



USE OF SUBMITTAL EXCHANGE ON THIS PROJECT IS GOVERNED BY THE SOFTWARE LICENSE AGREEMENT. IF SUBSCRIBER DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT USE THE SERVICE. BY USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

SOFTWARE LICENSE AGREEMENT

This Software License Agreement is entered into on the date set forth below by and between Oracle America, Inc. ("Oracle") and the entity that is subscribing to Submittal Exchange for the Project(s) (the "Subscriber"). The parties wish to enter into this Software License Agreement to set forth the terms and conditions under which Oracle shall provide access to and the ability to use certain services available through the website www.submittalexchange.com (the "Site") for the sole purpose of transmitting, reviewing, tracking and archiving construction submittals, closeout documents and other design and construction correspondence for the Project(s) (the "Service"). The Terms of Use available at <http://www.oracle.com/contracts> and the terms of any of Oracle's order form(s) for Submittal Exchange entered into by and between the parties (the "Order Form") are expressly incorporated herein by reference. In the event of a conflict between this Software License Agreement, an Order Form, and the Terms of Use, the terms and provisions of this Software License Agreement shall control. As used herein, the term "Agreement" means the Terms of Use, any Order Forms and this Software License Agreement, collectively.

1. Projects and User Accounts

1.1 *Definition of Project.* As used herein, the term "Project" means the project(s) identified by Subscriber on the applicable Order Form for inclusion in Subscriber's account and for which Subscriber and the Associates (as defined herein) intend to use the Service and Site.

1.2 *User Accounts.* Subscriber is responsible for identifying those Associates who Subscriber would like to have access to and the ability to use the Site and Service. "Associates" means Subscriber's employees, representatives, or agents, or any architects, consultants, contractors, construction managers, subcontractors, suppliers, owners or other individuals associated with a Project, who are authorized to use the Service and have been supplied access to the Project on the Site by Subscriber (or by Oracle at Subscriber's request). In addition to Subscriber's obligations set forth in this Software License Agreement, both Subscriber and all Associates shall be required to review and agree to the Terms of Use available at the Site prior to being granted access to the Site and/or the Service.

1.3 *Unauthorized Use.* Subscriber shall notify Oracle immediately of any unauthorized use of any password or account or any other known or suspected breach of security related to the Site or Services.

2. Additional Services

2.1 *Available Features.* Subscriber's use of the Site includes access to features specific to the design or/or construction phase of a Project as indicated on the applicable Order Form.

2.2 *Project Setup.* If Subscriber's use of the Site includes construction phase features (as indicated on the applicable Order Form), then Oracle will create initial submittal log(s) on the Site based on Project specifications provided by Subscriber. Final review of the log(s) and additional changes after the initial setup are the responsibility of Subscriber.

2.3 *Notice of Completion.* Subscriber will notify Oracle within thirty (30) days of when a Project is complete or when Subscriber no longer requires the use of the Service and/or Site in connection therewith. In the event the Subscriber has no other active Projects, such notice shall function as a cancellation of this Agreement pursuant to Section 3.2 hereof.

2.4 *Archiving.* Upon notification by Subscriber or cancellation of the Agreement, Oracle will remove all data associated with the identified Project(s) from the Site, including without limitation all Project logs and related files whether or not submitted to the Site by a Subscriber or Associate (collectively, the "Project Data"), and enable the Subscriber or

Associate to download the same in a compressed file (the "Archive Package") from the Site, provided all amounts due under this Agreement have been paid in full. Project logs will be recorded in HTML format in the Archive Package, with direct links to the file for each document recorded in the Project log. The ability to download the Archive Package shall be removed thirty (30) days after the Subscriber's request.

2.5 Project Data Removal. Oracle reserves the right to proceed with archiving and removal of Project Data from the Site if a Project has no new activity for a period of sixty (60) consecutive days and if Subscriber has not responded to Oracle's request to archive. Notwithstanding anything to the contrary contained herein, Oracle reserves the right to withhold, remove and/or discard Project Data without notice for any breach of this Agreement, including without limitation, Subscriber's non-payment of the fees due hereunder. Further, upon termination for cause or after the expiration of the thirty (30) day window following cancellation, Subscriber's and its Associates' rights to access or use Project Data through the Site shall immediately cease and Oracle shall have no obligation to maintain or forward any Project Data to Subscriber.

2.6 Data Retention. Oracle has the right, but not the obligation, to retain copies of any Project Data following cancellation or termination of the Agreement or completion of the archive process as described in this Article 2. Oracle is not required to retain the Project Data and may, at its option, delete the Project Data at any time following termination or cancellation of this Agreement without notice to Subscriber.

2.7 Third Party Services. If mutually agreed upon between the parties and expressly indicated on the applicable Order Form, the Subscription Fee will include an allowance for certain third party services to be provided in connection with the Service (the "Third Party Services"). If offered, the Order Form will set forth the third party service provider(s) and any other relevant information relating to the Third Party Services. Oracle reserves the right to change and/or discontinue the Third Party Services at any time. If offered, such Third Party Services are provided "as is" and without warranty of any kind. It is Subscriber's responsibility to ensure that any data provided through the Third Party Services is complete, accurate and timely.

2.8 Recommended Project Manual Language. Subject to Subscriber's compliance with this Agreement, Oracle hereby grants Subscriber a non-exclusive, non-transferable, limited right and license to use the Recommended Project Manual Language and other Oracle materials for the purpose of explaining electronic submittal expectations and procedures to Subscriber's Associates in connection with the Project(s). All rights not expressly granted to Subscriber are reserved by Oracle.

3. Term and Termination

3.1 Term. The term of this Agreement commences on the Effective Date and shall remain in effect for the Initial Term. "Effective Date" means the date the Subscriber electronically signs or accepts the Order Form. For a Subscriber, the definition of "Effective Date" as set forth herein shall control over any definition of "Effective Date" set forth in the Terms of Use. Upon expiration of the Initial Term, the term of this Agreement will automatically extend into the Extended Term if the Project(s) listed on the applicable Order Form remain active. "Initial Term" means the term of this Agreement beginning on the Effective Date and terminating upon the earlier of (a) thirty (30) months thereafter or as otherwise expressly specified on the applicable Order Form, or (b) cancellation or termination of this Agreement by a party pursuant to Sections 2.3, 3.2 or 3.3. "Extended Term" means the term of this Agreement beginning one (1) day after the final day of the Initial Term and terminating upon cancellation or termination of this Agreement by Oracle or Subscriber pursuant to Sections 2.3, 3.2 or 3.3, whichever occurs first.

3.2 Cancellation. This Agreement can be cancelled at any time during the Initial Term or the Extended Term by either party upon thirty (30) days' advanced written notice. In the event of cancellation, all Project Data associated with Subscriber's Project(s) and/or account will be removed from the Site and distributed according to Article 2.

3.3 Termination for Cause. Oracle, in its sole discretion, may immediately terminate this Agreement, and Subscriber's password, account and use and/or the Associates' passwords, accounts and use of the Service and Site if either Subscriber or an Associate breaches or otherwise fails to comply with this Agreement.

4. Billing

4.1 Invoices. Upon execution of this Software License Agreement, Oracle will invoice Subscriber for the Subscription Fee (as defined below) and any additional fees due. Thereafter, Oracle shall periodically issue invoices to Subscriber

for any additional fees identified in the Order Form or relating to an Extended Term. Unless otherwise stated on the applicable Order Form, all outstanding fees are due upon receipt of the applicable invoice.

4.2 *Fees.* In exchange for access to the Site and use of the Service for the Initial Term, Subscriber agrees to pay the Subscription Fee. The "Subscription Fee" is identified on the applicable Order Form and based on each Project's identified Construction Value (as set forth on the applicable Order Form). In the event the scope of a Project increases beyond the Construction Value originally set forth on the applicable Order Form, Subscriber will promptly notify Oracle and additional fees may be assessed based on the then-current Oracle pricing scale. For each month of the Extended Term, the Subscription Fee shall be prorated on a calendar month basis.

4.3 *Additional Fees.* Additional fees will be charged on an as-quoted and out-of-pocket expense basis. Oracle's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Subscriber shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Oracle's income. Oracle reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least thirty (30) days prior notice to Subscriber, which notice may be provided by e-mail.

4.4 *Third Party Services Allowance.* If applicable, a portion of the Subscription Fee will be allocated for Third Party Services (the "Third Party Services Allowance"), the maximum amount of which will be set forth on the Order Form. Provided Third Party Services are identified in the applicable Order Form, the Third Party Services Allowance will be applied to pay for any fees related to the Third Party Services. If Subscriber incurs fees relating to the Third Party Services in excess of this Third Party Services Allowance, such fees will be billed to Subscriber on an invoice issued by Oracle with an additional 10% mark-up included for administrative overhead and processing. The Third Party Services Allowance is nonrefundable. The Third Party Services Allowance is based on a service agreement between Oracle and the applicable third party service provider and, therefore, changes in fees or services offered by a third party service provider may affect the services and quantity of services provided.

4.5 *Excess Data Storage Fee.* The Subscription Fee includes 10 GB of disk storage space for each of Subscriber's Project(s), unless a different amount is stated on the applicable Order Form. If the amount of disk storage required exceeds this limit (or the limit stated on the Order Form if applicable), Oracle will notify Subscriber and, for each additional gigabyte or portion thereof required, Subscriber will be charged a fee equal to 1/300th of the then-current Subscription Fee per month. Oracle reserves the right to establish or modify its general practices and limits relating to storage of Project Data upon giving notice to Subscriber.

4.6 *Billing and Contact Information.* Subscriber agrees to provide Oracle with complete and accurate billing and contact information. This information includes Subscriber's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. Subscriber agrees to update this information within thirty (30) days of any change. If the contact information Subscriber has provided is false or fraudulent, Oracle reserves the right to terminate Subscriber's access to the Service and/or Site for cause in addition to any other legal remedies.

4.7 *Currency.* All fees are stated and will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes.

4.8 *Effect of Cancellation or Termination.* In the event of cancellation of this Agreement by Subscriber, for any reason, the Subscription Fee is non-refundable. In the event of cancellation of this Agreement by Oracle, a portion of the Subscription Fee will be refunded to Subscriber based on the following schedule: 50% of the Subscription Fee will be refunded if cancellation occurs six months or less from the Effective Date; 25% of the Subscription Fee will be refunded if cancellation occurs more than six months but no more than twelve months from the Effective Date; the Subscription Fee will be non-refundable if cancellation occurs more than twelve months after the Effective Date. In the event of termination of this Agreement for cause by Oracle, the Subscription Fee is non-refundable. Except as otherwise provided herein, all payment obligations are non-cancelable and all amounts paid are non-refundable. In the event Subscriber disputes in good faith all or any portion of an invoice submitted by Oracle, Subscriber may withhold payment of the amount subject to the dispute; provided, however, that Subscriber (a) continues to pay any undisputed amount when it becomes due and payable in accordance with this Agreement; and (b) contacts Oracle in writing within twenty (20) days of the invoice date with a request for invoice review. The parties shall work together to resolve any such dispute; however, in the event a resolution between the parties is not achieved within a reasonable period of time, Oracle reserves the right to immediately terminate this Agreement.

5. Non-Payment and Suspension

5.1 *Suspension*. In addition to any other rights granted to Oracle herein, Oracle reserves the right to suspend or terminate this Agreement and Subscriber's and all of its Associates' access to the Service and/or Site if payment is not received by Oracle for an outstanding invoice within sixty (60) days of the invoice date. In addition, accounts not paid within thirty (30) days of the invoice date are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Subscriber will not be eligible for Subscription Fee reimbursement pursuant to Section 4.8 during any period of suspension and, if during the Extended Term, will continue to be charged the prorated Subscription Fee. If Subscriber or Oracle initiates termination or cancellation of this Agreement, Subscriber will be obligated to pay any balance due on Subscriber's account computed in accordance with Sections 4.2 and 4.8.

5.2 *Reconnection Fee*. Oracle reserves the right to impose a reconnection fee in the event Subscriber is suspended and thereafter requests access to the Service and/or Site.

6. Indemnification

Subscriber shall be responsible and liable for all of Subscriber's and the Associates' acts and omissions and any breach of this Agreement caused by Subscriber or the Associates. Subscriber shall, at Subscriber's expense, defend, indemnify and hold Oracle, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, members, employees, advisors, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including court costs and attorneys' fees) arising out of or in connection with: (a) a claim alleging that use of the Project Data infringes the rights of, or has caused harm to, a third party; (b) a claim, which if true, would constitute a violation of any of Subscriber's representations and warranties; (c) a claim arising from the breach by Subscriber of this Agreement; (d) a claim arising out of Subscriber's negligence or willful misconduct; (e) any claim arising out of or related to Subscriber's use of the Site and/or Service or the related electronic media or components; and (f) a claim, demand or subpoena for records or testimony arising out of any dispute related to or arising out of a Project, or between the Subscriber, the Associates, any user of the Site or third parties whatsoever, provided that in any such case Oracle: (i) gives written notice of the claim promptly to Subscriber, (ii) gives Subscriber sole control of the defense and settlement of the claim (provided that Subscriber may not settle or defend any claim unless Subscriber unconditionally releases Oracle of all liability and such settlement does not affect Oracle or the Service), or (iii) provides to Subscriber all available information and assistance reasonably requested. Oracle shall be able to participate in its defense with its own counsel if it so desires.

7. Limitation of Liability

NEITHER ORACLE NOR ITS DIRECTORS, MEMBERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, OR LICENSORS SHALL BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY FOR ANY COMPENSATORY, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF SUBSCRIBER'S OR AFFILIATES' USE OF THE SITE AND/OR SERVICE, OR INABILITY TO GAIN ACCESS TO OR USE THE SITE AND/OR SERVICE, OR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE AND/OR SITE, OR OUT OF ANY BREACH OF ANY WARRANTY, EVEN IF ORACLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, IN SUCH STATES AND JURISDICTIONS LIABILITY IS LIMITED TO THE GREATEST EXTENT NOT PROHIBITED BY LAW.

SUBSCRIBER'S SOLE RIGHT AND REMEDY WITH RESPECT TO ANY DISPUTE WITH ORACLE WITH RESPECT TO THE SERVICES PROVIDED UNDER THESE TERMS OF USE SHALL BE TERMINATION OF THESE TERMS OF USE. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ORACLE'S AGGREGATE LIABILITY TO ALL PARTIES FOR ANY CLAIMS, WHETHER ARISING IN TORT, CONTRACT, COMMON LAW, STATUTE, REGULATION OR OTHERWISE EXCEED THE FEES PAID BY SUBSCRIBER TO ORACLE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ANY SUCH CLAIM.

8. Disclaimer of Warranties

Oracle is not engaged in the practice of architecture or engineering and does not provide any independent review or approval of submittals or other documents on the Site or enforce any submittal schedule. Responsibility for timely submittals remains with Subscriber, and none of Oracle's services or actions should be construed to relieve Subscriber

of Subscriber's exclusive responsibility for those obligations. Subscriber and its Associates have sole responsibility for the accuracy, quality, integrity, legality and reliability of all Project Data.

ORACLE AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE, THE SITE THIRD PARTY SOFTWARE, SUPPORT SERVICES OR THIRD PARTY SERVICES. ORACLE AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SITE, SERVICE, THIRD PARTY SOFTWARE, SUPPORT SERVICES OR THIRD PARTY SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SITE, SERVICE, SUPPORT SERVICES, THIRD PARTY SOFTWARE OR THIRD PARTY SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA, INCLUDING WITHOUT LIMITATION PROJECT DATA, WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE OR THIRD PARTY SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SITE, SERVICE, THIRD PARTY SERVICES, THIRD PARTY SOFTWARE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE, SUPPORT SERVICES, THE SITE, THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES ARE PROVIDED TO SUBSCRIBER AND ITS ASSOCIATES STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR TITLE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ORACLE AND ITS LICENSORS. Certain states and/or jurisdictions do not allow the exclusion of implied warranties, so the exclusions set forth above may not apply.