



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: 02-01-2023

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 DOT2300000036 1	Procurement Folder:	1126738
Document Name:	Bentley Professional Services (81230036)	Reason for Modification:	
Document Description:	Bentley Professional Services (81230036)		
Procurement Type:	Central Sole Source		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-12-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-12-14

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000232598 BENTLEY SYSTEMS INC 685 STOCKTON DR EXTON PA 19341 US Vendor Contact Phone: 999-999-9999 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><tr><td>#4</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			#4	No			Requestor Name: John P Toomey Requestor Phone: 304-352-0540 Requestor Email: John.P.Toomey@wv.gov 23 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

2-3-23 BAT

Total Order Amount:

Open End

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION

DATE: *2-3-23*
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE: *2/7/2023*
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE: *2-7-23*
ELECTRONIC SIGNATURE ON FILE

Extended Description:

The Vendor, Bentley Systems, Inc., agrees to enter into this contract with the agency, WV Division of Highways, for Bentley Professional Services, per the attached documentation.

Bentley Professional Services (81230036)

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	81112200			LS	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Bentley Professional Services (81230036)

Extended Description:

Bentley Professional Services (81230036).

See attached pricing proposal for pricing.

	Document Phase	Document Description	Page 3
DOT2300000036	Draft	Bentley Professional Services (81230036)	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

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.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

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:

☐ **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 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.

☒ Certificate Holder should read as follows:
State of WV
1900 Kanawha Blvd E, Charleston, WV 25305

☐

☐

☐

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. VENUE: 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.

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.

Revised 09/12/2022

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 NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

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.

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 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.

(Printed Name and Title) Lara Lamparski, Regional Director DOT

(Address) Bentley Systems, Incorporated 685 Stockton Drive Exton PA 19341

(Phone Number) / (Fax Number) 610 458 5000

(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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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)


(Signature of Authorized Representative)

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)

**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"): 81230036

Commodity/Service: Bentley Professional 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 ~~strike 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: WV DOT
By: Carla Rotsch
Printed Name: Carla Rotsch
Title: Business Manager
Date: 1-27-23

Vendor: Bentley Systems Incorporated
By: [Signature]
Printed Name: Ken MacArthur
Title: VP, Regional Executive, Americas
Date: 1.26.2023

RECEIVED

JAN 27 2023

BUSINESS MANAGER'S
OFFICE

**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 WVDOT 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: Carla Rotsch

Print Name: Carla Rotsch

Print Title: Business Manager

Date: 1-20-23

Bentley Systems, Incorporated

By: Brock Ballard

Print Name: Brock Ballard

Print Title: Vice President

Date: 09.08.2022

RECEIVED

JAN 19 2023

BUSINESS MANAGER'S
OFFICE



BENTLEY SYSTEMS, INCORPORATED
SELECT PROGRAM AGREEMENT
NORTH AMERICA

Bentley SELECT

Bentley SELECT Agreement CLA Number 10399271

This SELECT Program Agreement (together with all exhibits and attachments hereto as in effect from time to time, the "Agreement") is made as of the Effective Date by and between Bentley Systems, Incorporated, a Delaware corporation with its principal office and place of business at 685 Stockton Drive, Exton, Pennsylvania 19341, and the subscriber identified below ("Subscriber"). All references herein to "Bentley" include Bentley Systems, Incorporated and its direct and indirect subsidiaries, including, without limitation subsidiaries created or acquired during the term hereof.

Subscriber desires to enter into this Agreement to subscribe to the Bentley SELECT® Program ("SELECT Program") to acquire licensing privileges and services offered from time to time under the SELECT Program, all as more fully described in the lettered exhibits attached hereto.

Subscriber, upon signing this Agreement, is bound by the terms of this Agreement and Exhibits A, B, C and F hereto. Subscriber shall be bound by any amended or supplemental exhibit provided by Bentley upon Subscriber's license or purchase of products or services to which such amended or supplemental exhibits apply. The lettered exhibits attached to this Agreement are incorporated herein and made a part of this Agreement, as such exhibits may be updated, amended and supplemented with additional exhibits from time to time upon thirty (30) days after delivery through electronic or other means to the Subscriber; provided, that as to particular products and services licensed or purchased hereunder, Subscriber shall be bound by the form of the exhibits in effect at the time the products or services are licensed or provided. Upon any renewal of this Agreement, the updated, amended or supplemented exhibits in effect at the time of such renewal, if any, shall be applicable to all licensing privileges and services under the SELECT Program provided from and after the date of such renewal. Notwithstanding the foregoing, unless Bentley and Subscriber agree otherwise by a writing duly executed by authorized representatives of the parties, no amendment or supplement to the exhibits to this Agreement after any perpetual license purchase shall limit or impair the rights of Subscriber under the perpetual license terms and conditions in effect at the time such license is acquired.

For definitions of the capitalized terms used in this Agreement and the Exhibits hereto, see Section 1 of the General Terms and Conditions included as Exhibit B. The term of this Agreement is set forth in the General Terms and Conditions under the caption "Term; Termination." The terms of all Product licenses acquired hereunder shall be as set forth Exhibit A to this Agreement, and all Product licenses hereunder are subject to the termination provisions applicable to such licenses in Exhibit A to this Agreement and in the General Terms and Conditions. Subscribers may not use the licenses, services and other benefits provided under this Agreement for purposes of developing software applications for distribution outside of their organization or for providing end-user training on Bentley Products other than to internal end users. If your organization falls into either of the foregoing prohibited categories, then please contact Bentley about other programs that are better suited for your business.

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. A FULLY EXECUTED COPY OF THIS AGREEMENT WILL BE RETURNED TO SUBSCRIBER AFTER THIS AGREEMENT IS APPROVED AND ACCEPTED BY BENTLEY.

SUBSCRIBER

West Virginia Department of Transportation

Company Name
Carla Rotsch

Signature
Carla Rotsch

Printed Name
Business Manager

Title

E-mail Address

Address: 1900 Kanawha Blvd, Bldg 5
Charleston, WV 25305

Telephone: _____

Date Signed: 01/20/23

BENTLEY SYSTEMS, INCORPORATED

Brock Ballard
Signature

Printed Name
Brock Ballard

Title
Vice President

685 Stockton Drive
Exton, Pennsylvania 19341

Telephone: 610-458-5000

Date Signed: 09.08.2022

RECEIVED

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**BUSINESS MANAGER'S
OFFICE**

BENTLEY SELECT PROGRAM AGREEMENT
SELECT Program Benefits
Exhibit A
Dated as of June 2014

1. General.

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. Subscriber may complete and submit to Bentley a supplemental form referenced by Bentley as Attachment 1 ("**Attachment 1**"), and if completed Attachment 1 shall be incorporated into this Agreement, provided that (except with respect to the duration of the initial term of the Agreement) in the event of any inconsistency between this Agreement and Attachment 1, this Agreement shall control with respect to Subscriber's SELECT Program subscription. 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.

2. SELECT Support Services

2.01. Bentley may provide SELECT support services to Subscriber either directly or, at its discretion, through authorized Bentley Channel Partners. A Channel Partner's authorization may be limited to a particular Site or Sites. Subscriber acknowledges that Channel Partners are independent contractors of Bentley, and that there is no employer/employee relationship between Bentley and its Channel Partners.

2.02. Bentley shall provide Technical Support services to Subscriber, which includes telephone, facsimile, electronic mail, and Internet based support to assist Subscribers regarding the use of Bentley Products, Passports and services (however, not to include professional services, managed services or professional training services) and reasonable efforts to respond to technical inquiries within four hours during regular business hours. The telephone portion of Technical Support services will be available seven days a week, 24 hours per day, provided that after normal business hours at a Subscriber's regional support location, Subscriber may be required to contact another Bentley support center.

2.03. Bentley shall have no obligation to provide a response or other service hereunder if Subscriber's technical inquiry is caused by: (a) incorporation or attachment of a feature, program, or device to a Product not approved or supplied by Bentley; (b) any nonconformance caused by accident, transportation, neglect, misuse, alteration, modification, or enhancement of a Product; (c) failure to provide a suitable installation environment; (d) use of the Product other than as described in its Documentation or as authorized under this Agreement; or (e) failure to incorporate any Update previously released by Bentley. Bentley shall offer SELECT support services for a given version of a Product, for at least twelve months, or until two Upgrades have been released by Bentley, whichever occurs first.

2.04. If Subscriber experiences a production-stopping anomaly, Bentley will use good faith efforts to create an appropriate solution and deliver it electronically, or through such other means as Bentley may choose in its sole discretion.

3. Upgrades, Updates, and Platform Exchanges

3.01. Subscriber shall have the right to receive, at no additional charge (other than shipping and handling, if applicable), Upgrades and Updates for each Product covered by the SELECT Program as such Upgrades and Updates become available. Subscriber shall also have the right to exchange, at no additional charge (other than shipping and handling, if applicable), a license for a Product (other than a Subscription License) covered by the SELECT Program on one platform for an equivalent

license for such Product on another platform (a "**Platform Exchange**").

3.02. Such Upgrade, Update, or Platform Exchange may be in downloadable electronic form, or any other means as Bentley may choose from time to time in its sole discretion. In order for Subscriber to be eligible to receive Upgrades, Updates, or Platform Exchanges, Bentley may require that Subscriber first return the Product (or component thereof, such as hardware lock or CD-ROM) subject to the Upgrade, Update, or Platform Exchange directly to Bentley.

3.03. If Subscriber receives an Upgrade and uses such Upgrade then Subscriber's aggregate use of the Upgrade and the original Product subject to such Upgrade may not exceed the number of licenses purchased for such Product. If Subscriber receives a Platform Exchange then Subscriber must immediately cease using the original Product subject to such Platform Exchange.

4. Online SELECT.

4.01. Bentley may, from time to time, offer Subscriber services, including, but not limited to, certain software fulfillment, support, social media, and training services, to its SELECT subscribers via the internet, or through technology developed in the future (collectively "**Online SELECT**"). Subscriber may only use an Online SELECT service in accordance with and subject to this Agreement, and any terms of use for the applicable Online SELECT service, which terms supplement this Agreement. In the event of a conflict with any Online SELECT service terms of use, the terms of this Agreement shall control.

4.02. Bentley shall have the sole right to control the format, content, delivery and all other aspects of Online SELECT. Bentley specifically reserves the right at any time to modify the information provided through Online SELECT, discontinue any portion of Online SELECT, or terminate any Online SELECT service altogether without providing Subscriber any prior notice.

5. Product Licensing

5.01. General.

(a) **Existing Licenses.** Bentley and Subscriber agree that the terms of this Agreement shall amend and supplement all license agreements existing as of the Effective Date for Products (including prior versions thereof). In the event of a conflict between the terms of any license agreements existing as of the Effective Date for Products and the terms of this Agreement, the terms of this Agreement shall control until termination of this Agreement, whereupon, with respect to any perpetually licensed Products, the terms of the license agreement provided with the Product upon its delivery to Subscriber shall govern Subscriber's use of any such Product.

(b) **Future Licenses.** In the event that Subscriber licenses a copy of a Product, Subscriber's use of such Product shall be governed by the terms of the license agreement provided with the Product upon its delivery to Subscriber, as amended or supplemented by the terms of this Agreement in effect at the time of such licensing. Subscriber hereby agrees that its downloading or use of any Products delivered to it shall constitute Subscriber's acceptance of the license agreement terms provided with the Product upon its delivery to Subscriber. In the event of a conflict between the terms of the license agreement provided with a Product upon its delivery to Subscriber and the terms of this Agreement in effect at the time such Product is purchased, the terms of this Agreement in effect at the time such Product is purchased shall control for the term of this Agreement. However, with respect to any perpetually licensed Product, upon any termination of this Agreement the terms and conditions of the license agreement

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provided with the Product upon its delivery to Subscriber shall govern Subscriber's use of the Product.

- (c) **No Transfers.** Subject to Section 8.01 of Exhibit B, Subscriber shall not sell, transfer, assign, grant a security interest in, sublicense, loan, lease or rent any of its rights under its licenses to use Bentley Products without the prior written consent of Bentley. If consent is given by Bentley, Subscriber may permanently transfer a license to another end user, provided all software and related documentation and media covered by such license are transferred to the transferee end user and the Subscriber does not retain any copies thereof, and provided further that the transferee end user agrees in writing with Bentley to cover all of its licensed Products under the SELECT Program and be bound by the terms of the license agreement then in effect for such Product.

5.02. **Licensing Programs.** Unless otherwise specifically set forth herein, Bentley Products are licensed on a per Device basis as set forth in the applicable end user license that ships with the Bentley Product. The following licensing programs are not available for all Products; please check Online SELECT to see which Products are Eligible Products for the respective licensing programs. Bentley reserves the right to add or remove any Product from eligibility for licensing under the following programs. Bentley reserves the right to discontinue any of its licensing programs at any time, without notice to Subscriber. However, until renewal or termination of this Agreement, such termination of any licensing program shall not affect the licenses for Products previously granted pursuant to such terminated licensing program. For purposes of clarity, all licenses previously granted pursuant to a terminated licensing program shall terminate upon the renewal or termination of this Agreement.

- (a) **Pooled Licensing.** Bentley hereby grants to Subscriber a limited non-transferable non-exclusive right to use Eligible Products for Production Use only on multi-user computer networks, and to install a licensed Product on more than one computer or hard disk.

Subscriber shall allow the management and monitoring of pooled licensing usage by SELECTservices. Subscriber acknowledges that the continuing operation of Bentley Products under pooled licensing is predicated upon Usage Data communications between Bentley Products and SELECTservices. Subscriber hereby agrees not to interfere with the transmission to Bentley of accurate Usage Data by installed Products.

In the alternative, upon Bentley's consent, Subscriber may install and implement Bentley's SELECTserver or such other Bentley licensing technology as may be required by Bentley from time to time to monitor usage. Subscriber agrees and acknowledges that, in such instance, Bentley's SELECTserver will from time to time transmit to Bentley the Usage Data files generated by SELECTserver or such other Bentley licensing technology. Subscriber agrees to allow the above transmission to Bentley.

Bentley shall establish time intervals and measure the number of unique Devices on which Subscriber Uses each Product per Site per interval ("**Pooled Usage**"). The interval over which Pooled Usage is measured is subject to change and may vary per Eligible Product, as well as other criteria. Further information on the duration of intervals and measurement of Pooled Usage for Eligible Products is published via Online SELECT.

SELECT Program coverage of licensed Products entitles Subscriber to Pooled Usage in each interval at each Site up to the number of copies of such Product for which Subscriber has licenses at such Site.

For purposes of clarity, the right to pool licenses of Products granted to Subscriber pursuant to this Section 5.02(a) of Exhibit A shall terminate in the event of any termination or non-renewal of this Agreement, notwithstanding that the subject Products may be licensed on a perpetual basis.

- (b) **Quarterly Term Licenses.** If, during a calendar quarter, the number of unique Devices at a Subscriber Site that utilize a Product in any interval exceeds the number of copies of such Product for which Subscriber has licenses at the Site ("**Excess Use**"), Bentley may grant Subscriber retroactive licenses to cover Excess Use ("**Quarterly Term Licenses**") and invoice Subscriber fees per Site and per licensed Product for the peak amount of such Excess Use ("**Quarterly Term License Fees**"), where such Quarterly Term Licenses shall be effective upon Subscriber's payment of the Quarterly Term License Fees only. Quarterly Term License Fees shall be those in effect as of the start of the calendar quarter to which they apply, as calculated and published by Bentley via Online SELECT.

In the event Subscriber fails to pay Quarterly Term License Fees, Bentley may, in addition to exercising any rights provided in Section 7.02 of Exhibit B of this Agreement, i) take technical measures aimed at restricting Subscriber's capacity to engage in Excess Use and/or ii) discontinue Subscriber's grant of the right to pooled licensing pursuant to Section 5.02(a) of Exhibit A of this Agreement.

- (c) **SELECT Open Access.** Subscriber may, upon Bentley's approval, be allowed to participate in Bentley's SELECT Open Access program ("**SELECT Open Access**"). The Use of Products under SELECT Open Access requires SELECTservices and is otherwise subject to the monitoring and measuring applicable to pooled licensing as provided in Section 5.02(a) of Exhibit A.

SELECT Open Access benefits include (i) a non-exclusive, limited, revocable, non-transferable, non-assignable license to install and use for Production Use only any Eligible Products, even those for which Subscriber has not otherwise licensed any copies of such Eligible Product and (ii) User access to on-demand and virtual classroom training, as made available by Bentley under the Bentley LEARN Program, corresponding per Product to the amount of Subscriber's SELECT Open Access Use (as defined below).

Bentley shall, at the end of each calendar quarter, invoice Subscriber Quarterly Term License Fees for the peak amount of Subscriber's Pooled Usage during the quarter on a per Site per Product basis, including Excess Use of separately licensed Products ("**SELECT Open Access Use**"). Quarterly Term License Fees for SELECT Open Access Use shall be those in effect as of the start of the calendar quarter to which they apply, as calculated and published by Bentley via Online SELECT. By participating in SELECT Open Access, Subscriber hereby agrees to pay Quarterly Term License Fees for all Use of Products hereby granted, such amount, in respect of any separately licensed Products, being limited to Excess Use only.

- (d) **Portfolio Balancing.**

- (1) At least thirty (30) days prior to each anniversary of any renewal of the term of this Agreement pursuant to Section 7.01 of Exhibit B, Subscriber may, upon Bentley's approval and under the terms set forth herein, request Portfolio Balancing ("**Portfolio Balancing**"). Portfolio Balancing allows Subscriber to exchange Eligible Product licenses Subscriber has purchased from Bentley for use on a perpetual basis ("**Perpetual Licenses**") for licenses for

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other Eligible Products in substitution for a Perpetual License (“**Exchanged Portfolio Licenses**”) for use at the Site of the Perpetual Licenses under the terms of Section 6.01 of Exhibit A.

- (2) Subscriber may exchange Perpetual Licenses for Exchanged Portfolio Licenses having a total aggregate value based on the list price in effect as published by Bentley in the Country of use for perpetual license of a Product (“**Current License Price**”) that is equal to or less than the total aggregate value based on the Current License Prices for the Perpetual Licenses. Upon exchange, license rights granted by Bentley to Subscriber in respect of the Perpetual Licenses shall cease, and license rights in respect of the Exchanged Portfolio Licenses shall commence for an initial term of twelve (12) months, with by-default automatic requests for renewals of like terms to follow, unless Subscriber notifies Bentley of its election not to request a renewal term. Notwithstanding the above, upon termination of this Agreement or the Portfolio Balancing licensing program any Exchanged Portfolio License granted to Subscriber shall terminate and Subscriber’s right to use Perpetual Licenses shall be reinstated. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.
- (e) **No-Charge Licenses.** Subscriber is hereby entitled on a non-exclusive basis, without payment of license fees but otherwise subject to the terms of this Agreement, to create Production Use copies, for use only by Subscriber, of certain Eligible Products made available by Bentley from time to time and which are designated by Bentley as no-charge software. Subscriber is entitled to redistribute such Products, which are designated by Bentley as available for such redistribution, in machine readable form to third parties to which Subscriber distributes its Bentley Products files; provided that Subscriber procures each such third party’s agreement not to further redistribute such Products. Unless Bentley specifically authorizes otherwise in writing, such free licenses granted or redistributed hereunder will expire upon termination of this Agreement.
- (f) **Home Use Licenses.** Unless Subscriber notifies Bentley in writing that Subscriber’s employees shall not be entitled to obtain home use editions of a Product, Bentley will distribute upon an employee’s request made through Subscriber’s site administrator, and permit Subscriber’s employees to use, without charge, home use editions of certain Products (for which such editions are available, as designated on Online SELECT) in accordance with the terms set forth in the license agreement provided with such home use edition of a Product, as amended and supplemented by this Agreement. Restrictions on home use licenses include the following: home use licenses are not permitted to be used for Production Use or any commercial use, including training; home use licenses are not for use in Subscriber’s offices; home use licenses may not be stored on any electronic media; home use licenses must be permitted in Subscriber’s jurisdiction. The total number of home use editions available to Subscriber’s employees may not exceed the number of Subscriber’s Product licenses to which the home use editions relate. Home use editions of Products are ineligible for Technical Support even if Subscriber has purchased SELECT Program services. Subscriber shall not be responsible for ensuring compliance by its employees with the Bentley home use license, nor shall Subscriber be liable for any breaches of such license by its employees. Such home use licenses granted hereunder will expire upon termination of this Agreement.
- (g) **Evaluation of Products.** Bentley hereby grants to Subscriber, subject to its compliance with the procedures of this Section

5.02(g) of Exhibit A, a limited non-transferable non-exclusive right to create, using Online SELECT (following the registration requirements published on Online SELECT), one (1) copy per Site of each Eligible Product solely for Evaluation Use of such Product, provided that Subscriber shall have no right to create evaluation copies of Products previously licensed by Subscriber. The duration of use of an evaluation copy shall not exceed thirty (30) days, and Bentley may provide the Product with a mechanism that will cause the Product to time out or expire after thirty (30) days. Upon the earlier of the conclusion of such (30) day evaluation period or the termination of this Agreement, Subscriber shall destroy all copies of Products created for evaluation hereunder and, upon request by Bentley, certify such destruction in writing.

- (h) **Documentation.** Bentley may, in association with Products, Passports or Cloud Offerings, make certain Documentation available to Subscriber. Documentation is Bentley Proprietary Information. Bentley hereby grants to Subscriber a limited non-transferable non-exclusive license to use such Documentation in support of Production Use.

6. Subscriptions.

Bentley makes available for purchase by Subscriber certain services and Product licenses for a specified term only (“**Subscription**”, such term being the “**Subscription Term**”). Subscriber’s use of such Products and services under Subscription shall be governed by the terms of this Agreement, including, as applicable, Section 5.01 of Exhibit A. Subject to Section 6.02(c), Bentley will invoice Subscription Fees based on the fees charged by Bentley for such Subscription as of the start of the Subscription Term.

6.01. Subscription Licenses.

- (a) Subscriber may, upon Bentley’s approval, purchase Subscriptions to license Eligible Products in advance of Use (a “**Subscription License**”). A Subscription License entitles Subscriber to license rights in a Product for Production Use, in Object Code form and within a Country. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley. Some Subscription Licenses require participation in SELECT Open Access.
- (b) Subscriber recognizes that the Products licensed under a Subscription License are provided to Subscriber for use only for the applicable Subscription Term or any renewal term. In no event will a Subscription License continue beyond the expiration or earlier termination of the SELECT Agreement under which it is granted. Subscriber recognizes that Subscription Licenses may be delivered to Subscriber with embedded Time Clocks. Subscriber agrees that Time Clocks are not considered a defect of such Subscription Licenses and releases Bentley from any and all claims, however characterized, arising from or related to Time Clocks or their operation. Subscriber may not remove or evade Time Clocks.
- (c) In the event of any inconsistency between this Section 6.01 of Exhibit A and any other Section or Exhibit of this Agreement, or between this Section 6.01 of Exhibit A and the terms and conditions in the license agreement provided with any Product that is the subject of a Subscription License, this Section 6.01 of Exhibit A shall control with respect to Subscription Licenses.
- (d) If a Subscription is designated as automatically renewing by Bentley, the Subscription Term (and each successive term) shall automatically renew at its expiration for a successive term of equal length unless either party gives notice of its election not to

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renew the Subscription Term at least thirty (30) days prior to the expiration of the then current term.

6.02. Passports.

- (a) A Passport ("Passport") is a Subscription granting rights and benefits to a specific named User. The Subscription Term for a Passport is the twelve month term described in Section 7.01 of Exhibit B of this Agreement. Subscriber may purchase incremental Passports and assign such Passports to Users at any time during the Subscription Term. Passports are non-transferrable and cannot be pooled or shared among Users. Passports shall automatically renew on the anniversary of the Effective Date, unless Subscriber evidences to Bentley, with at least thirty (30) days' notice, that Subscriber has revoked the prior assignment of a Passport to a particular named User.
- (b) Subscriber shall allow the management and monitoring of Passport assignment and usage, and Server Product usage, through SELECTservices. Subscriber acknowledges that the continuing availability of Passports to Users may be predicated upon communications with SELECTservices. The total number of Passports counted as assigned by Subscriber during a Subscription Term shall comprise, in addition to any renewing Passports, the number of new Passports so purchased or assigned, including each unique new User recorded in Subscriber's SELECTservices Usage Data files pursuant to this Section 6.02(c), during the Subscription Term.
- (c) Subscriber shall pay to Bentley Subscription Fees for each Passport purchased or assigned by Subscriber as of the start of the Subscription Term. Bentley may also invoice Subscription Fees for any additional Passports purchased or assigned by Subscriber during the Subscription Term. For Passports purchased or assigned after the start of a Subscription Term, the Subscription Fees shall be those as published by Bentley as of the date Subscriber purchases or assigns such Passports.
- (d) Bentley offers Passports granting license rights and access to services. These Passports include the right for an authorized User to run Passport-enabled offerings (including Eligible Products and other client applications and mobile apps) and to connect to and access information and collaborate on an unlimited number of projects, whether those projects are hosted i) on a Server Product deployed behind Subscriber's firewall, ii) on a Server Product licensed by an external organization, or iii) by Bentley as a cloud-based service. The parties acknowledge and agree that an External User may be permitted to access Server Products licensed by Subscriber using such a Passport owned by that External User.
- (e) Bentley further offers Visas ("Visas"), which are Subscriptions granting a User with a Passport the right to access specified incremental services during the Subscription Term of the Passport. A list of available Bentley Visas may be found on Online SELECT.

6.03. SELECTservices. Subject to the terms of this Agreement, Subscriber may, upon Bentley's approval, and at no charge, be granted a Subscription to SELECTservices to monitor and manage Subscriber's use of Bentley Products and Passports. In the alternative, upon Bentley's approval, Subscriber may receive a Subscription License for Bentley's SELECTserver Product (or such other server-based license management technology that Bentley may offer). The terms of Subscriber's use of the SELECTserver Product shall be as set forth in the license agreement provided with the SELECTserver Product, as such terms are amended or supplemented in this Agreement.

7. SELECT Program Fees

- 7.01.** Subscriber shall pay to Bentley the applicable SELECT Program Fee in effect for each Product licensed as of the Effective Date of this Agreement. Subscriber shall pay to Bentley the applicable SELECT Program Fee in effect for each additional Product licensed during the term hereof as of the date such additional Product license is purchased. With respect to the Products licensed by Subscriber during the term of the Agreement, the fees in place as of the Effective Date, or, with respect to additional Products licensed, as of the date of such purchase, shall remain in effect for the Subscriber until the date of the next renewal of this Agreement, at which time the fees shall be changed to those charged by Bentley as of such renewal date, provided that no changes in fees for Products covered shall be effective until thirty (30) days after Subscriber receives notice of such changes.
- 7.02.** Subscription Fees as set forth in Section 6 and Quarterly Term License Fees as set forth in Section 5.02(b) of this Exhibit A are inclusive of SELECT Program coverage and no additional fees for SELECT Program coverage shall apply for Passports utilized or Products licensed under a Subscription. Subscription Fees, including Subscription Fees for Passports, may be invoiced in conjunction with Subscriber's SELECT Program Fees.
- 7.03.** Bentley shall initially invoice Subscriber for one (1) year of SELECT Program Fees for all Product licenses as of the Effective Date of this Agreement. Bentley shall provide Subscriber with a pro-rated annual invoice for all Product licenses purchased during the first year following the Effective Date of this Agreement. As of the first anniversary of the Effective Date of this Agreement, invoices for SELECT Program Fees for Product licenses shall be issued quarterly or annually. Invoices reflecting new Product licenses will include a prorated amount reflecting coverage of the Product under the SELECT Program during the preceding invoice period plus the full amount for the current invoice period. Bentley may modify the timing of invoicing hereunder at any time.

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- 1. Definitions.**
- The capitalized words, terms and phrases in this Agreement shall have the meanings set forth below:
- 1.01. **"Agreement"** means the SELECT Program Agreement executed by Bentley and the Subscriber and all exhibits, attachments and amendments as in effect from time to time.
- 1.02. **"Bentley Products"** or **"Products"** mean the software products, data and other materials, previously or hereafter (including software products, data and other materials acquired by Bentley during the term of this Agreement) distributed by Bentley through delivery mechanisms determined in Bentley's sole discretion (including but not limited to distribution via Online SELECT through download or by ordering through CD format) that Bentley makes available to Subscriber typically in Object Code form only, for licensing hereunder, including Updates and Upgrades thereto.
- 1.03. **"Channel Partner"** or **"Bentley Channel Partner"** means individuals and companies who are authorized by Bentley to provide SELECT support services as set forth in Exhibit A, Section 2.
- 1.04. **"Country"** means the country: (i) where the Product is first obtained from Bentley or a Channel Partner; or (ii) specified in the purchase order for which a Production Use copy of the Product may be made or the Product is authorized to be used.
- 1.05. **"Device"** means a single personal computer, workstation, terminal, hand held computer, pager, telephone, personal digital assistant, server, or other electronic device.
- 1.06. **"Distribute"** means distribution by Bentley through all means now known or hereinafter developed.
- 1.07. **"Documentation"** means descriptive, interactive or technical information resources pertaining to Products, Passports, or Cloud Offerings.
- 1.08. **"Effective Date"** means the date that this Agreement is accepted by Bentley as indicated on the first page of this Agreement.
- 1.09. **"Eligible Product"** means a Bentley Product eligible under a licensing program or Subscription, as designated by Bentley and published on Online SELECT, absent of which a Product is ineligible for any such program or Subscription.
- 1.10. **"Evaluation Use"** means the use of a Bentley Product solely for internal evaluation of such Product. Evaluation Use expressly excludes use in connection with ongoing projects, use for compensation of any kind, and Production Use.
- 1.11. **"External User"** means any User (not an organization) who is not: (i) one of Subscriber's full-time, part-time, or temporary employees; or (ii) agency temporary personnel or an independent contractor on assignment at Subscriber's place of business or work-site.
- 1.12. **"Object Code"** means the Products in a machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes source code.
- 1.13. **"Online SELECT"** shall be defined as set forth in Exhibit A, Section 4.01 herein.
- 1.14. **"Order"** shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.15. **"Passport"** shall be defined as set forth in Exhibit A, Section 6.02(a) herein.
- 1.16. **"Platform Exchange"** shall be defined as set forth in Exhibit A, Section 3.01 herein.
- 1.17. **"Pre-Existing Works"** shall be defined as set forth in Exhibit C, Section 1.08 herein.
- 1.18. **"Production Use"** means use of a Bentley Product in Object Code form by a User or Device, as applicable, solely for Subscriber's internal production purposes, and excludes External Users (except with respect to use of Passports and access of Server Products pursuant to Exhibit A, Section 6.02 herein).
- 1.19. **"Proprietary Information"** shall be defined as set forth in Exhibit B, Section 3.06(a) herein.
- 1.20. **"SELECT Program Fee"** means the fee for SELECT Program services as published from time to time in Bentley's sole discretion.
- 1.21. **"SELECTserver"** means Bentley's server-based licensing technology.
- 1.22. **"SELECTservices"** means Bentley's cloud-based licensing service.
- 1.23. **"Serial Number"** means a unique number issued by Bentley for identification of a particular copy of a Product, which number shall be registered to Subscriber and assigned by Subscriber to a particular copy of such Product.
- 1.24. **"Server Product"** means a Product that resides on a server and provides functionality that Users access by connecting to the server using client applications or mobile apps.
- 1.25. **"Site"** means one or more discrete geographic locations at which Subscriber Uses or manages the operation of Products within the geographic boundaries of a single Country.
- 1.26. **"Subscriber"** shall be defined as set forth on the front page of this Agreement, and with respect to Use of Products the term **"Subscriber"** shall refer to: (i) one of Subscriber's full-time, part-time, or temporary employees; or (ii) agency temporary personnel or an independent contractor engaged in Production Use and working under Subscriber's direct supervision and control.
- 1.27. **"Subscription Fee"** means the fee for a Subscription as published from time to time in Bentley's sole discretion.
- 1.28. **"Subscription License"** shall be defined as set forth in Exhibit A, Section 6.01(a) herein.
- 1.29. **"Subscription Term"** shall be defined as set forth in Exhibit A, Section 6 herein.
- 1.30. **"Technical Support"** means telephone, facsimile, Internet and electronic mail based support to assist a subscriber to the SELECT Program as described in Exhibit A, Section 2.02 of this Agreement.
- 1.31. **"Time Clocks"** means copy-protection mechanisms, or other security devices which may deactivate Products or Passports, including Bentley's SELECTserver, after termination or expiration of the Agreement, any applicable Subscription Term or any applicable renewal term.
- 1.32. **"Update"** means a maintenance release of a Product.

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- 1.33. **"Upgrade"** means a commercial release of a Product which has substantial added functionality over the Product it is intended to replace.
- 1.34. **"Usage Data"** means such data or information as Bentley may collect relating to Subscriber's installation, access or use of Products, Product features and functionality, Cloud Offerings (as defined in Exhibit F, Section 1(d)), Passports, Online SELECT and other Bentley services.
- 1.35. **"Use"** (whether or not capitalized) means utilization of the Product or Passport by an individual.
- 1.36. **"User"** means an individual person.
- 1.37. **"Work"** shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.38. **"Work Product"** shall be defined as set forth in Exhibit C, Section 1.01 herein.
2. **Payment of Bentley Invoices.**
- 2.01. **Payment Terms.** Subscriber shall pay each Bentley invoice for all Passports, Product licenses and services provided hereunder within thirty (30) days from the date of such invoice. Interest shall accrue on delinquent payments of such invoices at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is less. 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.
- 2.02. **Taxes.** Subscriber shall pay to Bentley all levied taxes that Bentley is required under applicable law to collect from Subscriber by reason of the transactions contemplated by this Agreement, including, but not limited to sales, use, occupation, value added, excise, and property taxes (except for taxes based on Bentley's net income). If Subscriber is obligated under an applicable law to withhold or deduct taxes from any payment of SELECT Program Fees to Bentley, Subscriber shall furnish to Bentley official receipts evidencing Subscriber's payment of such taxes.
- 2.03. **Local Price and Currency.** Calculation and payment of the SELECT Program Fee or any separate price for all Passports, Products and services hereunder shall be based on the local price and local currency of the Subscriber's Site where such Passport, Product or service is used.
- 2.04. **Records; Audit.** Subscriber shall maintain complete and accurate records of Product licenses acquired prior to the date of this Agreement and its creation and use of Passports and Products 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 and identify the Users to whom Subscriber has assigned the Passports. If Bentley suspects Usage Data is incomplete, inaccurate or indicative of non-compliance with Subscriber's granted rights, Bentley may request, and 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.
3. **Intellectual Property Rights**
- 3.01. **Title; Reservation of Rights.** Subscriber acknowledges and agrees that:
- (a) The Products, including the Documentation for each Product, and any information which Subscriber obtains through the SELECT Program or the use of Online SELECT or any other means of electronic transmission, contain proprietary information of Bentley, its licensors or other suppliers, and are protected under United States copyright laws, other applicable copyright laws, other laws relating to the protection of intellectual property, and international treaty provisions;
- (b) The entire right, title and interest in and to the Products, the Documentation, any information Subscriber obtains through the SELECT Program or the use of Online SELECT or any other means of electronic transmission, and all associated intellectual property rights, shall remain with Bentley or its licensors;
- (c) The Products are licensed, not sold, and title to each copy of the Products shall remain with Bentley or its licensors, and shall not pass to Subscriber; and
- (d) Bentley retains all rights not expressly granted.
- 3.02. **Source Code.** Subscriber shall have no right hereunder to receive, review, use or otherwise have access to the source code for the Products.
- 3.03. **Copyright Notices.** Subscriber shall reproduce and include on all copies of the Products created by Subscriber all copyright notices and proprietary legends of Bentley or its licensors as they appear in or on the original media containing the Products supplied by Bentley.
- 3.04. **Usage Data.** Subscriber agrees and acknowledges that Bentley will from time to time collect Usage Data and that all Usage Data shall be owned by Bentley and deemed Bentley Proprietary Information. Subscriber agrees not to alter or interfere with the collection by Bentley of accurate Usage Data.
- 3.05. **Reverse Engineering.** Subscriber may not decode, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Products or Documentation except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. To the extent that Subscriber is expressly permitted by law to undertake any of the activities listed in the previous sentence, Subscriber will not exercise those rights until it has provided Bentley with thirty (30) days prior written notice of its intent to exercise such rights.
- 3.06. **Proprietary Information.**
- (a) Subscriber understands and agrees that Bentley may, in connection with the provision of Passports, Products and services hereunder, disclose to Subscriber confidential, proprietary and technical information pertaining to Bentley Products and to Bentley's technology and business practices (collectively **"Proprietary Information"**). Subscriber agrees to treat all Proprietary Information in accordance with this Section 3.06 of Exhibit B.
- (b) Subscriber shall maintain the confidentiality of all Proprietary Information. Subscriber shall not reproduce or copy Proprietary Information except as permitted in this Agreement or as may be expressly authorized in writing in advance by Bentley. All such copies shall be marked by Subscriber as proprietary and confidential information.
- (c) Subscriber shall only use Proprietary Information in furtherance of this Agreement, and may disclose Proprietary Information only to those employees required to have knowledge of same to perform their duties pursuant to this Agreement. Subscriber shall not disclose or make Proprietary Information available to any third party at any time.
- (d) Subscriber shall treat Proprietary Information with the same degree of care as it uses to protect its own confidential information, and in no case less than a reasonable degree of care.

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- (e) Upon the termination or non-renewal of this Agreement, Subscriber shall return to Bentley or, if so requested, destroy all Proprietary Information in its possession.
- (f) Subscriber shall have no obligation of confidentiality with respect to any Proprietary Information that (i) has entered the public domain other than through a breach of this Agreement, (ii) has been rightfully obtained by Subscriber from a third party with no obligation of confidentiality, or (iii) is previously known by Subscriber as demonstrated by clear and convincing evidence.
- (g) Subscriber shall promptly inform Bentley upon knowledge of any actual or potential unauthorized use or disclosure of the Proprietary Information.
- 3.07. **No Benchmarks.** Subscriber may not disclose the results of any Product testing, including but not limited to benchmarks, to any third party without first obtaining Bentley's written consent to do so.
4. **Limited Warranty; Limitation of Remedies and Liability**
- 4.01. **Limited Warranty to Subscriber.** Except for Products licensed under Section 5.02(e), Section 5.02(f) or Section 5.02(g) of Exhibit A hereof, which are provided to Subscriber "AS-IS" and without warranty of any kind, Bentley hereby warrants for the benefit only of Subscriber that (a) for a period of ninety (90) days ("Warranty Period") from the date of delivery to Subscriber of a Serial Number or Product, as the case may be, the Product shall, under normal use, operate in substantial conformance with the functional specifications set forth in the Documentation applicable to such Product, and (b) for a period of ninety (90) days from the date of delivery, other products and materials furnished by Bentley to Subscriber shall, under normal use, operate in substantial conformance with the Bentley documentation applicable to such products and materials. If any modifications, enhancements or changes are made by Subscriber or at Subscriber's direction to the Products; if the Products are reverse-engineered, decompiled or disassembled; or if Subscriber breaches the terms of this Agreement, then the warranties in this section shall be immediately terminated. This limited warranty gives Subscriber specific legal rights, Subscriber may have other rights which may vary from state/jurisdiction to state/jurisdiction.
- 4.02. **Exclusion of Warranties.** THE WARRANTIES STATED IN SECTION 4.01 ARE BENTLEY'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE PRODUCTS, SELECT SUPPORT SERVICES AND OTHER MATERIALS AND SERVICES LICENSED, DELIVERED OR OTHERWISE FURNISHED BY BENTLEY UNDER THIS AGREEMENT. BENTLEY DOES NOT WARRANT THAT THE PRODUCTS, SELECT SUPPORT SERVICES, OR ANY OTHER SERVICE OR MATERIALS WILL MEET SUBSCRIBER'S REQUIREMENTS, BE FREE FROM VIRUSES OR OPERATE UNINTERRUPTED OR ERROR FREE. BENTLEY HEREBY DISCLAIMS ALL OTHER WARRANTIES EITHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AGAINST NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE EXCLUSIONS MAY NOT APPLY TO SUBSCRIBER AS SOME STATES/JURISDICTION DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES.
- 4.03. **Exclusive Remedy.** The entire liability of Bentley and the sole and exclusive remedy of Subscriber for claims under Section 4.01 of this Exhibit B shall be, in Bentley's sole and absolute discretion, (i) to repair or replace a Product or other materials in breach of the foregoing warranties, (ii) to advise Subscriber how to achieve the same functionality with the Product as described in the Documentation through a procedure different from that set forth in the Documentation, or (iii) to return the purchase price or fees paid therefore, where written notice of such breach, specifying the defect, is furnished to Bentley during the Warranty Period. Repaired, corrected, or replaced Products and Documentation shall be covered by this limited warranty for ninety (90) days after the date: (a) of shipment to Subscriber of the repaired or replaced Products and Documentation, or (b) Bentley advised Subscriber how to operate the Products so as to achieve the functionality described in the Documentation.
- 4.04. **Exclusion of Damages.** IN NO EVENT SHALL BENTLEY OR ITS LICENSORS AND SUPPLIERS BE LIABLE TO SUBSCRIBER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, INTERRUPTION OF BUSINESS, LOSS OF USE, INABILITY TO ACCESS ONLINE SERVICES, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF BENTLEY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO SUBSCRIBER.
- 4.05. **Disclaimer.** Subscriber acknowledges that the Products are not fault-tolerant and have not been designed, manufactured or intended for use and will not be used in the development of weapons of mass destruction, as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Products could lead directly to death, personal injury, or severe physical or environmental damage. Subscriber further acknowledges that the Products are not substitutes for Subscriber's professional judgment, and accordingly, neither Bentley nor its licensors or suppliers are responsible for Subscriber's use of the Products or the results obtained from such use. The Products are intended only to assist Subscriber in its business, and are not meant to be substitutes for Subscriber's independent testing and verification of stress, safety, utility or other design parameters.
- 4.06. **Limitation of Bentley Liability.** IN THE EVENT THAT, NOTWITHSTANDING SECTIONS 4.01, 4.02, 4.03, 4.04 AND 4.05 OF THIS EXHIBIT B, BENTLEY IS FOUND LIABLE FOR DAMAGES BASED ON ANY BREACH, DEFECT, DEFICIENCY OR NON-CONFORMITY IN A PRODUCT, IN SELECT SUPPORT SERVICES, OR IN ANY OTHER SERVICE OR MATERIALS, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE BY LAW, BENTLEY'S CUMULATIVE LIABILITY HEREUNDER SHALL NOT EXCEED THE PRICE PAID BY SUBSCRIBER FOR (i) SUCH PRODUCT, (ii) A ONE-YEAR SUBSCRIPTION TO THE SELECT PROGRAM, OR (iii) SUCH OTHER DEFECTIVE SERVICE OR MATERIALS, AS THE CASE MAY BE. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN BENTLEY AND SUBSCRIBER. BENTLEY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.
- 4.07. **Indemnification by Bentley.**
- (a) Bentley shall pay any damages finally awarded against Subscriber based on a claim against Subscriber that a Product which is developed and owned by Bentley infringes a third party's copyright under the laws of a Berne Convention signatory country, or results in a misappropriation of a third party's trade

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secret, in the Country where Subscriber has been authorized to place the Product subject to such claim into Production Use, if Subscriber provides to Bentley: (a) prompt written notice of any such claim, (b) all available information and assistance, and (c) the opportunity to exercise sole control of the defense and settlement of any such claim.

- (b) Bentley shall also have the right, at its expense, either to procure the right for Subscriber to continue to use the Product or to replace or modify such Product so that it becomes non-infringing. If neither of the foregoing alternatives is available on terms that Bentley, in its sole discretion, deems desirable, Subscriber shall, upon written request from Bentley, return to Bentley the allegedly infringing Product, in which event Bentley shall refund to Subscriber the price paid by Subscriber for each copy of such returned Product, less twenty percent (20%) for each elapsed year since the commencement of the license for such copy. In no event shall Bentley's liability under this sub-section (b) to Subscriber exceed the license fees paid by Subscriber for the allegedly infringing Product.
- (c) Bentley shall have no liability and this indemnity shall not apply if the alleged infringement is contained in a Product which is not developed or owned by Bentley or is due to modification of the Product by Subscriber or the combination, operation or use of a Product with other software that does not originate from Bentley or if Subscriber is in breach of this Agreement. Bentley shall also have no liability, and this indemnity shall not apply, for the portion of any claim of infringement based on use of a superseded or altered release of a Product if the infringement would have been avoided by the use of a current, unaltered release of the Product.

This Section 4.07 sets forth Subscriber's sole remedy for intellectual property infringement.

5. Export Controls.

The Products have been manufactured or developed in the United States of America and accordingly may be subject to U.S. export control laws, regulations and requirements. Regardless of any disclosure made by Subscriber to Bentley of an ultimate destination of the Products, Subscriber must not export or transfer, whether directly or indirectly, the Products, or any portion thereof, or any system containing such Products or portion thereof, to anyone outside the United States (including further export if Subscriber took delivery of the Products outside the United States) without first complying strictly and fully with all export controls that may be imposed on the Products by the United States Government or any country or organization of nations within whose jurisdiction Subscriber uses the Products. The countries subject to restriction by action of the United States Government are subject to change, and it is Subscriber's responsibility to comply with the United States Government requirements as they may be amended from time to time. Subscriber shall indemnify, defend and hold Bentley harmless for any breach of its obligations pursuant to this Section.

6. U.S. Government Restricted Rights.

If the Products are acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with restricted rights. The Products and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the Products and accompanying documentation by the U.S. Government are subject to

restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-19, 227.7202, and 1852.227-86, as applicable.

7. Term; Termination

- 7.01. **Term.** This Agreement and Subscriber's SELECT Program subscription shall become effective on the Effective Date, and shall continue for an initial term of twelve (12) months, and shall automatically renew for terms of like tenure 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.

- 7.02. **Termination for Material Breach.** Either party may, at its option, terminate this Agreement in the event of a material breach of this Agreement by the other party. Any such termination may be effected only through a written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have twenty-one (21) days to cure such breach or breaches, and this Agreement shall terminate in the event that such cure is not made by the end of such period; provided, however, Bentley shall have the right to terminate this Agreement immediately if Subscriber breaches any of its obligations under Section 3 of this Exhibit B. The failure of Subscriber to pay an outstanding invoice of Bentley shall always constitute a material breach of this Agreement.

- 7.03. **Insolvency.** If, under applicable insolvency laws, Subscriber becomes unable to pay its debts or becomes insolvent or bankrupt or makes arrangements with its creditors, or otherwise goes into liquidation, administration or receivership, then Bentley shall have the right to terminate this Agreement immediately by written notice.

- 7.04. **Consequences of Termination.** Upon the termination of this Agreement for any reason, all of the rights and licenses granted to Subscriber in this Agreement shall terminate immediately. With respect to any perpetually licensed Products, the terms and conditions set forth in the license agreement delivered with such Products shall govern Subscriber's use of such Products. Subscriber shall immediately discontinue use of any Online SELECT services.

- 7.05. **Reinstatement Following Termination.** Following a termination of the SELECT Program, Subscriber may reinstate such services only if Bentley consents to such reinstatement and Subscriber pays to Bentley, in advance, a SELECT reinstatement fee, in an amount to be determined in Bentley's sole discretion, such amount not to exceed the amount of all fees that would have accrued and been payable, excluding discounts, for the period between the date of termination and the date of reinstatement.

8. Miscellaneous.

- 8.01. **Assignment.** Subscriber shall not assign this Agreement or delegate its duties hereunder without prior written consent by Bentley. For purposes of this Agreement, a change in control of Subscriber shall be considered an assignment for which Bentley's prior written consent is hereby granted provided that the surviving entity from such change in control must enter into a SELECT Agreement. This Agreement may be assigned by Bentley to any successor in interest to Bentley's business or to any direct or indirect wholly-owned subsidiary of Bentley Systems, Incorporated. Any purported assignment in violation of this provision shall be void and without effect.

- 8.02. **Entire Agreement.** This Agreement, together with the Exhibits and signed Amendments, if any, incorporate the entire agreement of the parties and supersede and merge all prior oral and written agreements, discussions and understandings between the parties with respect to the subject matter hereof. The terms and conditions of this Agreement and of the applicable Bentley confirmation shall apply to each order accepted or shipped by Bentley hereunder. Any additional or different

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terms or conditions appearing on a purchase order issued by Subscriber hereunder, even if Bentley acknowledges such terms and conditions, shall not be binding on the parties unless both parties expressly agree in a separate writing as provided under Section 8.03 of this Exhibit B.

- 8.03. **Amendments.** Except as otherwise contemplated herein with respect to updating, amending and supplementing the exhibits, this Agreement may only be amended or modified by a writing duly executed by authorized representatives of the parties, provided, however, that any additional or different terms or conditions appearing on a purchase order, even if required to be acknowledged by Bentley, shall not be binding on the parties.
- 8.04. **Notices.** Notices under this Agreement shall be made or given as of the date of either hand delivery or mailing to such party, if sent prepaid certified mail or next day air delivery to the address set forth on the first page of this Agreement. All notices under this Agreement shall be addressed, if to Bentley, to its General Counsel, and if to Subscriber, to its authorized representative identified in this Agreement or in a subsequent notice to Bentley.
- 8.05. **Force Majeure.** Bentley shall not be liable for failure to fulfill the terms of this Agreement due to fire, strike, war, government regulations, acts of God, labor disturbances, acts of terrorism or other causes which are unavoidable and beyond its control.
- 8.06. **Waiver.** The failure of either party to insist upon any of its rights under this Agreement upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 8.07. **Survival.** The covenants contained in this Agreement which, by their terms, require or contemplate performance by the parties after the expiration or termination of the Agreement (including, but not limited to, Sections 5.01(a), (b), (c) and (d) and 7.01 of Exhibit A, Sections 1, 2, 3, 4, 5, 6, 7.04, 7.05 and 8 of Exhibit B, and Sections 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.12, 1.14, 1.16 and 1.17 of Exhibit C) shall be enforceable notwithstanding said expiration or termination.
- 8.08. **Severability.** The provisions of this Agreement shall be severable and the invalidity or unenforceability of any one provision shall not affect any other unless otherwise noted.
- 8.09. **Governing Law.** This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law provisions. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and of the Uniform Computer Information Transactions Act, as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this Agreement.
- 8.10. **Arbitration.** In the event of any dispute, controversy or claim between the parties arising under this Agreement, the parties shall submit to binding arbitration before a single arbitrator in Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding on the parties, and the judgment upon the award rendered by the arbitrator shall be enforceable in any court of competent jurisdiction. Each party shall bear its own attorney's fees, costs, and expenses incurred in such arbitration.
- 8.11. **Independent Contractor.** Bentley's relationship with Subscriber for all purposes hereunder shall be that of an independent contractor and nothing herein shall be construed as creating, at any time, an employer and employee relationship between the parties.

- 8.12. **Change of Ownership.** Subscriber shall provide Bentley with sixty (60) days advance written notice of any changes in its ownership or location.

- 8.13. **Headings.** The headings in this Agreement are intended solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement.

BENTLEY SELECT PROGRAM AGREEMENT
Professional Services
Exhibit C
Dated as of June 2014

1. Professional Services.

- 1.01. Subscriber may request professional services from time to time and Bentley may agree to perform such services pursuant to this Agreement. The description of professional services requested by Subscriber and which Bentley agrees to perform shall be set forth in one or more written descriptions labeled "SELECT Professional Services" and signed by Subscriber and Bentley (each an "Order"). Bentley shall have the right to accept or decline any proposed Order. Each Order shall set forth, at a minimum, the work to be done, the number of Bentley's personnel to be assigned to Subscriber's work, the duration of each individual's assignment, and the fees for the work. The services and other provisions described on the Order(s) are referred to collectively as the "Work" while the results of the Work, if any, are referred to as the "Work Product".
- 1.02. **Method of Performance.** Bentley, in conjunction with its personnel, will determine the method, details, and means of performing the work to be carried out for Subscriber, including the use of sub-contractors if deemed necessary. Subscriber shall have no right to, and shall not, control the manner or determine the method of accomplishing such work. Subscriber may, however, require Bentley's personnel to observe at all times the security and safety policies of Subscriber. In addition, Subscriber shall be entitled to exercise a broad general power of supervision and control over the results of work performed by Bentley to ensure satisfactory performance. This power of supervision shall include the right to inspect, stop work, make suggestions or recommendations as to the details of the work, and request modifications to the scope of an Order.
- 1.03. **Scheduling.** Bentley will try to accommodate work schedule requests of Subscriber to the extent possible. Should any personnel of Bentley be unable to perform scheduled services because of illness, resignation, or other causes beyond Bentley's reasonable control, Bentley will attempt to replace such personnel within a reasonable time, but Bentley shall not be liable for failure if it is unable to do so, giving due regard to its other commitments and priorities.
- 1.04. **Reporting.** Subscriber will advise Bentley of the individuals to whom Bentley's manager will report progress on day-to-day work. Subscriber and Bentley shall develop appropriate administrative procedures for performance of work at Subscriber's site, if necessary. Subscriber shall periodically prepare an evaluation of the work performed by Bentley for submission to Bentley upon Bentley's request.
- 1.05. **Place of Work.** Certain projects or tasks may require Bentley's personnel to perform work for Subscriber at Subscriber's premises. In the event that such projects or tasks are required to be performed at Subscriber's premises, Subscriber agrees to provide working space and facilities, and any other services and materials Bentley or its personnel may reasonably request in order to perform their work. Subscriber recognizes that there may be a need to train Bentley's personnel in the unique procedures used at Subscriber's location. When Subscriber determines that such training is necessary, Subscriber shall, unless otherwise agreed in writing, pay Bentley for its personnel's training time.
- 1.06. **Non-Exclusive.** Bentley shall retain the right to perform work for others during the term of this Agreement. Subscriber shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other contractors during the term of this Agreement.
- 1.07. **Perpetual License.** Upon full payment for the Work, Bentley shall grant Subscriber a paid-up, perpetual, royalty-free right and license to use the Work Product for Production Use. Bentley retains all

right, title and interest to the Work Product not otherwise granted to Subscriber.

- 1.08. **Preexisting Works of Bentley.** Notwithstanding Section 1.07 of Exhibit C hereof, Bentley hereby reserves and retains ownership of all works which Bentley created unrelated to the Work performed pursuant to any Order, including but not limited to Products (the "Pre-Existing Works"). Bentley does not grant Subscriber any rights or licenses with respect to the Pre-Existing Works.
- 1.09. **Residuals.** It is mutually acknowledged that, during the normal course of its dealings with Subscriber and the Work, Bentley and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the Work. Notwithstanding anything in this Agreement to the contrary, and regardless of any termination of this Agreement, Bentley shall be entitled to use, disclose, and otherwise employ any ideas, concepts, know-how, methods, techniques, processes, and skills, adaptations, including generalized features of the sequence, structure, and organization of any works of authorship, in conducting its business (including providing services or creating programming or materials for other customers), and Subscriber shall not assert against Bentley or its personnel any prohibition or restraint from so doing.
- 1.10. **Third-Party Interests.** Subscriber's interest in and obligations with respect to any programming, materials, or data to be obtained from third-party vendors, regardless of whether obtained with the assistance of Bentley, shall be determined in accordance with the agreements and policies of such vendors.
- 1.11. **Fees.** Bentley shall be paid the fee as specified in each Order (which Bentley reserves the right to change upon at least sixty (60) days advance notice or at any time for any new Order or modified portion of an existing Order), or, if no fee is specified, at Bentley's customary rates for the level of personnel providing such services.
- 1.12. **Expenses.** Subscriber shall also pay either the actual cost of Bentley's reasonable travel and living expenses or 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 out-of-pocket expenses incurred by Bentley.
- 1.13. **Estimates.** Estimates of total fees for projects may be provided in an Order, but Bentley does not guarantee such estimates. Bentley will, however, notify Subscriber as soon as possible if it will exceed the estimate, and Subscriber may then terminate the project and pay only for services actually rendered if Subscriber so chooses.
- 1.14. **Confidentiality.** In the performance of the Work, Bentley may acquire information of Subscriber which is proprietary, non-public and identified in writing as confidential by Subscriber. Bentley shall not disclose to anyone not employed by Subscriber nor use except on behalf of Subscriber any such confidential information acquired in the performance of the Work except as authorized by Subscriber in writing. Bentley shall have no obligation of confidentiality with respect to any information of Subscriber that (i) has entered the public domain other than through a breach of this Agreement, (ii) has been rightfully obtained by Bentley from a third party with no obligation of confidentiality, or (iii) is previously known by Bentley as demonstrated by clear and convincing evidence. Notwithstanding the foregoing restrictions, Bentley and its personnel may use and disclose any information to the extent required by an order of any court or other governmental authority or as necessary for it or them to protect their interest in this Agreement, but in each case only after Subscriber has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

BENTLEY SELECT PROGRAM AGREEMENT
Professional Services
Exhibit C
Dated as of June 2014

1.15. **Term.** This Exhibit C will become effective as of the date of the first executed Order and will continue in effect through the completion of each Order.

1.16. **Termination of Orders.** Subscriber or Bentley may terminate any uncompleted Order at any time by giving thirty (30) days written notice to the other party. Upon such termination, Bentley agrees to stop Work under the Order in question and to forward to Subscriber

all completed or uncompleted drawings, reports or other documents relating to the Work. In the event of such termination Subscriber shall be liable only for such fees, costs and expenses as have accrued prior to the effective date of such termination.

1.17. **Prohibition on Hiring.** Subscriber shall not solicit for employment or hire any Bentley employees providing professional services hereunder for the duration of the Work, plus a period of one (1) year after completion of the professional services provided hereunder.

BENTLEY SELECT PROGRAM AGREEMENT
Bentley Cloud Offerings
Exhibit F
Dated as of June 2014

1. **Definitions.** The capitalized words, terms and phrases in this Exhibit F shall have the meanings set forth below:

(a) **"Bentley Data"** means Bentley's Proprietary Information including, but not limited to, the methods by which the services described in this Exhibit F are performed and the processes that make up such services.

(b) **"Data Storage"** means the amount of data storage space (including the backup and off-site storage), if any, to be allocated for Subscriber Data within the Bentley environment.

(c) **"Internet"** means any systems for distributing digital electronic content and information to end users via transmission, broadcast, public display, or other forms of delivery, whether direct or indirect, whether over telephone lines, cable television systems, optical fiber connections, cellular telephones, satellites, wireless broadcast, or other mode of transmission now known or subsequently developed.

(d) **"Bentley Cloud Offerings"** or **"Cloud Offerings"** mean the Bentley products and services made available to Subscriber and accessed by Users via the Internet for use under the terms herein.

(e) **"Subscriber Data"** means data collected or stored by Subscriber using Cloud Offerings, including, but not limited to, financial, business and technical information, engineering plans, customer and supplier information, research, designs, plans, and compilations, but not including any Bentley Data.

2. **Applicability.** Upon Bentley's approval, Subscriber may be entitled to subscribe to Bentley Cloud Offerings pursuant to the specific terms set forth herein. Cloud Offerings are available as Subscriptions only, as described in Section 6 of Exhibit A. Subscriber acknowledges and agrees that Bentley may in its sole discretion utilize a third party service provider to provision Bentley Cloud Offerings and/or Subscriber Data. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.

3. **Bentley Cloud Offerings.** A User in possession of a valid Passport may be able to access certain Cloud Offerings at no additional charge to Subscriber. Other Cloud Offerings also require the purchase by Subscriber of a Visa for such User. Certain other Cloud Offerings may be purchased by Subscriber for additional fees (**"Cloud Offering Fees"**) to be specified in a quotation from Bentley to Subscriber (the **"Cloud Offering Quote"**), which may include, as applicable, (a) the number of Passport holders accessing the Cloud Offering; (b) the number of assets managed using the Cloud Offering; (c) Data Storage size; (d) the Professional Services, if any, to be delivered by Bentley to Subscriber for the initial deployment of the Cloud Offering; and (e) Professional Services related to the ongoing management and support of the Cloud Offering, including availability and support service level terms.

4. **Permitted Use.** Bentley will grant Subscriber a non-exclusive, non-transferrable, non-assignable, revocable, limited license to use and access purchased Bentley Cloud Offerings (subject to the terms of this Exhibit F and any terms of use (**"Terms of Use"**) presented upon access) solely for Production Use (the **"Permitted Use"**). Subscriber acquires only the right to use the purchased Cloud Offering and does not acquire any rights of ownership to the Cloud Offering or any part thereof. Bentley and its suppliers retain all rights, title and interest in the Cloud Offering, and any use of the Cloud Offering beyond the Permitted Use shall constitute a material breach of the Agreement. In addition to the use restrictions set forth in the Terms of Use, Subscriber's Permitted Use rights shall be subject to the following conditions:

(a) Subscriber purchasing against a Cloud Offering Quote shall not exceed any limits set forth in such Cloud Offering Quote. In the event use of a Cloud Offering by Subscriber exceeds that purchased by Subscriber as specified in the applicable Cloud Offering Quote, Bentley may invoice, and Subscriber shall pay, additional Cloud Offering Fees. Bentley shall, in its sole discretion, add such additional fees to subsequent invoices or invoice Subscriber separately.

(b) In the event of a past due balance, Bentley reserves the right to suspend use of the Cloud Offerings until all past due amounts have been received.

(c) Bentley reserves the right to modify or suspend use of a Cloud Offering, or any part thereof, if (i) Bentley determines in its sole discretion that such suspension is necessary to comply with any applicable law, regulation or order of any governmental authority or with the terms of its agreement(s) with its third party service providers; or (ii) Bentley determines in its sole discretion that the performance, integrity or security of the Cloud Offerings is being adversely impacted or in danger of being compromised as a result of Subscriber's or its Users' access.

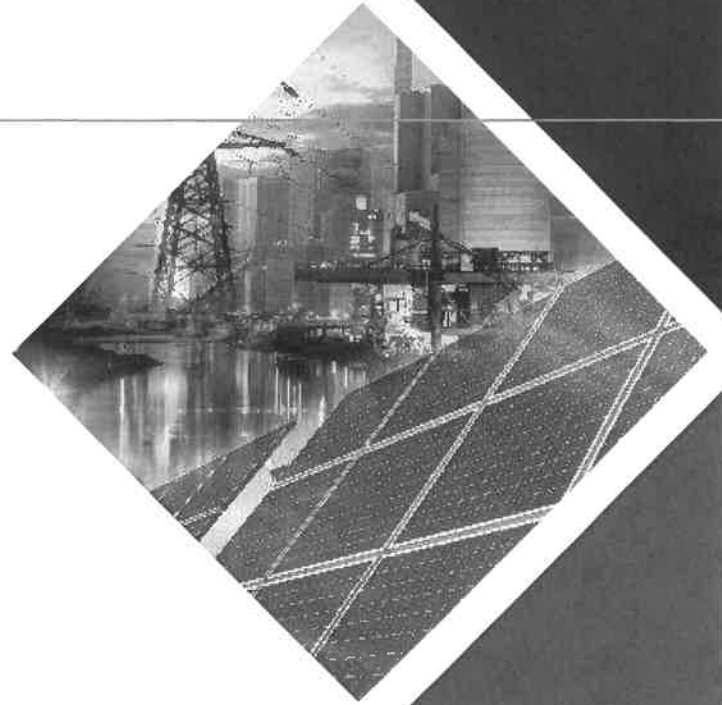
(d) Subscriber shall not tamper in any way with the software or functionality of Cloud Offerings or any part thereof. Without limiting the foregoing, Subscriber agrees not to put any material into the Cloud Offerings which contain any viruses, time bombs, Trojan horses, worms, cancelbots or other computer programming routines that may damage, interfere with, intercept or expropriate any system or data. Subscriber shall not utilize bots, agents, auction crawlers or other computer based crawling programs in conjunction with its use of the Cloud Offerings.

(e) Subscriber shall communicate the above listed use restrictions to all Subscriber employees and External Users accessing or using any Cloud Offerings. The acts or omissions of any such User accessing the Cloud Offerings shall be deemed to be the acts or omissions of the Subscriber under the Agreement, such that Subscriber shall be fully responsible for the performance and fulfillment of all obligations set forth in the Agreement. Subscriber shall indemnify and hold Bentley harmless against any and all liability resulting from any non-compliance with the terms herein.

5. **Access and Availability.** Subscriber is responsible for providing all equipment and the connectivity necessary to access and use Cloud Offerings via the Internet. Subscriber agrees that from time to time the Cloud Offerings may be inaccessible or inoperable for various reasons, including without limitation (i) system malfunctions; (ii) periodic maintenance procedures or repairs which Bentley or its service provider(s) may undertake from time to time; (iii) compatibility issues with Subscriber's or a third party's hardware or software; or (iv) causes beyond the control of Bentley or which are not reasonably foreseeable by Bentley, including network or device failure, interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively **"Downtime"**). Bentley shall use reasonable efforts to provide advance notice to Subscriber in the event of any scheduled Downtime, and to minimize any disruption of the Cloud Offerings in connection with Downtime.

6. **Data.** Bentley acknowledges, and Subscriber warrants and represents, that Subscriber owns all right, title and interest in Subscriber Data. Subscriber shall indemnify and hold Bentley harmless against any and all claims against Bentley alleging that the Subscriber Data collected or stored for use with the Bentley Cloud Offerings infringes any patent, trademark, trade secret, copyright or other proprietary rights of any third party, or in any way violates any privacy or data protection laws. Bentley shall not be responsible for any failure or impairment of the Cloud Offerings caused by or related to the Subscriber Data. Bentley shall maintain the confidentiality of all Subscriber Data, and shall not reproduce or copy such data except as required to provide services under this Agreement or as may be expressly authorized by Subscriber. Subscriber shall be solely responsible for the Subscriber Data, including without limitation for uploading such data and/or appropriately formatting and configuring such data for use with a Cloud Offering. Subscriber agrees and acknowledges that Bentley will from time to time collect Usage Data and that all Usage Data shall be owned by Bentley and deemed Bentley Proprietary Information. Subscriber agrees not to alter or interfere with the collection by Bentley of accurate Usage Data.

7. **Termination.** In addition to the termination rights of the parties set forth in Section 7 of Exhibit B, Bentley may terminate a Cloud Offering Subscription, upon notice to Subscriber, in the event of the termination of Bentley's agreement(s) with its third party service provider(s). Termination of a Cloud Offering Subscription by either party shall automatically terminate any license granted pursuant to Section 4 of this Exhibit F.



West Virginia DOT SUPERLOAD Proposal

December 2, 2022



West Virginia DOT SUPERLOAD Proposal

COMPANY NAME AND CONTACT INFORMATION

This proposal has been prepared for:

Name: Todd Gibson, PE

Title: Bridge Evaluation/Hauling Permit Engineer

Address: West Virginia Department of Transportation, Building 5, 1900 Kanawha Blvd E, Charleston, WV 25305

Telephone: (304) 558-9478

Email: todd.d.gibson@wv.gov

BENTLEY CONTACT INFORMATION

Your primary point of contact in relation to this proposal is:

Name: Lara Lamparski

Title: Regional Director, DOT

Address: 685 Stockton Dr., Exton, PA 19341

Telephone: (610) 458-2625

Email: Lara.Lamparski@bentley.com

BENTLEY CONTRACTING ENTITY

Name: Bentley Systems, Inc.

Address: 650 Stockton Drive, Exton, PA 19341



Non-disclosure

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EXECUTIVE SUMMARY

Based on our experience and knowledge of best practices to maintain a state-of-the-art SUPERLOAD implementation, Bentley has developed a comprehensive managed service offering for our SUPERLOAD users. This Proposal is designed to provide DOTs with professional services to host the system, assist with software and industry support, on-going training, provide management insight into the data/metrics of a hauling permits system, as well as addressing new DOT-specific development needs (e.g., new permit types, interfaces, etc.) and various tasks such as route and bridge data maintenance.

The key components of this Proposal are:

- Regularly scheduled meetings to help understand changing needs within WVDOT and Bentley direction/priorities
- Regular system maintenance releases
- Assistance in updating WVDOT SUPERLOAD Road Network Information from agency master data sources relied upon to manage permit issuance
- Assistance in updating the WVDOT SUPERLOAD Bridge Database and Bridge Inventory data from agency master data sources relied upon to manage permit issuance
- Refresher training for WVDOT staff
- System configuration, regular business process and performance review
- Special enhancement services – such as but not limited to provide updates to permit rules, addition of new permit types, removal of redundant permit types, configuration, new third - party system interfaces, etc.
- Cloud Hosting of SUPERLOAD by Bentley
- Handling all payment processing and covering all credit card fees and administrative costs
- A guaranteed resource plan to address ongoing enhancements needs over the subscription term

Bentley is committed to helping WVDOT achieve the maximum possible success from your investment in SUPERLOAD. As joint partners, Bentley and WVDOT will work together to create the best outcomes possible by taking advantage of a level of service over and above the standard technical support offered to all Bentley users as part of their SELECT Agreement. We will assist in providing a service that is focused on ensuring that WVDOT has the updates and enhancements necessary to keep WVDOT at the forefront of SUPERLOAD optimization and operating safely, effectively, and efficiently for years to come.





SCOPE OF WORK

Bentley will tailor Success Services for WVDOT to meet WVDOT's anticipated needs for ongoing hosting, maintenance, support, coaching and training for SUPERLOAD.

1.1 Bentley Staff

Bentley staff Bentley will meet with WVDOT regularly, via teleconference at least twice a quarter. WVDOT and Bentley will discuss the progress of the program and the activities/tasks that were previously identified and any rules and regulations that may change which must be adhered to in order to be in compliance with legislative acts or other requirements that require WVDOT compliance. This may be via teleconference or on site as deemed mutually necessary by WVDOT and Bentley.

Bentley will work with WVDOT to implement mutually agreed plans over the quarter and will meet with WVDOT regularly to discuss progress. At the end of each quarter a meeting will be held with WVDOT to review the outcomes of the previous quarter and to plan the following quarter. WVDOT reserves the right to call additional meetings with Bentley to discuss progress and procedures going forward.

The plans for each quarter will be formally agreed and recorded. The plans will aim to execute all the components of the Success Services discussed below. Permit support will also require a statement of work to confirm both WVDOT and Bentley have a common understanding of the scope to be executed.

Bentley will confirm that the Service Level Agreement is met and acts as WVDOT's advocate inside the Bentley organization for service tickets/requests and pulls in/escalates appropriately within Bentley, on WVDOT's behalf.

Bentley will work with WVDOT to implement the following components of the Success Services:

- Regularly scheduled meetings to help understand changing needs within WVDOT and presents Bentley direction/priorities
- A scheduled annual briefing about Bentley and WVDOT business objectives
- Regular system support/maintenance releases
- Assistance in updating WVDOT SUPERLOAD Road Network Information from agency master data sources relied upon to manage permit issuance
- Assistance in updating the WVDOT SUPERLOAD Bridge Database from agency master data sources relied upon to manage permit issuance
- Refresher training for WVDOT staff



- System configuration, regular business process and performance review
- Special enhancement services – such as but not limited to provide updates to permit rules, addition of new permit types, removal of redundant permit types, configuration, new third-party system interfaces, etc.
- Fully Managed Services - Cloud Hosting of SUPERLOAD by Bentley
- A guaranteed resource plan to address ongoing enhancements needs over the Subscription Year

Bentley will work with WVDOT to agree the specific services and people who will perform the services. This will be spread across multiple consultants to get the most appropriate skills for the tasks agreed. Each of these services are discussed below.

1.2 Annual Briefing about WVDOT Customer Support Objectives

Bentley will facilitate a briefing session where WVDOT and Bentley can share their customer support objectives. This will usually take the form of several sessions over a day, at WVDOT offices or virtually, where Bentley will present a strategic view of over-dimension permitting, system hosting, updates, and other required maintenance. WVDOT will be invited to present and discuss permit volume and the related issuance of permits so the objectives can be achieved.

Bentley will prepare a briefing paper that records the items discussed and any recommendations or follow-up actions agreed during the briefing. This will be created by Bentley and delivered to WVDOT shortly after the briefing is completed.

1.3 Support and Maintenance Release Updates

Bentley is constantly adding functionality to SUPERLOAD to address specific issues experienced by users, to address changing technology, and to enhance the product's capabilities. As part of the Success Services, Bentley will apply Maintenance Release Updates to the WVDOT system so that WVDOT is always running on the most recent version of the core SUPERLOAD CONNECT Edition software.

The Maintenance Release Update includes the planning, management, implementation, testing, roll out and support for any changes agreed with Bentley. WVDOT will be involved in this process and will be asked to approve the plan to apply Maintenance Releases and to test and accept those releases to avoid interruption to the service. In the unlikely event that services are interrupted, Bentley support staff will work with WVDOT to restore services.

Note that configuration updates to address changes in the needs of WVDOT, or required because of a change in the core software, will be provided through specifically scoped Special Support Services





(discussed below). Bentley will coordinate activities so that the minimum effort is required from both Bentley and WVDOT to maximize the capacity of the WVDOT SUPERLOAD system.

1.4 Updates to the Road Network Information

The roads in West Virginia are constantly changing with new road construction, realignment, and replacement. Periodically the road network information used by SUPERLOAD needs to be updated to account for the physical changes recorded in the agency master data.

Bentley will undertake to assist and support WVDOT in the replacement or update of the WVDOT SUPERLOAD Route Network model used by WVDOT which includes the current network used in the WVDOT SUPERLOAD system. Bentley anticipates that WVDOT will require this service at least four (4) times per Subscription Year, but this can be altered to meet the specific needs of WVDOT. Bentley will obtain the latest GIS, road inventory, and bridge inventory data from WVDOT, along with the current production WVDOT SUPERLOAD Route Network. Bentley will then execute the Network Build Update processes. Bentley will address all general processing errors and will return a list of Route Network changes to WVDOT for confirmation. The changes will include lists of route changes, bridge changes, and interchange impacts. Bentley will work with WVDOT to address any inaccurate changes, complete a correct Network build, and provide that Network for final WVDOT testing and production deployment as well as support the WVDOT users once the changes are live and in production.

Bentley will build a process to perform the update loading process. Often the data loading process will reveal issues with data quality and inconsistencies, and these will remain the responsibility of WVDOT. Bentley will perform up to two (2) loads of data from WVDOT to allow WVDOT the opportunity to correct any errors found within the data during the data loading process. Bentley will address issues resulting from the data migration process.

The data to be loaded will be supplied to Bentley in the agreed format which will be detailed in a data loading document agreed by both WVDOT and Bentley. Should the source model need to change, such changes will be accommodated via the special support services defined below.

The data loading process will be used to regularly update the information in WVDOT SUPERLOAD. Bentley will perform two (2) loads into a TEST system; after each load a report will be provided to WVDOT detailing all conflicts and data issues detected by the load process so that WVDOT can resolve these issues and perform the data cleansing before resupplying the data in the format specified.

If after two (2) loads the data has still not been successfully loaded without resolving significant data quality issues, Bentley and WVDOT will meet to discuss what mitigation can be put in place to minimize the impact on the Production system and minimize the delay in updating the Production





system. WVDOT and Bentley will then agree to perform a further load, add additional loads for the iteration, abandon the load for this iteration, or perform some other treatment that addresses the issue.

WVDOT can use the TEST system to confirm the data loaded is accurate for use. The final load to TEST will then be transferred to Production. Any new successful updates will then fall under routine support.

1.5 Updates to the Bridge Database Information

As with the roads, the bridges in West Virginia are constantly changing with new bridge construction, rehabilitation, wear-and-tear, and deterioration. Periodically, the structural information used by WVDOT SUPERLOAD needs to be updated to account for the physical changes recorded in the agency master data. Since the release of SUPERLOAD CONNECT Edition, WVDOT has updated the bridge database at intervals deemed necessary by WVDOT employees. It is expected that WVDOT will continue to conduct bridge database updates on their own. Under the Success Services, Bentley can provide additional support, when needed, to support WVDOT in the replacement or update of WVDOT SUPERLOAD Bridge Database. Should Bentley support be requested, the latest structural models and LARS configuration files (or output XFR transfer files) will be provided by WVDOT, along with the current production WVDOT SUPERLOAD Bridge Database. Bentley may then execute the Bridge Database Update support. This will update both the Bridge Structural Database and the Bridge Inventory data used by WVDOT SUPERLOAD.

In the event Bentley performs the bridge database updates or replacement, Bentley will address all general processing errors and will return a list of Bridge Database changes and Bridge Inventory data changes to WVDOT for confirmation. The changes will include bridge lists as well as test results for a specific vehicle. Bentley will work with WVDOT to address any inaccurate changes, complete a correct Bridge Database and Bridge Inventory data update, and provide that Bridge information for final WVDOT testing and production deployment.

Similar to the Road Information loading above, Bentley can build a process to perform the update loading process. Often the data loading process will reveal issues with data quality and inconsistencies, and these will remain the responsibility of WVDOT. Bentley will perform up to two (2) loads of data from WVDOT to allow WVDOT the opportunity to correct any errors found within the data during the data loading process. Bentley will address issues resulting from the data migration process. The data to be loaded will be supplied to Bentley in the agreed format which will be detailed in a data loading document agreed by both WVDOT and Bentley.





The data loading process will be used to regularly update the information in WVDOT SUPERLOAD. Bentley will perform at least two (2) loads into a TEST system. After each load, a report will be provided to WVDOT listing all conflicts and data issues detected by the load process so that WVDOT can resolve these issues and perform the data cleansing before resupplying the data in the format specified.

If after two (2) loads the data has still not been successfully loaded without resolving significant data quality issues, Bentley and WVDOT will meet to discuss what mitigation can be put in place to minimize the impact on the Production system and minimize the delay in updating the Production system. WVDOT and Bentley will then agree to perform a further load, add additional loads (for the iteration), abandon the load (for this iteration), or perform some other treatment that addresses the issue.

WVDOT can use the TEST system to confirm the data loaded is accurate. The final load to TEST will then be transferred to Production. Any new successful updates will then fall under routine support.

1.6 System Configuration, Business Process and Performance Review

In the contract year, Bentley will provide a mid-year review of the system configuration and performance to identify bottlenecks causing delays or other limitations reducing the efficacy or performance of WVDOT SUPERLOAD. Bentley will review all outcomes to determine if any rules, conditions, or system issuance criteria are candidates for modification. Bentley will then undertake a review of the current work process executed by WVDOT and make recommendations about possible changes in use by WVDOT or possible changes in business processes in place to enable faster results or improved outcomes.

1.7 Special Support

Periodically WVDOT will encounter changes in legislation or regulation that require changes to the configuration of the permits WVDOT has implemented. The Success Services can cover these changes via the Special Support Services. These support services can also be used for creating or updating third party interfaces, providing additional reporting, etc. Bentley anticipates providing WVDOT two (2) updates per Subscription Year to address such changes. Minor changes to several permits or a major change to a single complex permit may be agreed between Bentley and WVDOT on a case-by-case basis. Examples of work that can be done under special support services that WVDOT has identified may include, but are not limited to:

- Any changes to GIS and inventory data sources, such as ESRI Roads and Highways that may include non-cardinal direction, dual centerline, bi-directional route, Global ID versus Route ID
- New reports
 - Dashboard enhancements





- CVIEW enhancements
- Adding location points/points of interest
- Additions per audits/regulations
- New Permit types or changes to existing permits

Special Support covers the analysis, design, implementation, testing and roll out of any changes agreed with Bentley. Where practical, Special Support will be combined with Maintenance Release Updates to minimize the impact on WVDOT for their testing and training.

1.8 Training for WVDOT Staff

Bentley will provide training as needed either onsite or by remote webinar as mutually agreed by Bentley and WVDOT. Training includes a period of preparation to cover the aspects of the system where WVDOT, state and allied agencies need assistance and to tailor the training to suit specific needs, as defined by WVDOT. Class size will not exceed 15 WVDOT employees or contract staff.

Training may include, but not be limited to:

- Basic training of new employees
- Refresher for existing employees
- Supervisory, advanced system usage
- Industry outreach
- Administrative processes
- Reporting and data mining
- Data management and review
- Refresher training for areas of the software not often used
- Features added as part of the Special Enhancement Services
- Features added as part of a Maintenance Release update
- Training needs identified as part of the System Configuration, Business Process and Performance Review

1.9 Software Provision and Cloud Hosting

Bentley will provision WVDOT SUPERLOAD hosted in a secure cloud-computing environment that provides 24x7 access, for the contract year to all project team members and stakeholders.

1.9.1 Key Features Include

- Virtualized infrastructure with 24x7 technology management provides the compute, storage, network, and data back-up resources
- Managed firewalls protect the networks and applications allowing authorized access, but prevent unwanted intruders

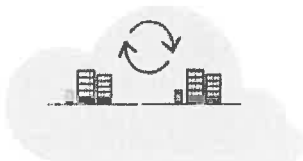




- Load balancers provide secure access to multiple dedicated servers, ensuring that any demand can be met
- Secure storage that is flexible yet guarantees data integrity
- Comprehensive back-up procedures and data retention policies that meet WV DOT policies and procedures and regular restores check that data is recoverable
- Certified engineers and technicians including managed services experts have an extensive track record of providing end-to-end solutions
- Service quality assured by KPIs and SLA
- Commitment to Security, Data Governance and Compliance
- WV DOT access to a read-only copy of the production database for queries and reporting
- Fax service provided allows fax and emailing of permits outbound functionality, technical support
- Maintained test servers to test new releases and functions

We are committed to security, data privacy and governance, and compliance. We operate our managed services in data centers that are SOC-2 certified. Our information security management policies are certified to ISO-27001 standards and our processes are aligned with Information Technology Infrastructure Library (ITIL) best practices for IT services management. For all our users, data is fully backed up and can be restored with the recovery time objective (RTO) and recovery point objective (RPO) specified in our robust Service Level Agreement (SLA).

Highly secure and available cloud platform providing global coverage underpinned with a 99.9% availability SLA



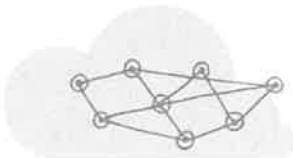
Flexible commercial models enabling you to pay for what you need, when you use it



Highly secure and compliant



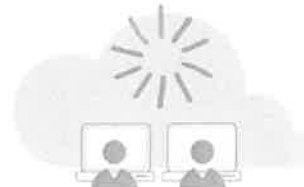
Scalability & flexibility that extends beyond the product



Zero data loss, even in the event of a failure



24x7 support and monitoring by experts who understand your requirements



***1.9.1.1 Cloud Operations Quality Established by Service Level Agreement***

Our Cloud Operations team is responsible for the managed services we provide and that they are available 24x7 and operating according to your SLA. Our application management specialists confirm that SUPERLOAD is running as it should with sufficient capacity, performance, and responsiveness. We manage software upgrades for you and confirm you have the most up-to-date version of our software. Our network and data security experts confirm that your data is protected and safeguarded. From the outset, we confirm that your system is installed and configured correctly and meets your defined needs. Whenever you need to ask for help, our support specialists are available round-the-clock (as detailed in Appendix A).

1.9.1.2 Deep Pool of Talent is an Extension of Your IT Department

With Bentley managed services, you are gaining access to expertise and experience to help you empower virtual teams and take your capabilities to the next level. That means that you can rely on a deep pool of talent from Bentley that can be an extension of your IT department, frees your IT department to focus on other strategic priorities, takes responsibility for getting the most value out of your software, and lets you focus on business and project outcomes. Bentley has a proven track record of providing managed services to the world's leading engineering, procurement, and construction companies in support of some of the most significant infrastructure and capital projects as well as government agencies and owner-operators.

1.9.1.3 Service Delivery Model Provides Flexibility and Reliability

Essential to the quality of the managed services that we deliver is our Service Delivery Model. Bentley has extensive experience and mature models in place based on the ITIL Framework to deliver consistently high levels of service. Bentley has overall responsibility for understanding your business objectives, ensuring that Bentley's obligations are met and managing the overall relationship.



OUR COMMERCIAL OFFERING

Bentley is pleased to offer WVDOT this Proposal that schedules payment for performance of the delivered software service as a subscription.

1.10 Subscription Term

The initial term will commence upon Bentley's receipt and acceptance of a purchase order (or equivalent notice to proceed) and shall continue through June 30, 2023, the "Initial Term"). Thereafter, the Recurring Services shall renew for subsequent terms, as agreed to by both parties in writing, each time for one (1) year (each a "Renewal Term") unless West Virginia DOT or Bentley gives the other party written notice of its election to not renew at least thirty (30) days prior to expiration of the then-current term.

1.11 Transaction Based Payment

1.11.1 Assumptions

- 100% of permit issuance transactions will be executed through the WVDOT SUPERLOAD System hosted at wv.gotpermits.com.
- Bentley will handle all payment processing and will cover the expenses of all credit card fees and administrative costs.

1.11.2 Permit Fee Schedule

For each permit issued, based on the assumptions noted above and the terms of the Agreement, Bentley will collect Permit Fees as determined by WVDOT.

The pricing below is based on the assumptions noted above and the terms of the Agreement. The fees collected for each permit by the system will comprise three (3) components:

1. Permit Fee – as determined by WVDOT. Bentley will collect this fee and remit it to WVDOT, on a monthly basis.
2. Automation Fee – Bentley will collect and retain \$15.00 for each of the first 7,000 paid permits issued in a calendar month; and \$9.00 for each paid permit after the 7,000th as part of compensation for the service provided.
3. Processing Fee – to cover the direct costs of credit card transactions and management of escrow accounts, at a fixed rate of 5% of the per permit per ton mile cost, \$0.002 at WVDOT's current rates. Bentley will collect this fee and will retain it to cover the described costs.

Permits that WVDOT issues at no cost will be issued without an Automation or Processing Fee but those permits will not count towards the total permit volumes.



1.11.3 Payment

Bentley will prepare a payment schedule on the first of the month for the preceding calendar month to WVDOT equal to the sum of the individually issued permits during the month, net of Bentley's automation and processing fees.

1.12 Bentley Professional Services

During the term of the agreement, WVDOT may request additional professional services from Bentley to support Bentley's comprehensive portfolio of software. Professional services for all Bentley licensed products, includes but is not limited to the following activities:

- Software installation
- Software integration
- Software implementation, including data conversion, data migration, testing, and onsite technical support
- Software configuration
- Application Support Services and Knowledge transfer
- Application training

Bentley will execute a work order defining the scope of services, deliverables and a price estimate based on the rates shown in the table below. Services may require an additional purchase order.

Role	Hourly Rate (USD)
Project Manager	\$256.55
Consultant	\$256.55
Senior Consultant(s)	\$282.20
Training Services	\$2,400.00
EPS Blueprint Service Credits	\$2000.00





TERMS AND CONDITIONS

Bentley will deliver the commercial offering described herein under the terms and conditions of the existing WV DOH - Bentley Agreement No. 81230018.

If applicable to this commercial offering, the parties agree that any additional or different terms or conditions appearing on a purchase order, even if required to be acknowledged by Bentley, shall not be binding on the parties even if Bentley executes the purchase order and/or even if Bentley processes the order. Such additional terms shall only be applicable if expressly agreed upon by the parties in writing.

WVDOT hereby grants to Bentley the right to use WVDOT's company name, including its logo or trademark, in marketing, sales, financial, and public relations materials and other communications solely to identify WVDOT as a Bentley user. Bentley hereby grants to WVDOT the right to use Bentley's name, including its logo or trademark, to identify Bentley as a provider of products and services to WVDOT. Neither party shall use the other party's product or company name or trademarks in any other manner without the prior written permission of the other party.



ACCEPTANCE

To accept this proposal, please send an executed copy to the Bentley contact provided herein. If you would like us to bill this proposal against a purchase order, please indicate the purchase order number(s) for the Professional Services Fees (if applicable) below and attach a copy with your signed acceptance of this proposal.

- ☐ Purchase order required.
- ☐ Purchase order is not required. We will accept Bentley's invoice based on this signed proposal.

To avoid delays in processing, please ensure the purchase order, if required, is signed, references the Bentley SELECT Program Agreement (or any other contractual agreement in place), references this proposal, the Bill To address, and payment terms of net 30 days. Resources will be assigned, and the schedule will be finalized, to reflect specific dates and times that are mutually acceptable upon final acceptance of this proposal and the issuance of a purchase order acceptable to Bentley.

Pricing, terms, and conditions of this proposal are valid for 30 days from the submittal date of this document, after which this proposal becomes null and void and will not be accepted by Bentley as a contractual document.

Prices shown on this quotation are not inclusive of applicable taxes. Applicable taxes will be included on invoices. If your account is exempt from standard taxes, please provide supporting documentation with your order.

Proposal Title: WVDOT SUPERLOAD Proposal

Company Name: West Virginia DOT

Date:

Signature:

Bill To:

Printed Name:

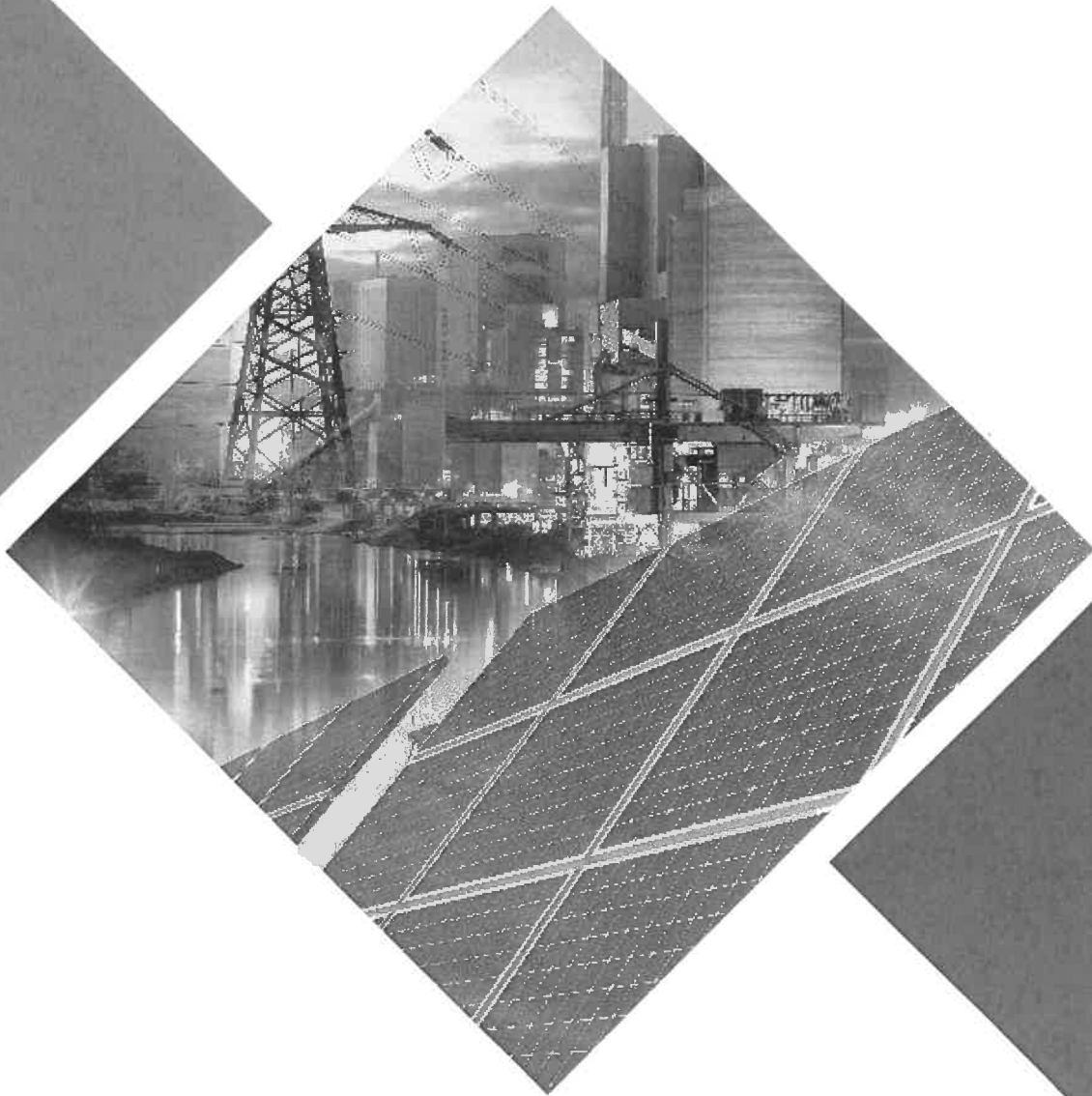
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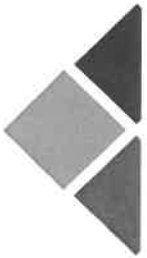
Printed Title:

Bentley Opportunity: 30709985



APPENDICES





APPENDIX 1 - SLA

Service Level Agreement

The following Service Level Agreement (SLA) supplements the SELECT Program Agreement, including Exhibit F Bentley Cloud Offerings. In the event there is a conflict between this SLA and the SELECT Program Agreement, this SLA shall prevail. This SLA shall apply to specific Bentley Cloud Offerings only when attached to or incorporated by reference to an applicable commercial offering document, such as a quotation, proposal, or order form. If a commercial offering document does not include this SLA as an attachment or by reference, it shall not apply to that Cloud Offering.

Availability Commitment

Bentley shall provide System Availability per Table 1 below.

Table 1 - Availability

Availability Commitment	System Availability Period
99.9%	24x7

Bentley shall measure performance against the Availability Commitment during a calendar month based on the following calculation:

$$\text{Availability \%} = \frac{\text{Available Minutes} - \text{Unscheduled Downtime Minutes}}{\text{Available Minutes}}$$

Users will be given notice of Maintenance Windows which will be used to apply required patches to the IT infrastructure to ensure the continued security, availability, and performance of the system. Wherever practical, Maintenance Windows will occur outside of Subscriber's core business hours.

- The Availability Commitment excludes downtime due to Scheduled Maintenance.
- Unscheduled Downtime is calculated from the minute it is clearly reported by the Subscriber to Bentley, until Bentley reports it fixed or mitigated. Bentley may subtract from the calculated downtime any time waiting for a response from the Subscriber
- Only "Critical" Incidents (Table 3 below) will be considered as Unscheduled Downtime in the above Availability calculation.
- Where Bentley provides multiple production services, identified by different Universal Resource Locators (URLs), the availability will be calculated for each URL.





Remedies

Bentley shall provide Subscriber remedies for any Bentley failure to meet the Availability Commitment during any single calendar month (the "Cover Period"). Upon the first instance per URL, Bentley shall make a good faith effort to understand the cause and make reasonable repairs to prevent the failure from occurring again. Upon any subsequent instance, in addition to the remedy set forth above, Bentley shall also provide a Service Credit to Subscriber as described in Table 2. If the Monthly Subscription covers multiple Fully Qualified Domain Names (FQDNs), the remedy will be based off a part of the Monthly Subscription proportional to the usage of that FQDN.

Table 2 – Remedies

Availability	Service Credit
98 % -- 99.8%	2% of Monthly Subscription for affected Service
95 % -- 97.9%	4% of Monthly Subscription for affected Service
Below 95%	5% of Monthly Subscription for affected Service

Bentley will apply any Service Credits only against future amounts due from Subscriber for Hosting Fees. Service Credits will not entitle Subscriber to any refund or payment from Bentley. Unless claimed within ninety (90) Days following the end of the Cover Period to which they correspond, all Service Credits are waived with respect to that period of service. Subscriber agrees that the Service Credits set forth herein are Subscriber's sole and exclusive remedy, and Bentley shall have no further liability, for any failure by Bentley to meet the Availability Commitment or System Availability Period. In respect of all other claims, losses, or damages, whether arising from tort (including negligence), breach of contract, or otherwise under or in connection with this SLA, shall in no event exceed the applicable monthly subscription fees during which the event giving rise to the liability occurs.





Support Objectives

Bentley will, in consultation with the Subscriber, be responsible for classifying each reported, verifiable, and reproducible incident per Table 3 and will use commercially reasonable efforts to resolve such incidents in accordance with the targets specified in Table 4.

Table 3 – Priority Classification

Name	Classification	Description	Example
Priority 1 (P1)	Critical	System Down A complete loss of cloud service – no user can interact with the service	Users at multiple sites cannot access the system and no workaround exists.
Priority 2 (P2)	High	Incident which impairs the users' ability to maintain business operation causing a severe degradation of service or resulting in some important functionality being unavailable. Operations can continue in a restricted fashion.	Users can access system however there is material degradation of functionality or performance
Priority 3 (P3)	Medium	Incident which causes a loss of some important functionality.	A service is not available causing inconvenience; however, business operations can continue without major disruption
Priority 4 (P4)	Low	Incident which has little or no significant impact on the business. Low impact & low urgency.	The behavior varies from user expectations, but normal business operations can continue.

The provision of a workaround or temporary fix will lower the Priority of an incident to reflect the residual impact.





Table 4 – Incident Response and Resolution Targets

Priority	Response Target	Resolution Target	Update Interval
P1 - Critical	1 Hour	See below*	1 Hour
P2 - High	2 Hours	1 Business Day	1 Business Day
P3 - Medium	4 Hours	10 Business Days	5 Business Days
P4 - Low	8 Hours	Mutually Agreed	Mutually Agreed

*Critical incidents will be forwarded immediately and worked continuously by qualified team members until it is resolved, or an acceptable workaround is delivered to reduce the priority.

Response, Resolution and Update target levels are indicators and serve as benchmarks for the Bentley Support teams.

"Response Times" and "Resolution Times" commence from the point in time accurate and complete information regarding the incident or interruption is correctly entered in Bentley's Incident Tracking system.

If the resolution of any P2, P3 or P4 issue requires an update, fix or patch to the relevant Bentley commercial software product resulting in a modification of standard COTS or customized code, then additional development, testing and release tasks will be required to ensure the quality of the product release. Bentley's support obligations in these instances, including response times, shall not be governed by this SLA, but rather the SELECT Program Agreement or other relevant governing agreement executed by Subscriber and Bentley shall apply.

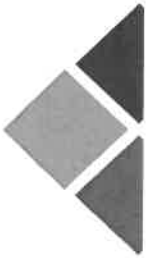
"Business Day" for support of P2 through P4 incidents is defined as Monday through Friday inclusive excepting Public Holidays in the location where support is provided.

Bentley has designed the systems to meet the recovery time and point objectives described in Table 5 and shall use commercially reasonable efforts meet them in the event of a system failure.

Table 5 – System Disaster Recovery Objectives

Recovery Time Objective (RTO)	Recovery Point Objective (RPO)
8 Hours	1 Hour





Limitations

This SLA and any applicable Service Levels do not apply to any performance or availability issues:

1. Due to factors outside our reasonable control (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to our data centers, including at Subscriber's site or between Subscriber's site and Bentley's data center).
2. That result from the use of services, hardware, or software provided by Subscriber, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services.
3. Caused by Subscriber's use of a Service after instruction from Bentley to modify use of the Service.
4. During or with respect to preview, pre-release, beta or trial versions of a Service, feature, or software (as determined by Bentley).
5. That result from Subscriber's unauthorized action or lack of action when required, or from Subscriber's employees, agents, contractors, or vendors, or anyone gaining access to Bentley network by means of Subscriber's passwords or equipment, or otherwise resulting from Subscriber's failure to follow appropriate security practices.
6. That result from faulty input, instructions, or arguments (for example, requests to access files that do not exist).
7. That result from use of sandbox, proof of concept, development, QA, or other non-production systems unless explicitly included by Bentley Systems.

Service Termination and Subscriber's Data

Upon termination of the Service, Bentley will deactivate any remaining Subscriber accounts and upon written request provide an export of Subscriber's data in a standard, generally accepted electronic form within ten (10) business days and places no restrictions on its use by the Subscriber. Unless otherwise requested, Bentley will delete all copies of Subscriber's data from its servers within two (2) weeks of being notified that the Subscriber has successfully read the files, or within four (4) weeks of the data being provided if no confirmation or associated Service Request is received.

Note: it may take up to an additional 30 days for back-ups of that data to expire.





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About Bentley Systems

Bentley Systems (Nasdaq: BSY) is the infrastructure engineering software company. We provide innovative software to advance the world's infrastructure – sustaining both the global economy and environment. Our industry-leading software solutions are used by professionals, and organizations of every size, for the design, construction, and operations of roads and bridges, rail and transit, water and wastewater, public works and utilities, buildings and campuses, mining, and industrial facilities. Our offerings include MicroStation-based applications for modeling and simulation, ProjectWise for project delivery, AssetWise for asset and network performance, Seequent's leading geoprofessional software portfolio, and the iTwin platform for infrastructure digital twins. Bentley Systems employs more than 4,500 colleagues and generates annual revenues of approximately \$1 billion in 186 countries.

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