

**USER LICENSE AGREEMENT FOR  
MBEX ONLINE CONSTRUCTION PLAN ROOM**

- A. LICENSEE MAY ONLY USE THE MBEX ONLINE CONSTRUCTION PLAN ROOM ON ITS OWN BEHALF BY DIRECT EMPLOYEES OF LICENSEE.**
- B. THE SHARING OF ANY USER NAME AND/OR PASSWORD UNDER ANY CIRCUMSTANCE IS STRICTLY PROHIBITED.**
- C. LICENSEE MAY NOT COPY AND/OR REPRODUCE ANY MBEX ONLINE CONSTRUCTION PLAN ROOM CONTENT OR DOCUMENTS TO LICENSEE'S OR ANY OTHER WEBSITE.**

BY BEING A MEMBER IN GOOD STANDING AND ACCESSING THE MBEX ONLINE CONSTRUCTION PLAN ROOM, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THE MINNESOTA BUILDERS EXCHANGE END USER LICENSE AGREEMENT FOR USE OF ITS ONLINE CONSTRUCTION PLAN ROOM. PLEASE CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT PRIOR TO ACCESSING THE MBEX ONLINE CONSTRUCTION PLAN ROOM.

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE LEAVE THE WEBSITE IMMEDIATELY. YOU MAY NOT ACCESS OR USE THE MINNESOTA BUILDERS EXCHANGE ONLINE CONSTRUCTION PLAN ROOM OR CONTENT WITHOUT AGREEING TO THE FOLLOWING TERMS AND CONDITIONS.

PLEASE BE ADVISED THAT THE MBEX ONLINE CONSTRUCTION PLAN ROOM MAY ONLY BE ACCESSED, VIEWED, AND/OR USED BY LICENSEE IN ACCORDANCE WITH THIS AGREEMENT. ANY ACCESS OR USE OF THE MBEX ONLINE CONSTRUCTION PLAN ROOM BY A LICENSEE IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE GROUNDS FOR MBEX TO – AMONG OTHER THINGS – TERMINATE THIS AGREEMENT AS WELL AS LICENSEE'S MEMBERSHIP IN MBEX.

**1. DEFINITIONS**

As used herein, the following terms are defined as follows:

- 1.1 "Agreement" means the User Agreement for MBEX Online Construction Plan Room.
- 1.2 "MBEX" means the Minnesota Builders Exchange.
- 1.3 "Licensee" means the MBEX member company which has consented to be bound by – and has become a party to – this Agreement.
- 1.31 "Direct Employees" means staff person who is an employee of a MBEX member

company (Licensee) and is not an independent contractor or consultant working under separate employment contract of that Licensee.

- 1.32 "Sharing" means purposely providing or allowing in any way others to use an MBEX issued or Licensee generated security access user name or password login information.
- 1.4 "Online Construction Plan Room" means MBEX's digital Online Construction Plan Room, and the contents thereof.

## **2. LICENSE RIGHTS & RESTRICTIONS**

2.1 Grant of License. MBEX grants to Licensee a revocable, non-transferrable, non-exclusive license to access, view, and use the Online Construction Plan Room subject to the terms, covenants, and conditions of this Agreement. This license shall only be effective while Licensee is a member in good standing of MBEX, and may be renewed from year to year by MBEX upon Licensee's payment of MBEX's annual membership fee. This license may be revoked by MBEX due to Licensee's failure to strictly comply with the terms, covenants, and conditions of this Agreement, and otherwise at MBEX's sole discretion.

2.2 Restrictions. Licensee agrees that it shall not disclose its user name and/or password for accessing the Online Construction Plan Room to any other person or entity without MBEX's express written consent, and further agrees as follows:

- (a) Licensee shall not disclose, distribute, or otherwise transmit in any form or by any means any portion of the Online Construction Plan Room including but not limited to any derivation thereof to any other person or entity without MBEX's express written consent;
- (b) Licensee shall not assign, pledge, hypothecate, alienate, or otherwise share its right to access and/or use the Online Construction Plan Room with any other person or entity without MBEX's express written consent; and
- (c) Licensee shall not access and/or use the Online Construction Plan Room for any unlawful or otherwise improper purpose including but not limited to interfering with other Licensees' access and/or use of the Online Construction Plan Room, or unlawfully disclosing any confidential, proprietary, and/or trade secret information contained in the Online Construction Plan Room.

## **3. PROPRIETARY RIGHTS**

3.1 Trade Secrets. Licensee acknowledges and agrees that the Online Construction Plan Room may contain the confidential, proprietary, and/or trade secret information ("Confidential Information") of others, and that Licensee's disclosure of such

Confidential Information without the owner's express written consent may be prohibited by law. Licensee agrees to defend, indemnify, and hold MBEX harmless from Licensee's unlawful use or disclosure of Confidential Information as provided below.

3.2 Trade Marks. Licensee acknowledges and agrees that the Online Construction Plan Room may contain logos, trade names, product names, trade marks, service marks, and the like ("Marks") which are owned by others, and that Licensee's reproduction, distribution, or use of such Marks without the owner's express written consent may be prohibited by law. Licensee agrees to defend, indemnify, and hold MBEX harmless from Licensee's unlawful reproduction, distribution, or use of such Marks as provided below.

3.3 Copyright. Licensee acknowledges and agrees that the Online Construction Plan Room may contain material subject to United States copyright laws and international treaty provisions that is owned by others, and that Licensee's reproduction, distribution, or use of such material without the owner's express written consent may be prohibited by law. Licensee agrees to defend, indemnify, and hold MBEX harmless from Licensee's unlawful reproduction, distribution, or use of such material as provided below.

#### **4. DISCLAIMER OF WARRANTIES, ASSUMPTION OF RISK, RELEASE, AND INDEMNITY**

**4.1 DISCLAIMER OF WARRANTIES AND ASSUMPTION OF RISK. THE ONLINE CONSTRUCTION PLAN ROOM CONTAIN DRAWINGS, PLANS, SPECIFICATIONS, AND OTHER INFORMATION RELATING TO POTENTIAL MINNESOTA RESIDENTIAL AND COMMERCIAL CONSTRUCTION PROJECTS THAT HAVE BEEN CREATED, DRAFTED, AND OTHERWISE PREPARED BY PERSONS AND ENTITIES OTHER THAN MBEX AND ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES.**

**MBEX DOES NOT WARRANT, GUARANTEE, OR OTHERWISE MAKE ANY REPRESENTATION – WHETHER EXPRESS OR IMPLIED – THAT SUCH DRAWINGS, PLANS, SPECIFICATIONS, AND OTHER INFORMATION ARE ACCURATE, ERROR-FREE, OR OTHERWISE SUITABLE FOR ANY PARTICULAR PURPOSE OR USE BY LICENSEE. LICENSEE ACKNOWLEDGES AND AGREES THAT IT ASSUMES ANY AND ALL RISKS ASSOCIATED WITH THE USE OF SUCH INFORMATION.**

**MBEX MAKES NO WARRANTIES – WHETHER EXPRESS OR IMPLIED – CONCERNING THE CONTENT OF THE ONLINE CONSTRUCTION PLAN ROOM, AND DISCLAIMS ANY AND ALL WARRANTIES – WHETHER EXPRESS OR IMPLIED – CONCERNING THE CONTENT OF THE ONLINE CONSTRUCTION PLAN ROOM INCLUDING, BUT NOT LIMITED, TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**4.2 RELEASE.** LICENSEE AGREES TO RELEASE MBEX FROM ANY AND ALL LIABILITY, CLAIMS, AND/OR DAMAGES ARISING FROM – OR OTHERWISE RELATING TO – LICENSEE’S ACCESS AND/OR USE OF THE ONLINE CONSTRUCTION PLAN ROOM SO LONG AS SUCH LIABILITY, CLAIMS, AND/OR DAMAGES DO NOT ARISE FROM MBEX’S INTENTIONAL, WILLFUL, OR WANTON ACTIONS AND/OR OMISSIONS. LICENSEE SHALL REIMBURSE MBEX FOR ITS ATTORNEYS’ FEES AND COSTS INCURRED DEFENDING AGAINST SUCH LIABILITY, CLAIMS, AND/OR DAMAGES.

**4.3 INDEMNITY.** LICENSEE AGREES TO DEFEND, INDEMNIFY, AND HOLD MBEX HARMLESS FROM ANY AND ALL LIABILITY, CLAIMS, AND/OR DAMAGES ARISING FROM – OR OTHERWISE RELATING TO – LICENSEE’S ACCESS AND/OR USE OF THE ONLINE CONSTRUCTION PLAN ROOM SO LONG AS SUCH LIABILITY, CLAIMS, AND/OR DAMAGES DO NOT ARISE FROM MBEX’S INTENTIONAL, WILLFUL, OR WANTON ACTIONS AND/OR OMISSIONS. LICENSEE SHALL ALSO REIMBURSE MBEX FOR ITS ATTORNEYS’ FEES AND COSTS INCURRED DEFENDING AGAINST SUCH LIABILITY, CLAIMS, AND/OR DAMAGES. LICENSEE ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT DOES NOT CONSTITUTE A “BUILDING AND CONSTRUCTION CONTRACT” AS DEFINED BY MINN. STAT. § 337.01 SUBD. 2.

**5. MISCELLANEOUS.**

**5.1 Entire Agreement.** This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter hereof, and no amendment to the terms of this Agreement shall be effective unless in writing and signed by MBEX. Notwithstanding the foregoing, MBEX may – from time to time – amend this Agreement and shall provide notice of any such amendments to Licensee for its consideration and assent. If Licensee does not assent to any such amendment, then MBEX may terminate this Agreement with Licensee.

**5.2 Relationship of the Parties.** This Agreement does not constitute a partnership or joint venture, and nothing contained herein is intended to constitute, nor will it be construed to constitute, such a partnership or joint venture. Except as expressly provided in this Agreement, neither MBEX nor Licensee shall have any power or authority to act in the name or on behalf of the other, or to bind the other to any other agreement.

**5.3 Severability.** The provisions of this Agreement are to be considered separately, and if any provision hereof should be found by any Court, arbitrator, or arbitration panel of competent jurisdiction to be invalid or unenforceable, this Agreement will be deemed to have effect as if such provision were severed from this Agreement.

**5.4 Jurisdiction and Disputes.** Any claim arising out of or related to this Agreement, except those waived herein, shall be subject to mediation. MBEX and Licensee (collectively “the Parties”) shall select a mediator within seven days of demand. If the Parties are unable to select a mediator within seven days of demand,

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then MBEX and Licensee shall each select a mediator (hereinafter "selected mediators") and the selected mediators shall select a third mediator (hereinafter "third mediator") and the third mediator shall mediate the disputes. Mediation shall be governed by the American Arbitration Association ("AAA") – Construction Industry Mediation Rules, without submitting the same to the AAA. Mediation is an express condition precedent to arbitration. Claims not resolved in Mediation shall be submitted next to mandatory binding arbitration and shall be governed by the AAA – Construction Industry Arbitration Rules without submitting the same to the AAA. Demand for arbitration shall be made within ten (10) days after the Parties have unsuccessfully attempted mediation. The Parties shall select a single arbitrator within two (2) weeks of the demand for arbitration. If the Parties are unable to select a mutually agreed upon arbitrator within two (2) weeks of the demand for arbitration, then the parties shall each select an arbitrator (hereinafter collectively referred to as "selected arbitrators"), and the selected arbitrators shall select a third arbitrator (hereinafter "third arbitrator"). The selected arbitrators and the third arbitrator shall comprise the arbitration panel and arbitrate the dispute. MBEX may provide said demand notices for mediation and/or arbitration via facsimile or electronic mail (e-mail). Any Mediation or Arbitration shall be held in St. Paul, Minnesota. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**5.5 WAIVER OF CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE'S ENTITLEMENT TO MEDIATION AND ARBITRATION AS PROVIDED HEREIN FOR ANY CLAIMS AND/OR CAUSES OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BARRED TWO (2) YEARS FROM THE TIME LICENSEE KNEW OR SHOULD HAVE KNOWN OF ITS CLAIM(S) AND/OR CAUSES OF ACTION(S).**