



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Master Agreement

Order Date: 12-17-2021

CORRECT ORDER NUMBER MUST
APPEAR ON ALL PACKAGES, INVOICES,
AND SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CMA 0803 0063 DOT2200000051 1	Procurement Folder:	881413
Document Name:	AASHTO SOFTWARE LICENSES MAINT. & SERVICE UNITS 6321C0074	Reason for Modification:	
Document Description:	AASHTO SOFTWARE LICENSES MAINT & SERVICE UNITS 6321C0074		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-01-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2022-12-31

VENDOR	DEPARTMENT CONTACT																
Vendor Customer Code: 000000196781 AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFF 555 12th ST NW STE 1000 WASHINGTON DC 20004 US Vendor Contact Phone: 202-624-8480 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			Requestor Name: Mark A Waid Requestor Phone: (304) 558-9236 Requestor Email: mark.a.waid@wv.gov 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days														
#1	No	0.0000	0														
#2	No																
#3	No																

INVOICE TO	SHIP TO
DIVISION OF HIGHWAYS ENGINEERING DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM 920 CHARLESTON WV 25305-0430 US	DIVISION OF HIGHWAYS INFORMATION SERVICE DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM 920 CHARLESTON WV 25305-0430 US

12-17-21 BAT

Purchasing Division's File Copy

Total Order Amount:

Open End

ENTERED

PURCHASING DIVISION AUTHORIZATION
DATE: 12/17/21
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: 12/17/2021
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
DATE: 12-17-21
ELECTRONIC SIGNATURE ON FILE

Extended Description:

The Vendor, American Association of State Highways and Transportation Officials, Inc., AASHTO, agrees to enter with the West Virginia Department of Transportation (WVDOT), West Virginia Division of Highways (WVDOH), into an open-end contract to provide the AASHTO software licenses, maintenance and service units, per the specifications, terms and conditions, bid requirements, and the Vendor's bid dated 05/18/2021 incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	81112200			EA	0.000000
	Service From	Service To			

Commodity Line Description: AASHTO SOFTWARE LICENSES, MAINTENANCE & SERVICE UNITS

Extended Description:

AASHTO SOFTWARE LICENSES, MAINTENANCE & SERVICE UNITS

See attached pricing pages.

	Document Phase	Document Description	Page 3
DOT2200000051	Draft	AASHTO SOFTWARE LICENSES MAINT & SERVICE UNITS 6321C0074	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

ORDER OF PRECEDENCE AND TERMS MODIFICATION ADDENDUM:

AASHTO - CRFQ DOT2100000145

Pursuant to this Order of Precedence and Additional Terms Agreement, American Association of State Highways and Transportation Officials, Inc. ("AASHTO") and the State of West Virginia ("State") agree that contract resulting from CRFQ DOT2100000045 between AASHTO and the West Virginia Department of Transportation, Division of Highways ("DOH") for AASHTO software (the "Contract") shall priority listed, and be modified as stated herein.

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the contract document in this section. Any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. Order of Precedence And Terms Modification Agreement (this document) – First Priority
- b. West Virginia Office of Technology SaaS Addendum – (Attached as Exhibit A) – Second Priority
- c. AASHTO License Software Supplemental Agreement – (Attached as Exhibit B) – Third Priority
- d. AASHTO Master Member Department Software Agreement (Attached as Exhibit C) – Fourth Priority
- e. The Purchasing Division's General Terms and Conditions and Specifications as modified by an Addenda to the Solicitation (Attached as Exhibit D) – Fifth Priority
- f. AASHTO's Price Quote (Attached as Exhibit E) – Sixth Priority

2. Modifications to Existing Documents

General Terms and Conditions:

- a. The provision entitled, "Section Three: General Terms and Conditions; 2.3 "Contract" is removed in its entirety and replaced with the following:

2.3 "Contract" means the binding agreement entered into between the State and the Vendor and includes those documents listed in Section 1 of this document.

- b. The provision entitled "**Section Three: General Terms and Conditions; 8. Insurance**" is removed in its entirety and replaced with the following:

8. Insurance: AASHTO will provide a copy of the current insurance certificate upon request.

- c. The provision entitled "**Section Three: General Terms and Conditions; 28. Warranty**" is removed in its entirety and replaced with the following:

28. Warranty: All matters of warranty are subject to Clause 9 of the AASHTO Master License Software Agreement and Clause 25 of the AASHTO License Software Supplemental Agreement.

- d. The provision entitled "**Section Three: General Terms and Conditions; 37. Indemnification**" is removed in its entirety and replaced with the following:

37. Indemnification: Vendor agrees to indemnify licensee as provided under Clause 11 of the AASHTO Master License Software Agreement.

Specifications:

- e. The provision entitled "**Specifications: 5.1 Ordering:**" is removed in its entirety and replaced with the following:

5.2. Ordering: Vendor shall provide the AASHTOWare Software Request forms in conjunction with wvOASIS, if applicable, through regular mail, facsimile, e-mail or any other written form of communication."

- f. The provision entitled "**Specifications: 6.5 Return of Unacceptable Items**" is deleted in its entirety.

- g. The provision entitled "**Specifications: 6.6 Return Due to Agency Error**" is deleted in its entirety.

- h. The provision entitled "**Specifications: 7.2.5. Vendor Default**" is deleted in its entirety and replaced with the following:

"7.2.5. Failure to remedy deficient performance subject to clause 25 of the AASHTO License Software Supplemental Agreement and the applicable Work Plan."

- i. The provision entitled "**Specifications: 8.3. Vendor Supply**" is deleted in its entirety.

AASHTO License Software Supplemental Agreement

- a. The provision entitled **“AASHTO License Software Supplemental Agreement; 37. Embedded Third Party Software.”** is removed in its entirety and replaced with the following:

“37. Embedded Third-Party Software: Software programs or modules under license from third parties may be embedded in the Software Products. LICENSEE shall comply with the terms and conditions of use of such third-party licenses, if any, to the extent such terms and conditions are not inconsistent with State law.”

West Virginia Office of Technology SaaS Addendum

- a. Add the following clause to the West Virginia Office of Technology SaaS Addendum:

“LICENSEE agrees that SaaS hosting is provided by AASHTO which is solely responsible for all aspects of the performance, delivery, quality, security, and terms and conditions of the hosting services being provided. For informational purposes, AASHTO has subcontracted the hosting performance to WVDOT through independent contractors. LICENSEE understands that if hosting services fail under this agreement, AASHTO will be responsible to correct those issues for WVDOT, but will then look to its subcontractors for indemnification”

- b. The provision entitled **“3. Data Protection and Privacy 3 c)”** is removed in its entirety and replaced with the following:

“The service provider’s platform shall provide integration of third-party multi-factor authentication with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.”

- c. The provision entitled **“3. Data Protection and Privacy 3 i)”** is removed in its entirety and replaced with the following:

“Data Location. For non-public data and PII data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store public jurisdiction data on portable devices, including personal computers. However, the service provider may use portable devices when necessary for temporary troubleshooting and debugging purposes. The devices shall be encrypted and must remain in the U.S. at all times.”

- d. The provision entitled "5. Breach Responsibilities e)" is removed in its entirety and replaced with the following:

"If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated up to five (5) million per cyber security incident with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach (or other similar publication if the named publication has not issued an updated average per record per cost in the last 5 years at the time of the data breach); and (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement."

- e. The provision entitled "7. Termination and Suspension of Service e)" is removed in its entirety and replaced with the following:

"The service provider shall securely dispose of all requested data in all of its forms, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction."

“Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction in an industry standard format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user activity history and security logs for all public jurisdiction files and accounts related to this contract. System detail raw audit data collection around the details of each login attempt would be a feature of and performed by the public jurisdiction’s third-party identity provider that integrates via SSO. Service provider(s) shall request and provide any security information available from any third-party vendors (eg: AWS).”

- f. The provision entitled “10. Access to Security Logs and Reports” is removed in its entirety and replaced with the following:**

“Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction in an industry standard format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user activity history and security logs for all public jurisdiction files and accounts related to this contract. System detail raw audit data collection around the details of each login attempt would be a feature of and performed by the public jurisdiction’s third-party identity provider that integrates via SSO. Service provider(s) shall request and provide

- g. The provision entitled “12. Data Center Audit” is removed in its entirety and replaced with the following:**

“Data Center Audit: Any third-party data centers shall meet Service Organization Control (SOC) 2 standards or approved equivalent. The service provider must provide a (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. The service provider may remove its proprietary information from the redacted version. Any significant deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to terminate the contract for cause.

- h. The provision entitled “13. Change Control and Advance Notice:” is removed in its entirety and replaced with the following:**

“Change Control and Advance Notice: The service provider shall give 30 days advance notice for any non-emergency updates to the public jurisdiction that may impact service availability and performance.”

- i. The provision entitled "13. Compliance and Accessibility Standards:" is removed in its entirety and replaced with the following:

"AASHTOWare's mission is to enable the development, management, and support of cost effective, quality technical solutions that meet the business requirements of AASHTO members. We are committed to ensuring that our products are accessible to customers with disabilities. For guidance, we look to the accessibility best practices and standards defined by Section 508 of the U.S. Rehabilitation Act and the Web Content Accessibility Guidelines (WCAG) of the World Wide Web Consortium Web Accessibility Initiative (W3C WAI).

There are ongoing progressive measures in place to assure compliance throughout the AASHTOWare portfolio of products. It is our goal to be 508 compliant. All planned AASHTOWare product improvements will consider a logical, cost-effective approach for enabling accessibility features as new software development is performed, and releases are issued. Our efforts to retrofit and/or upgrade non-accessible information are ongoing.

The parties will work together to resolve any accessibility compliance issue."

3. Additional Contract Terms:

- a. The following clause is added to the Contract.

"VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law."

AASHTO

By: 

Its: Executive Director

Date: 11/02/2021

State Agency

By: 

Its: Deputy Business Manager

Date: 11/17/21

Exhibit A

Software as a Service Addendum

1. Definitions:

Acceptable alternative data center location means a country that is identified as providing equivalent or stronger data protection than the United States, in terms of both regulation and enforcement. DLA Piper's Privacy Heatmap shall be utilized for this analysis and may be found at <https://www.dlapiperdataprotection.com/index.html?t=world-map&c=US&c2=IN>.

Authorized Persons means the service provider's employees, contractors, subcontractors or other agents who have responsibility in protecting or have access to the public jurisdiction's personal data and non-public data to enable the service provider to perform the services required.

Data Breach means the unauthorized access and acquisition of unencrypted and unredacted personal data that compromises the security or confidentiality of a public jurisdiction's personal information and that causes the service provider or public jurisdiction to reasonably believe that the data breach has caused or will cause identity theft or other fraud.

Individually Identifiable Health Information means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Non-Public Data means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the public jurisdiction because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

Personal Data means data that includes information relating to a person that identifies the person by first name or first initial, and last name, and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, state identification card); financial account information, including account number, credit or debit card numbers; or protected health information (PHI).

Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

Public Jurisdiction means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

Public Jurisdiction Data means all data created or in any way originating with the public jurisdiction, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the public jurisdiction, whether such data or output is stored on the public jurisdiction's hardware, the service provider's hardware or exists in any system owned, maintained or otherwise controlled by the public jurisdiction or by the service provider.

Public Jurisdiction Identified Contact means the person or persons designated in writing by the public jurisdiction to receive security incident or breach notification.

Restricted data means personal data and non-public data.

Security Incident means the actual unauthorized access to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a public jurisdiction's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

Service Provider means the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

Software-as-a-Service (SaaS) means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

2. Data Ownership: The public jurisdiction will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the public jurisdiction's written request.

3. Data Protection and Privacy: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of public jurisdiction information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of public jurisdiction information and comply with the following conditions:

- a) The service provider shall implement and maintain appropriate administrative, technical and physical security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. In Appendix A,

the public jurisdiction shall indicate whether restricted information will be processed by the service provider. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind. The service provider shall ensure that all such measures, including the manner in which personal data and non-public data are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Addendum and shall survive termination of the underlying contract.

- b) The service provider represents and warrants that its collection, access, use, storage, disposal and disclosure of personal data and non-public data do and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations, policies and directives.
- c) The service provider shall support third-party multi-factor authentication integration with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.
- d) If, in the course of its engagement by the public jurisdiction, the service provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, the service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the service provider's sole cost and expense. All data obtained by the service provider in the performance of this contract shall become and remain the property of the public jurisdiction.
- e) All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data.
- f) Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit, in accordance with recognized industry practice. The public jurisdiction shall identify data it deems as non-public data to the service provider.
- g) At no time shall any data or process – that either belong to or are intended for the use of a public jurisdiction or its officers, agents or employees — be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the public jurisdiction.
- h) The service provider shall not use or disclose any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- i) Data Location. For non-public data and personal data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its

U.S. data centers. With agreement from the public jurisdiction, this term may be met by the service provider providing its services from an acceptable alternative data center location, which agreement shall be stated in Appendix A. The Service Provider may also request permission to utilize an acceptable alternative data center location during a procurement's question and answer period by submitting a question to that effect. The service provider shall permit its personnel and contractors to access public jurisdiction data remotely only as required to provide technical support.

4. Security Incident or Data Breach Notification: The service provider shall inform the public jurisdiction of any confirmed security incident or data breach.

- a) Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as defined by law or contained in the contract. Discussing security incidents with the public jurisdiction shall be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes defined by law or contained in the contract.
- b) Security Incident Reporting Requirements: The service provider shall report a confirmed Security Incident as soon as practicable, but no later than twenty-four (24) hours after the service provider becomes aware of it, to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and (3) the public jurisdiction point of contact for general contract oversight/administration. The following information shall be shared with the public jurisdiction: (1) incident phase (detection and analysis; containment, eradication and recovery; or post-incident activity), (2) projected business impact, and, (3) attack source information.
- c) Breach Reporting Requirements: Upon the discovery of a data breach or unauthorized access to non-public data, the service provider shall immediately report to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and the public jurisdiction point of contact for general contract oversight/administration.

5. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.

- a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.

- b) Immediately following the service provider's notification to the public jurisdiction of a data breach, the parties shall coordinate cooperate with each other to investigate the data breach. The service provider agrees to fully cooperate with the public jurisdiction in the public jurisdiction's handling of the matter, including, without limitation, at the public jurisdiction's request, making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law and regulation.
- c) Within 72 hours of the discovery, the service provider shall notify the parties listed in 4(c) above, to the extent known: (1) date of discovery; (2) list of data elements and the number of individual records; (3) description of the unauthorized persons known or reasonably believed to have improperly used or disclosed the personal data; (4) description of where the personal data is believed to have been improperly transmitted, sent, or utilized; and, (5) description of the probable causes of the improper use or disclosure.
- d) The service provider shall (1) cooperate with the public jurisdiction as reasonably requested by the public jurisdiction to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and prevent any further data breach at the service provider's expense in accordance with applicable privacy rights, laws and regulations and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- e) If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach (or other similar publication if the named publication has not issued an updated average per record per cost in the last 5 years at the time of the data breach); and (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any

type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement.

6. Notification of Legal Requests: The service provider shall contact the public jurisdiction upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the public jurisdiction's data under this contract, or which in any way might reasonably require access to the data of the public jurisdiction. The service provider shall not respond to subpoenas, service of process and other legal requests related to the public jurisdiction without first notifying the public jurisdiction, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

- a) In the event of a termination of the contract, the service provider shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data.
- b) During any period of service suspension, the service provider shall not take any action to intentionally erase any public jurisdiction data.
- c) In the event the contract does not specify a time or format for return of the public jurisdiction's data and an agreement has not been reached, in the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any public jurisdiction data for a period of:
 - 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - 30 days after the effective date of termination, if the termination is for convenience
 - 60 days after the effective date of termination, if the termination is for cause

After such period, the service provider shall have no obligation to maintain or provide any public jurisdiction data and shall thereafter, unless legally prohibited, delete all public jurisdiction data in its systems or otherwise in its possession or under its control.

- d) The public jurisdiction shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the Contract.
- e) The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction.

8. Background Checks: The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3 and not utilize any staff to fulfill the obligations

of the contract, including subcontractors, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the public jurisdiction's information among the service provider's employees and agents.

9. Oversight of Authorized Persons: During the term of each authorized person's employment or engagement by service provider, service provider shall at all times cause such persons to abide strictly by service provider's obligations under this Agreement and service provider's standard policies and procedures. The service provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of personal data by any of service provider's officers, partners, principals, employees, agents or contractors.

10. Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction in CSV format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user access IP address, user access history and security logs for all public jurisdiction files and accounts related to this contract.

11. Data Protection Self-Assessment: The service provider shall perform a Cloud Security Alliance STAR Self-Assessment by completing and submitting the "Consensus Assessments Initiative Questionnaire" to the Public Jurisdiction Identified Contact. The service provider shall submit its self-assessment to the public jurisdiction prior to contract award and, upon request, annually thereafter, on the anniversary of the date of contract execution. Any deficiencies identified in the assessment will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

12. Data Center Audit: The service provider shall perform an audit of its data center(s) at least annually at its expense and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

13. Change Control and Advance Notice: The service provider shall give 30 days, advance notice (to the public jurisdiction of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics.

14. Security:

- a) At a minimum, the service provider's safeguards for the protection of data shall include: (1) securing business facilities, data centers, paper files, servers, back-up

systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; (3) securing information transmission, storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (6) providing appropriate privacy and information security training to service provider's employees.

- b) The service provider shall execute well-defined recurring action steps that identify and monitor vulnerabilities and provide remediation or corrective measures. Where the service provider's technology or the public jurisdiction's required dependence on a third-party application to interface with the technology creates a critical or high risk, the service provider shall remediate the vulnerability as soon as possible. The service provider must ensure that applications used to interface with the service provider's technology remain operationally compatible with software updates.
- c) Upon the public jurisdiction's written request, the service provider shall provide a high-level network diagram with respect to connectivity to the public jurisdiction's network that illustrates the service provider's information technology network infrastructure.

15. Non-disclosure and Separation of Duties: The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of public jurisdiction data to that which is absolutely necessary to perform job duties.

16. Import and Export of Data: The public jurisdiction shall have the ability to securely import, export or dispose of data in standard format in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the public jurisdiction to import or export data to/from other service providers identified in the contract (or in the absence of an identified format, a mutually agreeable format).

17. Responsibilities: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the cloud services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the service provider.

18. Subcontractor Compliance: The service provider shall ensure that any of its subcontractors to whom it provides any of the personal data or non-public data it receives hereunder, or to whom it provides any personal data or non-public data which the service provider creates or receives on behalf of the public jurisdiction, agree to the restrictions, terms and conditions which apply to the service provider hereunder.

19. Right to Remove Individuals: The public jurisdiction shall have the right at any time to require that the service provider remove from interaction with public jurisdiction any

service provider representative who the public jurisdiction believes is detrimental to its working relationship with the service provider. The public jurisdiction shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract without the public jurisdiction's consent.

20. Business Continuity and Disaster Recovery: The service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

21. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

22. Web Services: The service provider shall use web services exclusively to interface with the public jurisdiction's data in near real time when possible.

23. Encryption of Data at Rest: The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data.

24. Subscription Terms: Service provider grants to a public jurisdiction a license to:

- a. Access and use the service for its business purposes;
- b. For SaaS, use underlying software as embodied or used in the service; and
- c. View, copy, upload, download (where applicable), and use service provider's documentation.

25. Equitable Relief: Service provider acknowledges that any breach of its covenants or obligations set forth in Addendum may cause the public jurisdiction irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the public jurisdiction is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the public jurisdiction may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Addendum to the contrary.

AGREED:

Name of Agency: _____

Name of Vendor: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. Required information not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Service Provider/Vendor: _____

Name of Agency: Department of Transportation/Division of Highways

Agency/public jurisdiction's required information:

1. Will restricted information be processed by the service provider?

Yes ☒
No ☐

2. If yes to #1, does the restricted information include personal data?

Yes ☐
No ☒

3. If yes to #1, does the restricted information include non-public data?

Yes ☒
No ☐

4. If yes to #1, may the service provider store public jurisdiction data in a data center in an acceptable alternative data center location, which is a country that is not the U.S.?

Yes ☐
No ☒

5. Provide name and email address for the Department privacy officer:

Name: Jill Dunn

Email address: Jill.C.Dunn@wv.gov

Vendor/Service Provider's required information:

6. Provide name and contact information for vendor's employee who shall serve as the public jurisdiction's primary security contact:

Name: _____

Email address: _____

Phone Number: _____

Exhibit B

**AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS**

**LICENSE SOFTWARE
SUPPLEMENTAL AGREEMENT**

LSA Agreement Number 10051-21

This License Software Supplemental Agreement (hereinafter, "Supplemental Agreement") is made this _____, day of _____, 202_, by and between the American Association of State Highway and Transportation Officials, Inc., a corporation of the District of Columbia, with offices at 555 12th Street NW, Suite 1000, Washington, DC 20004, (hereinafter AASHTO), and the organization named below (hereinafter the LICENSEE), for the purpose of licensing and providing specific Software Products and providing development support, maintenance and enhancements to the licensed Software Products, as described herein. This Supplemental Agreement is made pursuant to and is supplemental to the Master Member Department Software Agreement, MMD Agreement Number 10051, or if the organization is not an AASHTO Member Department, the Master License Software Agreement, MLA Agreement Number _____ (in either case hereinafter, "Master Agreement"), also entered into by AASHTO and the LICENSEE, which is incorporated by reference.

Organization/LICENSEE Name:	<u>West Virginia Department of Transportation</u>
Address:	<u>1900 Kanawha Blvd</u>
City/State/Zip Code:305-	<u>Charleston, WV 25305-0330</u>

Table 1: Software Products and License Periods covered under this Supplemental Agreement:

Software Product	License Period

Definitions:

"Software Product" and "Software Products" shall mean the product(s) listed in Table 1 as described in the current AASHTOWare® Catalog (hereinafter, the "Catalog"), including Pre-Production Software Products designated by AASHTO, related materials and documentation,

"Work Plan" shall mean the planned maintenance, support and enhancement activities for specified Software Products published by AASHTO.

"License Period" shall mean the effective dates of the license(s) for the Software Product(s) stated in Table 1.

"Super Site License" shall mean a site license, available to AASHTO member agencies only, for unlimited use of a Software Product within the LICENSEE/member agency and for use by contractors of the LICENSEE (hereinafter, "Contractors") on work performed for the LICENSEE.

"Extended Super Site License" shall mean a Super Site License that includes use by county or city governmental jurisdictions of the LICENSEE (hereinafter, "Local Governments").

"Contractor" shall include any county, city, local unit of government, university, private sector employer, organization or entity, including consultants, authorized to perform work for the LICENSEE under the terms of this Agreement.

"Pre-Production Software Products" shall mean Software Products under development that are designated as Pre-Production by AASHTO, at its discretion.

"Production Software" shall mean Software Products that have been approved by AASHTO for general release and distribution. All Software Products listed in the Catalog and Table 1 shall be Production Software unless designated as Pre-Production Software Products by AASHTO.

"Software as a Service Product" means a Software Product made available and hosted over the Internet.

TERMS

1. Master Agreement. This Supplemental Agreement is available only to an organization, agency or entity that is also signatory to a Master Agreement with AASHTO. In the event of any conflict between the terms and conditions of this Supplemental Agreement and the terms and conditions of the Master Agreement, the terms and conditions of this Supplemental Agreement shall control with respect to the Software Products licensed hereunder. Termination of the Master Agreement automatically terminates this Supplemental Agreement.
2. Grant of License. AASHTO hereby grants, and the LICENSEE accepts, a limited, nontransferable and nonexclusive license to use the Software Products under the terms and conditions described herein and under the Master Agreement. Software as a Service Products are made available and hosted in accordance with the Software as a Service Amendment LINK to this Supplemental Agreement.
3. Support. AASHTO shall provide support, maintenance, and enhancements for Production Software based on the Work Plan for the applicable Software Product(s). A copy of the applicable Work Plan shall be made available to the LICENSEE upon request. In addition, AASHTO shall make available to the LICENSEE all published modifications or updates to the Production Software made by AASHTO, or caused to be made by AASHTO, during the term of this Supplemental Agreement. AASHTO shall have no obligation to support or maintain Pre-Production Software Products and will provide only limited telephone support for such products.
4. License Fees. The LICENSEE shall submit to AASHTO a completed AASHTOWare® Products and Services Request Form ("Request Form") specifying the Software Products and licensing options requested by the LICENSEE. The LICENSEE shall pay a license fee for each Software Product licensed hereunder based on the fee schedules in the Catalog for the applicable Software Products and licensing options. If the term of the license is greater or less than one (1) year, the LICENSEE shall pay a pro-rated license fee based on the term set forth in paragraph 8. License fees are not refundable or otherwise pro-ratable. AASHTO shall invoice the LICENSEE for the applicable fees, and the LICENSEE shall make payment of such fees within 60 calendar days of receipt of the invoice.
5. Licensing Options. AASHTO offers a variety of licensing options which may vary depending upon the Software Product under license. Options may include site licenses permitting use of

Software Products on single or multiple workstations and use by cities/counties and contractors/consultants performing work for member agencies. Software Product licensing options, including terms of use, are set forth in the Catalog and incorporated by reference and made a part of this Agreement.

6. Internal Use and Non-Disclosure. The LICENSE granted hereunder is for LICENSEE's internal use only. Licensed Software Product(s) may be used by LICENSEE's employees and authorized Contractors performing work for LICENSEE under this Agreement, to the extent specified under the applicable Software Product licensing option described in the Catalog and selected by LICENSEE. LICENSEE acknowledges and agrees that the Software Products licensed hereunder constitute proprietary and confidential materials of AASHTO. The license granted hereunder is for the LICENSEE's internal use of the Software Products, and the LICENSEE shall not provide or otherwise make available the Software Products in any form to any person other than the LICENSEE's designated employees and authorized Contractors under this Agreement. The LICENSEE shall take all reasonable steps to ensure that the content of the Software Products is not disclosed to any unauthorized person or third party.
7. Primary Contacts. LICENSEE shall submit to AASHTO a completed Primary Designee Form designating the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to the support of each Software Product, and the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to invoices and related financial communications. All communications regarding these matters should be directed through the designated contact person.
8. Term. The term of this Supplemental Agreement for each Software Product shall be the applicable License Period.
9. Termination. The rights granted to the LICENSEE under this license shall immediately terminate for each Software Product at the end of the applicable License Period. Unless the LICENSEE executes another Supplemental Agreement to license the Software Product(s) for an additional term, the LICENSEE shall immediately remove and destroy all copies of the Software Product(s) on LICENSEE's computer(s), return all CD ROMs, diskettes and all other forms of the Software Product(s) to AASHTO, and certify to AASHTO that all of the Software Products(s) have been destroyed or returned. All returns must be to the location from which they were originally shipped unless otherwise instructed by AASHTO. The obligation to remove/destroy or return the Software Products shall include the obligation to ensure that LICENSEE's authorized Contractors and Local Governments using the Software Product(s) also comply with the requirements of this paragraph.
10. Permission to Copy and Modify. Any Software Product materials provided by AASHTO under this Agreement in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by LICENSEE, for archives or emergency restart purposes, to replace a worn copy, to understand the contents of such machine readable materials, or to modify the material as provided. The original and any partial or complete copies of materials named hereunder shall be the property of AASHTO.
11. Responsibilities of the LICENSEE. The LICENSEE shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this Agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the software, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction. Any LICENSEE modifications to the Software Product(s) are the responsibility of the LICENSEE to maintain.

12. Pre-Production Software Products. AASHTO may, at its sole discretion, designate Software Products as Pre-Production Software Products, and such designation shall appear in Table 1. LICENSEE understands and acknowledges that Pre-Production Software Products have the following characteristics: (i) they have not been fully tested, (ii) they contain incomplete design and functionality that is subject to change on a frequent basis and without prior notice, and (iii) there is a greater likelihood of errors, defects, bugs and operational instability in Pre-Production Software Products compared with Production Software. AASHTO makes no representation, warranty or guarantee that any particular functionality will be included in any version released as Production Software.
13. Non-Commercial Use. Pre-Production Software Products may not be used in commercial or business applications by LICENSEE.
14. Release of Production Software. AASHTO shall notify LICENSEE when Pre-Production Software Products licensed under this Agreement have been released as Production Software, and shall provide LICENSEE access to the Production Software via the web, CD ROM or diskette, as applicable. In such a case, LICENSEE shall be entitled to use the Production Software for the remainder of the License Period with payment of the applicable license fee. There is no guarantee that a Pre-Production Software Product will be released as Production Software during the term of this Agreement.
15. Removal of Pre-Production Software Products. Upon notification that the Production Software version of a Pre-Production Software Product has been released and is available under paragraph 12, LICENSEE shall promptly remove and destroy all copies of the Pre-Production Software Product(s) on LICENSEE's computer(s) and certify to AASHTO that all of the Pre-Production Software Product(s) have been removed and destroyed.
16. Defects. In the event there are defects in a Software Product, excluding Pre-Production Software Products, the LICENSEE shall provide written notice to AASHTO or its designated contractor with a detailed description of the defects. Defects will be addressed by the contractor based on the priorities and procedures in the applicable Work Plan. Defects in Pre-Production Software Products reported to AASHTO may be tracked as part of the development process, but AASHTO shall have no obligation to correct any defects, bugs or errors in Pre-Production Software Products.
17. Reverse Engineering and Derivative Works. The LICENSEE shall not reverse engineer, decompile, or disassemble the Software Products. The LICENSEE shall not make any derivative works based on the Software Products except under the terms of a duly executed AASHTO Source Code Agreement.
18. Contractors. Subject to paragraphs 5 and 6, LICENSEE may employ Contractors to perform work for LICENSEE under this Agreement to the extent permitted under the licensing option selected by LICENSEE. Authorized Contractors may access or use the Software Product(s) only while performing work for LICENSEE. Prior to permitting any such Contractors access to or use of the Software Product(s), LICENSEE shall require such Contractor to execute a Software License-Contractor Agreement in the form specified in Appendix A. LICENSEE shall provide a copy of the executed Contractor Agreement to AASHTO. Copies of the applicable Master and Supplemental Agreements shall be made available to the Contractor, upon request. In the event that the Contractor violates any of the terms of the license, this Supplemental Agreement or the Master Agreement, LICENSEE shall take all steps necessary to remedy the violation including, but not limited to, terminating the Contractor's access to and use of the Software Product(s) and taking appropriate action to recover the Software Product(s) including all copies.
19. Super Site License. Super Site licenses are not available for Pre-Production Software Products.

20. Extended Super Site License. Extended Super Site licenses are not available for Pre-Production Software Products.
21. Estimator, Field Manager and Field Net Software. The terms and conditions of this paragraph are applicable to LICENSEES of AASHTOWare Project Estimator, Project Fieldmanager and Project FieldNet software. Project Estimator and Project FieldNet are proprietary software products of Info Tech, Inc. The Project FieldManager suite (including Project FieldManager, Project FieldBook and Project FieldBuilder) is a proprietary software product jointly owned by Info Tech, Inc. and the State of Michigan. AASHTO and its sublicensees have been granted a license to use these software products under an agreement with Info Tech, Inc. ("Info Tech Agreement"). LICENSEE agrees to abide by the terms and conditions of the Info Tech Agreement and the terms of use for the applicable software product as set forth in the AASHTO Catalog, which are incorporated by reference and made a part of this Agreement. LICENSEE further acknowledges that the Info Tech Agreement is a confidential agreement between AASHTO and Info Tech, and LICENSEE agrees not to disclose the contents of said agreement, or any portions thereof, to any other person without prior written authorization from AASHTO and Info Tech. A copy of the Info Tech Agreement will be provided to any requesting AASHTO member or associate member.
22. AASHTOWare Safety – Segment Analytics, Intersection Analytics, and Trend Analytics Software. The terms and conditions of this paragraph are applicable to LICENSEES of AASHTOWare Safety-Segments Analytics, AASHTOWare Safety-Intersection Analytics, and the AASHTOWare Safety -Trend Analytics software. The above-mentioned products are proprietary software products of Numetric, Inc. AASHTO and its LICENSEES, as sublicensees of AASHTO, have been granted a license to use these software products under an Alliance Agreement with Numetric, Inc. ("Numetric Agreement"). LICENSEE agrees to abide by the terms and conditions of the Numetric Agreement and the terms of use for the applicable software product as set forth in the AASHTO Catalog, which are incorporated by reference and made a part of this Agreement. LICENSEE further acknowledges that the Numetric Agreement is a confidential agreement between AASHTO and Numetric, and LICENSEE agrees not to disclose the contents of said agreement, or any portions thereof, to any other person without prior written authorization from AASHTO and Numetric. A copy of a redacted Numetric Agreement may be provided to any requesting AASHTO member.
- a. LICENSEE of the above-mentioned software agrees not to:
- i. disassemble, decompile, reverse engineer, or otherwise attempt to derive the source code or algorithms in the software, except to the extent permitted by applicable law, or work around any technical limitation in the software;
 - ii. make the software available for access or use by any person or entity other than authorized LICENSEE'S employees;
 - iii. rent, lease, loan, or sell access to the software to any third party or provide it as a service bureau;
 - iv. interfere with or disrupt the software; and
 - v. copy or otherwise reproduce, translate port, modify, or make derivative works of the software.
23. Catalog. AASHTO may modify or change the Catalog from time to time at its sole discretion.
24. Transfer. This Supplemental Agreement and the Software Products may not be assigned, sublicensed, rented, leased, loaned or otherwise transferred by the LICENSEE without prior

written consent from AASHTO. Any attempt to transfer any of the rights, duties, or obligations hereunder is null and void.

25. Patent, Copyright, and Trademark. AASHTO retains all rights, title, and interest, including patents, copyrights, and trademarks in and to the Software Products (including, but not limited to, any images, photographs, animations, video, audio, music, and text incorporated into the Software Products) and any copies of the Software Products. AASHTO trademarks may be used only in the manner and form authorized by AASHTO. All rights not expressly granted under this Supplemental Agreement are reserved to AASHTO.
26. WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SUPPLEMENTAL AGREEMENT AND THE MASTER AGREEMENT, THE SOFTWARE PRODUCTS HEREUNDER ARE LICENSED "AS IS" AND NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE SOFTWARE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND AASHTO EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCTS.

AASHTO DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE PRODUCTS WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATIONS OF THE SOFTWARE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ALSO ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE PRODUCTS TO ACHIEVE THE LICENSEE'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE PRODUCTS.
27. LIMITATION OF LIABILITY. AASHTO SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, RELATING TO, OR BASED ON THE USE OF THE SOFTWARE PRODUCTS, EVEN IF AASHTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, AASHTO'S ENTIRE LIABILITY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE APPLICABLE SOFTWARE PRODUCT(S).
28. Hold Harmless. Unless otherwise prohibited under applicable law, the LICENSEE shall hold harmless, indemnify, and defend AASHTO, and its officers, directors, employees and members, from and against any and all claims, losses, liabilities, judgments, interest and settlements, including reasonable attorneys' fees and expenses, arising out of, or relating to the installation and use of the Software Products.
29. Purchase Orders. In the event of any conflict between the terms and conditions of this Supplemental Agreement and terms and conditions of any subsequent purchase order, the terms and conditions of this Supplemental Agreement and the Master Agreement referenced herein shall control.
30. Headings. The captions and headings are included for ease of reference only and will be disregarded in interpreting or construing this Supplemental Agreement.
31. Force Majeure. If the performance of any part of this Supplemental Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, riot, judicial or governmental action, labor dispute, act of God or other causes beyond the control of

either party, the party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

32. Enforceability. If any provision of this Supplemental Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of the Supplemental Agreement shall not be affected and shall remain in force and effect.
33. Exclusive Remedies. The remedies set forth herein shall be the LICENSEE's exclusive remedies under this Supplemental Agreement.
34. Waiver. A waiver of any term, provision or condition of this Supplemental Agreement shall not be deemed a continuing waiver of any such term, provision or condition. No waiver shall be valid or binding unless agreed to in writing and signed by authorized representatives of AASHTO and the LICENSEE.
35. Drafting. Each party agrees and acknowledges that no presumption or inference shall be made or drawn against the drafter or drafter(s) of this Supplemental Agreement.
36. Successors and Assigns. This Supplemental Agreement shall be binding upon and shall inure to the benefit of the parties and each of their respective successors assigns.
37. Authorized Persons. The persons executing this Supplemental Agreement do hereby declare, represent, acknowledge, warrant and agree that they are duly and fully authorized to execute this Agreement so as to legally bind LICENSEE and AASHTO.
38. Embedded Third Party Software. Software programs or modules under license from third parties may be embedded in the Software Products. LICENSEE shall comply with the terms and conditions of use of such third party licenses, if any.
39. Taxes. LICENSEE shall be responsible for payment of any applicable state and local sales, use, general excise or similar tax arising out of or relating to the licensing and use of the Software Products under this Agreement.
40. Amendments. This Supplemental Agreement and the Master Agreement referenced herein constitute the entire agreement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Supplemental Agreement. This Supplemental Agreement may not be amended or modified except in writing signed by both parties.
41. Governing Law. This Supplemental Agreement shall be governed by the laws of the District of Columbia.

For AASHTO:

Name: Jim Tymon

Signature: 

Title: Executive Director

Date: 04/23/2021

For the LICENSEE:

Name: _____

Signature: _____

Title: _____

Date: _____

Exhibit C

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

MASTER MEMBER DEPARTMENT SOFTWARE AGREEMENT

MMD Agreement Number 10051

This Master Agreement is made this 8th day of AUGUST, 198 6, by and between the American Association of State Highway and Transportation Officials, Inc., a corporation of the District of Columbia, with offices at 444 N. Capitol Street, N.W., Suite 225, Washington, D. C. 20001, (hereinafter AASHTO), and the Member Department named below (hereinafter the AGENCY), for the license and use of software products described herein.

MEMBER DEPARTMENT Name West Virginia Department of Highways

Address 1900 Washington Street, East

City/State/Zip Code Charleston, West Virginia 25305

1. Supplemental Agreements: The AGENCY and AASHTO shall have the right to enter into Supplemental Agreements pursuant to this Master Agreement, which shall contain the specific terms and conditions relating to the licensing and use of any of the Software Products covered by this Master Agreement, which Supplemental Agreements shall be considered to be incorporated into this Master Agreement and subject to all the terms and conditions thereof. This Master Agreement in and of itself does not license any specific Software Product, execution of a Supplemental Agreement under this Master Agreement being required to initiate such a license.

2. Software Products: The Software Products covered by this Master Agreement are all owned by AASHTO, and a list and brief description of those Software Products available from AASHTO and/or under development by AASHTO at the time this Master Agreement was executed is attached hereto as Exhibit A. This list of Exhibit A may be added to from time to time by AASHTO, and AASHTO reserves the right to withdraw Software Products from the list, but in so doing shall honor the terms of any Supplemental Agreements then outstanding covering such withdrawn Software Products. Supplemental Agreements executed pursuant to this Master Agreement shall specifically identify the AASHTO Software Product(s) being licensed, and any such Software Product(s) identified in such Supplemental Agreements shall be deemed to be included within this definition of Software Products and this Master Agreement.

3. Grant of License: AASHTO hereby grants, and the AGENCY accepts, on the following terms and conditions, a limited, nontransferable and nonexclusive license to use AASHTO's Software Product(s) as identified and described in any Supplemental Agreements executed pursuant to this Master Agreement, which Supplemental Agreements are incorporated by reference herein. The AGENCY's rights under this Master Agreement are those of a licensed user only, and the Software Product(s) shall at all times remain the property of AASHTO.

4. Term: This Master Agreement is effective from the date hereof and shall remain in force until terminated. The AGENCY may terminate this Master Agreement at any time by notifying AASHTO in writing of its intent, which notification shall specify a termination date. All Supplemental Agreements to this Master Agreement would also be considered terminated on the termination date specified in such notification. The AGENCY may terminate any Supplemental Agreement by similarly notifying AASHTO of its intent. Termination of Supplemental Agreements do not terminate this Master Agreement. Termination of Supplemental Agreements either through termination of this Master Agreement or through termination of a specific Supplemental Agreement will require destroying the original and all copies, in whole or in part, in any form, including partial copies and modifications of the Software Product(s) received from AASHTO or made in connection with this Master Agreement. AASHTO may require the AGENCY to terminate this Master Agreement in the manner described above if the AGENCY fails to comply with any of the terms and conditions of this Master Agreement.

5. Use: This Master Agreement and the Software Products may not be assigned, sublicensed, or otherwise transferred by the AGENCY without prior written consent from AASHTO.

6. Permission to Copy and Modify: Any Software Product materials provided by AASHTO under this Master Agreement in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by the AGENCY, for archives or emergency restart purposes, to replace a worm copy, to understand the contents of such machine readable materials, or to modify the material as provided. The original and any partial or complete copies of materials named hereunder shall be the property of AASHTO.

7. Protection and Security: The AGENCY agrees not to provide or otherwise make available the Software Product(s) provided under this Master Agreement in any form to any person other than the AGENCY's designated personnel. The AGENCY agrees to notify AASHTO immediately of the unauthorized possession, use, or knowledge of the Software Product(s) supplied under this Master Agreement, by any person or organization not authorized by this Master Agreement to have such possession, use, or knowledge. The AGENCY will promptly furnish full details of such possession, use, or knowledge to AASHTO, will assist in preventing the recurrence of such possession, use or knowledge, and will cooperate with AASHTO in any litigation against third parties deemed necessary by AASHTO

to protect its proprietary rights. The AGENCY's compliance with this paragraph shall not be construed in any way as a waiver of AASHTO's rights to recover damages or obtain other relief against the AGENCY for its negligent or intentional harm to AASHTO's proprietary rights, or for breach of contractual rights.

8. Responsibilities of the AGENCY: The AGENCY shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this Master Agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the software, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction.

Any AGENCY modifications to the Software Product(s) are the responsibility of the AGENCY to maintain.

9. Warranty: AASHTO makes no warranty regarding the performance or results that may be obtained by using the Software Product(s) provided under this Master Agreement, or that it is appropriate for the AGENCY's purposes, or that it is error free.

The sole obligation of AASHTO shall be: (1) to make available to the AGENCY all published modifications or updates made by AASHTO to the Software Product(s) provided to it for a period of 90 days after the effective date of this Master Agreement, or any Supplemental Agreement executed pursuant to this Master Agreement, and (2) to make available to the AGENCY all such modifications or updates after the initial 90 days, only in the event the AGENCY has a current Software Support Agreement with AASHTO.

10. Limitation of Liability: The foregoing warranty is in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

11. Patent, Copyright and Trade Secret Indemnification: AASHTO will defend at its expense any action brought against the AGENCY to the extent that it is based on a claim that the Software Product(s) provided under this Master Agreement and used within the scope of the license hereunder infringes a United States copyright or United States letters patent, or a trade secret. AASHTO shall have no liability for any claim of copyright, patent or trade secret infringement made on: (1) use of other than the latest unmodified release of the materials from AASHTO if such infringement would have been avoided by use of the latest materials, or (2) use or combination of the licensed materials with non-AASHTO programs or data if such infringement would have been avoided by use or combination

of the licensed materials with other programs or data. The foregoing states the entire liability of AASHTO with respect to infringement of any copyright, patent or trade secret by the Software Product(s) or any part thereof, and AASHTO shall have no liability with respect to any other proprietary rights.

12. Right of Source Program: The AGENCY shall have the right to receive a single copy of the current version of the source programs for all Software Products supplied under this Master Agreement for its own and sole use only, and a single copy of the documentation associated therewith, upon request made to AASHTO. Each source program supplied to the AGENCY under this paragraph shall be subject to each and every restriction on use set forth in this Master Agreement, and the AGENCY acknowledges that the source programs and their associated documentation are extraordinarily valuable proprietary property of AASHTO and will guard against unauthorized use or disclosure with great care.

13. Charges: The license fees shall be set forth in Supplemental Agreements, and are incorporated by reference herein.

14. General: The term "Master Agreement" as used herein includes any future written amendments, modifications, supplements, or attachments made in accordance herewith. The AGENCY agrees that its acceptance of the Software Product(s) from AASHTO under this Master Agreement is conclusive evidence that the license for such software is governed by the terms of this Master Agreement.

If any provision of this Master Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of this Master Agreement shall not be affected and shall remain in full force and effect.

The AGENCY's remedies in this Master Agreement are exclusive.

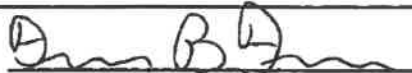
AASHTO and the AGENCY acknowledge that they have read this Master Agreement, understand it, and agree to be bound by its terms, and further agree that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Master Agreement.

This Master Agreement shall be governed by the laws of the District of Columbia.

In the event of any conflict between the terms and conditions of this Master Agreement and the terms and conditions of any subsequent purchase order, the terms and conditions of the Master Agreement shall control.

For AASHTO:

Name Francis B. Francois

Signature 

Title Executive Director

Date Sept 2, 1986

For the AGENCY:

Name W. S. Ritchie, Jr

Signature 

Title Commissioner

Date 8/11/86

APPROVED AS TO FORM THIS
5th DAY OF August 1986
H. H. Steen
ATTORNEY LEGAL DIVISION,
WEST VIRGINIA DEPARTMENT
OF HIGHWAYS

Exhibit D

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on January 1, 2022 and the initial contract term extends until (1) one year.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to THREE (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☒ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐

☐

☐

☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

- ☐ **Commercial General Liability Insurance** in at least an amount of: 1,000,000.00 per occurrence.
- ☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.
- ☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.
- ☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.
- ☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.
- ☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.
- ☐ **Pollution Insurance** in an amount of: _____ per occurrence.
- ☐ **Aircraft Liability** in an amount of: _____ per occurrence.
- ☒ **State of West Virginia must be listed as additional insured on Insurance Certificate. Certificate holder should read as follows:**
 - ☒ **State of WV**
1900 Kanawha Blvd. E., Bldg. 5
Charleston, WV 25305
 - ☐
 - ☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____

☐ Liquidated Damages Contained in the Specifications

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

40. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Revised 03/15/2021

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

43. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a

“substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

44. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

45. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.



(Name, Title)

Angelique Williams, Business Operations Manager for AASHTOWare

(Printed Name and Title)

555 12th Street, N.W., Suite 1000, Washington, DC 20004

(Address)

202-624-5808

(Phone Number) / (Fax Number)

angelw@ashto.org

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

American Association of State Highway and Transportation Officials (AASHTO)

(Company)



(Authorized Signature) (Representative Name, Title)

Jim Tymon, Executive Director

(Printed Name and Title of Authorized Representative)

04/23/2021

(Date)

202-624-5800

(Phone Number) (Fax Number)

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Transportation (WVDOT) to establish an open-end contract for American Association of State Highways Transportation Officials (AASHTO) AASHTOWARE Software Licenses (or equal) and Service Units. The term of this contract shall be for one (1) year with three (1) one-year options for renewal.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **"Contract Item" or "Contract Items"** means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 **"Pricing Pages"** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
 - 2.3 **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 2.4 **"Software License Agreement"** refers to the contract between the licensor and the purchaser of the software product that details how and when the software can be used.

3. GENERAL REQUIREMENTS:

- 3.1 **Contract Items and Mandatory Requirements:** Vendor must provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

If alternate 'or equal' products are proposed, the vendor must include as part of their bid, all software, hardware and services needed to migrate systems and data/files; train WVDOT staff; test systems; and test ALL migrated data/files. All information currently residing in the existing system(s) must be migrated. This process must be done with no interruption to the current business process within WVDOT and be totally completed within three (3) months of contract award.

Vendor should include all Software License Agreement(s) for the products specified in this RFQ as part of the response to the bid.

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

3.1.1 General Requirements – applies to ALL software modules/licenses.

- 3.1.1.1** Modules must be licensed on an annual license fee basis which includes software maintenance and support.
- 3.1.1.2** WVDOT must have the ability to install the software on unlimited WVDOT personal computers for unlimited WVDOT users unless otherwise noted in the specifications below.
- 3.1.1.3** Source code for the software modules must be available for WVDOT to use and modify as part of the annual license fee.
- 3.1.1.4** Software must allow for integration and data transfer between all modules. This includes both client/server and web-based applications.
- 3.1.1.5** Software must be compatible with WVDOT's current network environment and minimum hardware/software specifications for all client PC and Server Window's operating systems (see Attachments 1 and 2)
- 3.1.1.6** Software must meet all Federal Highway Administration (FHWA) regulation standards for the modules listed in this RFQ.
- 3.1.1.7** WVDOT will have the opportunity to be involved and influence the direction of the software development. This can be through participation in Task Force, Committees, Beta Testing and Focus Groups. WVDOT will have the ability to vote on software direction/enhancements/fixes for upcoming releases.
- 3.1.1.8** The vendor may bid a yearly license rate fee that changes each year. At each renewal year, WVDOT will submit a request that includes the software products they will be using, to the vendor for renewal. The price for that year, will be based on the price bid on Exhibit A Pricing Pages.
- 3.1.1.9** Vendor should provide with their bid a copy of any Software Terms and Conditions or Licenses that the State of West Virginia or the Agency will have to agree or accept as a part of this solicitation. This information will be required before a Purchase Order is issued.

3.1.2 AASHTOWARE PROJECT Software –or equal. Equal products must meet the mandatory specifications as listed in the following sections. Vendor must bid both Individual license (option 1) and Site License (option 2) models for PROJECT software – or equal, as detailed on the pricing page. It will be at the discretion of WVDOT

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

which modules will be purchased. Since this is an open-end contract, WVDOT may add modules included in this contract during the life of the contract.

3.1.2.1 PROJECT Bid Analysis Management System/Decision Support System (BAMS/DSS) – or equal.

- 3.1.2.1.1** Must be capable of providing a complete project historical data warehouse.
- 3.1.2.1.2** Must provide the ability to perform statistical models analysis and ad hoc analysis on data obtained through integration with other modules being bid for this contract.
- 3.1.2.1.3** Must provide Bid Monitoring and reporting such Ad Hoc reports (custom reports by user) and Collusion Detection reports (built-in reports).
- 3.1.2.1.4** Must provide a data structure and architecture within the database that is capable of including and storing the following:
 - 3.1.2.1.4.1** Vendor information (contractor, subcontractor)
 - 3.1.2.1.4.2** DBE (Disadvantage Business Enterprise)
 - 3.1.2.1.4.3** Surety information
- 3.1.2.1.5** Must provide Item Price Estimation.
- 3.1.2.1.6** Must provide Planning and Budgeting Process.
- 3.1.2.1.7** Must perform long term-term bidding pattern analysis.
- 3.1.2.1.8** Must perform analysis to identify collusion detection.

3.1.2.2 PROJECT Data Analytics – or equal.

- 3.1.2.2.1** PROJECT Data Analytics – Module license or equal.
- 3.1.2.2.2** This web-based system replaces the client/server BAMS/DSS functionality.
- 3.1.2.2.3** WVDOT is migrating from BAMS/DSS to PROJECT Data Analytics, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.
- 3.1.2.2.4** Must be a web-based system that includes all of the functionality of the client/server modules in section 3.1.2.1. It is understood that web-based technology differs from that used for client/server. It is acceptable

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

that different/additional products may be required to achieve the requested functionality. If additional products are needed, these should be listed in the response and a cost provided.

3.1.2.3 PROJECT Preconstruction – or equal. This product is used for generating information for the construction proposal, estimates, letting and project award.

3.1.2.3.1 Must provide bid-based pricing at both the project and proposal level.

3.1.2.3.2 Must be able to generate Engineering & Construction percentages.

3.1.2.3.3 Must provide Cost plus Time designations.

3.1.2.3.4 Must provide for alternate specifications at both the category and line item levels.

3.1.2.3.5 Must have the capability to generate the Plans, Specifications and Estimates package (PS&E) for transportation construction projects.

3.1.2.3.6 Must be able to combine Estimates into Proposals.

3.1.2.3.7 Must be able to combine Proposals to create a Bid Letting Package that will include the following standard reports:

- **Final Detail Estimate:** must use bid prices from the awarded vendor and/or valid low bidder to provide a project, prime project, or proposal view of costs, including add-on percentages and funding breakdowns.

- **Proposal Price Schedule** – must use the engineer's estimated values to produce five sub reports. When this report is generated a user must be able to choose to include one, several, or all of the sub reports.:

- ***Proposal Cover Sheet,**

- ***Proposal Schedule of Items,**

- ***Proposal Estimate** - The Unit Price field for each proposed item must be populated with the Proposal Item Unit Price for the corresponding proposal item. The Unit Price for lump sums, hybrid lump sums, and fractional lump sum items remains LUMP SUM. The Extended Amount field for each proposal item must be populated

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

with the Proposal Item Extended Amount for the corresponding proposal item. The Total Bid value for the proposal must be replaced by the Estimated Total, which is the estimated low cost total proposal cost taking design alternates into consideration.

***Quantity Sheet Summary**

***Proposal DBE Interest Report**

- 3.1.2.3.8** Agencies must have the ability to define and produce custom reports.
- 3.1.2.3.9** Must have the ability to advertise proposals.
- 3.1.2.3.10** Must be able to track plan and proposal holders.
- 3.1.2.3.11** Must be able to process bid information electronically to reflect accurate and up-to-date bid data.
- 3.1.2.3.12** Must be able to track Disadvantaged Business Enterprise (DBE) commitments information.
- 3.1.2.3.13** Must be able to generate the following reports in pdf format:
 - Notice to Contractors.** This report serves as a legal notice to the public that proposals are available for bid and is submitted to the media for publication. The report must contain two parts, a cover page and a proposal item quantities list.
 - Bid Tabulation Report:** uses bid information received from proposal vendors to produce a listing of item bid information in a cross-tab format. Bidders must be listed according to their vendor bid ranking, with the highest ranked bidder listed first
 - Analysis of Received Bids:** must be derived from the actual bids through the web site used by WVDOT for contractor bidding. The data must be imported in the software and be used to generate reports for human analysis. Must include capabilities of viewing of funds available amount and compare vendor bids received for a proposal defined with additive sections.
 - Bid Tabulation analysis report** must use bid information to produce a listing of bid item information in a cross tab format. Bidders must be

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

listed according to their vendor bid ranking, with the highest ranked bidder listed first.

-Vendor Ranking report must include a list of bidders ranked according to bid total for each selected proposal in the selected bid letting.

- Low Bid Item Analysis must compare the item prices from the low bidder to those in the Engineer's estimate for each selected proposal in the bid letting.

-Low Bid Summary report must list bid letting totals, and is used to identify the low bidder and compare the corrected low bid value to the Engineer's estimate. The report must calculate the low bid as a percentage of the Engineer's estimate and shows how much the bid is over or under the Engineer's estimate

-Bid Letting Summary Reports: must be comprised of the following five individual sub reports. When the Bid Letting Summary is Generated, you should be able to include one, several, or all of these sub reports.

***Proposal Addenda Detail,**

***Bid Letting History,**

***Letting Award Summary,**

***Bid Letting Comparison Form,**

***Bid Letting Prequalification.**

3.1.2.3.14 Must include plan holder management.

-Must have the ability to maintain the plan holders list.

-Must have the ability to produce mailing lists and plan holder invoices.

3.1.2.3.15 Must include online and batch data entry facilities for vendor bids.

3.1.2.3.16 Must include a unified database and consolidated security model, with PROJECT web based applications, or equal such as CRLMS or equal, and PROJECT Construction and Materials or equal).

3.1.2.3.17 Must provide workflow/phase handling.

3.1.2.3.18 Must interface with all PROJECT modules – or equal.

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

3.1.2.4 PROJECT Civil Rights Labor Management System (CRLMS) – or equal.

- 3.1.2.4.1** Licensing of this module will be at the OPTION of WVDOT.
- 3.1.2.4.2** Must meet the guidelines for processing data to meet federal and state requirements for civil rights and labor compliance activities.
- 3.1.2.4.3** Must be a web-based platform.
- 3.1.2.4.4** Must provide for the administration of an agency's external civil rights and labor compliance activities. This must include but not be limited to:
 - Contractor payrolls and labor compliance
 - Wage decisions
 - Disadvantaged Business Enterprise (DBE) certification
 - Vendor data management
 - DBE commitments,
 - On-the-Job Trainees (OJT) tracking and monitoring
 - Subcontractor data and prompt pay tracking
 - Bidder/Quoter submittals
 - Trucking types and tracking
- 3.1.2.4.5** Must interface with client/server environment and contract compliance reviews.
- 3.1.2.4.6** Must provide secure, limited access to non-agency users (e.g. contractors and subcontractors). This is to allow submission of electronic information such as payroll and subcontractor payment information.
- 3.1.2.4.7** Must provide a spreadsheet conversion utility to assist contractors in creating an Extensible Markup Language (XML) formatted payroll file for import into the system.
- 3.1.2.4.8** Must provide a XML Developer's Resource kit to assist payroll software companies to create XML formatted payroll files for import into the system.

3.1.2.5 PROJECT BIDS – MODULE LICENSE – OR EQUAL.

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- 3.1.2.5.1** PROJECT BIDS, or equal must provide a tool for bidders to receive proposal information. This must include:
 - Item schedules.
 - DBE requirements
 - Affidavits
- 3.1.2.5.2** Must provide the ability to enter proposal information and designate specific data fields as mandatory for a proposal to be valid. Must validate each proposal on the basis that all required information has been received.
- 3.1.2.5.3** Must support proposals with cost plus time components.
- 3.1.2.5.4** Must have the ability to have alternate sections and alternate items, lump sum and fixed-price items.
- 3.1.2.5.5** Must provide for the distribution of amendments in electronic format.
- 3.1.2.5.6** Must have the ability to convert a flat file of proposal item information into an electronic proposal or amendment file for distribution to prospective bidders.
- 3.1.2.5.7** Must include an electronic bid manager which allows item bids to be entered interactively, as on a spreadsheet, with item extensions and section and proposal totals calculated and displayed immediately.
- 3.1.2.5.8** Must facilitate the submittal of DBE commitment information and an electronic bid bond identifier or manually delivered check or payment indication.
- 3.1.2.5.9** Must have the ability to check the electronic bid and determine required data has been entered in the correct format.
- 3.1.2.5.10** Must allow the transportation agency to enter bid data from proposals submitted manually in a PC-based program for loading into LAS , or equal
- 3.1.2.5.11** Must allow the transportation agency to electronically verify the bidder's bid bond.
- 3.1.2.5.12** License must include the ability to distribute the electronic bid manager component and associated documentation for use by all prospective bidders.

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- 3.1.2.5.13** Must provide security within the electronic environment using encrypted digital certifications for all agency approved bidders/contractors.
- 3.1.2.5.14** Bidders/contractors must be able to receive proposal item schedules.
- 3.1.2.5.15** Bidders/contractors must be able to submit/withdraw items bids.

3.1.2.6 SiteManager – Module License – or equal.

- 3.1.2.6.1** WVDOT is migrating from SiteManager to PROJECT Construction, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.
- 3.1.2.6.2** Must provide license for construction management software that provides for data entry, tracking, reporting and analysis of contract data from contract award through finalization.
- 3.1.2.6.3** Software must allow use for different levels of access depending on the user's business role. This shall include but not limited to the following roles:
 - Field Inspectors
 - Administrators
 - Technicians
 - Project Managers
 - Clerks
 - Auditors
 - Lab Personnel
 - Management,
 - Producer/Suppliers
 - FHWA.
- 3.1.2.6.4** Contract Administration functions must include the ability to:
 - 3.1.2.6.4.1** Monitor the contractor progress schedule.
 - 3.1.2.6.4.2** Receive payrolls.
 - 3.1.2.6.4.3** Monitor and report on status.
 - 3.1.2.6.4.4** Provide reference data for vendors, subcontractor and bid items.
 - 3.1.2.6.4.5** Include the ability to load contract data from the preconstruction system.

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- Process contract and line item adjustments (including liquidated damages, fuel adjustments, price adjustments and licensee-specific adjustments)
- Manage retainage.
- Provide tracking
- Approval
- Finalization
- And discrepancy notification/ resolution for items such as certified payrolls and tested materials.

3.1.2.6.8 Materials Management must be provided for recordings, tracking and reporting of material samples and test results from job sites, plants and test labs.

3.1.2.6.8.1 It must include comprehensive lists for reference and validation of data, including:

- Materials
- Lab qualifications
- Testing personnel
- Approved material lists
- Approved producer/suppliers
- Calibrated equipment
- Welders
- Inspectors

3.1.2.6.8.2 It must support aggregate, concrete and bituminous concrete mix designs.

3.1.2.6.8.3 It must provide for sampling and testing requirements for contracts.

3.1.2.6.8.4 It must provide reporting of the status of tested materials for a contract.

3.1.2.6.9 Laboratory Information Management System (LIMS) – or equal, must provide sampling and testing workflow management.

3.1.2.6.9.1 It must include the ability to establish a material sample “chain of custody.” This must include

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

User and date/time of sample process.

3.1.2.6.9.2 It must manage access to samples and test based on user qualifications that are identified through system security roles.

3.1.2.6.9.3 It must have the capability to define standard and alternative sample testing workflows.

3.1.2.6.9.4 It must have the ability to maintain sample test queues.

3.1.2.6.9.5 It must have the ability to schedule tests.

3.1.2.6.9.6 It must have the ability to audit and track samples.

3.1.2.7 PROJECT Construction and Materials – Module license or equal.

This web-based system replaces the client/server SiteManager construction, materials, and laboratory information management functionality.

3.1.2.7.1 WVDOT is migrating from SiteManager to PROJECT Construction, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.

3.1.2.7.2 Must be a web-based system that includes all of the functionality of the client/server modules in section 3.1.2.7. It is understood that web-based technology differs from that used for client/server. It is acceptable that different/additional products may be required to achieve the requested functionality. If additional products are needed, these should be listed in the response and a cost provided.

3.1.2.8 PROJECT Estimation – Module license or equal.

3.1.2.8.1 Must be a web-based cradle-to-grave estimation application.

3.1.2.8.2 Must provide a variety of estimation methodologies that include bid-based, cost based, reference based, parametric estimation,

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

ad hoc pricing, collection bases that perform DOH estimates.

3.1.2.8.3 Must include assessment and assignment of risk contingency, life cycle analysis tools, expansion of existing import/export capabilities, inclusion of non-bid costs, non-construction costs and markups, and the ability to utilize snapshots in creation of an audit trail for DOH estimates.

3.1.2.8.4 The software must provide the ability to run a quick analysis of bid-history pricing to utilize in what-if scenarios and planning discussions.

3.1.2.8.5 Must contain interactive graphical display for accessing the dynamic bid history profiles utilizing the data analytics analysis.

3.1.3 AASHTOWare Bridge Rating – Bridge Load Rating system - Unlimited Option – or equal.

3.1.3.4 This software must use graphical tools to provide a visual representation of the data and application of the results.

3.1.3.5 Must be analytical software that allow users to perform load and resistance factor rating (LRFR), load factor rating (LFR) and allowable stress rating (ASR).

3.1.3.6 Must provide an integrated database where ratings inputs and outputs can be stored, reviewed and re-used.

3.1.3.7 Must allow a user to provide a 3-dimensional description of a bridge superstructure.

3.1.3.8 Bridge data must be usable by a variety of line-girder, 2-D or 3-D analysis packages, permit/routing systems and other third-party produced applications.

3.1.3.9 Bridge configurations and capabilities must include:

- Simple spans, continuous spans, hinges (steel and reinforced concrete)
- U. S. Customary and International System of Units (S.I.) units
- Line-Girder analysis and 3D Finite Element Analysis
- Parallel and flared girder configurations
- Reinforced concrete tee beams, slabs, I-beams and multi-cell box beams
- Reinforced concrete box culverts
- Pre-stressed concrete box, I, tee and U-beams (precast, pre-tensioned continuity for live load)
- Post-tensioned multi-cell box beams
- Harped strands and de-bonded strands

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- Steel rolled beams (including cover plates)
- Steel built-up plate I-girders
- Steel welded plate I-girders (including hybrid)
- Parallel, tapered, parabolic and circular webs
- Transverse and longitudinal stiffened
- Frame structure simplified definition
- Steel trusses and floor systems
- Timber beams and decks
- Corrugated metal decks; 3-D analysis of steel and concrete multi-girder superstructures
- 3-D analysis of curved steel multi-girder superstructures

3.1.3.10 Bridge Load Rating Features must include but not be limited to:

- Load rate various structure units within a bridge
- Load rate various members within a structural unit
- Rate a user-defined group of bridges
- Input definition and rating of deteriorated sections
- Review of rating history for groups of bridges and routing applications
- Perform load ratings in accordance with AASHTO methods Load and Resistance Factor Rating (LRFR), Load Factor Rating (LFR), and Allowable Stress Rating (ASR)
- Load rate timber and corrugated metal decks
- Load rate girder-floorbeam-stringer configurations
- Load rate truss-floorbeam-stringer and floor-truss configurations
- Permit rating with routine traffic in adjacent lane
- Permit rating with routine traffic in adjacent lane axles
- Rating of non-standard gage vehicles by loading a 3-D influence surface

3.1.3.11 System must have a Bridge Load Rating and Permit Vehicle Analysis database.

3.1.3.11.1 Must include the ability for an entire route to be treated for a permit vehicle in a single step.

3.1.3.11.2 Permit analysis must include 3-D analysis to consider load effects due to a specific vehicle traveling along a user-defined path on a structure.

3.1.3.11.3 Must comply with corporate database standards by supporting Oracle and Microsoft SQL server database managers, data sharing and security features.

3.1.3.12 Graphical Features and Customizable Libraries

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- 3.1.3.12.1** Must include libraries of standard and user-defined vehicles, loads, steel and pre-stressed shapes, load and resistance factors, materials, parapets, etc. to allow bridge models to be built quickly in a drag and drop manner.
- 3.1.3.12.2** The ability to copy a part of a bridge to another bridge
- 3.1.3.12.3** Must include the following features as a bridge model is constructed:
 - A graphical schematic framing plan
 - Elevation view
 - Cross-section view
- 3.1.3.13** Import and Rating Features
 - 3.1.3.13.1** Must be able to import BARS (Bridge Analysis and Rating System), BRASS (Bridge Rating and Analysis of Structural Systems) and BAR7 (Bridge Analysis and Rating) data files.
 - 3.1.3.13.2** Must provide flexure and shear ratings.
 - 3.1.3.13.3** Must compute dead loads and distribution factors if they are not manually input and analyze deteriorated sections.
 - 3.1.3.13.4** Must accept data in either cross-section or schedule-base forms.
- 3.1.3.14** Architectural Support for Third-Party Customizations and Add-ons
 - 3.1.3.14.1** Must use an industry standard COM (Component Object Model) interface that makes it possible to access the system's data and functionality from other software systems.
 - 3.1.3.14.2** These Must include but not be limited to:
 - Visual Basic
 - Excel
 - Microsoft Word
 - 3.1.3.15** Must include user support via telephone, email and online via the internet.
- 3.1.4** **AASHTOWare Bride Design Unlimited Option – or equal.**
 - 3.1.4.4** The AASHTOWare Bridge management software must be a comprehensive asset management system developed to assist in the challenging task of bridge management.
 - 3.1.4.5** Must store bridge inventory and inspection data; formulates network-wide preservation and improvement plans for use in

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

evaluating the needs of each bridge in a network; and makes recommendations for what projects to include in an agency's capital plan for deriving the maximum benefit from limited funds.

3.1.4.6 Must support entire bridge management cycle, and is capable of maintenance tracking and federal reporting. The software integrates the objectives of public safety and risk reduction, and preservation of investment to produce budgetary, maintenance, and program policies.

3.1.4.7 System must provide a systematic procedure for the allocation of resources to the preservation and improvement of the bridges in a network, by considering both the costs and benefits of maintenance policies versus investments in improvements or replacements.

3.1.4.8 Software must support the collection of inspection data based on the AASHTO Manual for Bridge Element Inspection.

3.1.4.9 Software must support multi-asset data collection and storage.

3.1.4.10 Software must include capabilities to collect and report tunnel inspection data in addition to bridges.

3.1.4.11 Software must be a web-based system that supports asset management, inventory, and inspection data through a web server either hosted on an agency's intranet or internet connections or hosted remotely. Selecting the local installation or the hosted does not change the features or capabilities of the platform.

3.1.4.12 Software must provide a full suite of out-of-the-box reports designed specifically to support bridge management needs. Reporting is facilitated through Crystal Reports or equal, which allows for new report development and customization of provided reports. Crystal Report or equal keys must be provided by the vendor for all users and no additional cost.

3.1.4.13 Must include user support via telephone, email and online via the internet.

3.1.5 AASHTOWare Bridge Management Super Site License or equal

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- 3.1.5.4** Must support the entire bridge management cycle, and is capable of maintenance tracking and federal reporting.
- 3.1.5.5** The software must integrates the objectives of public safety and risk reduction, and preservation of investment to produce budgetary, maintenance, and program policies.
- 3.1.5.6** Must provide a systematic procedure for the allocation of resources to the preservation and improvement of the bridges in a network, by considering both the costs and benefits of maintenance policies versus investments in improvements or replacements.
- 3.1.5.7** Must support multi-asset data collection and storage.
- 3.1.5.8** Must include capabilities to collect and report tunnel inspection data in addition to bridges
- 3.1.5.9** Must be a web-based system and support asset management, inventory, and inspection data through a web server.
- 3.1.5.10** System reporting must be through developer Crystal Reports or equal and must be provided by the vendor at no additional cost.
- 3.1.6 AASHTOWARE Project Mobile Applications License or equal**
 - 3.1.6.4** Must provide automatic synchronization of data between the mobile applications on a smartphone or tablet and the AASHTOWare Project software or equal.
 - 3.1.6.5** Must provide secure storage and transmission for the following mobile applications or equal: AASHTOWare Project SiteManager, AASHTOWare Project Civil Rights and Labor, and the AASHTOWare Project Construction & Materials application.
 - 3.1.6.6** Must provide unlimited usage for all three (3) AASHTOWare Project applications or equal:
 - 3.1.6.6.1** Infotech Mobile Inspector or equal
 - 3.1.6.6.2** Infotech Field Interviewer or equal
 - 3.1.6.6.3** Project Mobile Tester or equal
- 3.1.7 AASHTOWARE Service Units or equal.** Service Units consist of fixed fee increments or units of contractor-provided service for consultation and support to assist an agency in

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

implementing the AASHTOWARE products. For an “or Equal” product, vendor should bid an equivalent to the service unit as described below:

- 3.1.7.4** Vendor must specify a unit cost for AASTHO service units in each category or list hourly cost for services if an “or equal” is bid.
- 3.1.7.5** It must be the option of WVDOT to procure service units on an as needed basis. To utilize the service units, WVDOT will receive an estimate of the number of units required and establish work plans, schedule for delivery, conditions of service prior to submitting a commitment. Service Units may be used, but are not limited to, the following:
 - 3.1.7.5.1** Planning and conducting training events
 - 3.1.7.5.2** Implementation planning
 - 3.1.7.5.3** Technical assessment/technical planning
 - 3.1.7.5.4** Application installation and configuration
 - 3.1.7.5.5** Data mapping of current agency systems data to:
 - 3.1.7.5.5.1** Preconstruction (e.g. financial, pre-construction, materials management)
 - 3.1.7.5.5.2** Configuring of generic field windows
 - 3.1.7.5.5.3** Configuring of custom templates (e.g. agency specific material test methods)
 - 3.1.7.5.5.4** Interface development
 - 3.1.7.5.5.5** Conversion development
 - 3.1.7.5.5.6** Updating prior releases of the AASHTOWARE Bridge Design/AASHTOWARE Bridge Rating database
 - 3.1.7.5.5.7** Adding an analytical or specification engine to the AASHTOWARE Bridge Design system;
 - 3.1.7.5.5.8** Adding new agency-specific features to the system

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

3.1.7.5.5.9 Specialized training in the use of AASHTOWARE Bridge Design or AASHTOWARE Bridge Rating during a two-day workshop for up to 15 individuals.

3.1.8 AASHTOWARE Hosting and Add-On Service Unit Option (HAO) for Bridge Management or equal

3.1.8.1 Hosting and maintenance of AASHTOWare Bridge Management

3.1.8.2 Must be in the AWS Production Environment or equal

3.1.8.3 Must have a 99.99 percent uptime guarantee.

3.1.8.4 Production site upgrades must be included.

3.1.8.5 DOH must have test site access before upgrades.

3.1.8.6 Unlimited number of users can access.

3.1.8.7 Must have automatic nightly database backups retained for ninety (90) days or greater.

3.1.8.8 Must have database read/write access (SQL Server or Oracle)

3.1.8.9 Must have data encryption both at rest and in transit.

3.1.9 AASHTOWARE Safety Segment Analytics or equal

3.1.9.1 Cloud-based SaaS platform that connects to external databases to receive crash, vehicle and occupant data, roadway data, asset data, as well as any other data supplied by WVDOH, to power a number of purpose-built applications.

3.1.9.2 Software must allow WVDOH to customize various configurations. Examples: countermeasure logic, Crash Modification Factor values, and various calculations.

3.1.9.3 Must have at least four modules: Crash Query, Safety Analysis, Network Screening, Safety Performance Functions Manager.

3.1.9.4 Crash Query must allow users to create custom queries to search crashes in a GIS interface. Must allow a number of search variables, including crash type, vehicle, occupant, roadway, or geographic criteria can be used to refine queries in natural-language search terms. WVDOH users must be able to explore crash details, including recommended countermeasures, to

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

help with crash mitigation. Crash Query must be able to generate shareable crash reports.

3.1.9.5 Safety Analysis must allow WVDOT users to conduct segment-specific analysis to see where crashes are occurring, and what countermeasures can be put in place to minimize crashes. Safety

Analysis allows users to generate benefit-cost calculations in seconds with built-in service life and cmf values. Safety Analysis must generate a shareable Safety Report complete with recommendations or specified treatments.

3.1.9.6 Networking Screening must allow WVDOT users to rank their roadway network using segments, and sliding window analyses by crashes, fatalities, crash ratio, crash rate, crashes per mile, equivalent property damage or any other desired calculation. Custom filters must be able to be applied to refine the scope of analysis, targeting regions, counties, cities, or custom geographic areas. The module must also allow filtering by contributing factors, or even potential countermeasures to help WVDOT to determine which roadways need the most attention. Must be able to generate a shareable Network Screening report to share this data with anyone internal or external to WVDOT.

3.1.9.7 Safety Performance Functions Manager must be able to see crash rates, which will give WVDOT insight into how WVDOT roadways are performing. WVDOT must be able to use safety performance functions that they have already created to run their analysis. Safety performance functions manager must be able to provide a history of the functions that can help provide analysis for how safety performance functions are performing.

3.1.10 AASHTO Safety Intersection Analytics or equal

3.1.10.1 Software must build on the segment-level data made available under the applications included in Safety Segment Analytics. Each application must be able to be configured to incorporate intersection data as well. Software must provide insight into intersection related crashes, safety improvements, and network screening analyses.

3.1.10.2 Must have at least four modules for safety intersection analytics: Crash Query, Safety Analysis,

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

Network Screening, Safety Performance Functions Manager.

- 3.1.10.3** Crash Query must add intersection data to Crash Query module, users can query, explore, and generate intersection-related crash and vehicle level data. Crash Query must be able to generate shareable Crash intersection reports.
- 3.1.10.4** Safety Analysis Intersections must allow WVDOH users to conduct corridor analysis and must include both segment and intersection analysis. The intersection-specific analysis must allow WVDOH users to see what crashes are occurring, and what intersection-specific countermeasures can be put in place to minimize intersection crashes. WVDOH users must be able to generate benefit-cost calculations with built-in service life and CMF values. Safety Analysis must also generate a shareable safety report complete with recommendations or specified treatments, which allows WVDOH users to generate a safety report on every project and at every phase of the project.
- 3.1.10.5** Networking Screening must allow WVDOH intersection users to rank their roadway network intersections by crashes, fatalities, crash ratio, crash rate, or any other desired calculation. Must allow custom filters to refine the scope of the analysis, targeting regions, counties, cities, or even custom geographic areas. Filter by contributing factors, or potential countermeasures to help WVDOH determine what intersections need the most attention. Generate a shareable Network Screening report and be able to share this data with anyone inside, or outside WVDOH.
- 3.1.10.6** Safety Performance Functions Manager must be able use safety performance functions that they have already created to run their analysis. Safety performance functions manager must be able to create custom Safety Performance Functions for WVDOH. Must be able to create or save a history of functions that can help provide analysis for how they are performing.

3.1.11 AASHTO Safety Trend Analytics or equal

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

3.1.11.1 Software must allow users to create custom dashboards to visualize any element of WVDOT data.

3.1.11.2 Software must create secure dashboards to share within WVDOT, or publicly available dashboards to share data with the public through public portals, a public-facing URL allowing for open access to any desired Workbook, with no user limit, or authentication required.

3.1.12 AASHTOWare Safety Implementation Units or equal

3.1.12.1 AASHTOWare Safety Implementation Units or equal.

Service Units consist of fixed fee increments or units of contractor-provided service for consultation and support to assist an agency in implementing the AASHTOWARE SAFTEY products or equal. For an "or Equal" product, vendor should bid an equivalent to the service unit as described below:

3.1.12.2 Vendor must specify a unit cost for AASHTO SAFTEY IMPLEMENTATION service units in each category or list hourly cost for services if an "or equal" is bid.

3.1.12.3 It must be the option of WVDOT to procure these implementation service units on an as needed basis. To utilize the implementation service units, WVDOT will receive an estimate of the number of units required and establish implementation plans, schedule for delivery, conditions of service prior to submitting a commitment.

3.1.13 AASHTOWare Safety Service Units or equal

3.1.13.1 AASHTOWare Safety Implementation Units or equal.

Service Units consist of fixed fee increments or units of contractor-provided service for consultation and support to assist an agency for AASHTOWARE SAFTEY products or equal. For an "or Equal" product, vendor should bid an equivalent to the service unit as described below:

3.1.13.2 Vendor must specify a unit cost for AASHTO SAFTEY service units in each category or list hourly cost for services if an "or equal" is bid.

3.1.13.3 It must be the option of WVDOT to procure these service units on an as needed basis. To utilize the AASHTO SAFTEY

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

service units, WVDOT will receive an estimate of the number of units required and establish implementation plans, schedule for delivery, conditions of service prior to submitting a commitment.

3.1.13.4 Service Units may be used, but are not limited to, the following:

3.1.13.5 Planning and conducting training events

3.1.13.6 Technical assessment/technical planning

3.1.13.7 Application installation and configuration

3.1.13.8 Configuring of generic field windows

3.1.13.9 Configuring of custom templates (e.g. agency specific material test methods)

3.1.13.10 Interface development

3.1.13.11 Collect new datasets

3.1.13.12 Create processes for improving quality assurance

3.1.14 AASHTOWare Project Hosting Services with Construction and Materials or equal

3.1.14.1 Must include configuration accommodates AASHTOWare Project Preconstruction, AASHTOWare Project Estimation, AASHTOWare Project CRL, Construction & Materials and AASHTOWare Project Data Analytics or equal. Must provide the following:

3.1.14.1.1 Production Instance (1 Production site)

3.1.14.1.2 Dev/Test Instance (1 Dev site and 1 Test site)

3.1.14.1.3 Additional AASHTOWare Project or equal installation for training purposes using the Dev/Test servers as desired.

3.1.14.1.4 Two additional AASHTOWare Project App/UI servers or equal in a load balanced configuration to the production instance.

3.1.14.2 The first year of Hosting Services must include a one month startup required to build the environment and establish the VPN connection with WVDOT. WVDOT will provide a suitable IP address range that will be used during the initial hosting setup. This will be followed by a five-month testing period of the Dev/Test instance. Once testing has completed,

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

the production instance will be created and be ready for
immediate use by WVDOT.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Exhibit A Pricing Pages.

4.1.8 Section 3.1.2 has two options for Purchase.

Option 1: Is for purchase of individual modules.

Option 2: Is for purchase of a Site License that includes all the modules in Option 1.

Vendor is required to bid both individual and Site Licensing options. Both options will become part of the Open-End Contract which will allow WVDOT to use the most cost effective method for licensing. Currently the Infrastructure for these systems is a mixture of Client/Server and Web Based architecture so initially we will need to utilize Option 1 for our mixed environment. As additional modules are added and we move others to their web based counterparts the cost of the site license becomes more cost effective.

4.2 Pricing Pages: Vendor should complete the **Exhibit A - Pricing Pages**. Vendor **must provide pricing for both** Option 1 Project Individual Licenses, and Option 2 Project Site License, see 3.1.2. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

4.2.8 Option 1: as noted in the requirements above, WVDOT is transitioning from older to updated modules of the AASHTOWARE system. During the migration, only one license will be utilized (i.e. WVDOT will **not** be required to license both the web based and client/server licenses during the transition year even though both modules may be used). Pricing is need for both as we are still in the planning phases of this progression.

4.2.2.1 If an "or equal" product is bid, vendor shall include the total fixed cost for ALL items needed to meet the requirements in in section 3.1 in the or equal column.

4.2.3 Option 2: Vendor shall include a Site License cost for ALL Products included in the Cost Evaluation for Option 1.

4.2.3.1 Site License shall include:

3.1.2.1 Project BAMS/DSS – or equal

**CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal**

- 3.1.2.2 Project Data Analytics or equal
- 3.1.2.3 Project Preconstruction – or equal
- 3.1.2.4 Project CRL – or equal
- 3.1.2.5 Project Bids – or equal
- 3.1.2.6 Project SiteManager – or equal
- 3.1.2.7 Project Constructions & Materials – or equal
- 3.1.2.8 Project Estimation – or equal
- 4.2.3.2 A migration cost for alternate and “or equal” products is not included in this option as it will be evaluated in Option 1.

The Exhibit A Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

5. ORDERING AND PAYMENT:

- 5.2 **Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 5.3 **Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

- 6.2 **Delivery Time:** Vendor shall deliver standard orders within 5 working days after orders are received. Vendor shall deliver emergency orders within 5 working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.3 **Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

obtain approval of the Purchasing Division.

- 6.4 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.
- 6.5 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.6 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

7.2 The following shall be considered a vendor default under this Contract.

- 7.2.2** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.2.3** Failure to comply with other specifications and requirements contained herein.
- 7.2.4** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

CRFQ 0803 DOT
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

7.2.5 Failure to remedy deficient performance upon request.

7.3 The following remedies shall be available to Agency upon default.

7.3.2 Immediate cancellation of the Contract.

7.3.3 Immediate cancellation of one or more release orders issued under this Contract.

7.3.4 Any other remedies available in law or equity.

8. MISCELLANEOUS:

8.2 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.3 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

8.4 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.5 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Angelique Williams
Telephone Number: 202-624-5808
Fax Number: _____
Email Address: angelw@ashto.org

Exhibit E

OPTION 2: AASHTOWare Project Site License (section 3.1.2)							
	If bidding or equal product, list brand and product info. below	Equal Product Migration, Training, Configuration and Setup Costs	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Restatement fee +Y1+Y2+Y3+Y4)
4.2.3 AASHTOWare Project Site License to includes all PROJECT licenses listed.			\$514,000.00	\$539,700.00	\$566,700.00	\$595,100.00	\$2,215,500.00
TOTAL Option 2:							\$2,215,500.00

AASHTOWare Bridge Rating - Bridge Load Rating System							
	If bidding or equal product, list brand and product information below	Equal Product Migration, Training, Configuration and Setup Cost	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.3 AASHTOWare Bridge Rating Unlimited			\$40,700.00	\$42,800.00	\$45,000.00	\$47,300.00	\$175,800.00
TOTAL Bridge Rating System:							\$175,800.00

AASHTOWare Bridge Design						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.4 AASHTOWare Bridge Design Unlimited		\$40,700.00	\$42,800.00	\$45,000.00	\$47,300.00	\$175,800.00
					TOTAL Bridge Design System:	
					\$175,800.00	

AASHTOWare Bridge Management						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.5 AASHTOWare Bridge Management Super Site License		\$51,500.00	\$54,100.00	\$56,800.00	\$59,700.00	\$222,100.00
TOTAL AASHTOWare Bridge Management Super Site License:						\$222,100.00

AASHTOWare Project Mobile Applications License						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.6 AASHTOWare Project Mobile Applications License		\$40,000.00	\$42,000.00	\$44,100.00	\$46,300.00	\$172,400.00
TOTAL AASHTOWare Project Mobile Applications License:						\$172,400.00

AASHTOWare Service Units (specify price per unit)						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.7 AASHTOWare PROJECT Service Units		\$13500 each	\$13500 each	\$13500 each	\$13500 each	\$13500 each
3.1.7 AASHTOWare Bridge Design/Rating Service Units		\$11600 each	\$11600 each	\$11600 each	\$11600 each	\$11600 each
3.1.7 AASHTOWare Bridge Management Units		\$11600 each	\$11600 each	\$11600 each	\$11600 each	\$11600 each
3.1.8 AASHTOWare Bridge Management Hosting and Add-On Service Unit (HAO)		\$3000 each	\$3000 each	\$3000 each	\$3000 each	\$3000 each
TOTAL AASHTOWare Service Units:						

	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.9 AASHTOWare Safety Segment Analytics		\$175,000.00	\$175,000.00	\$175,000.00	\$175,000.00	\$700,000.00
3.1.10 AASHTOWare Safety Intersection Analytics		\$175,000.00	\$175,000.00	\$175,000.00	\$175,000.00	\$700,000.00
3.1.11 AASHTOWare Safety Trend Analytics		\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$400,000.00
TOTAL AASHTOWare Safety Modules:						\$1,800,000.00

AASHTOWare Safety Service Units						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.12 **AASHTOWare Safety Implementation Units		\$25,000 each	\$25,000 each	\$25,000 each	\$25,000 each	\$25,000 each
3.1.13 AASHTOWare Safety Service Units		\$10,000 each	\$10,000 each	\$10,000 each	\$10,000 each	\$10,000 each
TOTAL AASHTOWare Safety Service Units:						\$1,800,000.00

**Implementation Units are required in the first-year of licensing to address one-time costs associated with AASHTOWare Safety implementation

AASHTOWare Project Hosting Services with Construction & Materials						
	If bidding or equal product, list brand and product information below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.14 AASHTOWare Project Hosting Services Base Configuration with Construction & Materials		\$210,000.00	\$220,500.00	\$231,600.00	\$243,200.00	\$905,300.00
TOTAL AASHTOWare Project Hosting Services w/CM:						\$905,300.00

TOTALS WITH OPTION 1 INDIVIDUAL LICENSING FOR PROJECT SOFTWARE	
TOTAL-Option 1:	\$2,186,400.00
TOTAL-Bridge Rating System:	\$175,800.00

TOTAL-Bridge Design System:	\$175,800.00
TOTAL AASHTOWare Bridge Management Super Site License:	\$222,100.00
TOTAL AASHTOWare Project Mobile Applications License:	\$172,400.00
TOTAL-Service Units:	
TOTAL AASHTOWare Safety Modules:	\$1,800,000.00
TOTAL AASHTOWare Safety Service Units:	
TOTAL AASHTOWare Project Hosting Services w/CM:	\$905,300.00
GRAND TOTAL with Option 1:	\$5,637,800.00

TOTALS WITH OPTION 2 SITE LICENSE FOR PROJECT SOFTWARE	
TOTAL-Option 2:	\$2,215,500.00
TOTAL-Bridge Rating System:	\$175,800.00
TOTAL-Bridge Design System:	\$175,800.00
TOTAL AASHTOWare Bridge Management Super Site License:	\$222,100.00
TOTAL AASHTOWare Project Mobile Applications License:	\$172,400.00
TOTAL-Service Units:	
TOTAL AASHTOWare Safety Modules:	\$1,800,000.00
TOTAL AASHTOWare Safety Service Units:	
TOTAL AASHTOWare Project Hosting Services w/CM:	\$905,300.00
GRAND TOTAL with Option 2:	\$5,666,900.00

¹Deliverables for Years 2-4 will be done by Change Order upon mutual agreement between the Vendor and Agency