless USG Boral (and its officers, employees and representatives) against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by USG Boral (or its officers, employees and representatives) as a result of your use of the Licensed Materials, breach of this EULA, tortious (including negligent) or other wrongful acts or omissions and any violation by you of any laws or the rights of any person.

**Circumstances beyond USG Boral's control :-**

USG Boral will not be in breach of this EULA or otherwise liable to you or any other person (including your employer or any third party you represent) for any unavailability or failure of the Licensed Materials or any delay or other failure by USG Boral (including as result of any delay or failure in the transmission of data via the internet) that is caused by or arises from any event or circumstances beyond USG Boral's control.

**Assignment :-**

You must not assign, transfer, sub-contract or otherwise dispose of any or all of your rights and/or obligations under this EULA. USG Boral may (with or without notice to you) assign, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this EULA to any person.

**Privacy :-**

Any personal information collected by USG Boral in connection with your use of the Licensed Material will be collected, used and managed in accordance with USG Boral's published Privacy Policy (which is available on USG Boral's website) and the *Privacy Act 1998* (Cth), including the Australia Privacy Principles. You should read USG Boral's Privacy Policy together with this EULA.

**Rights cumulative :-**

The rights, powers, privileges and remedies provided under any provision of this EULA are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this EULA or by applicable law or otherwise.

**Waiver :-**

No failure to exercise nor any delay in exercising by USG Boral of any right, power, privilege or remedy under this EULA shall impair or operate as a waiver thereof in whole or in part. No single or partial exercise of any right, power privilege or remedy under this EULA shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

**Invalidity :-**

If any provision of this EULA is held to be illegal, void, invalid or unenforceable under the applicable laws of any jurisdiction, the legality, validity and enforceability of the remainder of this EULA in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this EULA in any other jurisdiction shall not be affected. You must not contest the validity or enforceability of this EULA solely because it was concluded electronically.

**Governing law :-**

This EULA is governed by, and must be construed in accordance with, the laws of New South Wales, Australia. You are deemed to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

**Interpretation :-**

In this EULA, unless the context requires otherwise: (a) any reference to a “person” includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same shall include a reference to the others; (b) any phrase introduced by the words “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; (c) references to the singular include the plural and to the masculine include the feminine, and in each case vice versa; and (d) the headings and sub-headings are inserted for convenience only and shall not affect the meaning of this EULA.