EULA version 2016-03-09

END USER LICENSE AGREEMENT FOR BENTLEY SOFTWARE

This End-User License Agreement ("**EULA**") is a legal agreement between Bentley Systems, Incorporated, a U.S. company located at 685 Stockton Drive, Exton PA 19341("**Bentley**"), and Government Customer ("Licensee" or "Ordering Activity") to purchase the Bentley software and associated online or electronic documentation that accompanies this EULA, which includes the associated media and Bentley Internet-based services (hereinafter referred to as "**Software**" which reference includes "**Test Software**" defined under Article I—Terms and Conditions.

If you are an entity or person ("**Evaluator**") using Software or certain features of Software distributed to you for testing and evaluation purposes ("**Test Software**"), license rights and obligations with respect to such Evaluator use are set forth in Article 3 of this EULA. To the extent there is a conflict between Article 3, and either Articles 1 or 2 of this EULA with respect to your use of Test Software, Article 3 shall take priority.

BENTLEY AND LICENSEE ACKNOWLEDGE AND AGREE THAT THIS EULA IS MADE A PART OF BENTLEY'S SCHEDULE 70 FSS GS-35F-0453L. LICENSEE'S ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS EULA IS A CONDITION TO THE GRANT OF LICENSE BELOW. THIS EULA, AS MAY BE MODIFIED BY ANY APPLICABLE SIGNED WRITTEN AGREEMENT BETWEEN LICENSEE AND BENTLEY, REPRESENTS THE ENTIRE SET OF TERMS AND CONDITIONS GOVERNING YOUR USE OF THE SOFTWARE AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN COMMUNICATIONS, PROPOSALS AND PRESENTATIONS WITH RESPECT TO THE SOFTWARE OR THE SUBJECT MATTER OF THE EULA.

If this agreement is translated into a language other than English and there is a conflict of terms between the English and the other language, the English version will control. Licensee should keep a copy of this EULA for their records. The latest version of this EULA appears in its entirety on http://www.bentley.com/legal/eula_en.txt. Bentley may update or amend the EULA at any time without notice and any amendments or updates that changes the terms and conditions of any previously approved EULA under the GSA Schedule shall be submitted to the Contracting Officer for approval; however, the form of EULA in effect at the time of the Software acquisition will apply.

Article 1: Terms and Conditions

1. **CERTAIN DEFINITIONS**.

   1.1. **"Academic Related Use"** means the use of designated Software in object code form solely for the internal classroom instruction or research of your teaching staff and/or students matriculated in a degree program and not to include student use in a paid employment setting or any other use prohibited under this EULA.

   1.2. **"Academic Software"** means Software that is identified as "Academic Edition" or "Academic License" (or words of similar meaning).

   1.3. **"CAL"** means client access license.

1.4. **“Device”** means a single personal computer, workstation, terminal, hand held computer, pager, telephone, personal digital assistant, Server or other electronic device used by a User.

1.5. **“External User”** means any individual (not an organization) who is not: (i) one of your full-time, part-time or temporary employees; or (ii) agency temporary personnel or an independent contractor on assignment at your place of business or work-site.

1.6. **“License Key”** means the document furnished to you by Bentley in electronic or such other format, as determined in Bentley’s sole discretion, that identifies the Software licensed and authorizes use of the Software.

1.7. **“Production Use”** means use of the Software in object code form by a single User or a Device, as applicable, solely for internal production purposes in support of one Site.

1.8. **“Site”** means the discrete geographic location where you first install or use the Software.

1.9. **“Time Clocks”** means any time clocks, copy-protection mechanisms, or other security devices embedded in the Software which may deactivate the Software after expiration of any applicable subscription or termed license period.

1.10. **“User**” or “**Evaluator**” means any individual or entity that is not an External User.

1.11. “Government Customer” means the Licensee under GSA Schedule contracts, and is the "ordering activity," defined as an "entity authorized to order under GSA Schedule contracts as defined in GSA Order ADM4800.2G, as may be revised from time to time."

1.12. “Software” means Bentley software and associated online or electronic documentation, including the associated media and Bentley Internet-based services.

1.13. “Test Software” means Software or certain features of Software distributed to Licensee for testing and evaluation purposes.

2. **GRANT OF LICENSE.** As and for so long as you comply with all of the terms of this EULA, Bentley grants Licensee the non-exclusive right to (a) install and use one copy of the Software for Production Use in the country where the Software is first obtained and (b) use the documentation that accompanies the Software for internal, non-commercial reference purposes only.

3. **RESERVED RIGHTS.** Licensee acknowledge and agree that the Software is a proprietary product of Bentley or its suppliers, distributors and unrelated third parties ("**Suppliers**") protected by copyright and other applicable intellectual property laws and treaty provisions. Licensee further acknowledge and agree that the entire right, title and interest in and to the Software including associated intellectual property rights, shall remain with Bentley or its Suppliers. This license grant may be made by Bentley on behalf of Suppliers as third party beneficiaries of the license rights provided herein. Bentley retains all rights not expressly granted to you in this EULA. **THE SOFTWARE IS LICENSED NOT SOLD.**

4. **REGISTRATION.** Licensee acknowledges that registration or activation may be required in order for Licensee to utilize the full benefits of the Software.

5. **NO RENTAL OR COMMERCIAL HOSTING.** Software is licensed for Production Use only. Licensee may not rent, lease, lend or provide commercial hosting services with the Software. Licensee may also not use the Software to

provide fee or transaction based services. Contact Bentley for the availability of alternate pricing if you desire to use the Software in such fashion.

6. **NO "MULTIPLEXING" OR POOLING.** Use of software or hardware that reduces the number of electronic devices directly monitored or managed by the Software or directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of licenses required; the number of licenses required would equal the number of distinct inputs to the multiplexing or pooling hardware/software "front end."
7. **LIMITATIONS ON REVERSE ENGINEERING.** Licensee may not decode, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Software except only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. To the extent that you are expressly permitted by law to undertake any of the activities listed in the previous sentence, Licensee will not exercise those rights until Licensee have provided Bentley with thirty (30) days prior written notice of your intent to exercise such rights.
8. **DATA CAPTURE AND USE.** Licensee agree that Bentley may collect and utilize technical information gathered as part of Software support services that may be provided to you. Data capture in this form will only be used to improve Bentley's products and/or provide customized services to Licensee and will not be disclosed or disseminated to third parties except in an aggregated form.
9. **ARCHIVAL OR BACKUP COPY.** Licensee may make a reasonable number of backup copies of the Software, not to exceed one (1) copy per Product licensed, provided Licensee's backup copies are not installed or used for other than archival purposes.
10. **RESTRICTIONS ON CERTAIN SOFTWARE.** Software identified as demo, evaluation, BDN, Beta, Technology Preview or "NFR" (or "Not for Resale" or with words of similar meaning) may not be sold, bartered or otherwise transferred. Such Software may not be used for any purpose other than your testing or evaluation unless specified otherwise pursuant to a separate agreement signed by both Licensee and Bentley.
11. **ACADEMIC SOFTWARE.** For Academic Software, Bentley hereby grants Licensee a non-exclusive right and license to use in object code form such Academic Software for Academic Related Use only. Licensee may not sell, barter or otherwise transfer Academic Software. ***Special Note Applicable to Academic Software:*** If Licensee have covered the Academic Software subject to this EULA pursuant to a valid Bentley Academic SELECT Program Agreement (or predecessor or successor agreement) with Bentley then Licensee may be entitled to additional and incremental licensing benefits to those set forth in this EULA by virtue of that relationship. In the event that Academic Software is no longer covered by a valid Bentley Academic SELECT Program Agreement (or predecessor or successor agreement) due to termination of such agreement or any other reason, then Licensee will lose those incremental benefits, and your license rights will only be as set forth in this EULA.
12. **TIME CLOCKS.** Bentley's default licensing term is perpetual unless otherwise specifically identified for the Software licensed. If Licensee have licensed the Software subject to this EULA for a term shorter than a perpetual license, Licensee acknowledge that the Software may be delivered to Licensee with embedded Time Clocks. Licensee agree that Time Clocks are not considered a defect of the Software and Licensee release Bentley from any and all claims, however characterized, arising from or related to Time Clocks or their operation.

13. **TRANSFER.** *Internal.* Licensee may transfer the Software and the EULA to a different Device at the same Site, provided you completely remove the Software from all prior Devices. Licensee may also make a one-time transfer of a CAL to another of Licensee's Users or Devices located at the same Site. In order to accomplish these transfers, Licensee may need to contact Bentley. *External.* Licensee may not transfer the Software and license granted under this EULA, or a CAL, to a third party without Bentley's prior written consent. If such consent is obtained, you may permanently transfer the Software and the license granted under this EULA, or the CAL, provided Licensee transfer the Software and all and media to such third party, and Licensee do not retain any copies. The recipient of such transfer must agree to all terms and conditions of the EULA. Any purported sublicense, assignment, transfer or encumbrance is void without Bentley's prior consent.

14. **UPGRADES.** Licensee may not use any Software identified as an upgrade unless Licensee is properly licensed to use Software which Bentley has identified as being eligible for an upgrade. After installing an upgrade, Licensee may use the original Software product that was eligible for an upgrade provided that at any one time Licensee use *only* the upgraded Software or the prior Software version subject to the upgrade.

15. **NO EXTENSION OF CAPABILITIES.** Licensee may develop its own applications that interoperate or integrate with the Software. Bentley prices its Software, among other factors, based on capabilities that we expose to you. Licensee may not extend the Software to enable or unlock capabilities of the Software not specifically identified by Bentley as forming part of the specified end user functionality.

16. **SEPARATION OF COMPONENTS.** The Software is licensed as a single product. Component parts of the Software may not be separated and installed or used on multiple Devices.

17. **TERMINATION.** If Licensee breaches the terms and conditions of this EULA, Bentley may terminate this EULA subject to 41 U.S.C. §§7101-7109 and in accordance with FAR 52.233-1without prejudicing any of its other rights. In such event you must destroy and remove all copies of the Software from your Device(s). Sections 1, 3, 13, 20, 21, 23, 25, 26, 27, 28 and 29 specifically survive termination.

18. **NO AUTOMATED USE.** A license for the Software may not be shared or used concurrently on different Devices, nor shared or used to support multiple User or operational requests as indicated above. As a result, Licensee may not use the Software in an automated, unattended, non-interactive server application or component (including ASP) where: (i) multiple User requests from different Users are queued for processing; or (ii) multiple requests from one User are queued for processing but acting against content created or edited by other Users. Examples which would violate this paragraph 18 of Article I include but are not limited to use as a plot server, file translator, print server or other applications using or employing similar methods.

19. **LIMITED WARRANTY.** Except for Software which is identified as no-charge, free, demo, evaluation, BDN, Beta, Technology Preview, or NFR, which is provided to you "AS-IS" and specifically without warranty of any kind, for sixty (60) days from the date of first installation (the "**Warranty Period**"), Bentley warrants that (i) the Software will perform substantially in accordance with the functional specifications in the documentation which accompanies the Software; and (ii) the media on which the Software is distributed meets generally accepted industry standards. It is understood that neither Bentley nor its Suppliers are

responsible for your use of the Software or the results from such use. It is further understood that there may be errors or omissions in the information contained in the Software, that the information contained in the Software may not be current or complete and that defects in hardware or software may prevent you from gaining access to the Software. This limited warranty is offered by Bentley alone, and is not extended to any software code that may be contributed to the Software by our Suppliers. Any supplements or updates to the Software (including but not limited to fixes, work in progress builds, or subsequent updates) provided to you after the expiration of the Limited Warranty period above are not covered by any warranty or condition, express, implied or statutory.

20. **WARRANTY DISCLAIMER**. WARRANTY DISCLAIMER shall be in accordance with Bentley's GSA Schedule Contract No. GS-35F-0453L Section 2.a.2. Exclusion of Warranties of Article 2 GUARANTEE/WARRANTY of the TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE.

21. **HIGH RISK ACTIVITIES**. The Software is not fault tolerant and is not designed, manufactured or intended for use or resale as control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, Bentley and its Suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

22. **END USER REMEDIES**. END USER REMEDIES END USER REMEDIES shall be in accordance with Bentley's GSA Schedule Contract No. GS-35F-0453L Section 2.a.3. Exclusive Remedy of Article 2 GUARANTEE/WARRANTY of the TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE.

23. **LIMITATION OF LIABILITY**. Limitation of Liability shall be in accordance with Bentley's GSA Schedule Contract No. GS-35F-0453L Sections 2.a.6. Limitation of Bentley Liability and 2.c. Limitation of Liability of Article 2 GUARANTEE/WARRANTY of the TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE.

24. STATUTORY CONSUMER RIGHTS. Nothing in this EULA is meant to contravene statutory rights that Licensee may have pursuant to Federal law.

25. EXPORT CONTROLS. The Software is subject to U.S. export control laws, regulations and requirements, in addition to export control laws, regulations and requirements of other agencies or authorities based outside of the United States

(collectively referred to as "**Export Controls**"). Regardless of any disclosure made by you to Bentley of an ultimate destination of the Software, you must not export, re-export or transfer, whether directly or indirectly, the Software, or any portion thereof, or any system containing such Software or portion thereof, to anyone without first complying strictly and fully with all Export Controls that may be imposed on the Software. The countries subject to restriction by action of the United States Government, or any other governmental agency or authority outside of the United States, are subject to change, and it is your responsibility to comply with applicable Export Controls as they may be amended from time to time. Licensee shall be solely responsible for its breach of the foregoing obligations in this Section.

26. U.S. GOVERNMENT RESTRICTED RIGHTS. If the Software is acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("**U.S. Government**"), it is provided with restricted rights. The Software and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and DFARS 227.7202, and "restricted computer software" pursuant to FAR 52.212-14 General (May 2014). Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-19, DFARS 227.7202, and 1852.227- 86, as applicable. Contractor/Manufacturer is Bentley Systems, Incorporated, 685 Stockton Drive, Exton, PA 19341-0678.

24. **GOVERNING LAW.** This EULA will be governed by and construed in accordance with Federal Law. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and the provisions of the Uniform Computer Information Transactions Act, as they may have been or hereafter may be in effect in any jurisdiction, shall not apply to this Agreement.

25. **SEVERABILITY.** The provisions of this EULA shall be deemed to be separable and the invalidity of any provision hereof shall not affect the validity of the remainder of this Agreement.

26. **NOTICES.** If Licensee is located within the geographic boundaries of the United States or Canada, please send all notices under this EULA to Bentley Systems, Incorporated, Attn: Legal Department, 685 Stockton Drive, Exton, PA 19341-0678.

27. **QUESTIONS.** Should Licensee have any questions regarding this EULA, please contact the Bentley subsidiary serving your country, or write to: Bentley Systems, Incorporated, Legal Department, 685 Stockton Drive, Exton, PA 19341-0678.

28. **RE-DISTRIBUTION OF BENTLEY® VIEW™.** If you are interested in re-distributing Bentley View either internally or externally to your organization, please contact a Bentley sales representative.

Article 2: Terms Applicable to Server Software

This Article details the installation, use and licensing of Server Software and associated CALs as well as External Connector licenses.

1. **CERTAIN ADDITIONAL DEFINITIONS**

   1.1. **"Client Software"** means software that allows a Device to access or utilize Server Software (and, also where applicable to utilize certain aspects of the Software when disconnected from the Server).

1.2. **"External Connector"** means a separately licensable module for specific Server Software which authorizes use of the Server Software by External Users.

1.3. **"Per Processor"** is a Server Software licensing mode where you are licensed to utilize the Server Software on one or more physical or virtual processors within a designated Server.

1.4. **"Per Server"** is a Server Software licensing mode where you are licensed to utilize the Server Software on all processors physically contained within the designated Server.

1.5. **"Per User"** or **"Per Device"** are licensing modes that require you to license a separate CAL for each unique User or Device respectively that accesses or utilizes the Server Software.

1.6. **"Server"** means any one of your computers that can run Server Software.

1.7. **"Server Software"** means Software that provides services or functionality to your Server(s).

1.8. **"Server/CAL"** is a licensing mode where the maximum number of Users (or Devices, if applicable) which may access or utilize the Server Software at a given interval is less than or equal to the number of CALs that you have acquired and designated for use exclusively with that Server Software.

2. **LICENSING MODES.**

2.1. **Servers.** Bentley licenses Server Software on a Server/CAL basis with either Device or User CALs and/or on a Per Processor basis. Some Server Software may be eligible for External Connector licensing. Server Software may be limited, even in Server/CAL licensing mode, as to the total number of Devices and/or Users that may access a designated Server Product. ***Unless explicitly specified in the documentation accompanying the Server Software, the default licensing mode for all Server Software is Server/CAL with User CALs.***

2.2. **CALs.** CALs are licensed by Bentley on a per Server, per Device or per User basis. A User CAL permits one User (using any Device) to access or use the Server Software. A Device CAL permits one Device to access or use the Server Software. ***Special Note Applicable to CAL Licensing:*** If you have covered the CALs and Server Software subject to this EULA pursuant to a valid SELECT Agreement with Bentley then you may be entitled to additional and incremental licensing benefits to those set forth in this EULA by virtue of that relationship. In the event your SELECT Agreement with Bentley terminates or you otherwise elect to remove CALs and/or their associated Server Software from coverage pursuant to a SELECT Agreement with Bentley then you will lose those incremental benefits, and your license rights will only be as set forth in this EULA.

2.3. **External Connectors.** Certain Server Products may be licensed to support External Users by virtue of an External Connector license.

3. **GRANT OF LICENSE FOR SOFTWARE IN SERVER/CAL MODE**. Bentley grants Licensee the following rights:

3.1. **Installation and Use**

(a) **Server Software.** Licensee may install and use one copy of the Server Software for Production Use on a single Server in the country where the Server Software was first obtained. Licensee may also use the documentation that accompanies the Server Software for internal, non-

commercial reference purposes only.

(b) **Client Software.** Licensee may install and use the Client Software on the aggregate total number of Devices to which you have dedicated a CAL for such usage.

(c) **CALs.** A separate CAL is required for each User or Device that accesses or uses Server Software on any of your Servers. A CAL grants a User (using any Device) or a Device the right to access or otherwise utilize the Server Software Licensee have deployed on its Server. The maximum number of Users or Devices that may access or use Server Software installed on a particular Server at a given interval equals the number of CALs (of either type) that Licensee acquire and designate for use *exclusively* with that Server. CALs cannot be pooled among internal Users or Devices and are tied to one Server Software installation.

(d) **Passive Fail-Over Server.** If the Server Software is used in a clustered environment, you may use the Server Software on a temporary basis on a Server that is employed only and exclusively for fail-over support.

4. **GRANT OF LICENSE FOR SERVER SOFTWARE IN PER SERVER MODE.** Bentley grants you the following rights for Server Software in Per Server Mode use:

4.1. **Installation and Use**

(a) **Server Software.** Licensee may install and use one copy of the Server Software for Production Use on a single Server in the country where the Server Software was first obtained. Licensee may also use the documentation that accompanies the Server Software for internal, non-commercial reference purposes only. In Per Server licensing mode, the Bentley default is that Licensee may use the Server Software on all processors physically contained within that one Server. If the Server Software is licensed in Per Processor mode, Licensee may only use the Software on the authorized and licensed number of processors (physical or virtual) within that Server.

(b) **Client Software.** In Per Server licensing mode, unless Bentley licenses the Server Software with a limitation on the maximum number of Devices or Users that may access it, Licensee may install the Client Software on any Device in support of any number of Users so long as the Client Software is being used only in conjunction with the Server Software.

(c) **CALs.** In Per Server licensing mode, unless Bentley licenses the Server Software with a limitation on the maximum number of Users or Devices that may access it, an unlimited number of Users or Devices may access and use the Server Software. CALs are not required for individual Users or Devices in the Per Server licensing mode.

(d) **Passive Fail-Over Server.** If the Server Software is used in a clustered environment, Licensee may use the Server Software on a temporary basis on a Server that is employed only and exclusively for fail-over support.

5. **GRANT OF LICENSE FOR EXTERNAL CONNECTOR LICENSES.** Bentley grants you the following rights for External Connector Licenses:

5.1. **Installation and Use**

(a) **External Connector License.** Licensee may install and use one copy of the External Connector on one Device and connect that Device to the designated Server Software whether or not located at the same Site, but always within the same country as the Server Software installation.

(b) **External Users.** The default licensing mode for an External Connector authorizes Licensee, for each External Connector license that you acquire, to permit any number of External Users to access or use a single copy of the designated Server Software for which the External Connector License has been obtained without the need for you to acquire a CAL for each External User. If any User does not clearly qualify as an External User then Licensee will need to properly license such use and access by the User of the Server Software by a method other than via the External Connector. Certain External Connector licenses only authorize a limited number of External Users to connect via that External Connector, please check your Product documentation and License Key for specific details, limitations and qualifications.

(c) **Passive Fail-Over External Connector.** If the External Connector is installed on a Device used in a clustered environment, you may use the External Connector on a temporary basis on a Server or Device that is employed only and exclusively for fail-over support.

Article 3 – Terms Applicable to Test Software

THIS EULA, TOGETHER WITH ANY APPLICABLE NON-DISCLOSURE AGREEMENT APPEARING OR REFERENCED ON OR IN THE FILES DELIVERED DURING INSTALLATION REPRESENTS THE ENTIRE SET OF TERMS AND CONDITIONS GOVERNING LICENSEE USE OF THE TEST SOFTWARE AND DOCUMENTATION, AND SUPERSEDE ANY OTHER PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

1. **Limited Rights For Testing Only.**

(a) The Test Software has been designed and developed by Bentley, either alone or together with other third parties, and this license is made on behalf of all parties who contributed to the Test Software and Documentation. Subject to the terms and provisions set forth, Evaluator is willing to accept delivery of the Test Software for the purpose of using and evaluating the same. Bentley is willing to permit the Evaluator to use and to evaluate the Test Software under the terms and conditions of this EULA in order to obtain Evaluator information to such Test Software which may be helpful to Bentley in making any improvements, enhancements or modifications with respect thereto. The Test Software may be used only on a single computer owned, leased or otherwise controlled by Licensee. Licensee may not use the Test Software on any other platform, including, but not limited to, servers, except as expressly provided herein. The Test Software is “in use” on a computer when it is loaded into temporary memory (i.e., RAM) or installed into permanent memory (e.g. hard disk, CD-ROM or other storage device) of that computer. If the Test Software is designed to provide services or functionality to servers, the Test Software shall be used on a single server owned, leased or otherwise controlled by Evaluator.

(b) Upon your acceptance of the Agreement by downloading the Test Software, Bentley does hereby grant Evaluator at no charge a non-exclusive, non-transferable right to use the Test Software for evaluation purposes only. This right shall terminate on the date Bentley determines

in its sole discretion which Bentley no longer has a need for Evaluator information from the Evaluator regarding the Test Software; or Bentley has learned that the terms of this EULA have been breached by Evaluator, in which case Bentley's right to terminate shall be in accordance with Section 18. TERMINATION of Article 1 Terms and Conditions of this EULA.

2. **Evaluation and Reports.** Evaluator shall provide Bentley with reports concerning its opinion and evaluation of the Test Software. Licensee shall consult with representatives of Bentley from time-to-time concerning the performance of the Test Software. Evaluator agrees that right, title and interest to any reports, feedback or suggestions relating to the Test Software or any inventions relating to an improvement, modification or enhancement of the Test Software conceived in, or made as a result of, Evaluator's performance of this EULA shall become the exclusive property of Bentley and that Bentley may disclose and use such information for any purposes whatsoever, entirely without obligation of any kind to Evaluator.

3. **Confidential and Proprietary Information and Data.**

(a) Evaluator acknowledges that the Test Software consists of software which is proprietary and confidential to Bentley or its licensors; and all rights, title and interest therein or thereto, including, without limitation, all patents, copyrights, trademarks and trade secrets are proprietary and confidential to Bentley or its licensors and shall remain vested therein. Therefore, Evaluator shall not disclose, directly or indirectly, or take any other action which would result in the unauthorized disclosure of any confidential or proprietary data whatsoever, including, but not limited to, reproduction of data furnished to Evaluator by Bentley.

(b) The release of confidential information to Evaluator does not constitute a commercialization of the Test Software, but rather is a release for testing purposes ONLY. Evaluator shall not disclose to any third party the terms of this EULA nor the results of any Evaluator evaluation hereunder except with the written consent of Bentley. Evaluator shall, upon Bentley's request, certify in writing as to the return or destruction of all such confidential information.

(c) For purposes of this EULA, "**Confidential and Proprietary Information**" shall include, but not be limited to, the Test Software, including its functionality, performance, business purpose, specifications, Documentation, and the like, test results obtained by Evaluator through use of the Test Software, any material data relating to use of the Test Software by Evaluator, including, but not limited to defects, deficiencies, errors, omissions, work-arounds, features, enhancements, updates, upgrades, and other information typically relating to unreleased version(s) of computer programs, and any and all information, either written or oral, relating to the Test Software, including plans, business and financial information, which

may, from time-to-time, be disclosed by Bentley to Evaluator during the term of this EULA. It is understood by both parties that ANY information provided by Bentley during the term to Evaluator relating to the Test Software is Bentley's Confidential and Proprietary Information.

(d) The parties shall use such Confidential and Proprietary Information only for

the purpose set forth in Section 1 above. Evaluator shall make no other use of the Confidential and Proprietary Information, in whole or in part, without the specific prior written consent of Bentley. Accordingly, Evaluator agrees not to make any commercial use of Confidential and Proprietary Information, and Evaluator shall not translate, copy, disassemble, reverse engineer, or decompile any Test Software, nor shall Evaluator make copies or translations of any Documentation. Furthermore, Evaluator will not make any pre-release reports or give pre-release interviews concerning the Test Software or the Confidential and Proprietary Information without Bentley's prior written consent.

(e) Evaluator shall maintain Bentley's Confidential and Proprietary Information in strict confidence, shall limit internal disclosure of Confidential and Proprietary Information to employees having a legitimate need to know, and shall exercise the same degree of care in protecting Bentley's Confidential and Proprietary Information as it exercises in protecting its own confidential and proprietary information. Bentley acknowledges that Federal agencies are subject to the Freedom of Information Act (FOIA) and some information may be released despite being characterized as "confidential" by Bentley, and Bentley agree that that courts of competent jurisdiction may require certain information to be released under FOIA (5 USC 552) that does not fall under certain exceptions, and such information must be released when requested; provided, however; Evaluator shall notify Bentley within a reasonable period of time of such a request, and Bentley shall be exclusively responsible for defending Bentley's position concerning the confidentiality of the requested information. Neither the Evaluator nor any of its agencies is or shall be obligated to assist in Bentley's defense. If any requests for disclosure of such information are made to Evaluator, disclosure shall only be made consistent with and to the extent allowable under law. Evaluator may make copies of the Test Software only to the extent necessary for the purpose of this EULA, provided that Evaluator shall also reproduce and include Bentley's trade secret, copyright, or other intellectual property rights notices on each such copy and include the legend LIMITED RIGHTS "Test Product –Do Not Copy or Distribute."

(f) Any other related materials supplied by Bentley, including Documentation, may not be reproduced in any manner by Evaluator. The original and all copies of Confidential and Proprietary Information shall remain the property of Bentley and shall be returned to Bentley upon demand.

4. Disclaimer of Warranty.

(a) Evaluator acknowledges that the Test Software has not been completely tested and will contain defects or deficiencies which cannot or may not be corrected. Evaluator further acknowledges that use of the Test Software may involve the transmission, upload, download, translation or transfer of its data to a server or computer platform outside of Evaluator's control, and some errors in the data may occur while transferring, transmitting or translating data while using the Test Software. Bentley cautions Evaluator to determine for itself the suitability of the use of the Test Software for any purpose. Bentley further cautions Evaluator not to use the Test Software in a production environment.

(b) Evaluator acknowledges that Bentley has no express or implied obligation to announce or to introduce the Test Software or any similar or compatible product. Evaluator acknowledges that all use, testing, research and development performed by it pursuant to this AGREEMENT are done entirely at its own risk. **ACCORDINGLY, BENTLEY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE USE OR PERFORMANCE OF THE TEST SOFTWARE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MECHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(c) EVALUATOR ACCEPTS THE TEST SOFTWARE IN "AS-IS" CONDITION, AND BENTLEY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF BENTLEY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Consequences of Breach.

(a) Evaluator acknowledges that:

i. Irreparable injury and damage to Bentley will result from unauthorized disclosure of the Test Software, Confidential Information and Proprietary Information gleaned by Evaluator through use of the Test Software, and from uses of the Test Software other than as contemplated herein;

ii. Monetary damages may not be sufficient remedy for unauthorized disclosure of the Test Software;

iii. Bentley shall be entitled, without waiving any additional rights or remedies available to it at law, in equity, or by statute, to such injunctive relief as may be deemed proper by a court of competent jurisdiction; and

(b) Subject to 41 U.S.C. §§7101-7109 and in accordance with FAR 52.233-1, Evaluator's breach of this EULA may result in termination of this EULA and may be cause for exclusion in other Bentley sponsored Test Software programs, among other remedies available to Bentley at law or equity.