



# West Virginia Purchasing Division

2019 Washington Street, East  
Charleston, WV 25305  
Telephone: 304-558-2306  
General Fax: 304-558-6026  
Bid Fax: 304-558-3970

The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at ***wvOASIS.gov***. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at ***WVPurchasing.gov*** with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header @ 5 List View

**General Information** | Contact | Default Values | Discount | Document Information

<b>Procurement Folder:</b> 254001	<b>SO Doc Code:</b> CRFQ
<b>Procurement Type:</b> Central Master Agreement	<b>SO Dept:</b> 0803
<b>Vendor ID:</b> 00000232598	<b>SO Doc ID:</b> DOT1700000041
<b>Legal Name:</b> BENTLEY SYSTEMS INC	<b>Published Date:</b> 12/13/16
<b>Alias/DBA:</b>	<b>Close Date:</b> 12/27/16
<b>Total Bid:</b> \$2,496,806.20	<b>Close Time:</b> 13:30
<b>Response Date:</b> 12/21/2016	<b>Status:</b> Closed
<b>Response Time:</b> 17:18	<b>Solicitation Description:</b> Addendum 1 BENTLEY SOFTWARE MAINTENANCE
<b>Total of Header Attachments:</b> 5	
<b>Total of All Attachments:</b> 5	



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

**State of West Virginia  
 Solicitation Response**

**Proc Folder :** 254001

**Solicitation Description :** Addendum 1 BENTLEY SOFTWARE MAINTENANCE AND SERVICES

**Proc Type :** Central Master Agreement

Date issued	Solicitation Closes	Solicitation Response	Version
	2016-12-27 13:30:00	SR 0803 ESR12151600000002785	1

VENDOR
000000232598 BENTLEY SYSTEMS INC

**Solicitation Number:** CRFQ 0803 DOT1700000041

**Total Bid :** \$2,496,806.20      **Response Date:** 2016-12-21      **Response Time:** 17:18:20

**Comments:** No additional discounts will be applied.

**FOR INFORMATION CONTACT THE BUYER**  
 Misty Delong  
 (304) 558-8802  
 misty.m.delong@wv.gov

<b>Signature on File</b>	<b>FEIN #</b>	<b>DATE</b>
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All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	BENTLEY SOFTWARE MAINTENANCE AND SERVICES	1.00000	EA	\$2,496,806.200000	\$2,496,806.20

Comm Code	Manufacturer	Specification	Model #
81112200			

**Extended Description :** OPEN END CONTRACT: TO PROVIDE BENTLEY SOFTWARE MAINTENANCE AND SERVICES  
Pricing shall be completed on Exhibit A Pricing Page.  
If submitting online vendor should enter their bid total from Exhibit A in the Oasis commodity line. This commodity line will not be evaluated. Vendor is responsible for attaching Exhibit A to online bids.



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

State of West Virginia  
 Request for Quotation  
 21 – Info Technology

Proc Folder: 254001

Doc Description: BENTLEY SOFTWARE MAINTENANCE AND SERVICES

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2016-12-05	2016-12-27 13:30:00	CRFQ 0803 DOT1700000041	1

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

Vendor Name, Address and Telephone Number:

Bentley Systems, Incorporated  
 685 Stockton Drive  
 Exton, PA 19341 Phone: (610) 955-3125

**FOR INFORMATION CONTACT THE BUYER**

Misty Delong  
 (304) 558-8802  
 misty.m.delong@wv.gov

Signature X

FEIN # 95-3936623

DATE December 20, 2016

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION:**

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Transportation (WVDOT) to establish a one (1) year, open-end contract with four (4) one year renewals, not to exceed sixty (60) months in total, for software licenses, services and maintenance for the products, modules and upgrades that are a critical part of the WVDOT Engineering Infrastructure.

INVOICE TO	SHIP TO
DIVISION OF HIGHWAYS INFORMATION SERVICE DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A719 CHARLESTON WV25305-0430 US	DIVISION OF HIGHWAYS INFORMATION SERVICE DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A719 CHARLESTON WV 25305-0430 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	BENTLEY SOFTWARE MAINTENANCE AND SERVICES	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112200			

**Extended Description :**

OPEN END CONTRACT: TO PROVIDE BENTLEY SOFTWARE MAINTENANCE AND SERVICES

Pricing shall be completed on Exhibit A Pricing Page.

If submitting online vendor should enter their bid total from Exhibit A in the Oasis commodity line. This commodity line will not be evaluated. Vendor is responsible for attaching Exhibit A to online bids.

**SCHEDULE OF EVENTS**

Line	Event	Event Date
1	Technical Questions Due	2016-12-12

DOT1700000041	<b>Document Phase</b> Draft	<b>Document Description</b> BENTLEY SOFTWARE MAINTENANCE AND SERVICES	<b>Page 3</b> <b>of 3</b>
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**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

**2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: December 12, 2016

Submit Questions to: Misty Delong

2019 Washington Street, East

Charleston, WV 25305

Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)

Email: [Misty.M.Delong@wv.gov](mailto:Misty.M.Delong@wv.gov)

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:  
Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the Purchasing Division.:

SEALED BID:  
BUYER: Misty DeLong  
SOLICITATION NO.: CRFQ DOT1700000041  
BID OPENING DATE: December 27, 2016  
BID OPENING TIME: 1:30 PM, EST  
FAX NUMBER:

The Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to an Expression or Interest or Request for Proposal is not permitted in wvOASIS.

**For Request For Proposal ("RFP") Responses Only:** In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus NA convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: (This only applies to CRFP)

- Technical  
 Cost

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: December 27, 2016 at 1:30 PM, EST.

Bid Opening Location: Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

**11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**15. PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Vendor Preference Certificate form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Vendor Preference Certificate form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

**16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**17. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

**18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

**19. NON-RESPONSIBLE:** The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.”

**20. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

**21. 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.

## **GENERAL TERMS AND CONDITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

**Term Contract**

**Initial Contract Term:** This Contract becomes effective on Award \_\_\_\_\_ and extends for a period of one (1) year(s).

**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 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. 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 48 months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

**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, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional \_\_\_\_\_ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. Automatic renewal of this Contract is prohibited.

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

**Other:** See attached.

**4. NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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

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

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

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

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

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

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

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

**PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of \_\_\_\_\_. The performance bond must be received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

**LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award. In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

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

**INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

**Commercial General Liability Insurance:** In the amount of \_\_\_\_\_ or more.

**Builders Risk Insurance:** In an amount equal to 100% of the amount of the Contract.

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

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

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

**9. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

**10. LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of

for \_\_\_\_\_.

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.

**11. 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.

**12. 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.

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

**14. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

**15. 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.

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

**17. 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.

**18. 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 § 148-1-6.1.e.

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

**20. 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.

**21. COMPLIANCE:** 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

**27. 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.

**28. 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.

**29. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

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

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

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

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

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. 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.

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

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

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

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

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

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

**37. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

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

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

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

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

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

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

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

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

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

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

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

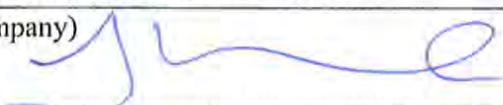
The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

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

**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.

Tom Gergel Account Director  
(Name, Title)  
Tom Gergel Account Director  
(Printed Name and Title)  
685 Stockton Drive, Exton PA  
(Address)  
610-955-3125  
(Phone Number) / (Fax Number)  
Tom.Gergel@bentley.com  
(email address)

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

Bentley Systems, Incorporated  
(Company)  
  
(Authorized Signature) (Representative Name, Title)  
Antonio Ierardo, Vice President  
(Printed Name and Title of Authorized Representative)  
December 20, 2016  
(Date)  
610 458 5000  
(Phone Number) (Fax Number)

REQUEST FOR QUOTATION  
**Bentley Software Licensing and Services for WVDOT Engineering Infrastructure**

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Transportation (WVDOT) to establish a one (1) year, open-end contract with four (4) one year renewals, not to exceed sixty (60) months in total, for software licenses, services and maintenance for the products, modules and upgrades that are a critical part of the WVDOT Engineering Infrastructure.

Yearly license fees, maintenance and support shall be provided as an Enterprise License Subscription (ELS) with Bentley Systems Inc. or equal. An ELS provides an unlimited number of user installations for the products that are specified in the requirements in section 3.1.3.

This RFQ also includes licensing/services for systems that are not configurable for an ELS model. These products are specified in section 3.1.4.

Section 3.1.5 includes specifications for hourly services that may be needed during the life of this contract. Utilization of these services is OPTIONAL for WVDOT.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
- 2.1 **“Contract Item”** or **“Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
- 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
- 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

3. **GENERAL REQUIREMENTS:**

- 3.1 **Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items shall meet or exceed the mandatory requirements as shown below.
- 3.1.1 Shall have a Project Centric Hybrid environment that can be accessed across the desktop, cloud, project server and mobile devices. This includes role based workspaces that provide user access to applications that address the project requirements; guidance and learning tools for their use. Shall have backward compatibility for desktop versions. (Example: V8, V8i has the ability to work in the newer Connect Edition environment)

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### Bentley Software Licensing and Services for WVDOT Engineering Infrastructure

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**3.1.2** If alternate 'or equal' products are proposed, the vendor shall include as part of their bid, all software, hardware and services needed to migrate systems and data/files; train WVDOT staff; test systems; and test ALL migrated data/files.

**3.1.3 Bentley Enterprise License Subscription (ELS) or equal, shall include yearly license fees and maintenance for the products provided as ELS licenses for the SELECT Licensing Program. WVDOT currently utilizes the software listed in section 3.1.3 as part of the SELECT Licensing Program.**

*Unlimited user licenses for ALL of the software listed in section 3.1.3 shall be provided.*

#### **3.1.3.1 MULTI-DISCIPLINE BRIDGE DESIGN AND ANALYSIS**

##### **3.1.3.1.1 LEAP Bridge and LEAP Bridge Enterprise or equal**

**3.1.3.1.1.1** Shall provide modeling and analysis capabilities for small to medium-sized concrete bridges of all types: precast, cast-in-place, reinforced, and post-tensioned.

**3.1.3.1.1.2** Shall include geometric modeling, substructure, and superstructure analysis and design, and load rating in a single environment.

**3.1.3.1.1.3** Shall provide intelligent data management, parametric modeling, and automated drawing production as part of the bridge delivery process.

**3.1.3.1.1.4** Shall analyze and rate traffic loading for both existing and new bridges.

**3.1.3.1.1.5** Shall leverage international design code specifications and rating methodologies for verification.

**3.1.3.1.1.6** Shall capture roadway geometry and topography. Shall include the ability to reuse data from GEOPAK, InRoads or equal, and import roadway information and ground data from LandXML files.

**3.1.3.1.1.7** Shall design and analyze superstructure and substructures. Shall use a synthesis of geometric modeling, substructure and superstructure analysis, and design in a single

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environment to benefit from a comprehensive bridge model.

**3.1.3.1.1.8** Shall generate bridge project deliverables. This includes the ability to generate detailed reports, create 3D models and 2D drawings for sections, elevations and framing plans.

**3.1.3.1.1.9** Shall be have the ability to sequence construction and phasing. This includes the investigating the different stages of construction – comparing results, detecting the relevant states and producing result envelopes for proof checking. Shall account for creep, shrinkage, and relaxation.

**3.1.3.1.1.10** Shall provide the ability to visualize bridge designs including 3D visualization of the bridge superstructure and substructure. Ability to visualize designs and verify modeling input as you work shall be provided. This includes view in-profile, elevation, and cross-section views with solid and transparent view options.

**3.1.3.1.2 LEAP Bridge Steel** or equal

**3.1.3.1.2.1** Shall provide parametric 3D modeling, analysis, design, and rating of straight and curved I-girder bridges.

**3.1.3.1.2.2** Shall include the ability to model, design, analyze and rate steel bridges, following international design standards (RM Bridge) and American Association of State Highway Transportation Official (AASHTO) Load and Resistance Factor Design (LRFD) standards specifications (LEAP Bridge Steel-or equal)

**3.1.3.1.3 LEAP CONSPAN** or equal

**3.1.3.1.3.1** Shall provide analysis, design and load rating functionality for precast/prestressed bridge beams.

**3.1.3.1.3.2** Shall be an integrated module with LEAP Bridge or equal.

**3.1.3.1.3.3** Shall have the ability to design and analyze concrete bridges of all types, including precast, cast-in-place, reinforced, and post-tensioned.

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3.1.3.1.3.4 Shall be able to manage data, model parametrically, and automate drawing production.

3.1.3.1.3.5 Shall be able to design and analyze spliced post-tensioned precast/prestressed bridge girders, cast-in-place (CIP) post-tensioned concrete slabs, and multi-span conventional prestressed/precast bridge girders with or without post-tensioning.

**3.1.3.1.4 LEAP RC-PIER or equal**

3.1.3.1.4.1 Shall provide an integrated tool for the AASHTO Standard and LRFD analysis and design for reinforced concrete bridge substructures and foundations.

3.1.3.1.4.2 Shall have the capability for the design of multi-column and hammerhead piers, straight, tapered or variable caps, and circular, rectangular (tapered and non-tapered) or drilled-shaft columns.

3.1.3.1.4.3 Shall include the following footing types: isolated or combined, supported on either soil or piles.

3.1.3.1.4.4 Analysis results shall be presented in a variety of easy-to-view formats.

3.1.3.1.4.5 Shall be an integrated module with LEAP Bridge or equal.

**3.1.3.2 CIVIL DESIGN AND ANALYSIS**

3.1.3.2.1.1 **InRoads and InRoads Suite** or equal

3.1.3.2.1.2 Shall provide the ability to create profiles and cross sections from any point within the design and be able to view updates on the fly as the design is modified with dynamic cross sections.

3.1.3.2.1.3 Shall have the ability to see the ground changing to reflect design edits. Include surface features, roadway components, and notations such as limits or stationing

3.1.3.2.1.4 Shall be able to combine engineering and graphical information system (GIS) data to create project base maps that combine analysis, visualization, and presentation.

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- 3.1.3.2.1.5 Shall use corridor modeling tools to streamline the complex development of every aspect of the roadway in a single, parametric presentation. This includes the ability to move along a corridor at controlled intervals, viewing and dynamically designing all roadway components together.
- 3.1.3.2.1.6 Shall include the ability to design and model tunnels. This includes being able to input and modify horizontal geometry, vertical geometry, and incorporate with your template to develop the 3D representation of your tunnel.
- 3.1.3.2.1.7 Shall be able to generate civil project deliverables. These include being able to generate consistent, paper and digital deliverables such as paper plots, reports, 2D/3D PDFs, and 3D physical models. This includes the ability to generate annotation, display styles, and reports by generating them directly from the embedded properties of objects.
- 3.1.3.2.1.8 Software shall provide design, volume, and cross-section data in XML industry-standard formats for data exchange.
- 3.1.3.2.1.9 Shall be able to incorporate topography and aerial imagery by importing imagery and topographic data from the United States Geological Survey (USGS) to view the design in a real-world setting.
- 3.1.3.2.1.10 Shall be able to drape imagery on triangulated irregular network (TIN) surfaces for quick 3D surface visualization.
- 3.1.3.2.1.11 Shall be able to model and analyze terrain by creating intelligent models that contain the terrain data, roadway and site features.
- 3.1.3.2.1.12 Shall have the ability to reuse common design layouts through the use of civil cells to enforce standards.
- 3.1.3.2.1.13 Shall have the ability to simulate vehicle path movement throughout the site design process. Shall provide a pre-populated library of vehicle templates and the ability to design custom templates. Files shall be

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exportable in DGN, DWG, Land XML and PDF formats.

3.1.3.2.1.14 Shall have the ability to visualize the designs using dynamic 3D modeling.

**3.1.3.2.2 OpenRoads Technology or equal**

3.1.3.2.2.1 Shall provide civil engineering 3D road design capabilities advancing through information modeling for multi-disciplinary roadway teams Building Information Modeling (BIM) objectives These include:

3.1.3.2.2.1.1 Dynamic building information modeling of roadway components with integrated corridor and site design.

3.1.3.2.2.1.2 Constraint-driven, 3D parametric modeling.

**3.1.3.2.2.2 OpenRoads ConceptStation – or equal**

3.1.3.2.2.2.1 Shall provide civil engineering 3D conceptual designs through data acquisition and reality modeling in the preliminary and planning design stages. Ability to generate 3D layouts, associated project costs to accelerate project delivery and easily share realistic visualizations to improve public engagements.

3.1.3.2.2.2.2 Shall be able to assemble context data rapidly from a variety of sources such as 3D reality meshes, terrain data, images and geospatial information.

3.1.3.2.2.2.3 Shall be able to generate multiple design scenarios with associated costs for decision making. This includes the ability to load your own historical bid tabulations.

3.1.3.2.2.2.4 Shall include drawing capabilities for roads, ramps, bridges, guardrails, street lights, etc. and the ability to ensure these adhere to industry standards.

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- 3.1.3.2.2.2.5 Shall have the ability to import data from our GIS environment to create intelligent 3D models for a given location.
- 3.1.3.2.2.2.6 Shall include a visualization engine that gives the ability to provide natural looking light and shadows, real-time global illumination, spotlights, lens flares and luminous materials, ability to adjust the time of day and apply depth of field.
- 3.1.3.2.2.2.7 Shall have the ability to transition the conceptual design to the detailed design phase using OpenRoads or equal, while maintaining geometric integrity.

### **3.1.3.3 CONSTRUCTION**

#### **3.1.3.3.1 Bentley Clash Resolution** or equal

3.1.3.3.1.1 Shall provide the ability to analyze the accuracy of 3D models, to ensure that all components are properly spaced for installation.

3.1.3.3.1.2 Shall provide capabilities to identify and resolve conflicts in the design phase before construction starts.

#### **3.1.3.3.2 Bentley Navigator** or equal

3.1.3.3.2.1 Shall provide the ability to view, analyze, and augment project information. This includes the ability to open i-models, native DGN/DWG files and point cloud files.

#### **3.1.3.3.3 Navigator Mobile** or equal

3.1.3.3.3.1 Shall provide the ability to navigate 3D engineering and construction models and documents on a mobile device.

#### **3.1.3.3.4 Navigator Mobile Publisher** or equal

3.1.3.3.4.1 Shall provide the ability to publish i-models that can be accessed with Navigator Mobile or equal; ProjectWise Explorer Mobile or equal; and mobile apps including Navigator or equal; and ProjectWise worksite apps or equal.

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**3.1.3.4 GEOSPATIAL**

**3.1.3.4.1 Bentley Map or equal**

3.1.3.4.1.1 Shall provide an engineering-accurate, 2D/3D desktop GIS application that provides infrastructure professionals with geospatial tools to create, maintain, analyze and share spatial information.

**3.1.3.4.2 Bentley Map Mobile or equal**

3.1.3.4.2.1 Shall provide a mobile application that allows viewing of Bentley Map projects or equal on a mobile device.

**3.1.3.5 GEOTECHNICAL**

**3.1.3.5.1 gINT Professional Plus or equal**

3.1.3.5.1.1 Shall provide core boring and well log data management and reporting including fence diagrams, graphs and tables.

3.1.3.5.1.2 Shall use MS SQL server multi-project database. This enterprise database shall provide for the centralization of multiple projects and include the ability to perform coordinate conversion between various coordinate systems.

3.1.3.5.1.3 Shall have the ability to create a variety of subsurface reports including borehole, well logs, fence diagrams, cross sections/profiles, site maps, graphs and tables. Report design tools shall include the ability for conditional formatting and data manipulation.

3.1.3.5.1.4 Shall have the ability to display data from various boring logs in a single report with 2D/3D fence diagrams. Fence diagrams shall have the ability to adjust to the presence or absence of data; extract surface data, covert to a grid and then display on fence diagrams; depict features in elevation on a fence report with graphics.

3.1.3.5.1.5 Shall have the ability to create geotechnical borehole log reports. Shall be able to use both provided reports and design new reports.

3.1.3.5.1.6 Shall provide the ability to plot basic wells and complex well lithology diagrams, lab and

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field tests, geological information and other data. Shall be able to create reports to display the specified column of data.

3.1.3.5.1.7 Shall be able to create multi-project reports from an unlimited number of projects.

3.1.3.5.1.8 Shall have the ability to import and export data from standard formats including Excel, CSV, Microsoft Access, AGS, and Land XML.

3.1.3.5.1.9 Shall provide subsurface data management tools for data acquisition, validation, queries, reporting and data sharing at a project level.

### 3.1.3.6 HYDRAULICS AND HYDROLOGY

#### 3.1.3.6.1 CulvertMaster or equal

3.1.3.6.1.1 Shall provide the capability to design new culverts and analyze existing culvert hydraulics.

3.1.3.6.1.2 Shall include a large range of design analysis from single-barrel crossing to complex embankment cross-drain systems, with different shapes and sizes, special tailwater considerations, and roadway overtopping considering watershed data, culvert characteristics and weir geometry.

3.1.3.6.1.3 Shall include a library of standard culvert shapes, materials and entrance conditions that can be used to compute culvert headwaters and tailwater elevations.

3.1.3.6.1.4 Shall use calculation methodologies outlined in Hydraulic Design Series Number 5 from the U.S. Federal Highways Administration.

3.1.3.6.1.5 Shall provide report and modeling tools that present detailed tables, reports, and rating curves to show the results of the hydraulic calculations performed.

3.1.3.6.1.6 Shall be Federal Emergency Management Agency (FEMA) approved.

#### 3.1.3.6.2 FlowMaster or equal

3.1.3.6.2.1 Shall provide a calculator for the design and analysis of hydraulic elements including but not limited to: pressure pipes, inlet and gutter

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hydraulics, open channel hydraulics, weir and orifice modeling.

3.1.3.6.2.2 Shall provide reports and modeling results using detailed tables and rating curves that show the results of the hydraulic calculations performed.

3.1.3.6.2.3 Shall be FEMA approved.

**3.1.3.6.3 PondPack or equal**

3.1.3.6.3.1 Shall provide the capability to model rainfall and runoff from urban and rural watersheds using external geospatial and engineering data.

3.1.3.6.3.2 Shall provide the capability to design detention and retention facilities, outlet structures, and channels

3.1.3.6.3.3 Shall provide a library of standard culvert shapes, materials, and entrance conditions.

3.1.3.6.3.4 Shall use calculation methodologies outlined in Hydraulic Design Series Number 5 from the U.S. Federal Highways Administration.

3.1.3.6.3.5 Shall be able to analyze pond and outlets using a wizard or software guide that includes a step by step process. Shall be able to set the maximum outflow rate, estimate storage, and check the outlet design and final design

3.1.3.6.3.6 Shall be able to model rainfall and runoff using software provided rainfall distributions or user defined rainfall events.

3.1.3.6.3.7 Shall be FEMA approved.

**3.1.3.6.4 StormCAD or equal**

3.1.3.6.4.1 Shall provide comprehensive modeling for the design and analysis of storm sewer systems.

3.1.3.6.4.2 Shall be able to allocate and estimate storm water loads using models with wet weather runoff flows that are derived from precipitation using built-in rainfall distributions or user-defined rainfall events.

3.1.3.6.4.3 Shall provide calculations for catchment runoff, gutters, inlets, junctions, pipe networks, and outfalls.

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- 3.1.3.6.4.4 Shall be able to calculate inlet capacities including the proportion of storm water runoff that will enter an inlet versus the proportion that will be carried downstream in a gutter or pond on the road surface. This includes the ability to confirm that the spread of flow in a gutter does not exceed design requirements.
- 3.1.3.6.4.5 Shall have the ability to import geospatial and engineering data to automate terrain extraction and node allocation.
- 3.1.3.6.4.6 Shall include a library of standard culvert shapes, materials and entrance conditions and then compute culvert headwater and tailwater elevations.
- 3.1.3.6.4.7 Shall use calculation methodologies outlined in Hydraulic Design Series Number 5 from the U.S. Federal Highways Administration.
- 3.1.3.6.4.8 Shall have the ability to design storm water systems. This includes utilizing data regarding existing design restrictions: velocities, slopes, cover depths, and pipe and inlet matching offsets. The system should recommend the most cost effective pipe sizes and invert elevations.
- 3.1.3.6.4.9 Shall be FEMA approved

**3.1.3.7 MODELING AND VISUALIZATION**

**3.1.3.7.1 Microstation or equal**

- 3.1.3.7.1.1 Shall provide a Computer Aided Design (CAD) platform for 2D and 3D CAD and information modeling of engineering and architectural projects, construction, and operation of utility systems, roads and rail, bridges, buildings, communications networks, water and wastewater networks, process plants, mining, and more.
- 3.1.3.7.1.2 Shall be able to process information from other disciplines and formats including point clouds DGN, DWG, DXF, SHP, 3DM, etc.
- 3.1.3.7.1.3 Shall be capable of reading, editing and using DGN file formats and interpreting

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WVDOTs existing CADD standards without conversion.

- 3.1.3.7.1.4 Shall have the ability to analyze and visualize models based on their geometry or attributes. This includes performing analysis of real-world solar exposure and shading and the ability to apply real-time display styles to visualize models based on each objects height, slope, aspect angle, and other embedded properties
- 3.1.3.7.1.5 Shall have the ability to automate common tasks. This includes tools to improve drawing accuracy such as intelligent interactive snapping and dynamic data entry. Shall have the ability to customize and group tools and tasks and cursor menus
- 3.1.3.7.1.6 Shall have the ability to control and protect files through utilizing a digital signature and the ability to control the rights to view, print, edit and copy file contents. This includes the ability to set a defined time limit for these actions.
- 3.1.3.7.1.7 Shall be able to produce both keyframe and time-base animations.
- 3.1.3.7.1.8 Shall include a library of physically correct materials, lighting and photorealistic content to create lifelike renderings. This includes the ability to speed up the process using distributed network rendering.
- 3.1.3.7.1.9 Shall include drafting tools to create 2D geometry. This shall include the ability to use persistent constraints to maintain the design intent
- 3.1.3.7.1.10 Shall include 3D design tools to build, edit curve, surface, mesh, feature, and solids models. Shall be able to build functional and parametric components with predefined variations to simplify managing and finding similar components
- 3.1.3.7.1.11 Shall have the ability to develop hyper models that present documentation and related design information within the spatial context of the 3D model. This

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- includes embedding of links to relate Microsoft Office documents and websites.
- 3.1.3.7.1.12 Shall have the ability to generate documentation such as paper plots, reports, 2D/3D pdfs, and 3D physical models.
- 3.1.3.7.1.13 Shall have the ability to integrate geospatial information from coordinate systems into our designs. This includes the ability to access data from OGC Web Map Servers, use real-time GPS data, and create and reference geospatial pdfs.
- 3.1.3.7.1.14 Shall be able to share and consume precise data in key industry formats such as Autodesk®, RealDWG™, IFC, Esri SHP, and more. Aggregate and assemble multiple file formats including PDF, U3D, 3DS, Rhino 3DM, IGES, Parasolid, ACIS SAT, CGM, STEP AP203/AP214, STL, OBJ, VRMLWorld, SketchUp SKP, and Collada.
- 3.1.3.7.1.15 Shall have the ability to incorporate referenced design content. This includes viewing and working with design information from others in real time using live referencing of 2D/3D DGN, DWG, and large image files, refreshed on demand. This includes the ability to natively reference PDF files into your designs.
- 3.1.3.7.1.16 Shall include the ability to integrate point-cloud data into the design environment. This includes the capacity to visualize, render and measure.
- 3.1.3.7.1.17 Shall have the ability to incorporate raster imagery of all types, including aerial and satellite imagery and scanned documents. This should include but not be limited to: Google Earth KML, CALS, BMP, TIF, GeoTIFF, JPG.
- 3.1.3.7.1.18 Shall have the ability to incorporate photo-textured 3D reality meshes to be used for the design and construction modeling.
- 3.1.3.7.1.19 Shall have the ability to maintain and enforce standards through the use of templates to control geometry and data standards such as styles for dimensions,

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text, lines, detail symbols, etc. Shall provide tools to check drawings for standard compliance

- 3.1.3.7.1.20 Shall provide the ability to track design changes. This includes view, plot, and selectively roll back any individual changes made throughout the history of the file
- 3.1.3.7.1.21 Shall have built in digital tools for markups. This includes the ability to review designs collaboratively with redlines, comments.
- 3.1.3.7.1.22 Shall have the ability to personalize a user's environment by the application of project required settings and standards.

### **3.1.3.8 PROJECT DELIVERY**

#### **3.1.3.8.1 ProjectWise Design Int. Server V8i edition or equal**

- 3.1.3.8.1.1 Shall provide an integrated Engineering Content Management (ECM) system that is used to store documents, calculations, drawings and photographs that are part of the WVDOTs engineering process.
- 3.1.3.8.1.2 Shall have the ability to interact with our engineering products through exchange of metadata, files and other information.
- 3.1.3.8.1.3 Shall provide for the secure sharing of documents and information.
- 3.1.3.8.1.4 Shall provide a collaborative project sharing environment where projects can be securely access by both internal (users on the WV state network) and external users.
- 3.1.3.8.1.5 Shall provide the capabilities for documents to inherit metadata which can then be used for searching and retrieval of files.
- 3.1.3.8.1.6 Shall provide an interface that has the ability to preview Microstation files and easily view project, file, and security access information.
- 3.1.3.8.1.7 Shall provide workflow capabilities that can route files to appropriate users at the defined stages.
- 3.1.3.8.1.8 Shall be integrated with Microsoft Office products for searching, retrieval and saving of documents.

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- 3.1.3.8.1.9 Microsoft Outlook shall have the ability to attach documents from ProjectWise or equal, to emails.
- 3.1.3.8.1.10 Shall be integrated with Bluebeam software or equal, for searching, retrieval and saving of documents
- 3.1.3.8.1.11 Shall be integrated with Bentley Microstation or equal. This shall include the retrieval and use of document metadata. This includes the extraction of title block data for the population of file attributes in ProjectWise or equal.
- 3.1.3.8.1.12 Shall have the capabilities to heal broken reference files for MicroStation or equal files that are copied/imported into ProjectWise or equal.
- 3.1.3.8.1.13 Shall have the ability to visually show reference file relationships.
- 3.1.3.8.1.14 Shall have the ability to use managed workspaces to ensure usage of WVDOT CAD standards for documents that are worked on in the ProjectWise or equal environment.
- 3.1.3.8.1.15 Shall have the ability to create a link to a document/folder in ProjectWise or equal. This link shall not be broken if the file is moved or renamed within the ECM system.
- 3.1.3.8.2 ProjectWise Geospatial Management** or equal
  - 3.1.3.8.2.1 Shall provide a geospatial component where documents can be searched and viewed on maps. Shall include tools for extracting geospatial data from Microstation files, survey data and digital photographs.
- 3.1.3.8.3 ProjectWise Caching Server** or equal
  - 3.1.3.8.3.1 Shall provide the ability for the decentralization of document storage to provide enhanced performance for WVDOT ProjectWise system or equal.
  - 3.1.3.8.3.2 Shall have the ability to utilize an unlimited number of caching servers in multiple locations.
- 3.1.3.8.4 ProjectWise Dynamic Plot Service** or equal

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- 3.1.3.8.4.1 Shall provide capabilities for the integration of paper markups for digital storing and presentation of engineering plans.
- 3.1.3.8.4.2 Shall provide the ability to create an intelligent link between paper plots and digital models, providing the ability to sync written comments and digital data.
- 3.1.3.8.5 ProjectWise Dynamic Plot Sync** or equal
  - 3.1.3.8.5.1 Shall provide a program that reads information from a digital markup pen and transfers it to the engineering plan (dgn) that is stored in ProjectWise or equal.
- 3.1.3.8.6 ProjectWise Explorer Client** or equal
  - 3.1.3.8.6.1 Shall provide a desktop client that has all the functionality of Windows Explorer with ProjectWise or equal, features added in.
- 3.1.3.8.7 ProjectWise Explorer Mobile** or equal
  - 3.1.3.8.7.1 Shall provide a client designed for users needing a mobile environment such as a tablet device.
- 3.1.3.8.8 ProjectWise InterPlot Organizer** or equal
  - 3.1.3.8.8.1 Shall provide the ability to publish compounds and linked documents to PDF to create a secure, compact, always readable format. This can be accomplished manually or as a batch scheduled process.
- 3.1.3.8.9 ProjectWise InterPlot Server** or equal
  - 3.1.3.8.9.1 Shall provide a utility to automate the production plotting and electronic archival process. Shall have the ability to batch process entire projects to electronic formats such as pdf.
- 3.1.3.8.10 ProjectWise Web Server** or equal
  - 3.1.3.8.10.1 Shall provide a web browser interface for ProjectWise or equal, users. This is useful for low-bandwidth locations and providing access to external users. Vendor shall provide a cost for external user licenses (ProjectWise passport or equal).
- 3.1.3.8.10.2 ProjectWise ARC GIS Connector** or equal
  - 3.1.3.8.10.2.1 Shall provide a user-initiated or event-driven interoperability with Environmental Systems Research Institute (ESRI) ArcSDE geodatabases. This includes the

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ability to extract, modify, and post information. Users shall be able to retrieve information from a geodatabase for viewing using the Connector. If the Connector is used in conjunction with Bentley Map or equal, users shall also have the ability to edit data.

**3.1.3.9 REALITY MODELING**

**3.1.3.9.1 Bentley Descartes for Microstation or equal**

3.1.3.9.1.1 Shall provide a toolset for integrating 3D imagery into information modeling workflows. Shall support the processing of fundamental data types including point clouds, scalable terrain models and raster files.

**3.1.3.9.2 Bentley Pointools or equal**

3.1.3.9.2.1 Shall provide software to support the viewing, animation, and editing of point clouds in stand-alone workflows. Shall enable the cleanup and preparation of point clouds to make them easier to reuse in other engineering applications. Users shall be able to streamline scan-to-model workflows by importing point clouds from all major scanner manufacturers.

**3.1.3.9.3 Bentley Pointools View or equal**

3.1.3.9.3.1 This gives users that do not have a full Bentley Pointools or equal, license the ability to view and provide feedback on a point-cloud model in process or review a final model. This shall include:

3.1.3.9.3.1.1 Ability to view and examine point-cloud datasets

3.1.3.9.3.1.2 Ability to measure distances between points

3.1.3.9.3.1.3 Ability to attach notes to points or models

3.1.3.9.3.1.4 Ability to produce orthographic and perspective images

**3.1.3.10 STRUCTURAL DESIGN AND ANALYSIS**

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**3.1.3.10.1 STAAD Foundation Advanced –or equal**

3.1.3.10.1.1 Shall include a foundation design program.

3.1.3.10.1.1.1 Shall be able to model complex or simple footings

3.1.3.10.1.1.2 Shall be able to model common foundations including isolated footings, combined footings, strip footings, pile caps, and mat foundations

3.1.3.10.1.1.3 Shall analyze steady state dynamic performance including large geometric models with multiple load cases.

3.1.3.10.1.1.4 Shall calculate and design concrete slab/column connections for punching shear, including the effects of unbalanced joint moments.

3.1.3.10.1.1.5 Shall comply with seismic requirements including, design and detail seismic force-resisting systems and generating seismic loads according to the relevant building code. Shall consider these forces in the design of elements and where applicable, the design of frames and the larger structural system. Shall enforce the ductility requirements of the selected design code in element proportioning and detailing.

3.1.3.10.1.1.6 Shall create finite element meshes and use element generation to decompose physical elements such as slabs, mats, or walls into series of plates or solids. Shall efficiently generate finite element geometry for complex objects with openings. Shall optimize finite element analysis by choosing various plate shapes based on analysis requirements.

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- 3.1.3.10.1.1.7 Shall design and analyze structural models This includes the ability to model the entire structure, including decks, slabs, slab edges and openings, beams, columns, walls, braces, spread and continuous footings, and pile caps. Shall automate design and analysis tasks and produce practical system and component designs.
- 3.1.3.10.1.1.8 Shall design foundations to US and International Standards.
- 3.1.3.10.1.1.9 Shall detail and schedule concrete rebar. This includes rebar lacing drawings, sections, plans, details, bar bending schedules, material take-offs and beam/column/footing schedules that are based on the 3D model.
- 3.1.3.10.1.1.10 Shall generate design loads and load combinations. Shall be able to apply code-prescribed wind and seismic loads to the structure using built-in load generators. Shall calculate relevant loading parameters automatically based on the structural geometry, mass, and selected building code provisions without the need for separate hand calculations. Shall combine lateral load cases with gravity and other types of loads using load combination generators. Shall model reinforced concrete shapes such as concrete beams, columns, slabs, walls, spread footings, and continuous footings, all with parametric behavior. Changes to the concrete shape shall cause the rebar to adjust automatically. Shall model complex reinforced concrete shapes, including curves, sloping, or non-orthogonal shapes using commands.

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- 3.1.3.10.1.1.11 Shall produce structural concrete details including rebar placing drawings, including sections, plans and details from the 3D model. Shall create details of reinforcing, including automated rebar labels, dimensions, and notes. This includes the ability to customize all drawings to adhere to WVDOT standards for all reinforced concrete projects. Shall automatically update drawings based on changes to the 3D model.
- 3.1.3.10.1.1.12 Shall generate structural design documents, including necessary plans and elevations that are used to convey the design intent. Changes made to the 3D model shall be automatically updated in the documentation.
- 3.1.3.10.1.1.13 Shall produce detailed 2D drawings directly from design results established in the structural model.

**3.1.3.11 BENTLEY LEARN TRAINING SUBSCRIPTION or equal**

- 3.1.3.11.1 Unlimited access to the Bentley LEARN Training subscription, or equal, shall be provided for all WVDOT users.
- 3.1.3.11.2 Standard LEARN Training Components shall include:
  - Distance Learning – Scheduled instructor-led distance learning classes delivered via the Internet on a space-available basis.
  - eLearning – Unlimited access to on demand eLearning, including interactive lessons and pre-recorded video clips that are designed to augment classroom time and foster retention. eLearning material is available at any time
- 3.1.3.11.3 Users shall have the ability to accumulate professional learning units from accrediting agencies. Shall be associated with industry professional associations that can provide the professional accreditation. Each individuals training shall be tracked including

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- Permanent transcript for each individual shall be available online and include accumulated Learning Units

**3.1.3.12 BENTLEY DEVELOPER NETWORK or equal**

**3.1.3.12.1** WVDOT shall have access to the SELECT Developer Program (a subscription level within the Bentley Developer Network) or equal. This shall include:

**3.1.3.12.1.1** Bentley Application Programming Interfaces (APIs) or equal. This shall include the routines, protocols and tools for integrating and customizing the software products bid in this RFQ.

**3.1.3.12.1.2** Bentley Software Development Kits (SDKs) or equal. This shall include a set of software development tools that allow the creation of modules/applications for the software products bid in this RFQ.

**3.1.3.12.1.3** Developer support must include a support group that shall provide interaction with the Bentley or equal, software developers and other users.

**3.1.3.12.1.4** WVDOT shall have access to support tools on the Bentley Developer or equal, web site.

**3.1.3.13 HELP DESK SUPPORT**

**3.1.3.13.1** All software products shall be supported by the Help Desk. Help desk shall be available 24 hours a day, seven days a week and 365 days a year.

**3.1.3.13.2** Communication methods for the help desk shall include:

- Online FAQs
- Tech Notes and answers to common queries
- Web Chat
- E-Mail
- 1-800 Telephone Support

**3.1.4 NON ENTERPRISE LICENSE SUBSCRIPTION (ELS) PRODUCTS**

**3.1.4.1 SUPERLOAD BRIDGE ANALYSIS SYSTEM – or equal**

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- 3.1.4.1.1** SUPERLOAD BRIDGE ANALYSIS SYSTEM or equal. Shall include the capability for live-load bridge analysis process for oversize/overweight routing and permitting.
  - 3.1.4.1.2** Shall include both hosting of system and leasing of software.
  - 3.1.4.1.3** Vendor shall be responsible for collecting the payment fee (which is determined by WVDOT) and on a monthly basis remit this fee to WVDOT.
  - 3.1.4.1.4** The following fees shall be collected and retained by the vendor as payment for the hosting/lease of the system and software. Amounts for evaluation purposes are listed in the cost sheet.
    - 3.1.4.1.4.1.1** Automation Fee
    - 3.1.4.1.4.1.2** Permit Amendment Fee
    - 3.1.4.1.4.1.3** Processing Fee
  - 3.1.4.1.5** System shall provide automation of permitting process and a management system for permit issuance. This shall include providing the capability for OS/OW (oversize/overweight) carriers to acquiring oversize/overweight permits online.
  - 3.1.4.1.6** System shall interface with the current restrictions and live bridge ratings to optimize the routing.
  - 3.1.4.1.7** System shall be able to produce historic data showing permit volumes for individual routes and bridges
  - 3.1.4.1.8** System shall be able to notify active permit holders about network changes that took place after permits are issued on a daily basis.
  - 3.1.4.1.9** System shall be able to remove self-issue capability for individual haulers as needed.
  - 3.1.4.1.10** System shall include technical support and software maintenance.
- 3.1.4.2 INSPECTTECH BRIDGE DATA MANAGEMENT SYSTEM or equal**
- 3.1.4.2.1** Shall include a Hosted Technical Support and Software Maintenance platform for The InspectTech Bridge Data Management Service or equal.
  - 3.1.4.2.2** Shall provide a system to manage and coordinate bridge inspections, maintenance requirements and bridge inspectors while collecting and managing inspection data.

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- 3.1.4.2.3 Shall include both a production and test environment for the software.
- 3.1.4.2.4 Shall meet Federal Highway Administration (FHWA) data requirements.
- 3.1.4.2.5 Shall have FHWA Sufficiency Rating, Structural Deficiency and Functional Obsolescence calculations built in.
- 3.1.4.2.6 Shall produce FHWA formatted yearly data submittal file.
- 3.1.4.2.7 Shall use web-based technology
- 3.1.4.2.8 Shall support a minimum of 500 users.
- 3.1.4.2.9 Shall have the capacity for storage of information and data for 7,500 bridges with a growth capacity of 10,000.
- 3.1.4.2.10 Shall have the capacity for the storage of information and data for up to 25,000 smaller pipe structures.
- 3.1.4.2.11 Shall have the capability to collect inspection data in the field using a client-server/tablet field application that runs disconnected or connected to the server.
- 3.1.4.2.12 Data entry screens shall be configurable for future needs.
- 3.1.4.2.13 Shall be able to store photographs, sketches, pdfs, Word, Excel and native engineering specific files.
- 3.1.4.2.14 Shall provide a GIS-based map to display the location of each asset.
- 3.1.4.2.15 Shall have the ability to schedule work orders.
- 3.1.4.2.16 Shall include a process for the creating, reviewing, updating and submitting of maintenance requests.
- 3.1.4.2.17 Shall be able to view, review and track the Inspection, maintenance and repair process of an asset.
- 3.1.4.2.18 Shall produce data error checks during the inspection report reviews.
- 3.1.4.2.19 Shall produce ad-hoc and standardized reports and provide query generation with ability for the user to save queries.
- 3.1.4.2.20 Shall provide historical data for analysis and reporting.
- 3.1.4.2.21 Shall have the ability to electronically comment and send the inspection report through DOTs state specific approval process with signatures from key

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personnel and final approval by DOTs central office.

**3.1.4.3 LARS BRIDGE SUITE (Bentley Bridge Load Rating and Analysis Solution) or equal**

**3.1.4.3.1** Shall include a system to be able to model and perform load-rating analysis on existing and planned bridges.

**3.1.4.3.2** Shall integrates with SUPERLOAD oversize/overweight routing and permitting software or equal system, and LEAP systems or equal.

**3.1.4.3.3** Shall conform to the current AASHTO Bridge Specifications for load resistance factor design, load factor design, allowable stress design.

**3.1.4.3.4** Shall be capable of analyzing superstructures and substructures using geometric modeling.

**3.1.4.3.5** Shall be able to analyze and rate traffic loading for new and existing bridges.

**3.1.4.3.6** Shall be able to load rate complex bridges.

**3.1.4.3.7** Shall be able to generate detailed resorts.

**3.1.4.3.8** Shall be able to create 3D models and 2D drawings for sections, elevations and framing plans.

**3.1.4.3.9** Shall be able to connect to AASHTO BRIDGEWare database directly or equal.

**3.1.4.4 PROJECTWISE CONNECT EDITION/PROJECTWISE DESIGN INTEGRATION PLATFORM or equal**

**3.1.4.4.1 ProjectWise Server** or equal, server based capabilities shall include the following:

**3.1.4.4.1.1** Design integration on-premises, cloud provisioned or a hybrid environment.

**3.1.4.4.1.2** Software for applications servers, web servers and publishing servers.

**3.1.4.4.1.3** File caching software with delta file transfer and point-cloud service.

**3.1.4.4.1.4** Distribution services that enable design work-sharing across distributed project teams and virtualizing talent across a variety of design tools including AutoCAD, Revit, Civil 3d and Bentley or equal,

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- design modeling and analysis modeling apps.
- 3.1.4.4.1.5 Geospatial indexing and management.
- 3.1.4.4.1.6 I-model composition server and automation services for validating, transforming, publishing and distributing native electronic files, pdf's and i-models.
- 3.1.4.4.2 ProjectWise Cloud Service** or equal, capabilities shall include the following:
  - 3.1.4.4.2.1 Instant-on access.
  - 3.1.4.4.2.2 **Bentley Cloud Services** or equal. This shall include a personal portal, project portal and enterprise portal.
  - 3.1.4.4.2.3 **ProjectWise Project Sharing** or equal. This shall provide the ability to configure and synchronize project documentation with other organizations.
  - 3.1.4.4.2.4 **ProjectWise Deliverables Management** or equal. This shall include closed loop contract communications with the ability to send, receive and manage transmittals, submittals and requests for information.
  - 3.1.4.4.2.5 **ProjectWise Project Performance Dashboards** or equal, shall provide visibility into project status with real-time, key performance indicators (KPIs), analytical views and trends to alert project professionals of project status as well as potential issues impacting project performance.
  - 3.1.4.4.2.6 **ProjectWise Issues Resolution** or equal, which can be used in the office or the field. This shall include the ability to: capture, redline, distribute, edit, review and close-out issues, punch lists and clashes from office, site or field.
  - 3.1.4.4.2.7 **ProjectWise Field Access and Data Collection** or equal, with mobile apps and forms. Field workers and mobile

REQUEST FOR QUOTATION  
**Bentley Software Licensing and Services for WVDOT Engineering Infrastructure**

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workforce shall be able to securely access project documentation for inspection and decision-making.

**3.1.4.4.3** Outside user passports and/or visa (both web and pw explorer based) shall be available for procurement on an as needed basis, should WVDOT choose to purchase these as needed for outside entities.

**3.1.5 Software Support**

**3.1.5.1** Support shall be provided in the form of telephone, Web content, chat capabilities and email.

**3.1.6 BENTLEY PROFESSIONAL CONSULTING AND IMPLEMENTATION SERVICES or equal – (This is an OPTION for WVDOT to utilize as needed for system implementation and consulting).**

**3.1.6.1** Experienced consultants, analysts, engineers and software developers shall be available to assist WVDOT with software installation/configuration/ customization. These are optional services at the State's discretion. NOT TO EXCEED CONTRACT COST OF \$750,000 for Services.

**3.1.6.1.1** All professional services personnel shall have a minimum of 2 years' experience working for Bentley or equal, for the product they are supporting.

**3.1.6.1.1.1** A Statement of Work (SOW) shall be developed that identifies the following:

**3.1.6.1.1.1.1** Tasks to be performed

**3.1.6.1.1.1.2** Deliverables

**3.1.6.1.1.1.3** Staff assigned, resumes and experience level. Staff shall have a minimum two years of experience working in the specific subject area they will be assigned to.

**3.1.6.1.1.1.4** Cost breakdown based on the rates quoted in this RFQ.

**3.1.6.1.1.1.5** WVDOT shall review and approve the SOW before commencing of any services.

**3.1.6.1.2** Areas of assistance include:

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Bentley Software Licensing and Services for WVDOT Engineering Infrastructure

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- 3.1.6.1.2.1 Development and delivery of customized courseware including company-wide training program development.
- 3.1.6.1.2.2 Assistance to help users maximize applications including enterprise configurations and advanced techniques education. Recommendations for improvement identified from a review of project workflow.
- 3.1.6.1.2.3 Development of customized user-specific functionality of base applications to address specific needs and integration with other business applications.
- 3.1.6.1.2.4 Project management, planning, execution, resource allocation, team coordination and communications to ensure a successful project completion.
- 3.1.6.1.2.5 Professional Services Labor Categories and rates shall be detailed. These are for work time only. If travel is incurred, actual expenses will be billed at the GSA reimbursement schedule for location to which the work was provided to WVDOT.
- 3.1.6.1.2.6 Quotes shall be given for the categories of:
  - Project Manager
  - Sr Consultant
  - Sr Technologist
  - Consultant
  - Technologist

#### 4. CONTRACT AWARD:

- 4.1 **Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.
- 4.2 **Pricing Pages:** Vendor should complete the Pricing Pages by filling out the yearly price for software licenses. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of

REQUEST FOR QUOTATION  
**Bentley Software Licensing and Services for WVDOT Engineering Infrastructure**

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anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: [misty.m.delong@wv.gov](mailto:misty.m.delong@wv.gov)

**5. ORDERING AND PAYMENT:**

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

**6. DELIVERY AND RETURN:**

- 6.1 Delivery Time:** Vendor shall deliver standard orders within 10 working days after orders are received. Vendor shall deliver emergency orders within 10 working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.2 Late Delivery:** The Agency placing the order under this Contract shall be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision shall first obtain approval of the Purchasing Division.

- 6.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.
- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable,

REQUEST FOR QUOTATION  
**Bentley Software Licensing and Services for WVDOT Engineering Infrastructure**

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the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7. VENDOR DEFAULT:**

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

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

REQUEST FOR QUOTATION  
**Bentley Software Licensing and Services for WVDOT Engineering Infrastructure**

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- 7.1.4 Failure to remedy deficient performance upon request.
- 7.1.5 The following remedies shall be available to Agency upon default.
- 7.1.6 Immediate cancellation of the Contract.
- 7.1.7 Immediate cancellation of one or more release orders issued under this Contract.
- 7.1.8 Any other remedies available in law or equity.

**8. MISCELLANEOUS:**

- 8.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 Vendor Supply:** Vendor shall carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 8.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 Contract Manager:** During its performance of this Contract, Vendor shall designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager shall be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

**Contract Manager:** Tom Gergel, Account Director  
**Telephone Number:** 610-458-3135  
**Fax Number:** 610-458-3181  
**Email Address:** tom.gergel@bentley.com

**Attachment A  
Enterprise License Subscription Fixed Program Pricing**

<b>Section A</b>							
	<b>If bidding an equal product list brand and product information below.</b>	<b>Year 1 Price</b>	<b>Year 2 Price</b>	<b>Year 3 Price</b>	<b>Year 4 Price</b>	<b>Year 5 Price</b>	<b>Extended Total</b>
<b>3.1.3 Enterprise License Subscription (ELS). Includes Bentley LEARN, Help Desk, Developer Network, or equal.</b>		\$237,905.00	\$245,042.00	\$252,393.00	\$259,965.00	\$267,764.00	\$ 1,263,069.00
<b>3.1.4.2 InspectTech Software Hosting/Lease (NOT covered in ELS), or equal</b>		\$50,500.00	\$58,000.00	\$63,000.00	\$63,000.00	\$68,000.00	\$ 302,500.00
<b>3.1.4.3 LARS Bridge Suite (No covered in ELS), or equal</b>		\$24,868.00	\$24,868.00	\$24,868.00	\$24,868.00	\$24,868.00	\$ 124,340.00
<b>3.1.4.4 ProjectWise Connect Edition (Not Covered in ELS), or equal</b>		\$121,613.00	\$125,261.00	\$129,019.00	\$132,890.00	\$136,877.00	\$ 645,660.00
<b>Section A Total Five year cost</b>							<b>\$2,335,569.00</b>

<b>Section B</b>				
	<b>If bidding an equal product list brand and product information below.</b>	<b>Unit Price</b>	<b>Estimate Quantity</b>	<b>Extended Total</b>
<b>3.1.4.4.3 Optional: ProjectWise Connect Edition Passport and/or Visa for external Users. (Specify Price per each unit.), or equal</b>		\$128.00	25	\$3,200.00
<b>Section B Total Cost</b>				<b>\$3,200.00</b>

**Section C**  
**3.1.4.1 SuperLoad Software Hosting/Lease (Not covered in ELS), or equal**

<b>Payment Fees are based on the permit fee which is determined by WVDOT. On a monthly basis, the vendor will collect this fee and remit it to WVDOT as described below.</b>	<b>Price</b>	<b>Estimated Quantities</b>	<b>Extended Price</b>
<b>Automation Fee</b> - Vendor will collect and retain this amount for the first 7,000 paid permits issued in a calendar month as part of the compensation for the service provided.	\$15.00	7,000	\$105,000.00
<b>Automation Fee</b> - Vendor will collect and retain this amount for each paid permit after the 7,000th issued in a calendar month as part of the compensation for the service provided.	\$9.00	3,000	\$27,000.00
<b>Permit Amendment Fee</b>	\$0.00	100	\$0.00
<b>Processing Fee</b> - Fee to be collected and retained by the vendor to cover the direct costs of credit card transactions and management of escrow accounts. This shall be charged as a <b>fixed rate percent</b> of the per permit per ton mile cost (currently 5% of the ton mile fee at WVDOT's current rates).	5%	\$274,023.96	\$13,701.20
<b>Section C Total Cost</b>			\$145,701.20

**Section D**  
**3.1.6 Professional Consulting and Implementation Services**

	<b>Hourly Rate for life of Contract</b>	<b>Estimated Hours</b>	<b>Extended Price</b>
<b>Project Manager</b>	\$273.76	10	\$ 2,737.60
<b>Senior Consultant</b>	\$270.38	200	\$ 2,703.80
<b>Senior Technician</b>	\$270.38	200	\$ 2,703.80
<b>Consultant</b>	\$209.54	100	\$ 2,095.40
<b>Technologist</b>	\$209.54	100	\$ 2,095.40
<b>Section D Total Cost</b>			\$12,336.00

<b>Bid Total (Total of Section A, B, C, &amp; D)</b>	\$2,496,806.20
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STATE OF WEST VIRGINIA  
Purchasing Division

# PURCHASING AFFIDAVIT

**MANDATE:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: Bentley Systems, Incorporated

Authorized Signature: [Signature] Date: December 14, 2016

State of Pennsylvania

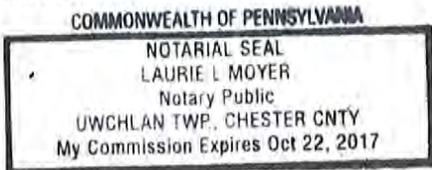
County of Chester, to-wit:

Taken, subscribed, and sworn to before me this 14<sup>th</sup> day of December, 2016.

My Commission expires October 22, 2017.

**AFFIX SEAL HERE**

**NOTARY PUBLIC** [Signature]



State of West Virginia  
**VENDOR PREFERENCE CERTIFICATE**

Certification and application is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

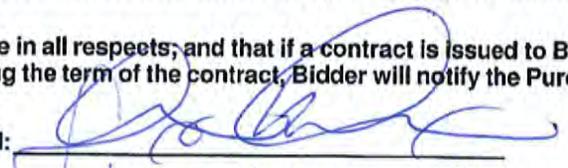
1.  **Application is made for 2.5% vendor preference for the reason checked:**  
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,  
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification;  
 Bidder is a resident vendor partnership, association, or corporation with at least eighty percent of ownership interest of bidder held by another entity that meets the applicable four year residency requirement; **or**,  
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,
2.  **Application is made for 2.5% vendor preference for the reason checked:**  
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
3.  **Application is made for 2.5% vendor preference for the reason checked:**  
 Bidder is a nonresident vendor that employs a minimum of one hundred state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and employs a minimum of one hundred state residents, and for purposes of producing or distributing the commodities or completing the project which is the subject of the bidder's bid and continuously over the entire term of the project, on average at least seventy-five percent of the bidder's employees or the bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid; **or**,
4.  **Application is made for 5% vendor preference for the reason checked:**  
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,
5.  **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**  
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,
6.  **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**  
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.
7.  **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.**  
 Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) rescind the contract or purchase order; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: Bentley Systems, Incorporated

Signed: 

Date: December 14, 2016

Title: LEGAL CONTRACT ADMINISTRATOR



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

State of West Virginia  
 Request for Quotation  
 21 - Info Technology

Proc Folder: 254001

Doc Description: Addendum 1 BENTLEY SOFTWARE MAINTENANCE AND SERVICES

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2016-12-13	2016-12-27 13:30:00	CRFQ 0803 DOT1700000041	2

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

Vendor Name, Address and Telephone Number:

Bentley Systems, Incorporated  
 685 Stockton Drive  
 Exton, PA 19341 Telephone: (610) 955-3125

**FOR INFORMATION CONTACT THE BUYER**

Misty DeLong  
 (304) 558-8802  
 misty.m.delong@wv.gov

Signature X

FEIN # 95-3936623

DATE December 20, 2016

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION:**

Addendum 1 -Attachment of vendor questions and responses

No other changes made.

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Transportation (WVDOT) to establish a one (1) year, open-end contract with four (4) one year renewals, not to exceed sixty (60) months in total, for software licenses, services and maintenance for the products, modules and upgrades that are a critical part of the WVDOT Engineering Infrastructure.

INVOICE TO	SHIP TO
DIVISION OF HIGHWAYS INFORMATION SERVICE DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A719 CHARLESTON WV25305-0430 US	DIVISION OF HIGHWAYS INFORMATION SERVICE DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A719 CHARLESTON WV 25305-0430 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	BENTLEY SOFTWARE MAINTENANCE AND SERVICES	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112200			

**Extended Description :**

OPEN END CONTRACT: TO PROVIDE BENTLEY SOFTWARE MAINTENANCE AND SERVICES

Pricing shall be completed on Exhibit A Pricing Page.

If submitting online vendor should enter their bid total from Exhibit A in the Oasis commodity line. This commodity line will not be evaluated. Vendor is responsible for attaching Exhibit A to online bids.

**SCHEDULE OF EVENTS**

Line	Event	Event Date
1	Technical Qesitons Due	2016-12-12

**SOLICITATION NUMBER:** CRFQ DOT1700000041

**Addendum Number: 1**

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The purpose of this addendum is to modify the solicitation identified as (“Solicitation”) to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- | Modify bid opening date and time
- | Modify specifications of product or service being sought
- | Attachment of vendor questions and responses
- | Attachment of pre-bid sign-in sheet
- | Correction of error
- | Other

**Description of Modification to Solicitation:**

1. Attachment of vendor questions and responses

No other changes made.

**Additional Documentation:** Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

# ATTACHMENT A

**CRFQ DOT1700000041**

**Technical Question**

**Question 1:** "Per the RFQ Bentley Systems would like to pose a vendor question. Bentley Systems previously had an agreed upon West Virginia Department of Transportation Amendment Number 1 to the SELECT program agreement with WVDOT. How would an amendment like this be handled under this RFQ Procurement? Could it be extended?"

**Answer 1:** *The vendor should submit any applicable terms and conditions, licensing and maintenance agreements with the bid response.*

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: DOT1700000041**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

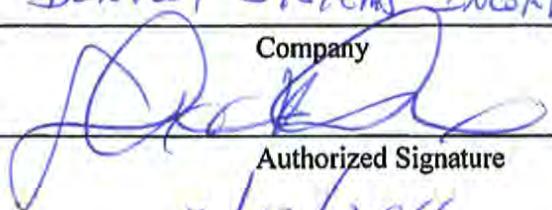
**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2            | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3            | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4            | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5            | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

BENTLEY SYSTEMS INCORPORATED  
Company  
  
Authorized Signature  
12/20/2016  
Date

**NOTE:** This addendum acknowledgment should be submitted with the bid to expedite document processing.  
Revised 6/8/2012

**State of West Virginia**  
**CRFQ 0803 DOT1700000041**  
**BENTLEY SOFTWARE MAINTENANCE AND SERVICES**

In accordance with Addendum No. 1, which contained Bentley's question and WVDOT's answer regarding contract terms and conditions, Bentley is proposing to deliver Products and Services under CRFQ 0803 DOT1700000041 ("CRFQ") within the same contract framework that has been previously agreed upon between WVDOT and Bentley.

Specifically, the Agreement for the prior Bentley Enterprise License Subscription ("ELS") for the performance period commencing April 1, 2012 was performed under WV Purchase Order Number 631200046, dated (/17/2012 and which incorporated the General Terms and Conditions, the then current Bentley SELECT Program Agreement ("SELECT Agreement"), the SELECT Program Amendment (containing agreed upon modifications to the SELECT Agreement as well as other contract documents), other Bentley documents related to the ELS, and WV Appendix A WV-96A). (Please see enclosed WV Purchase Order Number 631200046 for reference).

For CRFQ 0803 DOT1700000041, Bentley is proposing the same contract format. Bentley is submitting the enclosed current version of the SELECT Agreement, the SELECT Amendment, (which is exactly the same as the previously agreed upon SELECT Amendment), the SELECT Exhibits related to the ELS, and the WV Appendix A WV-96A, (collectively the "SELECT Document Package"), which upon acceptance by WVDOT, to be incorporated into the new Purchase Order, along with the General Terms and Conditions to comprise the Final Agreement for the subject CRFQ.

Please see enclosed SELECT Document Package for WVDOT review.

**Attachment A  
Enterprise License Subscription Fixed Program Pricing**

<b>Section A</b>							
	<b>If bidding an equal product list brand and product information below.</b>	<b>Year 1 Price</b>	<b>Year 2 Price</b>	<b>Year 3 Price</b>	<b>Year 4 Price</b>	<b>Year 5 Price</b>	<b>Extended Total</b>
<b>3.1.3 Enterprise License Subscription (ELS). Includes Bentley LEARN, Help Desk, Developer Network, or equal.</b>		\$ 237,905.00	\$ 245,042.00	\$ 252,393.00	\$ 259,965.00	\$ 267,764.00	\$ 1,263,069.00
<b>3.1.4.2 InspectTech Software Hosting/Lease (NOT covered in ELS), or equal</b>		\$ 50,500.00	\$ 58,000.00	\$ 63,000.00	\$ 63,000.00	\$ 68,000.00	\$ 302,500.00
<b>3.1.4.3 LARS Bridge Suite (No covered in ELS), or equal</b>		\$ 24,868.00	\$ 24,868.00	\$ 24,868.00	\$ 24,868.00	\$ 24,868.00	\$ 124,340.00
<b>3.1.4.4 ProjectWise Connect Edition (Not Covered in ELS), or equal</b>		\$ 121,613.00	\$ 125,261.00	\$ 129,019.00	\$ 132,890.00	\$ 136,877.00	\$ 645,660.00
<b>Section A Total Five year cost</b>							\$2,335,569.00

<b>Section B</b>				
	<b>If bidding an equal product list brand and product information below.</b>	<b>Unit Price</b>	<b>Estimate Quantity</b>	<b>Extended Total</b>
<b>3.1.4.4.3 Optional: ProjectWise Connect Edition Passport and/or Visa for external Users. (Specify Price per each unit.), or equal</b>		\$128.00	25	\$3,200.00
<b>Section B Total Cost</b>				\$3,200.00

<b>Section C</b>			
<b>3.1.4.1 SuperLoad Software Hosting/Lease (Not covered in ELS), or equal</b>			
<b>Payment Fees are based on the permit fee which is determined by WVDOT. On a monthly basis, the vendor will collect this fee and remit it to WVDOT as described below.</b>	<b>Price</b>	<b>Estimated Quantities</b>	<b>Extended Price</b>
<b>Automation Fee</b> - Vendor will collect and retain this amount for the first 7,000 paid permits issued in a calendar month as part of the compensation for the service provided.	\$15.00	7,000	\$105,000.00
<b>Automation Fee</b> - Vendor will collect and retain this amount for each paid permit after the 7,000th issued in a calendar month as part of the compensation for the service provided.	\$9.00	3,000	\$27,000.00
<b>Permit Amendment Fee</b>	\$0.00	100	\$0.00
<b>Processing Fee</b> - Fee to be collected and retained by the vendor to cover the direct costs of credit card transactions and management of escrow accounts. This shall be charged as a <b>fixed rate percent</b> of the per permit per ton mile cost (currently 5% of the ton mile fee at WVDOT's current rates).	5%	\$274,023.96	\$13,701.20
<b>Section C Total Cost</b>			\$145,701.20

<b>Section D</b>			
<b>3.1.6 Professional Consulting and Implementation Services</b>			
	<b>Hourly Rate for life of Contract</b>	<b>Estimated Hours</b>	<b>Extended Price</b>
<b>Project Manager</b>	\$ 273.76	10	\$ 2,737.60
<b>Senior Consultant</b>	\$ 270.38	200	\$ 2,703.80
<b>Senior Technician</b>	\$ 270.38	200	\$ 2,703.80
<b>Consultant</b>	\$ 209.54	100	\$ 2,095.40
<b>Technologist</b>	\$ 209.54	100	\$ 2,095.40
<b>Section D Total Cost</b>			\$12,336.00

<b>Bid Total (Total of Section A, B, C, &amp; D)</b>	\$2,496,806.20
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State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Purchase Order

PURCHASE ORDER NO.  
 631200046

PAGE  
 1

BLANKET RELEASE  
 00

CHANGE ORDER

CORRECT PURCHASE ORDER NUMBER  
 MUST APPEAR ON ALL PACKAGES,  
 INVOICES, AND SHIPPING PAPERS.  
 QUESTIONS CONCERNING THIS PUR-  
 CHASE ORDER SHOULD BE DIRECTED  
 TO THE BUYER AS NOTED BELOW.

OFFICE

DIVISION OF HIGHWAYS  
 FINANCE DIVISION  
 BUILDING 5, ROOM A220  
 1900 KANAWHA BOULEVARD EAST  
 CHARLESTON, WV  
 25305-0430

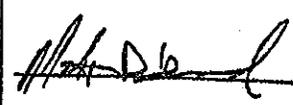
## AGENCY COPY

ADDRESS

\*106130129 610-458-5000  
 BENTLEY SYSTEMS INC  
 685 STOCKTON DR  
 EXTON PA 19341

SHIP TO

DIVISION OF HIGHWAYS  
 CHIEF OF INFORMATION SYSTEMS  
 BUILDING 5  
 1900 KANAWHA BOULEVARD, EAST  
 CHARLESTON, WV  
 25305-0430 304-558-0408

DATE PRINTED	TERMS OF SALE	FEIN/SSN	FUND
09/17/2012	NET 30	953936623	
SHIP VIA	FOB	FREIGHT TERMS	ACCOUNT NUMBER
BEST WAY	DESTINATION	PREPAID	MUL.-MUL.
LINE	QUANTITY	UCP	VENDOR ITEM NO
DELIVERY DATE	CAT. NO.	ITEM NUMBER	UNIT PRICE
0001	09/14/2015		099-00-01-001
	ENTERPRISE LICENSE		SUBSCRIPTION
DIRECT PURCHASE ORDER			
<p>THE VENDOR, BENTLEY SYSTEMS INC., AGREES TO ENTER INTO AN OPEN-END CONTRACT WITH THE AGENCY, THE WEST VIRGINIA DIVISION OF HIGHWAYS TO PROVIDE THE AGENCY WITH ENTERPRISE LICENSE SUBSCRIPTION FOR A THREE YEAR CONTRACT PER THE SPECIFICATIONS, AND TERMS &amp; CONDITIONS INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF HEREOF.</p>			
			PURCHASING DIVISION CERTIFIED ENCUMBERED  OCT 19 2012  

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE  *10/16/12*

**APPROVED FOR ONE FISCAL YEAR**  
*Daime Wayfield*  
 APPROVED AS TO FORM BY  
 ASSISTANT ATTORNEY GENERAL

BY *Kristen S. Turrell*  
 PURCHASING DIVISION AUTHORIZED SIGNATURE

OPEN END  
 TOTAL

**GENERAL TERMS AND CONDITIONS:**

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.
  
2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
  - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.
  
  - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.
  
  - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.
  
  - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.
  
  - 2.5 **"Purchase Order"** 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 successful bidder and Contract holder.
  
  - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.
  
  - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
  
  - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

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

**Term Contract**

**Initial Contract Term:** This Contract becomes effective on   
  
 and extends for a period of  year(s).

**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 must be submitted to the Purchasing Division Director 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. Renewal of this Contract is limited to  successive one (1) year periods. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

**Reasonable Time Extension:** At the sole discretion of the Purchasing Division Director, and with approval from the Attorney General's office (Attorney General approval is as to form only), this Contract may be extended for a reasonable time after the initial Contract term or after any renewal term as may be necessary to obtain a new contract or renew this Contract. Any reasonable time extension shall not exceed twelve (12) months. Vendor may avoid a reasonable time extension by providing the Purchasing Division Director with written notice of Vendor's desire to terminate this Contract 30 days prior to the expiration of the then current term. During any reasonable time extension period, the Vendor may terminate this Contract for any reason upon giving the Purchasing Division Director 30 days written notice. Automatic extension of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases, but Attorney General approval may be required.

- Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within  days.
- One Time Purchase:** The term of this Contract shall run for one year from the date the Purchase Order is issued or from the date the Purchase Order is issued until all of the goods contracted for have been delivered, whichever is shorter.
- Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.
- Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.
  - Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
  - Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
  - One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.
6. **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.
7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.
- BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

| | **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of [ ]. The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

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

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

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

| | **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.

| | **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award:

| | **Commercial General Liability Insurance:**  
[ ] or more.

| | **Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.


The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

- LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

[	
[	
[	
[	

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

- 9. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.
- 10. ALTERNATES:** Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or

other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount

n/a	for n/a

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.

**13. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

**14. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee if applicable.

**15. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**16. 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.

**17. PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."

**18. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**19. DELIVERY:** All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.

**20. INTEREST:** Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

**21. PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's

failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

- 22. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 23. 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.
- 24. 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 cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
- 25. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.
- 26. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 27. 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.
- 28. COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.
- 29. PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage

requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

- 30. 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.
- 31. 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). **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.**
- 32. 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.
- 33. 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.
- 34. 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. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
- 35. 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.
- 36. 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.
- 37. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

- 38. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at <http://www.state.wv.us/admin/purchase/vrc/hipaa.html> and is hereby made part of the agreement provided that the Agency meets the definition of a Covered entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the Vendor.
- 39. **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>.
- 40. **DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 41. **LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, 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. 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.

- 42. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order 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.
- 43. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

- 44. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

| Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

- 45. 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.

- 46. 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.
- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any 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.
- 50. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:
- Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

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

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

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

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

**52. 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.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

- a. 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

- b. 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.

**53. 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.

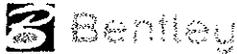
This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single 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.

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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.

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 and B 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 in Section 5 of Exhibit A to this Agreement, and all Product licenses hereunder are subject to the termination provisions applicable to such licenses in Section 5 of 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

BENTLEY SYSTEMS, INCORPORATED

West Virginia DOT  
Company Name

Keith E. Chapman  
Signature

KEITH E. CHAPMAN  
Printed Name

WV DOT BUSINESS MANAGER  
Title

E-mail Address

Address: WV DOT - 1900 Kanawha Blvd. E  
CHARLESTON, WV 25305

Telephone: (304) 558-2811

Date Signed: 4/3/12

[Signature]  
Signature

Antonio Ierardo  
Printed Name

Vice President  
Title

685 Stockton Drive  
Exton, Pennsylvania 19341

Telephone: 610-458-5000

Date Signed: March 22, 2012

# BENTLEY SELECT PROGRAM AGREEMENT

## SELECT Program Benefits

### Exhibit A

Dated as of January 2010

#### I. General.

Subscriber agrees to purchase SELECT Program coverage for all Bentley Products licensed and CALs acquired 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, CALs and services (however, not to include professional 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 Document Set 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.

3.03. 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.

3.04. 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. SELECT Online.

Subscriber shall receive access to SELECT Online as set forth below and in more detail in the applicable online agreement found at [www.bentley.com](http://www.bentley.com) (the "Online Agreement"):

4.01. Bentley may, from time to time, offer certain services, including, but not limited to, training services, to its SELECT subscribers on a computer online service, electronic bulletin board, Internet site or through technology developed in the future ("SELECT Online"). Subscriber shall use SELECT Online only in accordance with and subject to this Agreement, the terms provided herein and as supplemented from time to time in the Online Agreement that is a condition precedent to use of SELECT Online. The Online Agreement supplements this Agreement but does not supersede it in any respect. In the event of a conflict between the Online Agreement and this Agreement, 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 SELECT Online. Bentley specifically reserves the right at any time to modify the information provided through SELECT Online, discontinue any portion of SELECT Online, or terminate the SELECT Online service altogether without providing Subscriber any prior notice.

4.03. Absent a written agreement with Bentley to the contrary, Subscriber's use of SELECT Online constitutes Subscriber agreement to be bound by the terms of the Online Agreement.

#### 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 acquires or licenses a copy of a Product, Subscriber's use of such Product shall be governed by the terms of the license agreement

# BENTLEY SELECT PROGRAM AGREEMENT

## SELECT Program Benefits

### Exhibit A

Dated as of January 2010

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 purchase. 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. If Subscriber licenses additional copies of a Product that is already licensed by Subscriber, such additional licenses may be authorized through delivery of a new License Key and without delivery or download of any additional Product. In such instances, Subscriber agrees that the license agreement terms contained or cross-referenced in the License Key shall govern Subscriber's use of such Product. 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 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 CALs or 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 CALs and licensed Products under the SELECT Program and be bound by the terms of the license agreement then in effect for such CAL or Product.
- (d) **No Commercial Hosting.** Products are licensed for Production Use only. Products may not be used to provide commercial hosting services or as the basis for fee or transaction based services.

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 SELECT Online to see which Products are eligible for the respective licensing programs (absent a specific designation of eligibility, a Product is ineligible for any such program). 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.** If a Product is designated as eligible on SELECT Online, then Bentley hereby grants to Subscriber a limited non-transferable non-exclusive right to use such Product for Production Use only on multi-user computer networks, and to install a licensed Product on more than one computer or hard disk, provided that all users under this arrangement are at the same Site and the number of users that Use a Product during any one interval does not exceed the number of copies of such Product for which Subscriber has licenses at such Site. Any

Subscriber using pooled licensing hereby agrees to 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 Bentley's SELECTserver will from time to time transmit to Bentley the usage log files generated by SELECTserver or such other Bentley licensing technology. Subscriber agrees to allow the above transmission to Bentley or otherwise to transmit to Bentley true and accurate copies of such usage log files. 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. The pooled licensing benefits set forth in this Section 5.02(a) of Exhibit A are not applicable to Server Products, Client Software and associated CALs.

(b) **No-Charge Licenses.**

- (1) If a Product is designated as eligible on SELECT Online, 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 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.
- (2) For each of Subscriber's licenses of a Product designated by Bentley as eligible on SELECT Online, Subscriber may at no charge receive a single CAL allowing one additional User (which User may, under the terms of Section 5.02(f) of Exhibit A, be an External User) of that designated Product to install and use Client Software to access any properly licensed Server Products, for Production Use, and in accordance with Section 5.02(f) of Exhibit A. Such CALs granted hereunder will expire upon termination of this Agreement.

- (c) **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 SELECT Online) 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

## BENTLEY SELECT PROGRAM AGREEMENT

## SELECT Program Benefits

## Exhibit A

Dated as of January 2010

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.

- (d) **Evaluation of Products.** If a Product is designated as eligible on SELECT Online, Bentley hereby grants to Subscriber, subject to its compliance with the procedures of this Section 5.02(d) of Exhibit A, a limited non-transferable non-exclusive right to create, using SELECT Online (following the registration requirements set forth on SELECT Online), one (1) copy per Site of each Product contained on SELECT Online 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.
- (e) **Subscription Licensing.**
- (1) Subscriber may, upon Bentley's approval, license certain Products, or acquire CALs, for a specified term (a "Subscription License"). A Subscription License may entitle Subscriber to license rights in a single Product (a "Product Subscription") or a specified portfolio of Products (a "Portfolio Subscription") for Production Use, in Object Code form and within the Country. Each Portfolio Subscription is licensed for use on a single computer at one time, and its component parts or individual Product elements, if any, may not be separated for use on more than one computer. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.
- (2) The license term for a Product Subscription or Portfolio Subscription shall commence upon Subscriber's receipt of the License Key and, unless earlier terminated, shall continue for the remaining current term of the Agreement or such shorter term (not less than one (1) month) as Subscriber may elect at the time the purchase order is delivered and reflected in the License Key (the "License Term"). The License Term (and each successive term) shall automatically renew at its expiration for a successive term equal to the then remaining term of the Agreement, or such shorter term (not less than one month) as a Subscriber may elect at the time of such renewal, unless either party gives notice of its election not to renew the License Term at least thirty (30) days prior to the expiration of the then current term. The License Term for a particular Product Subscription or Portfolio Subscription shall terminate upon termination of the Agreement or in the event of non-renewal at the end of the then current License Term as provided in the preceding sentence.
- (3) The fees in effect as of the date a Subscription License for a CAL, Product Subscription or Portfolio Subscription is initiated or renewed hereunder shall remain in effect for such CAL, Product or Portfolio Subscription until the expiration or renewal date of the License Term for such CAL, Product or Portfolio Subscription. On the renewal date, the prices in effect on such date shall be applicable.
- (4) During the License Term, and any renewal term, all Subscription Licenses for CALs, Product Subscriptions and Portfolio Subscriptions shall entitle Subscriber to all SELECT Program services that the same CALs or Products under a perpetual license would entitle Subscriber to receive.
- (5) Subscriber recognizes that the CALs, Products and Portfolios acquired or licensed under a Subscription License are provided to Subscriber for use only for the applicable License 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 CAL Subscriptions, Product Subscriptions and Portfolio Subscriptions 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.
- (6) In the event of any inconsistency between this Section 5.02(e) of Exhibit A and any other Section or Exhibit of this Agreement, or between this Section 5.02(e) of Exhibit A and the terms and conditions in the license agreement provided with any Product or CAL that is the subject of a Subscription License, this Section 5.02(e) of Exhibit A shall control with respect to Subscription Licenses.
- (f) **Client Software Benefits.** "Client Access License" or "CAL" is a license right to install and use Client Software and permit a User to access Server Products licensed by Subscriber. If Client Software is designated as eligible on SELECT Online, Subscriber may, up to the total number of CALs licensed by Subscriber, for Production Use only: (1) install and use Client Software; (2) permit Users, including External Users, to access Server Products licensed by Subscriber; and (3) access Server Products licensed by an External User, and the total number of CALs counted as used hereunder shall be the number of unique Users, which number shall include External Users, recorded in the usage log files transmitted pursuant to this Section 5.02(f), during the term of this Agreement. The parties acknowledge and agree that an External User may be permitted to access Server Products licensed by Subscriber using a CAL owned by that External User. Subscriber agrees to transmit to Bentley, upon Bentley's request, true and accurate copies of the usage log files generated by Server Products or such other Bentley licensing technology as may be required by Bentley from time to time, and information identifying any External User that has accessed Server Products licensed by Subscriber. Upon expiration or earlier termination of this Agreement, the terms of the license agreement provided with the Client Software and the CAL shall thereafter govern the use of such Client Software and the associated CAL, and Subscriber shall no longer be entitled to the Client Software Benefits as set forth in this Section.
- (g) **SELECTserver.** Subscriber may, upon Bentley's approval, and at no charge, 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. Subscriber acknowledges that SELECTserver (or such other server-based license management technology that Bentley may offer) may be delivered to Subscriber with embedded Time Clocks. Subscriber agrees that Time Clocks are not considered a defect of the Product and releases Bentley from any and all claims, however characterized, arising from or related to Time Clocks or their operation. Subscriber may not

**BENTLEY SELECT PROGRAM AGREEMENT**  
**SELECT Program Benefits**  
**Exhibit A**  
**Dated as of January 2010**

remove or evade Time Clocks. Subscriber agrees and acknowledges that Bentley's SELECTserver will from time to time transmit to Bentley the usage log files generated by SELECTserver or such other Bentley licensing technology. Subscriber agrees to allow the above transmission to Bentley or otherwise to transmit to Bentley true and accurate copies of such usage log files.

**6. SELECT Program Fees**

- 6.01. Subscriber shall pay to Bentley the applicable SELECT Program Fee in effect for each Product licensed or CAL acquired 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 or CAL acquired during the term hereof as of the date such additional Product license or CAL is purchased. With respect to the Products licensed or CALs acquired by Subscriber during the term of the Agreement, the fees in place as of the Effective Date, or, with respect to additional Products licensed or CALs acquired, 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 or CALs covered shall be effective until thirty (30) days after Subscriber receives notice of such changes. Subscription License fees as set forth in Section 5.02(e) of this Exhibit A are inclusive of SELECT Program coverage and no additional fees for SELECT Program coverage shall apply for Products licensed or CALs acquired under a Subscription License.
- 6.02. Bentley shall initially invoice Subscriber for one (1) year of SELECT Program Fees for all Product licenses and CALs as of the Effective Date of this Agreement. Bentley shall provide Subscriber with a prorated annual invoice for all Product licenses and CALs 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 and CALs shall be issued quarterly or annually. Invoices reflecting new Product licenses or CALs will include a prorated amount reflecting coverage of the Product or CAL 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.
- 6.03. Calculation and payment of the SELECT Program Fee hereunder shall be based on the local price and local currency of the Subscriber's Site where the related Products or CALs are used.

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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 distributed by Bentley through delivery mechanisms determined in Bentley's sole discretion (including but not limited to distribution via SELECT Online 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. "CAL" shall be defined as set forth in Exhibit A, Section 5.02(f) herein.
- 1.04. "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.
- 1.05. "Client Software" means software that allows a Device to access or utilize (or where applicable, be managed by) Server Products (and, also where applicable, to utilize certain aspects of the Products when disconnected from the Server).
- 1.06. "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.
- 1.07. "Definition of Use" shall have the meaning set forth in each License Key.
- 1.08. "Device" means a single personal computer, workstation, terminal, hand held computer, pager, telephone, personal digital assistant, Server, or other electronic device.
- 1.09. "Distribute" means distribution by Bentley through all means now known or hereinafter developed.
- 1.10. "Document Set" means, with respect to a Product, one copy of one or more user guides developed for use with such Product in electronic format or such other format as elected by Bentley in its sole discretion.
- 1.11. "Effective Date" means the date that this Agreement is accepted by Bentley as indicated on the first page of this Agreement.
- 1.12. "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.
- 1.13. "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.
- 1.14. "License Key" means the document furnished by Bentley in electronic or such other format as determined in Bentley's sole discretion, to Subscriber identifying the Product licensed and authorizing use of a Product.
- 1.15. "License Term" shall be defined as set forth in Exhibit A, Section 5.02(e)(2) herein.
- 1.16. "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.
- 1.17. "Online Agreement" shall be defined as set forth in Exhibit A, Section 4 herein.
- 1.18. "Order" shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.19. "Pre-Existing Works" shall be defined as set forth in Exhibit C, Section 1.08 herein.
- 1.20. "Platform Exchange" shall be defined as set forth in Exhibit A, Section 3.01 herein.
- 1.21. "Portfolio Subscription" shall be defined as set forth in Exhibit A, Section 5.02(e)(1) herein.
- 1.22. "Product Subscription" shall be defined as set forth in Exhibit A, Section 5.02(e)(1) herein.
- 1.23. "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 CALs and access of Server Products pursuant to Exhibit A, Section 5.02(f) herein) and Service Bureau Use.
- 1.24. "Proprietary Information" shall be defined as set forth in Exhibit B, Section 3.06(a) herein.
- 1.25. "SELECT Online" shall be defined as set forth in Exhibit A, Section 4.01 herein.
- 1.26. "SELECT Program Fee" means the fee for SELECT Program services as set forth from time to time in Bentley's sole discretion.
- 1.27. "SELECTserver" means Bentley's server-based licensing technology.
- 1.28. "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.
- 1.29. "Server" means one of Subscriber's computers that can run a Server Product.
- 1.30. "Server Product" means a Product that provides services or functionality to Subscriber's Server(s).
- 1.31. "Service Bureau Use" includes managing, hosting, distributing or otherwise providing access to Products across a wide area network.
- 1.32. "Site" means all of the discrete geographic locations at which Subscriber Uses or manages the operation of Products within the geographic boundaries of a single Country.
- 1.33. "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 on assignment at Subscriber's place of business or work-site.

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- 1.34. "Subscription License" shall be defined as set forth in Exhibit A, Section 5.02(e)(1) herein.
- 1.35. "Subscription Licensing" means acquisition of a CAL or licensing of a Product or portfolio of Products as set forth in Section 5.02(e) of Exhibit A of this Agreement.
- 1.36. "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.
- 1.37. "Time Clocks" means copy-protection mechanisms, or other security devices which may deactivate Products or CALs, including Bentley's SELECTserver, after termination or expiration of the Agreement, any applicable License Term or any applicable renewal term.
- 1.38. "Update" means a maintenance release of a Product.
- 1.39. "Upgrade" means a commercial release of a Product which has substantial added functionality over the Product it is intended to replace.
- 1.40. "Use" (whether or not capitalized) means utilization of the Product or CAL by an individual or when a Product has been loaded into temporary memory (i.e. RAM) or installed into permanent memory (e.g. hard disk, CD-ROM, or other storage device) of a computer.
- 1.41. "User" means an individual person.
- 1.42. "Work" shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.43. "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 CALs, 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 CALs, Products and services hereunder shall be based on the local price and local currency of the Subscriber's Site where such CAL, Product or service is used.
- 2.04. **Records; Audit.** Subscriber shall maintain complete and accurate records of CALs and Product licenses prior to the date of this Agreement and its creation and use of the CALs acquired and 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 CALs or 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.
3. **Intellectual Property Rights**
- 3.01. **Title; Reservation of Rights.** Subscriber acknowledges and agrees that:
- (a) The Products, including the Document Sets for each Product, and any information which Subscriber obtains through the SELECT Program or the use of SELECT Online 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 Document Sets, any information Subscriber obtains through the SELECT Program or the use of SELECT Online 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. **Reproduction of Document Sets.** Subscriber may reproduce the Document Sets for its internal, non-commercial use only, but the cumulative number of such reproduced Document Sets may not exceed the number of Products licensed by Subscriber that correspond to the Document Sets.
- 3.05. **Reverse Engineering.** Subscriber may not decode, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Products or Document Sets 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 CALs, 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

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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.
- (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(b), Section 5.02(c) or Section 5.02(d) 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 Document Set 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 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 Document Set through a procedure different from that set forth in the Document Set, 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 Document Sets 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 Document Sets, or (b) Bentley advised Subscriber how to operate the Products so as to achieve the functionality described in the Document Sets.

4.04. **Exclusion of Damages.** IN NO EVENT SHALL BENTLEY AND 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.

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- 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.** 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 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. 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. 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. In no event shall Bentley's liability hereunder to Subscriber exceed the license fees paid by Subscriber for the allegedly infringing 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 (unless Attachment 1 provides for a longer duration of the initial term), 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 and the Definition of Use shall govern Subscriber's use of such Products. Subscriber shall immediately discontinue use of SELECT Online.
- 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.

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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 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 6.01 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.

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**Dated as of January 2010**

- 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, including those that Subscriber considers to be proprietary or secret. 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 and as may be permitted by Section 1.09 of this Exhibit C. 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

**BENTLEY SELECT PROGRAM AGREEMENT**  
**Professional Services**  
**Exhibit C**  
**Dated as of January 2010**

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.

- 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.

**SELECT PROGRAM AGREEMENT  
TRAINING SUBSCRIPTIONS**

**Exhibit D**

**Dated as of October 2009**

1. **Definitions.** The definitions of certain terms used herein with initial capitalized letters, if not otherwise defined herein, shall have the definitions set forth in the Agreement.
2. **Applicability.** At Subscriber's request, and upon Bentley's approval, Subscriber may be entitled to subscribe to certain Product training services pursuant to the terms set forth in this Exhibit D. To be eligible to participate, Subscriber must have a valid Bentley SELECT® Program Agreement and must be current on all outstanding invoices for amounts owed to Bentley. Only employees of Subscriber are eligible to participate in the training subscription program benefits available under this Exhibit D.
3. **Bentley LEARN Program.** Through the Bentley LEARN Program subscription, Bentley shall offer certain training services to its SELECT Subscribers via a Learning Management System, computer-based online service, electronic bulletin board, Internet site or through technology developed in the future. Subscriber shall pay to Bentley, in return for Bentley LEARN Program benefits, the applicable Bentley LEARN Program subscription fee in effect as of the beginning of each term defined below in Section 4 of this Exhibit D. Bentley LEARN Subscribers will have access to Bentley's (i) OnDemand eLearning online content and (ii) Live Training in a Virtual Classroom as per the terms and requirements set forth below and in the Bentley Web Properties Terms of Use posted on [www.bentley.com](http://www.bentley.com) ("Terms of Use"):
  - (a) Bentley shall have the sole right to control the format, content, schedule, delivery and all other aspects of the OnDemand eLearning online content and Live Training in a Virtual Classroom, and specifically reserves the right to, at any time (i) modify the information provided through the OnDemand eLearning online content and Live Training in a Virtual Classroom or (ii) discontinue any portion of the OnDemand eLearning online content or Live Training in a Virtual Classroom.
  - (b) Subscriber shall use the OnDemand eLearning online content and Live Training in a Virtual Classroom only in accordance with and subject to the Agreement as supplemented by the Terms of Use. The Terms of Use supplements the Agreement, but does not supersede it in any respect. In the event of a conflict between the Terms of Use and the Agreement, the terms of the Agreement shall control.
  - (c) The non-transferable, non-perpetual, non-exclusive "right to use" license granted herein shall terminate immediately upon suspension or termination of Subscriber's Bentley LEARN Program subscription, or the Agreement. Upon such termination, Subscriber shall discontinue use of all OnDemand eLearning online content and Live Training in a Virtual Classroom.
4. **Term and Termination.** Training subscriptions offered under the terms of this Exhibit D shall become effective on the date that Bentley produces an invoice to Subscriber for such training subscription (the "Training Subscription Effective Date"). The initial term of a training subscription shall begin on the Training Subscription Effective Date and shall continue until the anniversary of the Effective Date of the Agreement (the "Training Subscription Initial Term"). Thereafter, the training subscription shall automatically renew for successive one (1) year terms commencing as of each anniversary of the Effective Date of the Agreement (each such term a "Training Subscription Renewal Term"), unless either party provides the other with written notice of its intent to terminate at least sixty (60) days prior to the end of the Training Subscription Initial Term, or the then current Training Subscription Renewal Term as applicable. In the event the training subscription is terminated by Subscriber or otherwise terminated through cancellation or termination of Subscriber's Bentley SELECT® Program Agreement prior to the end of the Training Subscription Initial Term or the then current Training Subscription Renewal Term, Subscriber shall remain responsible for the full amount of training subscription fees for the remainder of such term.
5. **Conflicts.** This Exhibit D must be read in conjunction with the other Exhibits to this Agreement, except that in the event of any inconsistency between this Exhibit D and any other Exhibit, this Exhibit D shall control with respect to Subscriber's training subscriptions.

# Bentley SELECT Program Agreement

## Terminal Server

### Exhibit T

Dated as of October 2011

1. **Definitions.** The definitions of certain terms used herein with initial capitalized letters, if not otherwise defined herein, shall have the definitions set forth in the Agreement.
  - (a) **"Terminal Server"** means a device on which a Microsoft server operating system is installed.
  - (b) **"Terminal Server Environment"** means the Microsoft server operating system or application virtualization software which, when installed on a Terminal Server, provides clients access to Windows based applications running entirely on such a server and supports multiple client sessions on the server.
2. **Use of Bentley Products with Terminal Server.** Subscriber may use Bentley Products for Production Use only on a multi-user computer network in a Terminal Server Environment, and to install properly licensed Bentley Products on one or more Terminal Servers subject to the following conditions:
  - (a) Subscriber acknowledges that Bentley Products are presently not certified for use in a Terminal Server Environment, and that Subscriber is solely responsible for testing and supporting Bentley Products for operation in a Terminal Server Environment.
  - (b) The number of Users that use a Bentley Product at a Subscriber Site (whether or not such use is made via a Terminal Server) during any one interval shall not exceed the number of copies of such Product for which Subscriber has licenses at such Site.
  - (c) For each Terminal Server on which Bentley Products are installed, Subscriber hereby agrees to activate product licensing with Bentley's SELECTserver, or such other licensing technology as may be required by Bentley from time to time, to monitor usage of the Bentley Products via the Terminal Server. SELECTserver shall be installed and maintained in a mode that recognizes each session started via Terminal Server as requiring its own unique license.
  - (d) The products running from the Terminal Server must be activated to a SELECTserver, such that the Terminal Server must accurately provide SELECTserver individual computer names or a means to accurately identify product sessions initiated from the Terminal Server. Subscriber agrees to transmit to Bentley on a monthly basis true and accurate copies of the usage log files generated by SELECTserver or such other Bentley licensing technology as may be required by Bentley from time to time.
  - (e) Subscriber shall, upon seven (7) days advance written notice by Bentley, permit reasonable inspection and copying of the usage log files by Bentley or a third-party auditor retained by Bentley at the offices of Subscriber during regular working hours.
3. **Warranty Disclaimer.** Bentley Products used in a Terminal Server Environment shall be excluded from the warranties described in Exhibit B of the Agreement.
4. **No Technical Support.** Bentley will not provide Subscriber with the technical support services described in Exhibit A of the Agreement for problems, errors or other operating difficulties caused by or related to Subscriber's use of Bentley Products in a Terminal Server Environment.
5. **Termination of Rights.** For purposes of clarity, Subscriber's right to use Bentley Products in a Terminal Server Environment shall terminate in the event of any termination or non-renewal of the Agreement, notwithstanding that such products are licensed on a perpetual basis.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
 ATTACHMENT 1 TO  
 SELECT PROGRAM AGREEMENT



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

Bentley Universal Client	5
PowerScope	8
Bentley CADscript	7
Bentley Geospatial Server	1
Bentley I/RAS B	2
Bentley iFill	1
Bentley InRoads	70
Bentley InRoads Site	1
Bentley InRoads Survey	23
Bentley InterPlot Client	127
CulvertMaster	1
FlowMaster For Windows	2
gINT Logs	1
gINT Professional	2
HEC-Pack	5
InterPlot Raster Server	2
LEAP CONSPAN	15
LEAP RC-PIER	5
MicroStation	200
ProjectWise Caching Server	10
ProjectWise InterPlot Driver Pack	2
ProjectWise InterPlot Server	2
ProjectWise Interplot Mid-Volume Driver Pack	1
ProjectWise Web Server	1
STAAD.Foundation	1
SUPERLOAD Permit Administration	1
Transportation Superload	2

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

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**Amendment No. 1**  
to  
**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 April 1, 2012 (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**” shall mean April 1, 2012 upon the approval and acceptance by West Virginia Department of Transportation.
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-96A (Rev. 9/11) Agreement Addendum for Software (“**WV-96A**”) as modified by this Addendum.
  - 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-96A (Rev. 9/11) Agreement Addendum for Software (“**WV-96A**”) as modified by this Addendum.
  - 3.3. The Original Agreement.
4. **Signature Page.**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
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SELECT PROGRAM AGREEMENT

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- 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 and E 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 and CALs acquired 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.”

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SELECT PROGRAM AGREEMENT



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. **SELECT Online.** 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 (“SELECT Online”). Subscriber shall use SELECT Online only in accordance with and subject to this Agreement and the terms provided herein.

- 7.2. Section 4.03 of Exhibit A of the Agreement is hereby deleted and replaced in its entirety with the following:

(a) **Disclaimer or Warranties and Liability.**

Use SELECT Online and any Materials contained in it at Subscriber’s own risk. Due to numerous possible sources of information available through this SELECT Online, and the inherent uncertainties of electronic distribution, there may be delays, omissions, inaccuracies or other problems with such information. Reliance upon any information on SELECT Online 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 SELECT Online. 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.

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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 SELECT ONLINE OR THE MATERIALS OR THE SERVICES PROVIDED THROUGH SELECT ONLINE.

(b) **No Unlawful or Prohibited Use.** As a condition of use of SELECT Online, 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 SELECT Online 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 SELECT Online. 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.** SELECT Online 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.

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**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.”

**8.4. 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

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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.”

9. **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.”

10. **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 April 1, 2012 (the “Effective Date”) and terminate on March 31, 2015, 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-96A, 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.”

11. **Miscellaneous.**

- 11.1. **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. 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.”

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

12. **Professional Services.**

12.1. **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 upon at least sixty (60) days advance notice or at any time for any new Order or modified portion of an existing Order). Fees for professional services are payable quarterly in arrears.”

12.2. **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.”

13. **WV-96A.** Appendix A, WV-96A (Rev. 9/11) Agreement Addendum for Software (“WV-96A”) is hereby modified as follows:

13.1. **Disputes.** Section 1 of WV-96A is deleted in its entirety.

13.2. **Governing Law.** Section 3 of WV-96A is 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. 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.”

13.3. **Assignment.** Section 12 of WV-96A 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.”

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

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

“Any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.”

14. **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.

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

*[Signatures on Next Page]*

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

Bentley Systems, Incorporated

By: *Keith E. Chapman*

By: *Antonio Ierardo*

Print Name: KEITH E. CHAPMAN

Print Name: Antonio Ierardo

Print Title: WV DOT BUSINESS MANAGER

Print Title: Vice President

Date: 4/3/12

Date: March 22, 2012

CW1971673

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

Bentley Systems, Incorporated

By: *[Signature]*

By: *[Signature]*

Print Name: Keith E. Chapman

Print Name: Antonio Ierardo

Print Title: MDOT BUSINESS MANAGER

Print Title: Vice President

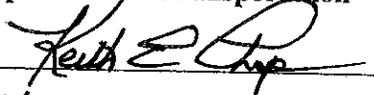
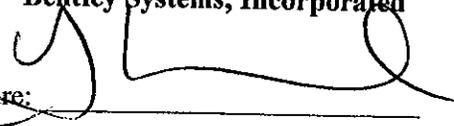
Date: 4/3/12

Date: March 22, 2012

APPROVED AS TO FORM THIS 24<sup>th</sup>  
DAY OF September, 2012  
DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

By: *[Signature]*  
DEPUTY ATTORNEY GENERAL

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective authorized representatives effective as of the Amendment Effective Date.

<p style="text-align: center;"><b>West Virginia Department of Transportation</b></p> <p>Signature: <u></u></p> <p>Name: <u>KEITH E. CHAPMAN</u></p> <p>Title: <u>BUSINESS MANAGER</u></p> <p>Date: <u>4/23/12</u></p>	<p style="text-align: center;"><b>Bentley Systems, Incorporated</b></p> <p>Signature: <u></u></p> <p>Name: <u>Antonio Ierardo</u></p> <p>Title: <u>Vice President</u></p> <p>Date: <u>March 22, 2012</u></p>
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**Enterprise License Subscription Program  
 Terms and Conditions through Amendment to Bentley Systems, Incorporated SELECT Program  
 Agreement (CLA No. 10399271)**

This amendment (“**Amendment**”) effective as of April 1, 2012 (the “**Amendment Effective Date**”) is made between West Virginia Department of Transportation, with principal offices at 1900 Kanawha Boulevard East, Charleston, WV 25302 (“**Subscriber**”) and Bentley Systems, Incorporated, a Delaware corporation, with principal offices at 685 Stockton Drive, Exton, PA 19341 (“**Bentley**”).

WHEREAS, Subscriber and Bentley wish to amend the Bentley Systems, Incorporated SELECT Program Agreement (CLA No. 10399271) made between the parties and effective as of April 1, 2012 (“**Agreement**”) upon the terms and conditions set forth in this Amendment; and

WHEREAS, Subscriber and Bentley wish to amend the Agreement upon the terms and conditions set forth in this Amendment.

NOW THEREFORE, in consideration of the mutual promises contained herein and of other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), Bentley and Subscriber hereby agree as follows:

**I. Definitions**

- a) “**Baseline Products**” means the Bentley Products licensed by Subscriber immediately prior to the Amendment Effective Date. Baseline Products shall be listed on **Exhibit A**, which shall be amended from time to time to include any additional Bentley Products licensed on a perpetual basis by Subscriber.
- b) “**Eligible Products**” means the Bentley Products (including any Updates or Upgrades thereto) eligible for inclusion in the Enterprise License Subscription Program as designated and posted at <http://www.bentley.com/els>, including any Updates or Upgrades thereto. The designation of Eligible Products may be amended from time to time in Bentley’s sole discretion.
- c) “**Employee**” means any employee of Subscriber or a Staff Augmentation Consultant.
- d) “**Enterprise License Subscription**” or “**ELS**” means the license grant described in Section III of this Amendment.
- e) “**Enterprise License Subscription Fee**” or “**ELS Fee**” means the fee for the Enterprise License Subscription as described and calculated for the Initial Term and any Renewal Terms in **Exhibit B** to this Amendment.
- f) “**Enterprise License Subscription Program**” or “**ELS Program**” means the Enterprise License Subscription and all other terms set forth in this Amendment.
- g) “**Ineligible Products**” means Bentley Products that are not Eligible Products.
- h) “**Initial Term**” shall have the meaning set forth in Section VI(a) of this Amendment.
- i) “**Non-SELECT Server Products**” means the total number of Baseline Products and Eligible Products installed at all Subscriber Sites that are not initiated by and deployed from a SELECT Server.
- j) “**Renewal Term**” shall have the meaning set forth in Section VI(a) to this Amendment.



- k) **"Reset Calculation"** means 1.8 times the Peak Usage calculation for each Eligible Product multiplied by the then current local SELECT Program Fees for each Eligible Product.
- l) **"SELECT Coverage"** means the SELECT Program benefits applicable to Bentley Products, as set forth in the Agreement.
- m) **"SELECT Server"** shall mean the most recently released Upgrade of Bentley's license management and reporting utility.
- n) **"Staff Augmentation Consultant"** means any temporary, term or contract professional or service personnel or employees who work at Subscriber Sites and whose work is supervised or managed by Subscriber and for whom Subscriber remains responsible.
- o) **"Subscriber Sites"** shall mean the discrete geographic locations from which Subscriber conduct its operations. The definition of "Site" in the Agreement is explicitly superseded by the foregoing definition for purposes of this Amendment.
- p) **"Subscriber Use"** means use of Eligible Products by Employees solely in the performance of official Subscriber business or projects solely at Subscriber Sites; but shall exclude use by consultants other than Staff Augmentation Consultants, such as those retained to provide independent professional consulting engineering services.
- q) **"Term"** or **"Year"** means each period defined by each year of the Initial Term or a Renewal Term.
- r) **"Terminal Server"** means a device on which a Microsoft server operating system is installed.
- s) **"Terminal Server Environment"** means a Microsoft server operating system or application virtualization software which, when installed on a Terminal Server, provides clients access to Windows based applications running entirely on such a server and supports multiple client sessions on the server.

## II. Program

- a) **Acceptance for Benefits.** Upon Bentley's acceptance of Subscriber into the Enterprise License Subscription Program, Subscriber shall be entitled to receive the following benefits: (1) Enterprise License Subscription Program benefits and rights as specified in this Amendment; and (2) Bentley LEARN Program benefits and rights as specified in Exhibit D of the Agreement.
- b) **SELECT Coverage of Eligible Products.** Eligible Products shall receive SELECT Coverage during the term of the Agreement.
- c) **SELECT Coverage of Ineligible Products.** Ineligible Products that are: (i) Baseline Products; or (ii) licensed by Subscriber during any Term, shall not be eligible for Enterprise License Subscription Program benefits, and shall continue to be eligible for SELECT Coverage under the terms of the Agreement as long as the Agreement remains in effect and Subscriber is current on all outstanding invoices issued pursuant to the Agreement.

## III. License Grants

- a) **Production Use.** In consideration for payment of the ELS Fee according to the terms set forth in Section IV of this Amendment, Bentley hereby grants Subscriber, subject to the terms and conditions contained herein, a non-exclusive, limited, non-transferable license to use: (i) Eligible Products (excluding Non-SELECT Server Products) for Subscriber Use for the term of the Enterprise License Subscription Program, without limitation as to the number of Employees who may access and use the Eligible Products; and (ii) Non-SELECT Server Products for Subscriber Use solely at the machine that corresponds to each node-locked license to a Non-SELECT Server Product.
- b) **Evaluation Use.** In consideration for payment of the ELS Fee according to the terms set forth in Section IV of this Amendment, Bentley



hereby grants to Subscriber a limited, non-transferable, non-exclusive right to use Eligible Products for internal evaluation or testing use only (an "Evaluation License"); provided that such Evaluation Licenses are only accessed through a dedicated SELECT Server hosted by Bentley in Exton, Pennsylvania (the "Evaluation Server"), and such licenses are not used for Production Use. The duration of use of an Evaluation License shall not exceed ninety (90) days (the "Evaluation Period"). Upon the earlier of the conclusion of the Evaluation Period or the termination of the Agreement or this Amendment, Subscriber shall discontinue use of all copies of Eligible Products used for evaluation hereunder and, upon request by Bentley, certify such destruction in writing. It is Subscriber's sole responsibility to ensure that all Evaluation Licenses are generated from the Evaluation Server, and Bentley shall have no obligation to adjust the Reset Calculation to account for evaluation use of Eligible Products under licenses generated by a SELECT Server other than an Evaluation Server.

#### IV. Fees

- a) **Invoice and Payment.** Payment of the ELS Fee for the Initial Term and any Renewal Term shall be made annually, in advance, and shall be due within thirty (30) days of receipt of an invoice.
- b) **Failure to Pay.** Subscriber's failure to remit payment of the appropriate ELS Fee as set forth in this Section IV shall: (i) give Bentley the right to immediately revoke the Enterprise License Subscription and any other benefits of the Enterprise License Subscription Program until such time that the appropriate ELS Fee is paid in full; and (ii) be treated as a material breach under Section VI (b) of this Amendment.
- c) **ELS Fee Changes For Additional Sites.** The ELS Fee is based on expected Daily Subscriber Usage from Subscriber and Staff Augmentation

Consultants as of the Amendment Effective Date. Bentley may adjust the ELS Fee for the then current Term in the event additional Subscriber Sites are added to the Enterprise License Subscription.

- d) **Fees for Ineligible Products.** Ineligible Products licensed by Subscriber will receive SELECT Coverage under the terms of the Agreement and SELECT Program Fees for such Ineligible Products will be invoiced to Subscriber.

#### V. SELECT Server

- a) **Use a Prerequisite.** Prior to the Amendment Effective Date, Subscriber Use at Subscriber Sites must be managed by the then current, most recent Upgrade to SELECT Server (whether hosted by Bentley or deployed by Subscriber at one or more locations).
- b) **Best Practices.** Subscriber shall migrate Subscriber Use reporting from all Subscriber deployed SELECT Servers to the most recent Upgrade to SELECT Server within twelve (12) months of commercial release.
- c) **Reporting.** Subscriber shall either: (i) deploy the automatic transmission facility of SELECT Server for monthly transmission of usage information to Bentley; or (ii) provide Bentley with monthly delivery of all usage information created by SELECT Server. With respect to delivery of usage information under sub-section (ii), each month's delivery shall be due within seven (7) days of the end of the month in which such usage information is generated, and Subscriber shall allow Bentley access to all Subscriber Sites in order to verify the content of such manually transmitted usage information. Subscriber shall also deploy any other Bentley licensing technology, as requested by Bentley, in order to allow Bentley to monitor usage of Eligible Products by Subscriber.
- d) **No Modifications.** Subscriber shall not edit, alter, delete, or otherwise revise in any manner the content of the usage information generated

by SELECT Server. Bentley shall treat each usage information transmission or delivery as confidential information of Subscriber. If Bentley fails to receive the required usage information, Subscriber shall transmit or deliver the required usage information to Bentley within fourteen (14) days after Bentley requests such information.

## VI. Term and Termination

- a) **Term.** The initial term of this Enterprise License Subscription Program and this Amendment shall be for three (3) years (the "**Initial Term**"). This Amendment will terminate at the expiration of the Initial Term. Upon concurrence of the parties, this Amendment may be extended in the manner set forth below. Bentley shall notify the Subscriber in writing, at least sixty (60) calendar days prior to the expiration of the then current term ("**Renewal Offer**"), of any offer to extend this Amendment for an additional one (1) year term. Within thirty (30) days of the receipt of the Renewal Offer, the Subscriber shall notify Bentley in writing of the Subscriber's intent to accept such offer. If parties mutually agree to extend this Amendment, the parties shall execute an appropriate amendment extending the term of the Agreement and this Amendment for an additional one (1) year term prior to the expiration of the then current term (a "**Renewal Term**"). The amendment will be subject to the signature and approval requirements as may be required by the Subscriber. If parties do not agree to an extension, this Amendment shall expire according to its terms, unless earlier terminated.
- b) **Termination.** Notwithstanding anything to the contrary contained herein, Bentley reserves the right to terminate the Enterprise License Subscription and this Amendment upon thirty (30) days prior written notice in the event Subscriber is in material breach of the Agreement or this Amendment, unless Subscriber cures such breach within such thirty
- (30) day period. Subscriber hereby acknowledges that this right to cure shall not be extended to any breach by Subscriber which by its nature cannot be cured, including, but not limited to, Subscriber's breach of its obligations under Sections IV (a), V, and VII (f) of this Amendment.
- c) **Lack of Appropriations.** Bentley and the Subscriber understand and intend that the obligation of the Subscriber to pay the ELS Fees required under **Exhibit B** of this Amendment shall constitute an expense of the Subscriber and shall not in any way be construed to be a debt of the Subscriber in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Subscriber, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the Subscriber. It is understood that the Subscriber funds are contingent on the availability of lawful appropriations by the Subscriber. If the legislative body with the authority to approve Subscriber's funding and expenditures fails at any time to continue funding for the payments due hereunder, or the Subscriber fails to receive appropriations, limitations, or other expenditure authority, then the Subscriber shall have the right to terminate this Amendment and the Agreement upon giving thirty (30) days written notice prior to the expiration of the then current term. Thereafter, this Amendment and the Agreement will terminate at the expiration of the then current term without any further obligation of the Subscriber. The Subscriber acknowledges that termination of this Amendment and the Agreement will result in loss of all entitlements and software functionality granted to the Subscriber under this Amendment and the Agreement as of the expiration of the then current term.
- d) **Event of Termination.** In the event of a termination, expiration or non-renewal of this Amendment or the Agreement, Subscriber's

Enterprise License Subscription rights shall immediately terminate and Subscriber's license rights with respect to Bentley Products shall revert back to the license rights Subscriber had in the Baseline Products. In the event of termination of the Amendment only, SELECT Coverage for Baseline Products will continue under the terms and conditions of the Agreement and Subscriber shall remove all Eligible Products, except for the Baseline Products, from Subscriber Sites and shall return such Eligible Products to Bentley.

- e) **Cross-Termination.** This Amendment shall terminate immediately upon any termination of the Agreement and is subject to the termination conditions defined in the Agreement.

#### VII. Miscellaneous

- a) **Impact of Amendment.** This Amendment supplements the provisions of the Agreement, and amends and supersedes the Agreement with respect to the Eligible Products as set forth in the terms herein. In the event of any conflicting terms between the Agreement and this Amendment, the terms of this Amendment shall control with respect to the Eligible Products or the Enterprise License Subscription Program.
- b) **Additional Designated Eligible Products.** In the event Bentley designates additional Eligible Products during any Term, Subscriber shall have the rights, benefits and obligations set forth herein with respect to such additional designated Eligible Products. Subscriber will not be invoiced for usage of any additional designated Eligible Products until the next Reset Calculation at which point Bentley shall include the Peak Usage, if any, of the newly added Eligible Products as part of the Reset Calculation for the next Term.
- c) **Representations and Warranties.** Subscriber hereby represents and warrants that: (i) Exhibit A to this Amendment, as of the Amendment Effective Date indicates a true and accurate count of all Bentley Products licensed by

Subscriber at Subscriber Sites; (ii) it has the authority to bind itself for the Eligible Products at the Subscriber Sites set forth in Exhibit A to this Amendment; and (iii) upon its execution and delivery of this Amendment, the Amendment will be valid and binding on Subscriber.

- d) **Use of Bentley Products in a Terminal Server Environment.** Subscriber shall not use Bentley Products on any multi-user computer network in a Terminal Server Environment without Bentley's prior written consent. If Bentley consents, any such use shall be subject to the terms of the Agreement, including, Exhibit T thereto, and Subscriber shall deliver to Bentley (within ten (10) days of any request) reports, usage logs and any other reasonable information related to Subscriber's Terminal Server Environment to enable Bentley to accurately calculate the ELS Fee for the Initial Term or any Renewal Term.
- e) **Waiver.** Subscriber hereby waives any all license rights to Bentley Products not specified in Exhibit A to the Amendment.
- f) **Terms are Confidential.** Subscriber hereby acknowledges that Bentley has designated the terms of this Amendment and the attached Exhibits as proprietary. Bentley acknowledges that the non-disclosure of documents is subject to the legal requirements of the Freedom of Information and/or Public Records Statutes applicable to Subscriber. Should Subscriber receive a public disclosure request pursuant to the Freedom of Information and/or Public Records Statutes applicable to Subscriber for information contained herein, Subscriber agrees to notify Bentley of the request within a reasonable period. Bentley assumes exclusive responsibility for defending its position as to the confidentiality of the requested information. Neither Subscriber 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.
- g) **Product Time Out.** Subscriber acknowledges that the licenses to the Eligible Products are for a set term and that Bentley shall have the right to terminate Subscriber's rights to the Eligible Products upon expiration of the term hereof, in the event of a failure to pay the ELS Fee, or upon termination of the Agreement for any other reason. The parties hereby agree that any timing out or expiration of the Eligible Products shall not be considered a "time bomb," defect or error with respect to the Eligible Products.
- h) **Assignment.** Subscriber shall not sell, assign or otherwise transfer its rights or obligations under this Amendment or the Agreement, whether by contract or operation of law, without the prior written consent of Bentley. For purposes hereof, the following shall be prohibited sales, assignments or transfers, which without Bentley's prior consent shall result in the termination of the Amendment under the terms of Section VI(b) of this Amendment: (i) any merger, consolidation or other acquisition of Subscriber; (ii) any sale or transfer of any Subscriber Site, or any asset of Subscriber that includes the Eligible Products; or (iii) any sale of Subscriber's equity securities either by Subscriber or some or all of their respective stockholders, in a single or series of related transactions, the result of which will be that the holders of a majority of voting securities before the transaction cease to hold such majority after the transaction.
- i) **Entire Agreement.** This Amendment, Appendix A WV-96A (Rev. 9/11) Agreement Addendum, as modified by Amendment No. 1 to the Agreement and any other amendments (*if any*) signed by the parties set forth the entire agreement between Bentley and Subscriber and Bentley with respect to the Enterprise License Subscription Program. Any other terms or conditions presented by Bentley or Subscriber are specifically excluded from the Enterprise License Subscription Program.

*Signature page to follow.*

Exhibit ABaseline Products:

Product	Quantity
Bentley Universal Client	5
PowerScope	8
Bentley CADscript	7
Bentley Geospatial Server	1
Bentley I/RAS B	2
Bentley iFill	1
Bentley InRoads	70
Bentley InRoads Site	1
Bentley InRoads Survey	23
Bentley InterPlot Client	127
CulvertMaster	1
FlowMaster For Windows	2
gINT Logs	1
gINT Professional	2
HEC-Pack	5
InterPlot Raster Server	2
LEAP CONSPAN	15
LEAP RC-PIER	5
MicroStation	200
ProjectWise Caching Server	10
ProjectWise InterPlot Driver Pack	2
ProjectWise InterPlot Server	2
ProjectWise Interplot Mid-Volume Driver Pack	1
ProjectWise Web Server	1
STAAD.Foundation	1
SUPERLOAD Permit Administration	1
Transportation Superload	2

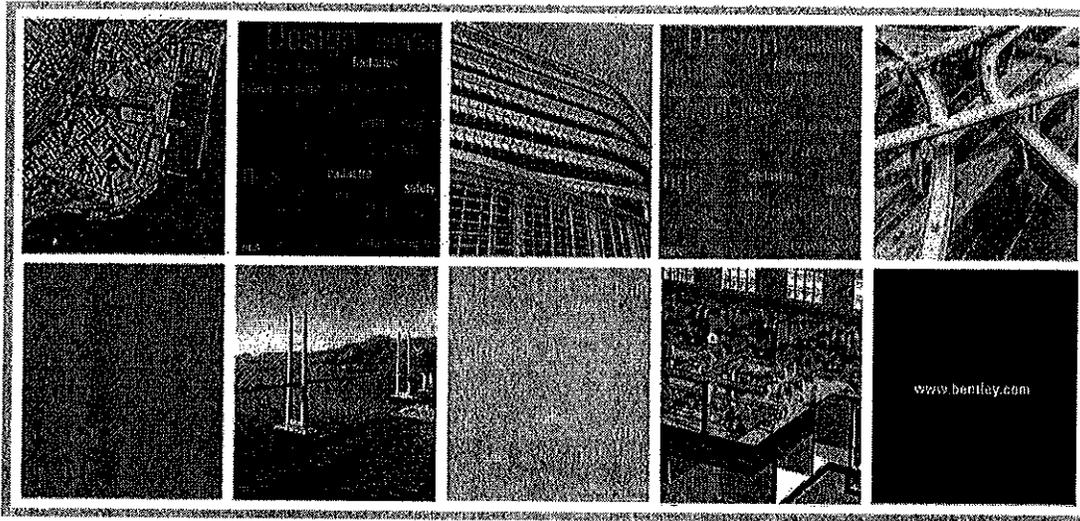
**Exhibit B**

1. ELS Fee for the Initial Term shall be as follows:
  - 1.1. Year 1 of the Initial Term: \$276,651.00
  - 1.2. Year 2 of the Initial Term: \$282,184.00
  - 1.3. Year 3 of the Initial Term: \$287,828.00
2. For any Renewal Term, the ELS Fee shall be determined upon mutual agreement of the parties prior to the expiration of the Initial Term or any Renewal Term.
3. SELECT Program Fees Ineligible Products<sup>1</sup>:

Product Name	Quantity	Annual SELECT Program Fees/ Seat (Before Subscriber discount)
Superload Permit Administration	1	\$100,000.00
Transportation Superload	2	\$54,900.00

Note (1): SELECT Program Fees for Ineligible Products are subject to change. Any such fee changes shall be effective upon the effective date of any term.

4. For each year of the Initial Term, Subscriber shall be entitled to ten (10) entry passes to Bentley's annual user conference at no-charge.



**Enterprise License Subscription Proposal  
To the  
West Virginia Department of Transportation**

**June 27, 2012**





685 Stockton Drive • Exton, PA 19341-0678 • Tel: (610) 458-5000

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March 12, 2012

Mrs. Priscilla Neal  
West Virginia Department of Transportation  
Bldg 5, Room A 715  
1900 Kanawha Blvd, East  
Charleston, WV 25305

Subject: Proposal for Enterprise License Subscription

Dear Mrs. Neal:

In response to your request, Bentley Systems, Incorporated (Bentley) is pleased to provide for your review our proposal for an Enterprise License Subscription (ELS) at the West Virginia Department of Transportation (WVDOT). We appreciate the opportunity to provide WVDOT with this innovative and effective program for licensing Bentley's software solutions within WVDOT.

For large-scale users like WVDOT, Bentley has developed a licensing program that greatly simplifies access to our products and offers you unique financial advantages. With an Enterprise License Subscription, WVDOT has enterprise-wide access to virtually all Bentley products, including Bentley MicroStation, Bentley discipline-specific solutions, and Bentley content management and publishing collaboration servers with full SELECT benefits.

The ELS frees WVDOT from discrete procurement decisions and permits you to focus on effective application of Bentley products, supporting a stable and more effective production environment.

Please note that for your convenience we have also included a proposal for providing SUPERLOAD upgrading and hosting in Section 7.

Should you have any questions regarding this proposal, please contact me at 610-955-3125. We appreciate this opportunity to submit our response and stand ready to serve your needs.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Tom Gergel'.

Tom Gergel  
Account Manager  
Bentley Systems, Incorporated  
Email: [tom.gergel@bentley.com](mailto:tom.gergel@bentley.com)

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## 1.0 Benefits of an ELS for WVDOT

Bentley understands that the West Virginia Department of Transportation (WVDOT) manages multiple transportation modals and that WVDOT is required to coordinate project personnel with varying needs in different locations. Individual product evaluation and procurement processes can be disruptive and distracting, and the realities of typical budget and purchasing constraints do not lend themselves well to keeping pace with technology advances.

For large-scale users like WVDOT, Bentley has developed a licensing program that greatly simplifies access to our products and offers you unique financial advantages. With an Enterprise License Subscription (ELS), WVDOT has enterprise-wide access to virtually all Bentley products, including Bentley MicroStation, Bentley discipline-specific solutions, and Bentley content management and publishing collaboration servers with full SELECT benefits.

The ELS frees WVDOT from discrete procurement decisions and permits you to focus on effective application of Bentley products, supporting a stable and more effective production environment.

WVDOT has responsibility for planning, construction and maintenance of West Virginia's extensive transportation network, which encompasses, highways and bridges, airports, public transit, rail freight and rail passenger systems. For an annual fee, WVDOT will be able to access all the Bentley owned and distributed software identified in [http://ftp2.bentley.com/dist/collateral/Web/SELECT/SELECT\\_Licensing\\_Programs.pdf](http://ftp2.bentley.com/dist/collateral/Web/SELECT/SELECT_Licensing_Programs.pdf), in any quantity, anywhere in the department within the State of West Virginia, at any time.

The advantages of an ELS for WVDOT are significant and include:

- Easy deployment of needed technology without limitations with an emphasis on technology standards and product integration
- A common platform across the enterprise
- The benefits of our comprehensive Bentley SELECT program
  - Ensure consistency of version between users
  - Only approved products and versions used
- Predictable budgeting
- A focus on workflow effectiveness and optimization
- Simplified license administration, tracking and billing
- Reduced procurement costs and product justification timelines on new Bentley products
- Software license compliance
- The flexibility to accommodate a fluctuating number of users per software application, as WVDOT's design, construction, operation and maintenance needs change throughout a project cycle.

Please visit

[http://ftp2.bentley.com/dist/collateral/Web/SELECT/SELECT\\_Licensing\\_Programs.pdf](http://ftp2.bentley.com/dist/collateral/Web/SELECT/SELECT_Licensing_Programs.pdf) to see the complete list of products that will be covered under your ELS.

Also, Bentley's Enterprise Bridge (eB) software has an option to be included as software available under Bentley's ELS program. eB is Bentley's enterprise document system software package and is being utilized as the core platform for Bentley's future AssetWise applications. The additional cost required to add eB to WVDOT's ELS is outlined in Section 6.0 below.

## 2.0 Scope of the ELS

This proposal is based upon the terms and conditions of the SELECT Program Agreement as set forth in Exhibit 1 between Bentley and WVDOT, as amended by terms and conditions applicable to the ELS Program Amendment to SELECT defined in Exhibit 2. Any subsequent purchase order issued by WVDOT will be governed by the terms and conditions of the SELECT Program Agreement.

Under an ELS, WVDOT will have the right to use unlimited amounts of Bentley products, including Bentley MicroStation, Bentley discipline-specific solutions, and Bentley content management and publishing collaboration servers, as listed in the ELS Program.

Bentley grants WVDOT the right to use Bentley products specified in the ELS Program at any geographic location within the State of West Virginia and within the WVDOT organization by WVDOT employees and any third party personnel who work at WVDOT's location(s) and whose work is supervised or managed by WVDOT

All software available under the ELS will be supported by Bentley's Help Desk. The Help Desk is a resource center for technical support for Enterprise License Subscribers and users are always just a click or call away from Bentley's Technical Support Group. The Help Desk is available 24 hours a day, seven days a week, and 365 days a year. There you will find analysts providing answers to your technical questions in 15 languages across 40 countries, available via a range of communications methods:

- Online FAQs - Tech Notes and answers to the most common queries
- Web chat - Launch a session with an analyst
- E-mail
- 1-800 Telephone Support

The annual ELS fee is set forth in the ELS Program Amendment to SELECT defined in Exhibit 2 and includes SELECT coverage for all products accessed through the ELS Program.

The ELS terms are defined in Exhibit 2 of the Enterprise License Subscription Program Amendment to SELECT.

### 3.0 Bentley LEARN Training Subscription

A Bentley LEARN Training Subscription offers convenient multi-user training at a fixed annual fee that streamlines budgeting and delivers comprehensive training to your entire organization and comes included as part of the ELS.

With the Bentley LEARN Training Subscription you can maximize your software return on investment by training multiple users and staying competitive while streamlining budgets. A Bentley LEARN includes unlimited instructor-led Distance Learning classes and unlimited access to all OnDemand materials.

In addition to the instructor-led Distance Learning classes and unlimited OnDemand training materials Bentley will also provide WVDOT with 25 no charge conference registrations to our annual BE Users Conference as part of the learning package. Details on the BE Conference Registrations are provided in the Section 3.2.

#### 3.1 Standard Bentley LEARN Training Subscription Components

The Bentley LEARN has two standard training components as part of the package:

1. **Distance Learning** – Attend scheduled *instructor-led* distance learning classes delivered via the Internet on a space-available basis.
2. **eLearning** – Gain unlimited access to OnDemand eLearning, including interactive lessons and pre-recorded video clips that are designed to augment classroom time and foster retention. eLearning material is available at anytime.

**Accumulate professional learning units from accrediting agencies**– Bentley's comprehensive AEC training includes classes on MicroStation, ProjectWise and hundreds of hours of learning on Bentley's Civil, Geospatial, Building, and Plant products. Bentley is associated with several industry professional associations and provides professional accreditation with its training. Each individual's training is tracked and managed by Bentley including:

- Permanent transcript for each individual which is made available online
- Accumulated Learning Units (a Learning Unit is equal to one hour of instruction) from the Bentley Institute

#### Professional Accreditation

The Bentley Institute offers **learning credits from professional organizations**. Accreditation credits are recorded on your **online transcripts** for easy reference.



**AIA** - American Institute of Architects Continuing Education Systems program learning units



**GISCI** - GIS Certification Institute Education units apply toward GISCI certification

#### 3.2 BE Conference Registration

The Bentley BE Conference is a once-a-year learning opportunity for all users of Bentley products and their managers who want to sharpen their skills and expand their knowledge. The BE Conference passes for WVDOT include:

- 10 full cost of Conference Registrations



- An opportunity to hear Bentley Executives speak on the direction of the Bentley Corporation
- An opportunity to take a sneak peek at future product directions
- Ability to participate in the DOT Customer Roundtable
- Ability to register for any of the standard sessions or presentations at the BE Conference.

The BE Conference Passes for WVDOT do NOT cover:

- Any travel, food (not included in the standard BE Registration) or incidental costs
- Any pre or post conference workshops



#### **4.0 Bentley Developer Network – SELECT Developer Program**

For the term of the ELS, Bentley grants WVDOT exclusive access to the SELECT Developer Program. The SELECT Developer Program is a subscription level within the Bentley Developer Network specifically designed to meet WVDOT's development support requirements for in-house customization and configuration of Bentley MicroStation and related AEC content creation, management and publishing technology solutions beyond the standard tools delivered with the products. At the core of a SELECT Developer Program subscription lays privileged Bentley Application Programming Interfaces (APIs) and Software Development Kits (SDKs), comprehensive tools for rapidly building, integrating, and operating application innovations. SELECT Developer Program benefits also include: direct access to Bentley's developer support group, a wide array of technical and interactive support tools available on the Bentley Developer only web-site.



## 5.0 Bentley Professional Services

Bentley's Professional Services organization is dedicated to optimizing and supporting engineering environments worldwide. This trained team of experts provides users of Bentley technology with a host of technical services that helps project teams leverage engineering information. For purposes of clarity, the Enterprise License Program Amendment does not include any Bentley Professional Services. Therefore, this proposal describes the services available from Bentley Professional Services to help WVDOT maximize its investment in Bentley Right of Way Office Operations & Maintenance technology and with Bentley's collaboration products (eB and ProjectWise). These professional services can be extended to any Bentley products that would require installation or configuration services that might be required by WVDOT.

### 5.1 Bentley Professional Consulting and Implementation Services

Bentley Consulting stands ready to assist WVDOT by sharing its experience implementing business solutions around Bentley's eB Document Management Software, Bentley's ProjectWise Engineering Collaboration Software, Bentley's Right of Way Office Operations & Maintenance software and any other of the Bentley software packages that might require installation or configuration expertise. Bentley Professional Services (BPS) is comprised of a team of experienced consultants, analysts, engineers and software developers who can add extensive knowledge to any project team. They review and make recommendations to project workflow, configure and manage the deployment of enterprise solutions. Each member of Bentley Consulting Team has direct access to all Bentley resources, including the Bentley Institute.

BPS provides:

- **Review**-Review of application functionality, benefits and a working demonstration.
- **Education**-Delivery of Bentley Institute courseware and the development and delivery of customized courseware. Includes company-wide training program development.
- **Deployment**-Installation, configuration, standards development and application coaching. Deployment extends to all business operations including business management, project teams and consultants.
- **Optimization**-Assistance to help users maximize a single application or a suite of applications includes enterprise configurations and advanced techniques education. Recommendations for improvement identified from a review of project workflow.
- **Customization**-Development of user-specific functionality of base applications to address specific needs and integration with other business applications.
- **Project Management**-Planning, execution, resource allocation, team coordination and communications to ensure a successful project completion. Project management provides a single point of project accountability.

### 5.2 Bentley Consulting Professional Services Labor Categories and Rates

Labor categories and rates proposed for this agreement are as shown below. These rates are valid for the Year 1 of the Agreement, after which time they will be subject to an annual increase of 2.0% (outlined in the table below). Actual expenses will be billed at the GSA reimbursement schedule for the location in which the work was provided to WVDOT.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
ENTERPRISE LICENSES SUBSCRIPTION PROPOSAL  
SECTION 5.0: BENTLEY PROFESSIONAL SERVICES

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Resource Type	Year1	Year2	Year 3
Project Manager	\$243.00	\$247.86	\$252.82
Sr. Consultant/Sr. Tech	\$240.00	\$244.80	\$249.70
Consultant/Technologist	\$186.00	\$189.72	\$193.51

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
 ENTERPRISE LICENSES SUBSCRIPTION PROPOSAL  
 SECTION 6.0: THREE YEAR BENTLEY FIXED PROGRAM PRICING SUMMARY



**6.0 Three Year - Bentley Fixed Program Pricing Summary**

Contract Year	Enterprise License Subscription (includes Bentley ITC/ITSP)	SOFTWARE SUPPORT AND MAINTENANCE AND CONSULTATION SERVICES	ELC'S Fixed Subscription	Fixed Price Total
1	\$276,651	\$154,900	\$24,500	\$456,051
2	\$282,184	\$154,900	\$24,500	\$461,584
3	\$287,828	\$154,900	\$24,500	\$467,228
			<b>Three Year Fixed Price</b>	<b>\$1,384,863</b>

\*Two percent fixed fee annual increase on the ELS

**Three Year Optional Contract Item:**

- **Time and Material for Project Based Services.** Optional services at State's discretion for Bentley ProjectWise and engineering automation services. Estimated annual services expenditure: First year \$125,000 (due to initial ProjectWise implementation and deployment of ProjectWise ArcGIS connector) contract year two and three amounts not to exceed \$50,000 per year. Three-year total not to exceed: \$225,000

**Total Contract Price:**

- Three Year Fixed Price portion of contract (software maintenance and support): \$1,384,863
- Three Year Optional portion of contract: \$225,000
- Three Contract Total: \$1,609,863



## 7.0 Proposed SUPERLOAD Hosting and Upgrade Project

Bentley is proposing a fully configured and outsourced SUPERLOAD implementation hosted on Bentley-managed hardware at a remote Bentley designated site, provided as a service for the term of the contract through the retention of automation fees as they are collected by the system.

All SUPERLOAD system enhancements and configuration, including the imported network data, are provided as part of the hosted SUPERLOAD System service for WVDOT for the term of the contract; and as such remain the sole property of Bentley.

Bentley's hosting the solution will reduce WVDOT IT efforts as software will only be installed on WVDOT machines for route network and bridge database maintenance. All other system usage will be via a browser, accessing software installed and hosted by Bentley. By the transaction payment method proposed, payments to Bentley start when the system is in production.

Bentley has implemented the SUPERLOAD system at WVDOT on WVDOT computing infrastructure, and has had an optional application process available at GotPermits.com. Bentley will upgrade all the processes used by WVDOT and will move all operation to Bentley infrastructure. Bentley's Professional Service team will work with WVDOT in a project covering configuration, upgrade, deployment, and training of the SUPERLOAD System.

A SUPERLOAD Project Statement of Work (SOW) is presented in Appendix A as a preliminary work plan for review prior to completing the Project Execution Plan (PEP). The SOW identifies the high level activities, the anticipated flow of work, and responsibilities of both parties during the implementation process. Immediately following a notice to proceed, Bentley will prepare and deliver a Project Execution Plan, which provides greater detail on the mechanics of the project including statements on the involvement of key stakeholders in the project for the WVDOT and Bentley. The PEP and the Project Schedule will be mutually agreed and formally signed by both parties at the initiation of project activities

### 7.1 The Bentley-hosted System

The implemented system will be hosted on Bentley managed hardware at a facility selected by Bentley. Access to the system for West Virginia State operators, management and industry users will be via the Internet.

There will be a site dedicated to West Virginia permitting at [wv.gotpermits.com](http://wv.gotpermits.com). Applicants can also use the [www.gotpermits.com](http://www.gotpermits.com) site to apply for West Virginia permits via the overall multi-state permitting portal. All requests will be synchronized with the [wv.gotpermits.com](http://wv.gotpermits.com) site and all data will be visible to all West Virginia state users.

### 7.2 WVDOT Responsibilities During the SUPERLOAD System Implementation

Bentley assumes that WVDOT personnel have the experience, skills and responsibilities to provide the necessary information and decisions for Bentley's successful execution of this project. Bentley anticipates WVDOT involvement as follows:

WVDOT Project Manager:

- Set and manage expectations of Industry Users (Permit/Wire Services, Haulers, etc.)
- Executive guidance on request



- Ultimately responsible for committing resources to attainment for project goals
- Provide feedback as needed on critical milestones during project
- WVDOT scope decision maker
- Status
- Resolve business-wide issues
- Attend status meetings
- Attend project kickoff
- Manage WVDOT project personnel such as the Project Team, users, IS, etc.
- Manage inter-program and divisional communications
- Communicate with WVDOT Management on project progress

**WVDOT IT Experts, IS Operations Analysis:**

- Validate System solution
- Consult in data migration from the current West Virginia hosted solution to the Bentley hosted solution
- Participate in testing

**WVDOT Permit Manager:**

- Validate business processes
- Consult in data migration from the current West Virginia hosted solution to the Bentley hosted solution
- Participate in testing
- Backup for WVDOT Project Manager

**WVDOT GIS/Road Inventory Analyst:**

- Validate routing network operation as required

**WVDOT Bridge Engineer:**

- Validate the bridge data in the network model along with the live load analysis of all structures crossed over

### **7.3 Acceptance Criteria**

A customized, complete acceptance test plan, including clear acceptance criteria, will be prepared and mutually agreed upon as part of the system configuration and deployment services.

Acceptance of the SUPERLOAD System will be achieved through successful execution of the acceptance tests and demonstration of achievement of the acceptance criteria.

Any training and documentation included in this proposal will be considered accepted upon completion and delivery.

The acceptance test process will be documented in more detail in the Project Execution Plan (PEP) and reviewed with WVDOT stakeholders during the project kick-off meeting.

All other project deliverables will be considered accepted following a 10 working-day period if WVDOT does not provide written documentation to the Bentley Project Manager of any material discrepancies with the deliverable. In the event that material discrepancies are reported, Bentley will resolve the discrepancies and resubmit the deliverable. Upon resubmission of the deliverable,



WV DOT shall have 10 working days to either accept the deliverable or report to Bentley that the material discrepancies still exist.

Once acceptance testing is complete and formal acceptance has occurred, production use of the system may occur. Authorization to place the system into production use is the responsibility of WVDOT, and in the event that the system has not otherwise been accepted shall constitute formal acceptance.

#### **7.4 Schedule**

On time completion of the project is in the best interest of WVDOT, Bentley and industry users. Industry Users will generally be able to obtain permits 24 x 7 x 365. Permits that require no manual intervention by WVDOT will be issued immediately. Permits will be obtainable from any PC running an approved Web browser with a connection to the Internet.

Further automation of the permit process will both increase the productivity of WVDOT staff and improve safety through rigorous validation of permitted loads against the recorded dimensional and weight constraints of the network.

The focus of Bentley's Project Manager, supported by the Bentley Solution Methodology (BSM), will be to drive towards timely completion through the project schedule, monthly updates, a communication plan, an escalation process, a steering group and others. The Project Execution Plan will provide more details.

Based on Bentley's implementation experience with similar systems, Bentley proposes the approximate schedule on the following page for the upgrade and deployment of the SUPERLOAD system. This estimated schedule is contingent on Bentley's receipt of fully executed contract documents and a notice to proceed before April 30, 2012. It is also based on assumptions such as response times and feedback from Department staff.

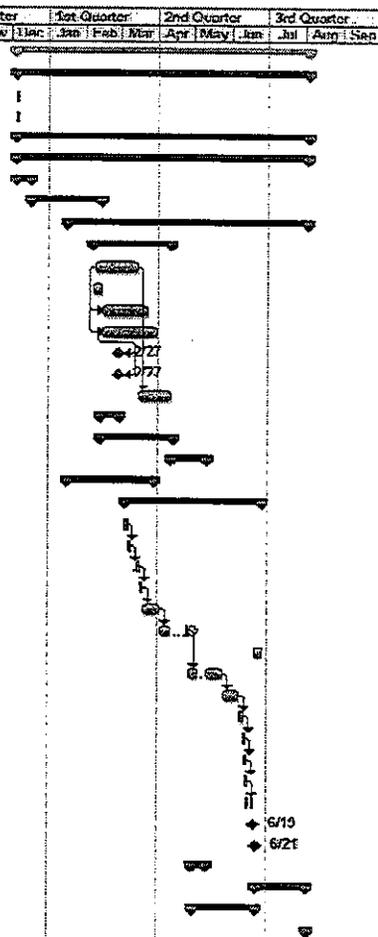
Appendix A, Project Statement of Work, outlines the full deployment plan for the testing, acceptance, installation, and cutover of the production system, and for the training of Department personnel for the operation and ongoing data management of the configured system.

As noted above, the project schedule will be mutually agreed by both parties as an initial task of the project.

PROPOSAL FOR SUPERLOAD UPGRADE AND HOSTING  
 WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
 SECTION 7.0: PROPOSED SUPERLOAD HOSTING AND UPGRADE PROJECT



ID	WDS	Task Name	Duration	Start	Finish	4th Quarter			1st Quarter			2nd Quarter			3rd Quarter		
						Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
0		14XXXX-WV-SUPERLOAD Upgrade	173 d	Mon 12/5/11	Fri 8/3/12												
1	1	Consulting	173 d	Mon 12/5/11	Fri 8/3/12												
2	1.1	Expenses	1 d	Mon 12/5/11	Mon 12/5/11												
3	1.2	Travel Time	1 d	Mon 12/5/11	Mon 12/5/11												
4	1.5	Project Administration	173 d	Mon 12/5/11	Fri 8/3/12												
10	1.4	Consulting Work	177 d	Mon 12/5/11	Thu 8/7/12												
11	1.4.9	Startup	10 d	Mon 12/5/11	Fri 12/16/11												
14	1.4.4	Design	39 d	Fri 12/16/11	Mon 2/13/12												
20	1.4.5	System Development	144 d	Mon 1/16/12	Thu 8/2/12												
29	1.4.5.4	PASS System Development	47 d	Mon 2/6/12	Wed 4/11/12												
30	1.4.5.4.14	PASS Core Development Tasks	26 d	Mon 2/6/12	Wed 3/14/12												
31	1.4.5.4.15	Preliminary Internet Setup	5 d	Tue 2/7/12	Mon 2/13/12												
32	1.4.5.4.16	PASS In-State User Interface Development Tasks	22 d	Tue 2/14/12	Thu 3/22/12												
33	1.4.5.4.17	ePASS Internet User Interface Development Tasks	34 d	Mon 2/13/12	Fri 3/30/12												
34	1.4.5.4.18	Review of Prototype Permit Types	0 d	Mon 2/21/12	Mon 2/21/12												
35	1.4.5.4.19	Review of Internet Routing Client Prototype	0 d	Mon 2/27/12	Mon 2/27/12												
36	1.4.5.4.20	PASS Unit Testing	20 d	Thu 3/15/12	Wed 4/11/12												
37	1.4.5.5	Route Network Tasks	12 d	Mon 2/13/12	Tue 2/28/12												
39	1.4.5.6	Bridge Database Tasks	45 d	Mon 2/13/12	Fri 4/13/12												
43	1.4.5.7	Restriction Manager	77 d	Wed 4/11/12	Fri 5/11/12												
50	1.4.5.1	QA Development	53 d	Mon 1/16/12	Wed 3/28/12												
55	1.4.5.8	QA/Installation/Cut-over	82 d	Mon 3/5/12	Tue 6/26/12												
56	1.4.5.8.48	Establish Exton QA Environment	2 d	Mon 3/5/12	Tue 3/6/12												
57	1.4.5.8.65	Establish Exton Production Environment	2 d	Wed 3/7/12	Thu 3/8/12												
58	1.4.5.8.51	Customize Installation Procedures	2 d	Fri 3/9/12	Fri 3/16/12												
59	1.4.5.8.86	Install Test Instance	1 d	Fri 3/16/12	Mon 3/19/12												
60	1.4.5.8.53	Functional Testing	10 d	Mon 3/19/12	Mon 4/2/12												
61	1.4.5.8.54	Full System Test	10 d	Mon 4/2/12	Thu 4/26/12												
62	1.4.5.8.67	Training Issue Resolution	5 d	Wed 6/20/12	Tue 6/26/12												
63	1.4.5.8.56	Complete Acceptance Testing	16 d	Thu 4/26/12	Fri 5/25/12												
64	1.4.5.8.57	Resolve UAT Issues	10 d	Fri 5/25/12	Fri 6/8/12												
65	1.4.5.8.58	Build Final Release	1 d	Fri 6/8/12	Mon 6/11/12												
66	1.4.5.8.59	Install and Test Development Environment	1 d	Mon 6/11/12	Tue 6/12/12												
67	1.4.5.8.60	Install and Test Quality Assurance Environment	1 d	Tue 6/12/12	Wed 6/13/12												
68	1.4.5.8.61	Install and Test Production Environment	1 d	Wed 6/13/12	Thu 6/14/12												
69	1.4.5.8.62	Install Production Instance	2 d	Thu 6/14/12	Mon 6/18/12												
70	1.4.5.8.63	Support Cut-over	0 d	Tue 6/19/12	Wed 6/20/12												
71	1.4.5.8.64	Go-Live	0 d	Thu 6/21/12	Thu 6/21/12												
72	1.4.5.9	Documentation	10 d	Mon 4/30/12	Fri 5/11/12												
74	1.4.5.10	Warranty	30 d	Fri 6/22/12	Thu 8/2/12												
76	1.4.5.11	Training	38 d	Tue 5/1/12	Thu 6/21/12												
82	3	Project Completion	1 d	Fri 8/3/12	Fri 8/3/12												



## **7.5 Hardware/Software**

Bentley will provide the hardware, software, communications and processes for the acceptance, analysis and processing of applications and issuance of permits via the Internet. All users will be operating against software installed and hosted by Bentley. The only exception is that WVDOT will install and run the route network and bridge database maintenance tools on a small set of local machines.

### **7.5.1 SUPERLOAD Software Updates**

The SUPERLOAD products that comprise the system are covered under the terms of Bentley's SELECT program. Bentley will provide the latest version of all software in the upgrade and will maintain the currency of all software as new versions are released.

### **7.5.2 SUPERLOAD System Enhancements**

Based on experience with systems at other states, Bentley recognizes that WVDOT will from time to time require enhancements to the SUPERLOAD System, for example, to load revised network or bridge data, or to incorporate a new permit type or revised permit regulations.

A provision has been made in the pricing to accommodate a typical, reasonable amount of such changes (approximately 200 hours per year or \$46,220/year (based on blended professional services rates). Bentley will work with WVDOT on a specification for each individual enhancement and will provide an estimate of the effort required to implement the specified update to the System. Bentley will proceed with implementation when the scope and effort have been agreed and signed off by both parties. The total annual effort will be limited as noted in the pricing section. Where changes are needed beyond the allocated amount for each calendar year, the additional work can be accommodated under a separate services agreement. These hours cannot be carried over from contract year to contract year as they are budgeted as part of Bentley's annual GotPermit support services staffing levels.

## **7.6 Data Update**

WVDOT will have responsibility for the route network and bridge database related data that is provided for the SUPERLOAD System. WVDOT will provide the data in a format that is ready to load directly into the SUPERLOAD System; i.e. it requires no pre-processing.

Bentley will be responsible for uploading revised data to the system, which will be presented to WVDOT for final review and acceptance prior to loading in the live operational system. Effort expended in loading data will be offset against the time allocated for system enhancements. Tools will also be provided so that WVDOT can upload and publish the data on the live site if they so choose.

WVDOT can also effect immediate changes to the routing network (dimensional, weight, lane availability, etc.) using the SUPERLOAD Restriction Manager tool. Use of this tool and the implemented network changes will be the responsibility of WVDOT.

## **7.7 Pre-Production Cut-Over Acceptance Test Process**

All changes to the System, for both software and data, will be finalized through the testing, acceptance and cut-over process as defined in Phase 10 of the project SOW described in Appendix A.



All reasonable efforts will be made to forewarn permit applicants of scheduled activity, to minimize periods of system unavailability and to avoid system downtime during periods of high usage.

### 7.7 System Availability

Bentley intends to make the WVDOT SUPERLOAD System, available on a 24x7 basis. Scheduled downtimes (e.g. for backups, system upgrades, and emergency maintenance) will be kept to a minimum.

### 7.8 End User Support

The WVDOT SUPERLOAD System interface includes links to a "Getting Started" guide, "Frequently Asked Questions" (FAQ), a "Contact Us" submit support request email address and a telephone support number.

Bentley provides support for queries from permit applicants related to the operation of the GotPermits site and will redirect queries related to permits (policy, detailed requirements, ...) to a designated location (individual, email, telephone number, ...) at WVDOT.

### 7.9 Transaction Based Payment

As the basis of the transaction based payment plan, Bentley has assumed that:

- 100% of permit issuance transactions will be executed through the WVDOT SUPERLOAD System hosted at GotPermits.com.
- That total annual permit volume is expected to remain at or above the current rate of approximately 120,000/yr
- In the event that the paid permit volume in a calendar month is less than 5,000 permits, Bentley reserves the right to re-negotiate the pricing of the Automation Fee schedule, as set forth below.
- System implementation will take approximately six (6) months.
- The term of the contract is four and one-half years (six months implementation and four years of operation).

### Permit Fee Schedule

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 as described above.
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 7,000<sup>th</sup> 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.

### Payment

Once the system is operational, 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. In the event that the paid permit volume in a calendar month is less than 5,000 permits, Bentley reserves the right to renegotiate the Automation Fees with WVDOT.

From the collected fees, Bentley will retain:

1. 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 7,000<sup>th</sup> as part of compensation for the service provided.
2. 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.

#### Termination

In the event that WVDOT terminates the project during implementation, WVDOT will compensate Bentley in accordance with progress on the implementation project. The total fixed fee cost of services implementation is \$495,000. Hence, termination at the point of completion would result in a payment to Bentley of \$495,000. Termination at an earlier date would result in a proportion of this total in accordance with percentage completion. The following table shows termination payment due at each month during the implementation assuming a linear distribution of implementation cost. Bentley will provide WVDOT with details of actual percentage of completion at the end of each month during the implementation period.

Terminated During Implementation						Production Cutover
Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	
\$82,500	\$165,000	\$247,500	\$330,000	\$412,500	\$495,000	

In the event that WVDOT terminates the contract after acceptance of the system, WVDOT will compensate Bentley for the fixed fee cost of the implementation on a linearly reducing scale over four years of the operating period. The following table shows scheduled termination payments due based on cancelation in each half year during the four years of operation.

Terminated During Operational Period							
H1 Year 1	H2 Year 1	H1 Year 2	H2 Year 2	H1 Year 3	H2 Year 3	H1 Year 4	H2 Year 4
\$495,000	\$433,125	\$371,250	\$309,375	\$247,500	\$185,625	\$123,750	\$61,875

Should WVDOT terminate the hosted service and request hosting the solution on WVDOT infrastructure, SELECT maintenance on the SUPERLOAD and GotPermits licenses would be reinstated.

#### 7.10 Terms and Conditions for the SUPERLOAD project

The work proposed herein will be completed under the terms and conditions of the active Bentley SELECT Program Agreement No 4001608 with the West Virginia Department of Transportation



**8.0 Acceptance**

Proposed by:

\_\_\_\_\_  
Tom Gergel  
Bentley Systems, Incorporated

Agreed and Accepted by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)



## Appendix A: SUPERLOAD Hosting and Upgrade Project Statement of Work

The proposed project will consist of the following general management, configuration, testing and installation support phases described in detail in the sections following:

1. Project Management and Reporting
2. Project Start-Up
3. System Design Document
4. SUPERLOAD Permit Administration Subsystem Configuration
5. SUPERLOAD Route Evaluation Subsystem Configuration
6. SUPERLOAD Bridge Analysis Subsystem Configuration
7. SUPERLOAD Restriction Management Subsystem Configuration
8. Testing of Integrated System
9. Training, Documentation and Installation
10. WVDOT Testing, Acceptance and Cut-Over
11. SUPERLOAD System Support

### Phase 1 – Project Management and Reporting

The Project Management and Reporting Phase will be comprised of those Work Tasks that are necessary to insure successful achievement of the overall Project objectives. These Tasks will include client communication and overall organization and direction of Bentley's Project Team.

#### Bentley Solutions Methodology (BSM)

Bentley strives to provide exceptional value in technology, products, and services. BSM is one mechanism that supports this mission. BSM is a compilation of Bentley's standardized processes for Professional Services project activity. Several benefits are achieved from the use of standardized processes and tools, including increased efficiency, consistency, and a shortened learning curve for new colleagues. However, the primary benefit resulting from BSM is the high quality of Bentley's project delivery.

BSM includes:

- An organized, easily-accessible, and easy-to-navigate set of procedures with useful outlines appropriate for different job functions
- Compatibility with existing Bentley processes and resources outside of Professional Services
- Templates for all standard documents
- Evaluation tools and checklists

Bentley Professional Services couples BSM with formal project management training, tools, and qualified people. Our level of expertise in Professional Services serves to strengthen the position of our partners and users. Because Bentley is a global company, BSM has been designed to be flexible enough to accommodate necessary cultural differences between countries and industries without compromising its purpose of standardization at a high level.

#### Task 1 - Project Management

Bentley will provide project management for both the Project Team activities and for communications and gaining concurrence with the WVDOT Project Manager and designated persons responsible for Project decision making.

**Task 2 - Monthly and Final Reporting**

Bentley's Project Manager will provide monthly progress reports to the support implementation status along with bi-weekly status calls to review open issues and to keep assigned actions and tasks on schedule. In addition, a final report will be provided to WVDOT to summarize the Project status and key actions that affected the final development and implementation

**Phase 2 - Project Start-Up**

Bentley will use a proven framework for successful SUPERLOAD implementation. Bentley will start the project with meetings with WVDOT staff with the purpose of producing an understanding of the means of starting and completing all of the Project Tasks. It will develop the understanding between WVDOT and Bentley as to the method of executing the project, and the means to maintain mutual understanding of goals and status for both parties. All of this information will be encapsulated in a Project Execution Plan which will be formally agreed by both parties.

**Phase 3 - System Design**

A Design Document describing the functional characteristics of the WVDOT system will be developed as the means of establishing a detailed meeting of the minds between WVDOT and Bentley. The Design Document will be composed of the following sections. WVDOT will be required to review, request modifications, accept and signoff on the final Design Document.

**Permit Administration System Design**

The data entry methods and screens for the SUPERLOAD permitting module for WVDOT will be defined in the Design Document. Screen layouts will be defined, including functionality for administrative tasks, such as reporting, account management and maintenance procedures. All business rules / program logic will be defined as they are in the existing the internal WVDOT system and the current non-exclusive GotPermits.com site. Reports will be updated and provided in PDF format.

**Routing**

It will be documented that the existing roadway network and routing processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System.

**Bridge Analysis**

It will be documented that the existing bridge database and analysis processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System.

**Route Restriction Manager**

It will be documented that the existing restriction management processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System.

**Phase 4 - SUPERLOAD Permit Administration Configuration**

The existing permit administration processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System. All permit administration processes will be browser based and hosted by Bentley. The WVDOT Permit Administration system will be completely integrated with the WVDOT Route and Bridge data resources and analytical capabilities to analyze and approve the route associated with the application.



The new browser-based permitting component will be comprised of two (2) main operational units – the basic permitting unit and the administrative unit. The basic permitting unit consists of a set of forms, rules, and procedures that support data entry, validation, business rule processing, and permit issuance. The administrative unit has the set of forms, rules, and procedures to support the permitting process. The administrative unit provides database management, management of modifications to issued permits, and operational and statistical reporting.

All permit applications and processing rules will be migrated to the new System.

All reports will be updated and will be provided in Adobe Acrobat PDF format. Ad-hoc queries are possible via the Advanced Query Tool.

Bentley will work with WVDOT to get a complete copy of the permit database. The permit database will be migrated to the new system. Bentley will perform initial trial data migrations and then schedule the final migration at the cut-over of the new system.

The entire process will be unit tested.

#### **Phase 5 - SUPERLOAD Route Evaluation Configuration**

The existing roadway network and routing processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System. All routing processes (except for the maintenance tools) will be browser based and hosted by Bentley. The entire process will be tested but no other work is anticipated. If additional changes are required, a change order will be created.

#### **Phase 6 - SUPERLOAD Bridge Analysis Configuration**

The existing bridge database and analysis processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System. All bridge analysis processes (except for the maintenance tools) will be browser based and hosted by Bentley. The entire process will be tested but no other work is anticipated. If additional changes are required, a change order will be created.

#### **Phase 7 – SUPERLOAD Restriction Manager Configuration**

The existing restriction management processes from the internal WVDOT system and the current non-exclusive GotPermits.com site, will be migrated to the new System. All restriction management processes will be browser based and hosted by Bentley. The entire process will be tested but no other work is anticipated. If additional changes are required, a change order will be created.

#### **Phase 8 – System Testing of Integrated Components**

The individual configured components will be integrated into the system level production process upon completion of the development and testing of each of the individual WVDOT components. Extensive testing of all of the functions of the integrated system will be performed by Bentley on all of the system operations. In addition, all of the WVDOT databases will be exercised by testing tools to produce results for review by WVDOT. These results will be in the form of reports that will clearly describe the roadway network route paths, interchange ramp conditions, bridge locations, clearances and bridge capacities for an HS20 test vehicle. The testing will also confirm the correctness of the WVDOT configured SUPERLOAD Maintenance Manager database builder. The testing will be accomplished by comparing the integrated system results with the original information used to build



the WVDOT databases. Any process steps that produce resulting data faults or process flaws will be corrected in preparation for final WVDOT acceptance testing.

When Bentley determines that the WVDOT testing results are correct, the test reports will be forwarded to WVDOT. Acceptance of the results of Bentley's test report, along with WVDOT's acceptance of the test results produced by Department's personnel (see Phase 10), will constitute final acceptance of the WVDOT oversize/overweight permit approval system.

The testing and checkout of each delivery of the SUPERLOAD system and its database will initially be performed on Bentley in-office processors. The SUPERLOAD system will be tested by Bentley along with WVDOT personnel in an environment similar to the final hosting environment as part of the first delivery.

### Phase 9 – Training and Documentation

Phase 9 will consist of personnel training in the use of the WVDOT system, and the necessary documentation related to both using and supporting the system.

Bentley's Training Plan does not require special facilities. The WVDOT training room will need to accommodate up to 10 trainees. Ideally, each trainee will have access to a PC workstation capable of accessing the permit system for hands-on exercises. If one (1) PC per trainee is not possible, two (2) trainees can share a PC. A projection system will be required for the instructor's PC to be used for Power Point slides and permit system software. Typically, Bentley's trainer will have a laptop PC with all pertinent software pre-loaded. The training room should also have a whiteboard or flip chart available.

A description of proposed training courses is shown in the table below:

WVDOT – Automatic Permitting System Training Courses				
Description	Audience	Duration	Prerequisites	Content
WVDOT Permit Operation	Permit Managers, Permit Processors, WVDOT Trainers	2 Days	Knowledge of WVDOT Permit Policy and Procedures, Operation of Current Windows OS	<ul style="list-style-type: none"> <li>• Operation of the WVDOT permits issuance process</li> <li>• Processing of all WVDOT permit types</li> <li>• Permit payment process</li> <li>• Electronic payment</li> <li>• Permit Approval process</li> <li>• General reports</li> <li>• How to run built-in reports</li> <li>• Analysis of specific route for permit (also verifies clearance of structures)</li> <li>• Overview of Internet processing via ePASS and eRoute</li> <li>• Electronic Fax issuance</li> <li>• Email routing</li> <li>• Route validation processing</li> </ul>
WVDOT Permit Operations	WVDOT Trainers	1 Day	WVDOT Permit Operation.	<ul style="list-style-type: none"> <li>• Highlights issues normally encountered when offering</li> </ul>

WVDOT - Automatic Permitting System Training Courses				
Description	Audience	Duration	Prerequisites	Content
Training of Trainers				classes with content of WVDOT Permit Operations
WVDOT Administrative Training	System's Administrators	1 Day		<ul style="list-style-type: none"> <li>Application administration requirements.</li> <li>System security – passwords, user ids, etc.</li> <li>How to verify data accuracy.</li> <li>Management tools and reports.</li> </ul>
WVDOT Operation for Industry Users	Permit Services, Other Industry Users	1/2 Day	Knowledge of permit requirements of WVDOT	<ul style="list-style-type: none"> <li>Web access for the permit functions.</li> <li>Submission of various permit applications</li> <li>Electronic payment submission</li> <li>Verification of permit data</li> <li>Analysis of specific route</li> <li>Status checking</li> </ul>

The table below provides a summary of the number and type of courses to be offered with locations.

WVDOT - Automatic Permitting System Training Delivery					
Course Name	Class Size	Number of Classes	How to train	Location of Training	Class Duration
WVDOT Permit Operation	Up to 10	1	Workshop and lecture with hands-on operation with exercises	WVDOT Central HQ	2 Days
WVDOT Permit Operations Training Of Trainers	WVDOT Trainers	1	WVDOT Permit Operation.	WVDOT Central HQ	1 Day
WVDOT Administrative Training		1	Workshop and lecture with hands-on operation	WVDOT Central HQ	1 Day
WVDOT Operation for Industry Users		2	Web-based permit application and issuance	WVDOT Central HQ	1/2 Day

WVDOT and Bentley will mutually agree upon the training class schedule. Classes for each subject should be presented in such a manner that the conclusion of the class would take place as close to the



time when the training will be put into use as practical. This is to insure that the training will not be lost by not putting it into practice soon enough.

#### **Description of Training Materials**

The training materials that will be provided to each user are listed below. The User Manuals and Help files will be updated to reflect WVDOT's configured features of the automated routing and permitting system.

#### WVDOT User's Manual

This is a full copy of the User Manual for the automated permitting system. This manual explains the operation of the system and gives detailed information on the use of all commands and features of the system.

#### WVDOT Training Material

This material will consist of an outline for each training session, and will list the plan and goals for the session. In addition, the material will include walk-throughs for each of the hands-on exercises, along with data to be entered for each exercise. The material will be custom developed for WVDOT, based upon the configured design and unique elements of WVDOT.

#### Copies of PowerPoint Presentation Slides

Electronic and hard copies of the presentation slides used in the class illustrating concepts and practical applications will be provided for WVDOT use in future training of WVDOT users.

#### **Task 1 – On-Site Classroom Training**

Under this proposal, Bentley will provide training to WVDOT staff. The training that will be provided will be as follows:

- Training of WVDOT Permit Issuance unit in the use of the WVDOT system for all oversize/overweight permit issuance activities.
- Training of Bridge Engineering unit in the use of WVDOT's SUPERLOAD based system both in support of the permitting operation, updating of the SUPERLOAD Bridge library and in its use for other network bridge purposes.
- Training of WVDOT System Administrators staff in system maintenance requirements of the WVDOT system, such as the network build process, rule table updating and backup and recovery procedures.
- Training of industry users in the operation of WVDOT will be provided in two (2) sessions at Department headquarters.

Training manuals will be provided for class participants and will also be provided on CDs.

#### **Task 2 - Documentation**

Bentley will provide the following SUPERLOAD documentation.

##### *Activity 1 - User Manuals and Documentation*

Bentley will provide all required user manuals with the proposed WVDOT. Additionally, the documentation will be provided on CD.

##### *Activity 2 - System Manuals and Documentation*

Bentley will provide all required system manuals and documentation with the proposed WVDOT. Additionally, the documentation will be provided on CD.



### *Activity 3 - System Support Documentation*

Bentley will provide documents and support processes for WVDOT system administrative personnel to perform administrative processes on the hosted system. The documentation will describe the procedures for WVDOT personnel to perform updating procedures for databases that will be modified as WVDOT infrastructure changes. Written instructions and help displays will be provided to guide the system administrator in the use of these processes.

### **Phase 10 - WVDOT Testing, Acceptance and Cut-Over**

WVDOT will review and test each delivery of the WVDOT system and its database to confirm the system reliability for its purposes. Upon acceptance of the WVDOT system, WVDOT will provide written notification that Bentley has correctly interpreted the information provided by WVDOT, has provided specific Phases of the system development Project in compliance with the proposal, and that the Department accepts the Phase(s) as correct for its permit approval.

Phase 10 will be constituted by the following six (6) Tasks:

#### **Task 1 – Customize Installation Procedures**

Bentley will customize its installation processes before the first deployment to make sure it has fully automated processes to install, upgrade, and maintain the hosted system.

#### **Task 2 – Install Test Instances**

Bentley personnel will deliver, install and perform a test adequate to determine that the first system delivery performs correctly in the hosted environment.

#### **Task 3 – Install Production Instance**

Bentley personnel will install a final production system and perform a test adequate to determine that the delivery performs as expected in the hosted environment.

#### **Task 4 – Support Acceptance Test**

Bentley personnel will provide WVDOT a 10-day support period, as needed, to assist in the final acceptance.

#### **Task 5 – Data Migration**

Bentley will get the last production database from WVDOT and migrate the data to the new System database.

#### **Task 6 – Support Cut-Over**

Bentley will provide support for the cutover to production use. The support will consist of planning for the steps to initiate use, as well as on-going support by telephone to respond to questions and advise in resolving problems. Bentley will correct discovered program faults and correct database flaws due to any misunderstandings of, or for mistakes in processing, data provided by WVDOT. Other conditions may constitute extra work and will require a change order. The cutover support will continue during the Warranty Period described in Phase 11.

### **Phase 11 - SUPERLOAD System Support**

After acceptance, Bentley will provide 30 days of warranty for the upgrade and hosting implementation. Following the warranty, support services for the SUPERLOAD suite of software will be provided under Bentley's SELECT program.





### Attachment 1

#### **PROVISION OF SERVICE**

A. Go Live. Once West Virginia Department of Transportation ("WVDOT") an agency of the State of West Virginia, has accepted the system on the basis of a successful acceptance test, Bentley Systems, Incorporated ("Bentley") shall be prepared to begin the oversize/overweight permitting service within three (3) business days ("Go Live"). If following Go Live, WVDOT decides to delay the issuance of permits through the system, it shall be credit Bentley for each permit issued pursuant to paragraph E below.

B. List Price. WVDOT shall pay Bentley in accordance with the List Prices listed on Attachment 2 attached hereto.

C. Payment for Service-issued Permits. Within 30 days following the end of each month starting with the month of the Go Live, Bentley shall calculate the total amount of permit fees owed to WVDOT ("Monthly Permit Fees") and deliver a report of such Monthly Permit Fees to WVDOT ("Monthly Report"). Bentley shall pay WVDOT an amount equal the Monthly Permit Fee for that month within 30 days following the end of such month.

D. Volume Guarantee. There is no volume guarantee. However in the event that the paid permit volume in a calendar month is less than 5,000 permits, Bentley reserves the right to renegotiate the Automation Fees with WVDOT

E. WVDOT Credits. Both parties intend 100% of permits to be issued via the System following Go Live. In the event that permits are issued outside the System, WVDOT shall provide a report to Bentley within 30 days following the end of each month of the number of permits issued outside of the System. WVDOT's report will credit Bentley \$12.00 for each permit issued outside of the System. Such credit will be applied against any amounts Bentley will owe for its next Monthly Permit Fee.

F. Effect of Termination. Within 30 days following the end of the month in which termination occurred, Bentley shall calculate the total amount of permit fees owed to WVDOT ("Monthly Permit Fees") and deliver a report of such Monthly Permit Fees to WVDOT ("Monthly Report"). Bentley shall pay WVDOT an amount equal the Monthly Permit Fee for that month within 30 days following the end of such month.



## LIST PRICES

### Assumptions

- 100% of permit issuance transactions will be executed through www.GotPermits.com. In the event that permits are issued by any other means, they shall be deemed to have been issued through www.GotPermits.com for the purposes of this Agreement.
- There is no minimum permit volume. However Bentley in the event that the paid permit volume in a calendar month is less than 5,000 permits, Bentley reserves the right to renegotiate the Automation Fees with WVDOT

### Permit Fee Schedule

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 as described above.
2. Automation Fee - is calculated at a rate of \$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 7,000<sup>th</sup>
3. The Processing Fee -- to cover the direct costs of credit card transactions and management of escrow accounts is calculated for each permit issued, at a fixed rate of 5% of the per permit per ton mile cost, 0.002 at WVDOT's current rate

### Payment

As described above, for each permit issuance transaction Bentley will collect:

1. The appropriate WVDOT permit fee, calculated per WVDOT overdimensional/overweight permit regulations
2. Automation fee is calculated at a rate of \$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 7,000<sup>th</sup>
3. The calculated processing fee which is equal to 5% of the per permit per ton mile cost, \$0.002 at WVDOT's current rates

In the event that production use does not immediately follow acceptance of the system pursuant to Section 4 of the Agreement, Bentley will invoice WVDOT monthly, for each month or part thereof, on the basis of the automation fee (\$12) for each permit at one-twelfth of the Annual Monthly Permit Volume rate.



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF TECHNOLOGY  
State Capitol  
Charleston, West Virginia 25305

Earl Ray Tomblin  
Governor

Ross Taylor  
Acting Cabinet Secretary

Susannah Carpenter  
Acting  
Chief Technology Officer

MEMORANDUM

**TO:** Priscilla Neal, Information Services Manager  
Department of Transportation

**FROM:** Sue Ann Lipinski *Sue Ann Lipinski*  
Office of Technology

**SUBJECT:** INFORMATION TECHNOLOGY PROCUREMENT  
REQUISITION NUMBER: N/A - IS&C NUMBER: 2012-410

**DATE:** March 26, 2012

Subdivision §5A-6-4(a)(3) of the State Code permits the Chief Technology Officer to "evaluate, in conjunction with the Information Services and Communications Division [IS&C] of the Department of Administration, the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units."

Your request for approval to enter into a direct agreement with Bentley Systems, for an Enterprise License Subscription Renewal during the period of April 1, 2012 through March 31, 2015 has been reviewed and approved by the Office of Technology.

It is our understanding that this procurement also includes optional item for time and materials on project based services as well as SUPERLOAD upgrade and hosting services.

Pursuant to State Code §5A-6-4(c), the Chief Technology Officer is required to provide project oversight for major information technology projects (those exceeding one hundred thousand dollars or requiring more than three hundred (300) man hours to complete.)

The agency will work through the OT Project Management Office, to plan for and schedule any OT technology resources and personnel that will be required to support the project and/or the final production system.

This memorandum constitutes this office's official approval and a copy should be attached to your purchase order and any other correspondence related to this request.

If you have questions, or need additional information, please contact Consulting Services at [Consulting.Services@wv.gov](mailto:Consulting.Services@wv.gov).

For Project Management support, please contact: [WVOT.EPMO@WV.gov](mailto:WVOT.EPMO@WV.gov).

SAL:tsm

**AGREEMENT ADDENDUM FOR SOFTWARE**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. *Fees for software licenses, subscriptions, or maintenance are payable annually in advance.* Payment for services will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - 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.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. *In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.*
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

**ACCEPTED BY:**

**STATE OF WEST VIRGINIA**

Spending Unit: WVDOH

Signed: *Keith Elch*

Title: BUSINESS MGR.

Date: 10/3/12

**VENDOR**

Company Name: BENTLEY SYSTEMS, Inc

Signed: *[Signature]*

Title: JULIE BERRYHART ANTONIO LECHE

Date: SEP 26, 2012



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

# Purchase Order

PURCHASE ORDER NO.  
 631200046

PAGE  
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BLANKET RELEASE  
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CORRECT PURCHASE ORDER NUMBER  
 MUST APPEAR ON ALL PACKAGES,  
 INVOICES, AND SHIPPING PAPERS.  
 QUESTIONS CONCERNING THIS PUR-  
 CHASE ORDER SHOULD BE DIRECTED  
 TO THE BUYER AS NOTED BELOW.

CHANGE ORDER  
 \_\_\_\_\_

OFFICE

DIVISION OF HIGHWAYS  
 FINANCE DIVISION  
 BUILDING 5, ROOM A220  
 1900 KANAWHA BOULEVARD EAST  
 CHARLESTON, WV  
 25305-0430

ADDRESS

\*106130129 610-458-5000  
 BENTLEY SYSTEMS INC  
 685 STOCKTON DR  
 EXTON PA 19341

SHIP TO

DIVISION OF HIGHWAYS  
 CHIEF OF INFORMATION SYSTEMS  
 BUILDING 5  
 1900 KANAWHA BOULEVARD, EAST  
 CHARLESTON, WV

DATE PRINTED: 09/17/2012      TERMS OF SALE: NET 30      FEIN/SSN: 25305-0430      FUND: 304-558-0408

SHIP VIA: \_\_\_\_\_      FOB: \_\_\_\_\_      FREIGHT TERMS: \_\_\_\_\_      ACCOUNT NUMBER: \_\_\_\_\_

BEST WAY: \_\_\_\_\_      DESTINATION: \_\_\_\_\_      PREPAID: \_\_\_\_\_      MUL-MUL: \_\_\_\_\_

LINE	QUANTITY	UQP	VENDOR ITEM NO	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT NO	ITEM NUMBER		

LINE	QUANTITY	UQP	VENDOR ITEM NO	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT NO	ITEM NUMBER		
			RECEIPT TICKET FOR PURCHASE ORDER		631200046
0001		099-00-01-001	ENTERPRISE LICENSE SUBSCRIPTION		
			SIGNATURE _____		DATE _____

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

TOTAL

APPROVED AS TO FORM BY  
 ASSISTANT ATTORNEY GENERAL

BY \_\_\_\_\_  
 PURCHASING DIVISION AUTHORIZED SIGNATURE



**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

Signature

Printed Name

Title

E-mail Address

Address: \_\_\_\_\_  
 \_\_\_\_\_

Telephone: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**BENTLEY SYSTEMS, INCORPORATED**

Signature

Printed Name

Title

685 Stockton Drive  
 Exton, Pennsylvania 19341

Telephone: 610-458-5000

Date Signed: \_\_\_\_\_

# 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

# BENTLEY SELECT PROGRAM AGREEMENT

## SELECT Program Benefits

### Exhibit A

Dated as of June 2014

conditions of the license agreement 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

# BENTLEY SELECT PROGRAM AGREEMENT

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Balancing allows Subscriber to exchange Eligible Product licenses Subscriber has purchased from Bentley for use on a perpetual basis (“**Perpetual Licenses**”) for licenses for 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.

# BENTLEY SELECT PROGRAM AGREEMENT

## SELECT Program Benefits

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

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.

## 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

# BENTLEY SELECT PROGRAM AGREEMENT

## General Terms and Conditions

### Exhibit B

Dated as of June 2014

#### 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.

# BENTLEY SELECT PROGRAM AGREEMENT

## General Terms and Conditions

### Exhibit B

Dated as of June 2014

- 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

# BENTLEY SELECT PROGRAM AGREEMENT

## General Terms and Conditions

### Exhibit B

Dated as of June 2014

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.
- (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

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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 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 subsection (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

# BENTLEY SELECT PROGRAM AGREEMENT

## General Terms and Conditions

### Exhibit B

Dated as of June 2014

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.

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.

8.02. **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 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.

8.11. **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.

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

# 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

# BENTLEY SELECT PROGRAM AGREEMENT

## Professional Services

### Exhibit C

Dated as of June 2014

notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- 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.

**Attachment 1**  
(CLA No. 10399271)

<u>Site ID</u>	<u>Subscriber Site(s)</u>	<u>Baseline Product(s)</u>	<u>Quantity</u>
4019141	WVDOH	MicroStation	200
4019141	WVDOH	ProjectWise InterPlot Driver Pack	2
4019141	WVDOH	Bentley InRoads Survey	23
4019141	WVDOH	Bentley InRoads Site	1
4019141	WVDOH	Bentley InRoads	70
4019141	WVDOH	ProjectWise Web Server	1
4019141	WVDOH	ProjectWise Caching Server	10
4019141	WVDOH	Bentley I/RAS B	2
4019141	WVDOH	LEAP CONSPAN	15
4019141	WVDOH	LEAP RC-PIER	5
4019141	WVDOH	ProjectWise InterPlot Server	2
4019141	WVDOH	CulvertMaster	1
4019141	WVDOH	FlowMaster For Windows	2
4019141	WVDOH	HEC-Pack	5
4019141	WVDOH	Bentley CADscript	7
4019141	WVDOH	Bentley iFill	1
4019141	WVDOH	gINT Logs	1
4019141	WVDOH	gINT Professional	2
4019141	WVDOH	ProjectWise InterPlot Mid-Volume Driver	1
4019141	WVDOH	Bentley Geospatial Server	1
4019141	WVDOH	STAAD Foundation Advanced	1
4019141	WVDOH	Powerscope	8
4019141	WVDOH	Interplot Raster Server	2
4019141	WVDOH	GeoStructural Analysis	1
4019141	WVDOH	Transportation Superload	2
4019141	WVDOH	SUPERLOAD Permit Administration	1

**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 April 1, 2017 (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 A m e n d m e n t .
  - 1.2. "**Effective Date**" shall mean April 1, 2017 upon the approval and acceptance by West Virginia Department of Transportation.
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-96A (Rev. 12/12) Agreement Addendum for Software ("WV-96A") 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-96A (Rev. 12/12) Agreement Addendum for Software ("WV-96A") 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, LS and T 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 REPRESENTATNES, 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 and CALs acquired 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 folih 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 SELECT Online and any Materials contained in it at Subscriber's own risk. Due to numerous possible sources of information available through this SELECT Online, and the inherent uncertainties of electronic distribution, there may be delays, omissions, inaccuracies or other problems with such information. Reliance upon any information on SELECT Online 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 SELECT Online. 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 MAIZES 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 MAIZES NO WARRANTY OR REPRESENTATION THAT T\_H\_E WEB PROPERTIES, MATERIALS OR SERVICES OFFERED ON THE WEB PROPERTIES WILL MEET ANY OF YOUR REQUIREMENTS OR WILL OPERATE UNINTERRUPTED, SECURE, OR ERRORFREE.

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, PUNITNE, 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 SELECT ONLINE OR THE MATERIALS OR THE SERVICES PROVIDED THROUGH SELECT ONLINE.

(b) **No Unlawful or Prohibited Use.** As a condition of use of SELECT Online, 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 SELECT Online 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 SELECT Online. 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.** SELECT Online 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 April 1, 2017 (the "Effective Date") and terminate on March 31, 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-96A, 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. 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."

- 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 upon at least sixty (60) days advance notice or at any time for any new Order or modified portion of an existing Order). 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-96A.** Appendix A, WV-96A (Rev. 12/12) Agreement Addendum for Software ("WV- 96A") is hereby modified as follows:

14.1. **Disputes.** Section 1 of WV-96A is deleted in its entirety.

14.2. **Governing Law.** Section 3 of WV-96A is 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. 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."

14.3. **Assignment.** Section 12 of WV-96A 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."

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

"Any limitation is null and void to the extent that it precludes any action 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.

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

Bentley Systems, Incorporated

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# BENTLEY SELECT PROGRAM AGREEMENT

## LICENSE SUBSCRIPTION PROGRAMS

### Exhibit LS

Dated as of June 2013

**1. Applicability.** At Subscriber's request, and upon Bentley's approval, Subscriber and/or its authorized LS Affiliates may be entitled to subscribe to a Bentley License Subscription Program, subject to the terms and conditions of this Exhibit LS. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.

#### **2. License Subscription Programs.**

**2.1 Overview.** Upon Bentley's acceptance of Subscriber into a License Subscription Program, Subscriber shall be granted rights to Use certain Eligible Products and Bentley Passports without limitation as to the number of Employees who may Use such Eligible Products and Bentley Passports. Descriptions of Bentley's License Subscription Programs are available at [www.bentley.com](http://www.bentley.com) (with Bentley reserving the right to alter the eligibility requirements and offerings of any such License Subscription Programs at any time, in its sole discretion, and without any notice to Subscriber). Prior to participating in a License Subscription Program, Subscriber shall complete and acknowledge a License Subscription Order Form which shall designate the details of the specific License Subscription Program in which the Subscriber is opting to participate, as well as the applicable Eligible Products and corresponding LS Fees for participation in that License Subscription Program.

**2.2 LS Affiliate Participation.** Subject to the terms and conditions of this Exhibit LS, Subscriber's LS Affiliates shall be eligible to participate in the LS Program upon Bentley accepting said LS Affiliate into the LS Program. Except in cases where an LS Affiliate has executed a LS Affiliate Participation Letter, Subscriber agrees to remain responsible for its participating LS Affiliates' compliance with the terms and conditions of the Agreement. Moreover, with respect to any participating LS Affiliates, each LS Affiliate's respective LS Affiliate Agreement, if any, shall terminate immediately upon, and as a precondition to, such LS Affiliate's participation in the License Subscription Program.

**2.3 SELECT Coverage of Eligible & Ineligible Products.** During the term of Subscriber's participation in an LS Program, all Eligible Products shall receive SELECT Coverage. Ineligible Products that are: (i) Baseline Products, or (ii) licensed by Subscriber or any LS Affiliate during any term, shall not be eligible for or included in the LS Program, but shall nonetheless continue to be eligible for SELECT Coverage under the terms of the Agreement for so long as the Agreement remains in effect and Subscriber is current on all outstanding invoices issued pursuant to the Agreement.

**2.4 Bentley LEARN.** Certain LS Programs include the right of Subscriber to receive Bentley LEARN benefits, subject to the terms and conditions of Exhibit D, as indicated on Subscriber's License Subscription Order Form. Unless otherwise set forth on the License Subscription Order Form, ELS Programs include the right of Subscriber to receive on-site training under the Bentley LEARN program, while QLS Programs do not include such right.

#### **3. Eligible Product License Grant.**

**3.1 Production Use.** In consideration for full payment of the LS Fees, and provided that Subscriber is not otherwise in breach of the Agreement, Bentley hereby grants to Subscriber a non-exclusive, limited, revocable, non-transferable, non-assignable license to Use: (i) Eligible Products (excluding Non-SELECTserver Products) for Production Use during the term of the LS Program, without limitation as to the number of Employees who may Use the Eligible Products; and (ii) Non-SELECTserver Products for Production Use solely on the Device that corresponds to each node-locked license to a Non-SELECTserver Product.

**3.2 Evaluation Use.** In consideration for full payment of the LS Fee (and depending on which LS Program that Subscriber opts to participate in), Bentley hereby grants to Subscriber a limited, non-transferable, revocable, non-exclusive right to use Eligible Products for internal evaluation or testing use only (an "Evaluation License"); provided that such Evaluation Licenses are only accessed through a dedicated SELECTserver hosted by Bentley (the "Evaluation Server"), and such licenses are not used for Production Use. Unless otherwise set forth in Subscriber's License Subscription Order Form, the duration of Subscriber's use of an Evaluation License shall not exceed ninety (90) days under an ELS Program, and shall not exceed ten (10) days under a QLS Program (each, respectively, an "Evaluation Period"). Upon the earlier of the conclusion of the Evaluation Period, the termination of the Agreement or

Subscriber's participation in the LS Program, Subscriber shall discontinue use of all copies of Eligible Products used for evaluation hereunder and, upon request by Bentley, certify such destruction in writing. To the extent that an Evaluation License is used in breach of the restrictions set forth herein (an "Unauthorized Use"), then each such instance of Unauthorized Use shall count as an instance of Subscriber Daily Use. It is Subscriber's sole responsibility to ensure that all Evaluation Licenses are generated from the Evaluation Server, and Bentley shall have no obligation to adjust the LS Fee to account for evaluation use of Eligible Products under licenses generated by a SELECTserver other than an Evaluation Server.

#### **4. SELECTServer.**

**4.1 SELECTserver as a Prerequisite.** As a condition precedent of participating in the License Subscription Program, Subscriber must utilize fully the then current, most recent Upgrade to SELECTServer. Subscriber may deploy a single SELECTserver for purposes of managing multiple Subscriber Sites and LS Affiliate Sites located in more than one Country; provided, however, that: (i) such SELECTserver is configured to report Subscriber's Daily Use within the Country it occurs; and (ii) all Subscriber Use within a particular Country is initiated by a Site activation key that is unique to such Country. Subscriber agrees that it shall migrate Subscriber Daily Use reporting from all of Subscriber's and/or LS Affiliates' deployed SELECTservers to the most recent Upgrade to SELECTserver no later than twelve (12) months after its general commercial release by Bentley.

**4.2 Reporting.** Where SELECTServer is not hosted by Bentley, Subscriber and LS Affiliates shall either: (i) deploy the automatic transmission facility of SELECTserver for monthly or daily transmission of usage information to Bentley; or (ii) provide Bentley with monthly delivery of all usage information created by SELECTserver. With respect to delivery of usage information under sub-section (ii) above, each month's delivery shall be due within seven (7) days of the end of the month in which such usage information is generated, and Subscriber and LS Affiliates, if applicable, shall allow Bentley access to all Subscriber Sites and LS Affiliate Sites in order to verify the content of such manually transmitted usage information. Subscriber and each LS Affiliate shall also deploy any other Bentley licensing technology, as requested by Bentley in order to allow Bentley to monitor Subscriber Daily Use of Eligible Products by Subscriber and each eligible LS Affiliate during the term.

**4.3 No Modifications.** Subscriber agrees that neither Subscriber nor any of its eligible participating LS Affiliates shall edit, alter, delete, or otherwise revise in any manner the content of the usage information generated by SELECTserver. Bentley shall treat each usage information transmission or delivery as confidential information of Subscriber and each LS Affiliate. If Bentley fails to receive the required usage information, Subscriber shall transmit or deliver the required usage information to Bentley within fourteen (14) days after Bentley requests such information.

#### **5. LS Fee Calculation.**

##### **5.1 Total Eligible Product Fees.**

- (a) For each Reset Period, "Eligible Product Peak Usage" shall be calculated by (i) determining the maximum Subscriber Daily Use of each Eligible Product over each pertinent Measurement Period (each a "Measurement Period Peak"); then (ii) for each Eligible Product, giving these Measurement Period Peaks an ordinal ranking from highest to lowest in the Reset Period and selecting the ranked Measurement Period Peak designated by Bentley for such Eligible Product under the applicable LS Program; and, finally, (iii) adding to the selected Measurement Period Peak the number of licenses of such Eligible Product as Subscriber has designated Non-SELECTServer Products.
- (b) Eligible Product Fees shall be calculated as (i) Eligible Product Peak Usage times (ii) the then most current SELECT Program Fees as published by Bentley for the applicable Eligible Product times (iii) the Multiplier for such Eligible Product under the applicable LS Program.

# BENTLEY SELECT PROGRAM AGREEMENT

## LICENSE SUBSCRIPTION PROGRAMS

### Exhibit LS

Dated as of June 2013

- c) Subscriber's "Total Eligible Product Fees" shall be the aggregate of the Eligible Product Fees across all Eligible Products Used by Subscriber during the Reset Period.

**5.2 Passport Fees.** For each Reset Period, Subscriber's Passport Fees shall be calculated as (i) the number of Subscriber's assigned Bentley Passport holders at the start of the Reset Period plus any new unique Bentley Passports used or assigned by Subscriber during the Reset Period times (ii) the then most current SELECT Program Fees as published by Bentley for Bentley Passports times (iii) the Multiplier for Bentley Passports under the applicable LS Program.

**5.3 LS Fees.** Subscriber's LS Fees for at least the first Reset Period shall be set forth on Subscriber's License Subscription Order Form. For each subsequent Reset Period, Subscriber's LS Fees shall be the greater of the Minimum LS Fees, or the sum of (i) Subscriber's Total Eligible Product Fees and (ii) Subscriber's Passport Fees for the immediate preceding Reset Period (the "Reset Calculation").

#### 5.4 LS Fee Calculation Definitions.

- a) "Eligible Product Peak Usage" shall have the meaning set forth in Section 5.1(a) of this Exhibit.
- b) "Minimum LS Fees" means the minimum amount of LS Fees for each Reset Period as set forth or described in the License Subscription Order Form for Subscriber's LS Program.
- c) "License Subscription Fees" or "LS Fees" means the fees payable each Reset Period to Bentley for Subscriber's (and/or its eligible participating LS Affiliates') participation in a License Subscription Program.
- d) "Measurement Period" means, for each Eligible Product, the period over which Subscriber Daily Use is measured and compared in order to determine a Measurement Period Peak.
- e) "Measurement Period Peak" shall have the meaning set forth in Section 5.1(a) of this Exhibit.
- f) "LS Day(s)" means the calendar day beginning at 12:00:01 AM and ending at 11:59:59 PM in the time zone defined for each Site managed by SELECTserver. All usage log files reflecting Subscriber's Daily Use shall be translated into GMT time relative to the location of the Device on which an Eligible Product is used.
- g) "Multiplier(s)" shall refer to the numerical value designated in Subscriber's applicable License Subscription Order Form which is used as part of the formula to calculate Subscriber's LS Fees during the term.
- h) "Reset Period" shall mean the sub-periods during the Initial Term or any Renewal Term which include a designated number of Measurement Periods to be considered in calculating LS Fees as set forth in the License Subscription Order Form for Subscriber's LS Program.
- i) "Reset Calculation" shall have the meaning set forth in Section 5.3 of this Exhibit.
- j) "Subscriber Daily Use" shall mean the number of unique machines from which Subscriber and/or its participating LS Affiliates Use an Eligible Product during an LS Day.
- k) "Total Eligible Product Fees" shall have the meaning set forth in Section 5.1(c) of this Exhibit.

#### 6. LS Program Fees & Payment Terms.

**6.1 Invoice and Payment.** Unless otherwise set forth in Subscriber's License Subscription Order Form, payment of all LS Fees for Reset Periods shall be made annually or quarterly by Subscriber and shall be due to Bentley within thirty (30) days of receipt of an invoice. Subscriber's failure to remit payment of the appropriate LS Fee shall: (i) give Bentley the right to immediately suspend Subscriber's participation in the License Subscription until such time that the appropriate LS Fee is paid in full; and (ii) be treated as a material breach of the Agreement. For clarity, for any Ineligible Products licensed by Subscriber and their LS Affiliates that are not included in the LS Program, Bentley shall invoice Subscriber for the SELECT Program Fees for such Ineligible Products.

**6.2 LS Fee Adjustment.** The parties agree that Bentley may adjust the LS Fee for the then current Reset Period in the event additional Subscriber Sites or LS Affiliates Sites are added to the License Subscription Program. Moreover, in the event Bentley designates additional Eligible Products during any Reset Period, Subscriber shall have the rights, benefits and obligations set forth herein with respect to such additional designated Eligible Products. Subscriber shall not be invoiced for Subscriber Usage of any additional designated Eligible Products, however, until the next applicable annual or quarterly LS Fee determination, at which point Bentley shall include the additional designated Eligible Products when calculating the LS Fees for the next Reset Period.

#### 7. Term and Termination.

**7.1 Term.** The minimum number of Reset Periods for Subscriber's LS Program subscription shall be designated on Subscriber's License Subscription Order Form, and shall commence on the date set forth therein (the "Initial Term"). Following expiration of the Initial Term, the terms of the License Subscription Program shall automatically renew for a successive minimum number of Reset Periods of like duration (each a "Renewal Term") unless: (i) Subscriber provides Bentley with written notice of its intent to terminate its participation in the LS Program no later than (A) one-hundred twenty (120) days prior to the end of the Initial Term or a then current Renewal Term for an LS Program with a term of more than six (6) months, and (B) thirty (30) days for an LS Program with a term of six (6) months or less, or (ii) Bentley provides Subscriber with written notice of its intent to terminate the LS Program no less than forty-five (45) days prior to the end of the Initial Term or a then current Renewal Term; with any such termination to be effective as of the end of such Initial Term or Renewal Term.

**7.2 Termination.** Notwithstanding anything to the contrary contained herein, Bentley reserves the right to terminate Subscriber's participation in the LS Program upon thirty (30) days prior written notice in the event Subscriber is in breach of the terms and conditions of this Exhibit and/or Agreement, unless Subscriber cures such breach within such thirty (30) day period. Subscriber hereby acknowledges that this right to cure shall not be extended to any breach by Subscriber which by its nature cannot be cured within the aforementioned thirty (30) day cure period.

**7.3 Event of Termination.** In the event of a termination, expiration or non-renewal of Subscriber's participation in the LS Program and/or the Agreement, Subscriber's and all its participating LS Affiliates' rights to participate in the LS Program shall immediately terminate and Subscriber's and all LS Affiliates' license rights with respect to Bentley Products shall revert back to the license rights Subscriber and each LS Affiliate respectively had in the Baseline Products. In the event Subscriber and/or its LS Affiliates opt not to continue participating in the LS Program only, SELECT Coverage for such Baseline Products will continue under the terms and conditions of this Agreement (or for a LS Affiliate under a newly executed LS Affiliate Agreement), and Subscriber and each LS Affiliate shall remove all Eligible Products, except for the Baseline Products, from Subscriber Sites and LS Affiliate Sites no later than fourteen (14) days after the Subscriber's participation in the LS Program has ceased.

# BENTLEY SELECT PROGRAM AGREEMENT

## LICENSE SUBSCRIPTION PROGRAMS

Exhibit LS  
Dated as of June 2013

### 8. Miscellaneous.

**8.1 Representations & Warranties.** Subscriber hereby represents and warrants that: (i) it has the authority to bind itself and all of its LS Affiliates for the Eligible Products at the Subscriber Sites and LS Affiliate Sites set forth in the License Subscription Order Form (as applicable); and/or (ii) cause all of its LS Affiliates set forth in the License Subscription Order Form to sign an LS Affiliate Letter attached to the License Subscription Order Form, wherein such LS Affiliates agree to be bound by the terms of this Exhibit; and (iii) upon its delivery of a License Subscription Order Form, or (if applicable) Bentley's

acceptance of an executed LS Affiliate Letter, this Exhibit will be valid and binding on Subscriber and each of its participating LS Affiliates.

**8.2 Use of Eligible Products in a Terminal Server Environment.** Subscriber agrees that it shall not use any Bentley Products on any multi-user computer network in a Terminal Server Environment without Bentley's prior written consent. If Bentley consents, any such use shall be subject to the terms of Exhibit T of the Agreement, and Subscriber shall deliver to Bentley (within ten (10) days of any request) reports, usage logs and any other reasonable information related to Subscriber's Terminal Server Environment to enable Bentley to accurately calculate the LS Fee during the term.

**8.3 Terms are Confidential.** Subscriber hereby acknowledges that the terms and conditions of this Exhibit and the applicable License Subscription Order Form are confidential in nature and Subscriber hereby agrees that neither it nor its LS Affiliates shall disclose the contents of the Exhibit and/or the License Subscription Order Form to any third party.

**8.4 Product Time Out.** Subscriber acknowledges that the licenses to the Eligible Products are for a set term and that Bentley shall have the right to terminate Subscriber's and any LS Affiliate's rights to the Eligible Products upon expiration of the term hereof. In the event Subscriber fails to pay the LS Fee, or upon termination of the Agreement for any other reason, the parties hereby agree that any timing out or expiration of the Eligible Products shall not be considered a "time bomb," defect or error with respect to the Eligible Products.

**8.5 Conflicts.** The terms herein must be read in conjunction with the other Exhibits to this Agreement, except that in the event of any inconsistency between the terms herein and any other Exhibit, the terms herein shall control with respect to Subscriber's participation in the License Subscription Program.

**9. Definitions.** Capitalized terms used in this Exhibit LS shall have the meanings set forth below or, if not otherwise defined herein, shall have the definitions set forth in the Agreement.

- a) **"Baseline Product(s)"** means the Bentley Products licensed by Subscriber and/or all participating LS Affiliates immediately prior to the date the Subscriber and/or its participating LS Affiliates enter into the LS Program. Baseline Products shall be listed on Subscriber's License Subscription Order Form and/or as an attachment to the LS Affiliate Participation Letter (as applicable), with Bentley reserving the right to amend the list of Baseline Products from time-to-time to include any additional Bentley Products licensed on a perpetual basis by Subscriber or LS Affiliates after the commencement of the LS Program subscription.
- b) **"Eligible Product(s)"** means the Bentley Products (including any Updates or Upgrades thereto) eligible for inclusion in a License Subscription Program, as designated and posted at: <http://selectservices.bentley.com/en-US/> (click on the "Eligible Software" link). The designation of Eligible Products may be amended from time-to-time in Bentley's sole discretion.
- c) **"Employee(s)"** means (i) any full-time, part-time, or temporary employee of Subscriber or an LS Affiliate, or, (ii) any temporary, term or contract professional or service personnel or employees who work at Subscriber Sites or LS Affiliates Sites, and whose work is supervised or managed by Subscriber or an LS Affiliate and for whom Subscriber or an LS Affiliate remains responsible.
- d) **"Ineligible Product(s)"** means Bentley Products that are not Eligible Products.
- e) **"Initial Term"** shall have the meaning set forth in Section 7.1 of this Exhibit.
- f) **"License Subscription Order Form(s)"** is the order form wherein Bentley shall indicate Subscriber's LS Program, Eligible Products, Reset Periods, Initial Term and corresponding LS Fees. The parties agree that the License Subscription Order Form shall constitute a part of this Exhibit LS and be governed by the terms and conditions of this Agreement.
- g) **"License Subscription Program(s)"** or **"LS Program(s)"** shall refer to the licensing programs, described at [www.bentley.com](http://www.bentley.com), under which Subscriber may Use Eligible Products under the terms and conditions of this Exhibit LS.
- h) **"LS Affiliate(s)"** shall mean: (i) an Affiliate; or (ii) any incorporated or non-incorporated entity: (A) listed on the License Subscription Order Form, or (B) whose participation in the LS Program is approved by Bentley upon such entity's execution of a LS Affiliate Participation Letter. The License Subscription Order Form may be amended by Bentley from time-to-time throughout the term to update the list of Subscriber's LS Affiliates.
- i) **"LS Affiliate Agreement(s)"** means a pre-existing SELECT Program Agreement, if any, between a LS Affiliate and Bentley.
- j) **"LS Affiliate Participation Letter(s)"** shall refer to a form letter attached to the License Subscription Order Form, wherein LS Affiliates can opt individually to participate in the LS Program under the terms set forth herein, subject to Bentley's acceptance of the LS Affiliate into the LS Program.
- k) **"Non-SELECTserver Product(s)"** means Baseline Products which are Eligible Products installed at a Subscriber Site but not initiated by or deployed from a SELECTserver.
- l) **"Renewal Term(s)"** shall have the meaning set forth in Section 8.1 of this Exhibit.
- m) **"SELECT Coverage"** means the SELECT Program benefits applicable to Bentley Products as set forth in the Agreement.
- n) **"Subscriber Site(s)"** or **"LS Affiliate Site(s)"** shall mean the discrete geographic locations from which Subscriber or its participating LS Affiliates conduct their respective operations. The definition of "Site" in Exhibit B of the Agreement is explicitly superseded by the foregoing definition for purposes of this Exhibit LS.

# SELECT PROGRAM AGREEMENT TRAINING SUBSCRIPTIONS

## Exhibit D

Dated as of October 2009

1. **Definitions.** The definitions of certain terms used herein with initial capitalized letters, if not otherwise defined herein, shall have the definitions set forth in the Agreement.
2. **Applicability.** At Subscriber's request, and upon Bentley's approval, Subscriber may be entitled to subscribe to certain Product training services pursuant to the terms set forth in this Exhibit D. To be eligible to participate, Subscriber must have a valid Bentley SELECT® Program Agreement and must be current on all outstanding invoices for amounts owed to Bentley. Only employees of Subscriber are eligible to participate in the training subscription program benefits available under this Exhibit D.
3. **Bentley LEARN Program.** Through the Bentley LEARN Program subscription, Bentley shall offer certain training services to its SELECT Subscribers via a Learning Management System, computer-based online service, electronic bulletin board, Internet site or through technology developed in the future. Subscriber shall pay to Bentley, in return for Bentley LEARN Program benefits, the applicable Bentley LEARN Program subscription fee in effect as of the beginning of each term defined below in Section 4 of this Exhibit D. Bentley LEARN Subscribers will have access to Bentley's (i) OnDemand eLearning online content and (ii) Live Training in a Virtual Classroom as per the terms and requirements set forth below and in the Bentley Web Properties Terms of Use posted on [www.bentley.com](http://www.bentley.com) ("**Terms of Use**");
  - (a) Bentley shall have the sole right to control the format, content, schedule, delivery and all other aspects of the OnDemand eLearning online content and Live Training in a Virtual Classroom, and specifically reserves the right to, at any time (i) modify the information provided through the OnDemand eLearning online content and Live Training in a Virtual Classroom or (ii) discontinue any portion of the OnDemand eLearning online content or Live Training in a Virtual Classroom.
  - (b) Subscriber shall use the OnDemand eLearning online content and Live Training in a Virtual Classroom only in accordance with and subject to the Agreement as supplemented by the Terms of Use. The Terms of Use supplements the Agreement, but does not supersede it in any respect. In the event of a conflict between the Terms of Use and the Agreement, the terms of the Agreement shall control.
4. **Term and Termination.** Training subscriptions offered under the terms of this Exhibit D shall become effective on the date that Bentley produces an invoice to Subscriber for such training subscription (the "**Training Subscription Effective Date**"). The initial term of a training subscription shall begin on the Training Subscription Effective Date and shall continue until the anniversary of the Effective Date of the Agreement (the "**Training Subscription Initial Term**"). Thereafter, the training subscription shall automatically renew for successive one (1) year terms commencing as of each anniversary of the Effective Date of the Agreement (each such term a "**Training Subscription Renewal Term**"), unless either party provides the other with written notice of its intent to terminate at least sixty (60) days prior to the end of the Training Subscription Initial Term, or the then current Training Subscription Renewal Term as applicable. In the event the training subscription is terminated by Subscriber or otherwise terminated through cancellation or termination of Subscriber's Bentley SELECT® Program Agreement prior to the end of the Training Subscription Initial Term or the then current Training Subscription Renewal Term, Subscriber shall remain responsible for the full amount of training subscription fees for the remainder of such term.
5. **Conflicts.** This Exhibit D must be read in conjunction with the other Exhibits to this Agreement, except that in the event of any inconsistency between this Exhibit D and any other Exhibit, this Exhibit D shall control with respect to Subscriber's training subscriptions.

# Bentley SELECT Program Agreement

## Terminal Server

### Exhibit T

Dated as of October 2011

1. **Definitions.** The definitions of certain terms used herein with initial capitalized letters, if not otherwise defined herein, shall have the definitions set forth in the Agreement.
  - (a) **“Terminal Server”** means a device on which a Microsoft server operating system is installed.
  - (b) **“Terminal Server Environment”** means the Microsoft server operating system or application virtualization software which, when installed on a Terminal Server, provides clients access to Windows based applications running entirely on such a server and supports multiple client sessions on the server.
2. **Use of Bentley Products with Terminal Server.** Subscriber may use Bentley Products for Production Use only on a multi-user computer network in a Terminal Server Environment, and to install properly licensed Bentley Products on one or more Terminal Servers subject to the following conditions:
  - (a) Subscriber acknowledges that Bentley Products are presently not certified for use in a Terminal Server Environment, and that Subscriber is solely responsible for testing and supporting Bentley Products for operation in a Terminal Server Environment.
  - (b) The number of Users that use a Bentley Product at a Subscriber Site (whether or not such use is made via a Terminal Server) during any one interval shall not exceed the number of copies of such Product for which Subscriber has licenses at such Site.
  - (c) For each Terminal Server on which Bentley Products are installed, Subscriber hereby agrees to activate product licensing with Bentley’s SELECTserver, or such other licensing technology as may be required by Bentley from time to time, to monitor usage of the Bentley Products via the Terminal Server. SELECTserver shall be installed and maintained in a mode that recognizes each session started via Terminal Server as requiring its own unique license.
  - (d) The products running from the Terminal Server must be activated to a SELECTserver, such that the Terminal Server must accurately provide SELECTserver individual computer names or a means to accurately identify product sessions initiated from the Terminal Server. Subscriber agrees to transmit to Bentley on a monthly basis true and accurate copies of the usage log files generated by SELECTserver or such other Bentley licensing technology as may be required by Bentley from time to time.
  - (e) Subscriber shall, upon seven (7) days advance written notice by Bentley, permit reasonable inspection and copying of the usage log files by Bentley or a third-party auditor retained by Bentley at the offices of Subscriber during regular working hours.
3. **Warranty Disclaimer.** Bentley Products used in a Terminal Server Environment shall be excluded from the warranties described in Exhibit B of the Agreement.
4. **No Technical Support.** Bentley will not provide Subscriber with the technical support services described in Exhibit A of the Agreement for problems, errors or other operating difficulties caused by or related to Subscriber’s use of Bentley Products in a Terminal Server Environment.
5. **Termination of Rights.** For purposes of clarity, Subscriber’s right to use Bentley Products in a Terminal Server Environment shall terminate in the event of any termination or non-renewal of the Agreement, notwithstanding that such products are licensed on a perpetual basis.

**AGREEMENT ADDENDUM FOR SOFTWARE**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - 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.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

**ACCEPTED BY:**

**STATE OF WEST VIRGINIA**

**VENDOR**

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_