



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: 10-27-2022

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 0081 DOT2300000020 1	Procurement Folder:	1103903
Document Name:	Bentley Software Maintenance & Subscription (81230018)	Reason for Modification:	
Document Description:	Bentley Software Maintenance & Subscription (81230018)		
Procurement Type:	Central Sole Source		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-10-03
Free on Board:		Effective End Date:	2023-09-30

VENDOR		DEPARTMENT CONTACT		
Vendor Customer Code:	000000232598	Requestor Name:	John P Toomey	
BENTLEY SYSTEMS INC		Requestor Phone:	304-352-0540	
685 STOCKTON DR		Requestor Email:	John.P.Toomey@wv.gov	
EXTON	PA			
US	19341			
Vendor Contact Phone:	999-999-9999			
Extension:				
Discount Details:		<b>23</b> FILE LOCATION		
Discount Allowed	Discount Percentage			Discount Days
#1 No	0.0000			0
#2 No				
#3 No				
#4 No				

INVOICE TO	SHIP TO
INFORMATION TECHNOLOGY DIVISION DEPT. OF TRANSPORTATION 1900 KANAWHA BLVD E, BLD. 5 RM-720 CHARLESTON WV 25305 US	INFORMATION TECHNOLOGY DIVISION DEPT. OF TRANSPORTATION 1900 KANAWHA BLVD E, BLD. 5 RM-720 CHARLESTON WV 25305 US

11-2-22  
Box  
Purchasing Division's File Copy

Total Order Amount:

Open End

**ENTERED**

MA 10/27/2022  
PURCHASING DIVISION AUTHORIZATION

DATE: *Day Van 10-27-22*  
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE: *John & Gray*  
ELECTRONIC SIGNATURE ON FILE  
11/9/2022

ENCUMBRANCE CERTIFICATION

DATE: *Beverly Toler 11-9-2022*  
ELECTRONIC SIGNATURE ON FILE

Extended Description:  
DIRECT AWARD

THE VENDOR, BENTLEY SYSTEMS INC., AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DIVISION OF HIGHWAYS INTO AN OPEN-END CONTRACT FOR BENTLEY SOFTWARE MAINTENANCE AND SUBSCRIPTION PER THE TERMS AND CONDITIONS AND THE VENDOR'S QUOTE DATED 09/09/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43230000			EA	0.000000
	Service From	Service To			

Commodity Line Description: Bentley Software Maintenance & Subscription

Extended Description:  
OPEN END CONTRACT: TO PROVIDE BENTLEY SOFTWARE, MAINTENANCE AND SUBSCRIPTION

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, 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:** The Initial Contract Term will be for a period of One (1) Year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**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 Four (4) 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:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the 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).

☐ **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.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in \_\_\_\_\_

**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/Award Document 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 of 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 in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **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 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 WV must be listed as additional insured on insurance certificate

☒ Certificate Holder should read as follows:  
State of WV  
1900 Kanawha Blvd E, 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:** 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.

☒ Liquidated Damages Are Not Included in this Contract.

**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:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**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, included in the Contract, 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. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**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 regarding 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. NO DEBT CERTIFICATION:** 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. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. 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.

**39. 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.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, 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. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. 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 heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. 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
  2. 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.

**42. 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

Revised 07/01/2022

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.

**43. 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 disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work 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.

**44. 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.

**45. 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.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of 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 Lara Lamparski

Title Regional Director DOT

Address: Bentley Systems, Incorporated 685 Stockton  
Drive Exton PA

Email Address Lara.Lamparski@bentley.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract 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/Contract 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.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Bentley Systems, Incorporated

(Company)



(Authorized Signature) (Representative Name, Title)

Brock Ballard, Vice President

(Printed Name and Title of Authorized Representative) (Date)

610 458 5000

(Phone Number) (Fax Number)

Brock.Ballard@bentley.com

(Email Address)

## ORDER FORM

### Enterprise 365 – Public Sector Program

Welcome to the Enterprise 365 – Public Sector (EPS-365) Program. By signing below, the Subscriber is confirming their intent to participate in the EPS-365 Program pursuant to this Order Form and the terms and conditions set forth in the Exhibit EPS-365 of the SELECT Program Agreement. The words, terms, or phrases in the section below shall have the meaning set forth in the SELECT Program Agreement.

<b>SUBSCRIBER:</b>	<u>West Virginia DOT</u>
<b>STATEMENT CONTACT NAME:</b>	<u>Sandi Keller</u>
<b>STATEMENT CONTACT EMAIL:</b>	<u>sandra.f.keller@wv.gov</u>
<b>SELECT PROGRAM AGREEMENT CLA #:</b>	<u>10399271</u>
<b>SUBSCRIPTION START DATE:</b>	<u>October 1<sup>st</sup>, 2022</u>

#### INITIAL TERM:

<b>YEAR 1 FEE (OCTOBER 1, 2022 – SEPTEMBER 30, 2023)</b>	<b>\$920,392.00* USD (29 Allocated Credits)</b>
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#### OPTIONAL YEARS:

<b>YEAR 2 FEE (OCTOBER 1, 2023 – SEPTEMBER 30, 2024)</b>	<b>\$738,801.00 USD (32 Allocated Credits)</b>
<b>YEAR 3 FEE (OCTOBER 1, 2024 – SEPTEMBER 30, 2025)</b>	<b>\$812,681.00 USD (36 Allocated Credits)</b>
<b>YEAR 4 FEE (OCTOBER 1, 2025 – SEPTEMBER 30, 2026)</b>	<b>\$853,315.00 USD (37 Allocated Credits)</b>
<b>YEAR 5 FEE (OCTOBER 1, 2026 – SEPTEMBER 30, 2027)</b>	<b>\$895,981.00 USD (39 Allocated Credits)</b>

\*Year One Fee includes a one-time contract set-up Fee of \$248,755.00

**Amendment No. 1  
Bentley SELECT Program Agreement  
(CLA No. 10399271)**

This Amendment No. 1 (the "**Amendment**") made between Bentley Systems, Incorporated, ("**Bentley**"), and West Virginia Department of Transportation, located at 1900 Kanawha Boulevard East, Charleston, WV 25302 ("**Subscriber**" or "**WVDOT**") as of October 1, 2022 (the "**Amendment Effective Date**").

WHEREAS, Bentley and Subscriber wish to amend the Bentley SELECT Program Agreement (CLA Number 10399271) effective as of the Effective Date made between the parties (the "**Original Agreement**").

NOW THEREFORE, the parties hereby mutually agree as follows:

1. **Definitions.** The definitions of certain terms used in the Amendment with initial capitalized letters, if not defined herein, shall have the definitions set forth in the Original Agreement.
  - 1.1 "**Agreement**" means the Original Agreement as amended by this Amendment.
  - 1.2. "**Effective Date**" The Agreement and this Amendment shall become effective in accordance with Section 3. Contract Term;Renewal;Extension, of the General Terms and Conditions of 81230018. The Effective Date of the Agreement and this Amendment shall be October 1, 2022.
2. **Merger of Documents.** The term "Agreement" shall be deemed inclusive of the following Appendices, Addendums and Agreements, as if merged and set forth herein in full.
  - 2.1. This Amendment.
  - 2.2. Appendix A, WV-96 (Rev. 1/1/2019 Addendum to Vendor's Standard Contractual Forms "WV-96") as modified by this Amendment.
  - 2.3. The Original Agreement.
3. **Inconsistencies.** The parties agree that, with regard to any inconsistencies, which might arise between various documents incorporated in this Agreement, the following order of precedence shall be used:
  - 3.1. This Amendment.
  - 3.2. Appendix A, WV-96 (Rev. 1/1/2019 Addendum to Vendor's Standard Contractual Forms "WV-96") as modified by this Amendment.
  - 3.3. The Original Agreement.

**4. Signature Page.**

- 4.1. The third paragraph of the signature page of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"Subscriber, upon signing this Agreement, is bound by the terms of this Agreement and Exhibits A, B, D, F, and EPS hereto and as such time as Agency engages Professional Services Exhibit C hereto. The lettered exhibits attached to this Agreement are incorporated herein and made a part of this Agreement. The Subscriber shall not be bound by any updated, amended or supplemental exhibits to this Agreement unless it is agreed to in writing by the parties. Bentley shall not be obligated to deliver any license, products or services to which such updated, amended or supplemental exhibits apply prior to receipt of the Subscriber's written acceptance of the applicable updated, amended or supplemental exhibits; provided if Subscriber does not agree with any proposed updated, amended or supplemental exhibit, Bentley shall have the option to terminate the Agreement effective thirty (30) days after Bentley's dispatch of written notice of termination to Subscriber. Notwithstanding the foregoing, no amendment or supplement to the exhibits to this Agreement implemented by Bentley after the date Subscriber purchased a perpetual license shall limit or impair the rights of Subscriber under the perpetual license terms and conditions in effect at the time such license is acquired."

- 4.2. The fifth paragraph of the signature page of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"BY SIGNING BELOW, SUBSCRIBER ACKNOWLEDGES THAT, THROUGH ITS AUTHORIZED REPRESENTATIVES, IT HAS READ AND UNDERSTANDS THIS AGREEMENT (INCLUDING ALL ATTACHED EXHIBITS), AGREES TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT. SUBSCRIBER IS NOT ENTERING INTO THIS AGREEMENT ON THE BASIS OF ANY REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN."

5. **General.** Section 1 of Exhibit A of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"Subscriber agrees to purchase SELECT Program coverage for all Bentley Products licensed by Subscriber. Bentley shall provide SELECT Program services to Subscriber for all Bentley Products licensed by Subscriber, subject to the provisions of this Agreement. The West Virginia Department of Transportation Licensed Bentley Products list is attached hereto as Attachment I. Subscriber and Bentley hereby agree that Attachment I sets forth a complete list of all of Subscriber's Bentley Products licensed by Subscriber as of the effective date of this Agreement. Any additional Bentley Products licensed by Subscriber during the term of this Agreement shall be added automatically to Subscriber's SELECT Program coverage hereunder and the additional SELECT Program Fees will be included in Subscriber's periodic invoices for SELECT Program services."

6. **SELECT Support Services.** Section 2.01 of Exhibit A of the Original Agreement is hereby

deleted and replaced in its entirety with the following:

"Bentley shall provide SELECT support services directly to WV DOT and will not delegate the SELECT support services to any third party."

7. **Online SELECT.** Section 4 of Exhibit A of the Original Agreement is hereby deleted and replaced in its entirety with the following:

- 7.1. Section 4.01 of Exhibit A of the Agreement is hereby deleted and replaced in its entirety with the following:

"Bentley may, from time to time, offer certain services to its SELECT subscribers on a computer online service, electronic bulletin board, Internet site or through technology developed in the future ("Online SELECT"). Subscriber shall use Online SELECT only in accordance with and subject to this Agreement and the terms provided herein."

- 7.2. Section 4.03 of Exhibit A is hereby added to the Agreement and shall read as follows:  
"4.03 (a) Disclaimer or Warranties and Liability.

Use Online SELECT and any Materials contained in it at Subscriber's own risk. Due to numerous possible sources of information available through this Online SELECT, and the inherent uncertainties of electronic distribution, there may be delays, omissions, inaccuracies or other problems with such information. Reliance upon any information on Online SELECT is at Subscriber's own risk. Subscriber is solely responsible for any loss of data or damage to Subscriber's computer system resulting from use of this Online SELECT. In states where exclusion of damages is specifically prohibited, Subscriber agrees that Bentley liability, if any, is limited to, and will not exceed, fifty dollars (\$50).

**DISCLAIMER OF WARRANTY:** UNLESS EXPLICITLY STATED OTHERWISE, WEB PROPERTY MATERIALS ARE PROVIDED "AS IS." BENTLEY DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. BENTLEY MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTIES AS TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF ANY OF THE WEB PROPERTY MATERIALS. ANY QUESTIONS REGARDING THE MATERIALS SHOULD BE DIRECTED TO THE PROVIDERS OF SUCH MATERIALS. BENTLEY MAKES NO WARRANTY OR REPRESENTATION THAT THE WEB PROPERTIES, MATERIALS OR SERVICES OFFERED ON THE WEB PROPERTIES WILL MEET ANY OF YOUR REQUIREMENTS OR WILL OPERATE UNINTERRUPTED, SECURE, OR ERROR FREE.

**LIMITATION OF LIABILITY:** BENTLEY IS NOT LIABLE FOR ANY DAMAGES SUFFERED AS A RESULT OF USING, MODIFYING, CONTRIBUTING, COPYING, DISTRIBUTING OR DOWNLOADING THE MATERIALS ON THIS WEBSITE.

BENTLEY IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGE (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE, HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, EVEN IF BENTLEY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SUBSCRIBER AGREES TO HOLD BENTLEY HARMLESS FROM, AND SUBSCRIBER AGREES NOT TO SUE BENTLEY FOR ANY CLAIMS ARISING FROM THEIR USE OF ONLINE SELECT OR THE MATERIALS OR THE SERVICES PROVIDED THROUGH ONLINE SELECT.

(b) **No Unlawful or Prohibited Use.** As a condition of use of Online SELECT, Subscriber hereby agrees that the Services will not be used for any purpose that is unlawful or prohibited by these terms, conditions, and notices. Subscriber may not use Online SELECT in any manner that could damage, disable, overburden, or impair any Web Property, or the network(s) connected to any Web Property, or interfere with any other party's use of Online SELECT. Subscriber may not attempt to gain unauthorized access to any Services, other accounts, computer systems or networks connected to any Web Property or to any of the Services, through hacking, password mining, or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services.

(c) **Third Party Content Disclaimer.** Bentley has not independently authenticated Materials provided by third party providers in whole or in part. Bentley does not provide, sell, license or lease any of the Materials other than those specifically identified as being provided by Bentley. Bentley makes no warranty or representation with respect to any third party Materials.

(d) **Third Party Links.** Online SELECT may be linked to other websites that Bentley does not control or maintain. Bentley provides this service as a convenience only.

(e) **Disclaimer.**

"Links" may direct Subscriber to third party Internet sites, or other electronic links, that are unaffiliated with Bentley (the "Third Party Sites"). Bentley does not endorse the Third Party Sites, nor does Bentley guarantee the accuracy of, nor make any representations relating to, any of the information which may be found on the Third Party Sites. Links to Third Party Sites, if present on "Links", are provided for the convenience of you the audience. Bentley does not grant you any rights relating to the Third Party Sites.

"Materials" as used in this Section 4.03 of Exhibit A is not intended to include Bentley Products, use of which is governed by the End User License Agreement distributed with such Product.

**8. Payment of Bentley Invoices.**

**8.1. Payment Terms.** Section 2.01 of Exhibit B of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"Subscriber shall pay each Bentley invoice for all Product licenses and services provided hereunder within thirty (30) days from the date of such invoice. In the event any payment hereunder is past due, Bentley, at its discretion, may suspend or, after notice of such overdue payment and a thirty (30) day period to cure, terminate Subscriber's services, rights, and licenses provided under this Agreement."

**8.2 Taxes.** Section 2.02 of Exhibit B of the Original Agreement is hereby deleted in its entirety.

**8.3 Records; Audit.** Section 2.04 of Exhibit B of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"Subscriber and Bentley hereby agree that Attachment I sets forth a complete list of all of Subscriber's Bentley Products licensed by Subscriber as of the Effective Date. Subscriber hereby agrees that any Bentley Products discovered to be in its possession (with the exception of subsequently licensed Products) after the Effective Date and not listed on Attachment I are null and void and shall be destroyed by Subscriber or returned to Bentley. Subscriber shall maintain complete and accurate records of Product licenses as the Effective Date and its creation and use of the Products licensed hereunder to permit Bentley to determine whether Subscriber has complied with its obligations hereunder. These records shall include the location and identification of the Subscriber hardware on which Subscriber uses each copy of the Products. Subscriber shall, upon seven (7) days advance written notice by Bentley, permit reasonable inspection and copying of such records by Bentley or a third-party auditor retained by Bentley at the offices of Subscriber during regular working hours. This provision shall survive for three (3) years after the termination of this Agreement."

**9. Non-Appropriation.** The following Section 2.05 is hereby added to and made a part of Exhibit B of the Original Agreement.

"2.05. Non-Appropriation and OBM Certification. Bentley and WVDOT understand and intend that the obligation of WVDOT to pay under this Agreement shall constitute an expense of the WVDOT and shall not in any way be construed to be a debt of WVDOT in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by WVDOT, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of WVDOT. It is understood that the WVDOT funds are contingent on the availability of lawful appropriations by the West Virginia Legislature. If the West Virginia Legislature fails at any time to continue funding for the payments due hereunder, this Agreement shall terminate as of the expiration of the current annual term; provided, however, that as of the date that funding for this Agreement expires, there shall be no

further monetary obligation of WVDOT. Subscriber accepts that SELECTserver, as set forth in Section 5.02(g) of Exhibit A, will terminate upon the expiration of the then current annual term."

10. **Proprietary Information.** The following subsection (h) is hereby added to and made a part of Section 3.06 of Exhibit B of the Original Agreement:

"(h) Bentley hereby acknowledges that any disclosures Bentley makes to Subscriber under this Agreement are subject to the State of West Virginia Statutes. The nondisclosure of documents or any portion of a document submitted by Bentley to Subscriber may depend upon official or judicial determinations made pursuant to the Statutes. If Subscriber receives from a third party any request under the Statutes for the disclosure of information designated by Bentley as "confidential information," Subscriber shall notify Bentley within a reasonable period of time of the request, and Bentley shall be exclusively responsible for defending Bentley's position concerning the confidentiality of the requested information. Neither the State of West Virginia nor any of its agencies is or shall be obligated to assist in Bentley's defense. If any requests for disclosure of such information are made to Subscriber, disclosure shall only be made consistent with and to the extent allowable under law."

11. **Term.** Section 7.01 of Exhibit B of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"The initial term of this Agreement shall begin on October 1, 2022 (the "Effective Date") and terminate on September 30, 2022, contingent upon fiscal year funding in accordance with Section 2.05 of this Exhibit B. Bentley's obligation to provide SELECT Program services hereunder shall continue for the initial term of Subscriber's SELECT Program subscription set forth above, and such obligation may be renewed for additional one year terms, contingent upon fiscal year funding in accordance with the WV-96, unless either party gives notice of its election to not renew the term at least thirty (30) days prior to the expiration of the then-current term."

12. **Miscellaneous.**

- 12.1. **Governing Law.** Section 8.09 of Exhibit B of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of West Virginia, without regard to conflicts of law provisions."

- 12.2. **Arbitration.** Section 8.10 of Exhibit B of the Original Agreement is hereby deleted in its entirety.



**13. Professional Services.**

**13.1. Fees.** Section 1.11 of Exhibit C of the Agreement is hereby deleted and replaced in its entirety with the following:

"Bentley shall be paid the fee as specified in each Order (which Bentley reserves the right to change; provided, however, that such change shall only become effective by means of a change order process, and subject to prior, written approval of the parties). Fees for professional services are payable quarterly in arrears."

**13.2. Expenses.** Section 1.12 of Exhibit C of the Agreement is hereby deleted and replaced in its entirety with the following:

"Subscriber shall also reimburse Bentley an agreed-to amount for such travel and living expenses (other than normal commutation travel) for Bentley employees in the performance of Work set forth in each Order along with all other agreed to out-of-pocket expenses incurred by Bentley, upon receipt of proper documentation of such expenses."

**14. WV-96.** Appendix A, WV-96 Rev. 1/1/2019 Addendum to Vendor's Standard Contractual Forms "WV-96") is hereby modified as follows:

**14.1. Assignment.** Section 12 of WV-96 is hereby deleted and replaced in its entirety with the following:

"Notwithstanding any clause to the contrary, the Agency reserves the right to assign the Agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the Agreement which consent will not be unreasonably withheld."

**14.2. Limitation of Liability.** Section 13 of WV-96 is hereby deleted and replaced its entirety with the following:

"Any limitation is null and void to the extent that it precludes any State claims for injury to persons or for damages to personal property."

**15. Legal Effect.** The modifications set forth in this Amendment are effective as of the Amendment Effective Date. Except as expressly amended or modified by the terms of this Amendment, all other terms of the Agreement shall remain unchanged and in full force and effect. In the event of a conflict between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control.

**16. Headings.** The headings used in this Amendment are for convenience of reference only and shall not be used to define the meaning of any provision.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
AMENDMENT NO. 1 TO  
SELECT PROGRAM AGREEMENT



IN WITNESS WHEREOF, the parties represent and warrant that this Amendment is executed by duly authorized representatives of each party as set forth below on the date first stated above.

West Virginia Department of Transportation

By: WV DOT / DOT

Print Name: Carla Rotsch

Print Title: Business Manager

Date: 10-25-22

Carla Rotsch

**RECEIVED**

OCT 25 2022

BUSINESS MANAGER'S  
OFFICE

Bentley Systems, Incorporated

By: [Signature]

Print Name: Brock Ballard

Print Title: Vice President

Date: 09.08.2022

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): **WVDOT**

Vendor: **Bentley Systems Inc.**

Contract/Lease Number ("Contract"): **81230018**

Commodity/Service: **Bentley Software Maintenance and Services**

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *italics* to identify language being added and ~~strikes through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: West Virginia DOT  
By: Carla Rotsch  
Printed Name: Carla Rotsch  
Title: Business Manager  
Date: 10/24/22

Vendor: Bentley Systems, Incorporated  
By: [Signature]  
Printed Name: Brock Ballard  
Title: Vice President  
Date: 09.06.2022

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BUSINESS MANAGER'S  
OFFICE