

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

LICENSE SOFTWARE
SUPPLEMENTAL AGREEMENT

LSA Agreement Number 10025-18

This License Software Supplemental Agreement (hereinafter, "Supplemental Agreement") is made this 17, day of July, 2017 by and between the American Association of State Highway and Transportation Officials, Inc., a corporation of the District of Columbia, with offices at 444 N. Capitol Street, N.W., Suite 249, Washington, D. C. 20001, (hereinafter AASHTO), and the organization named below (hereinafter the LICENSEE), for the purpose of licensing and providing specific Software Products and providing development support, maintenance and enhancements to the licensed Software Products, as described herein. This Supplemental Agreement is made pursuant to and is supplemental to the Master Member Department Software Agreement, MMD Agreement Number 10025, or if the organization is not an AASHTO Member Department, the Master License Software Agreement, MLA Agreement Number 02853 (in either case hereinafter, "Master Agreement"), also entered into by AASHTO and the LICENSEE, which is incorporated by reference.

Organization/LICENSEE Name: Minnesota Department of Transportation

Address: 395 John Ireland Boulevard

City/State/Zip Code: St. Paul, MN 55155

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

Software Product	License Period
AASHTOWare Project BAMS/DSS	July 1, 2016 through June 30, 2017
AASHTOWare Project Preconstruction	July 1, 2016 through June 30, 2017
AASHTOWare Project Cost Estimation	July 1, 2016 through June 30, 2017
AASHTOWare Project Estimation	July 1, 2016 through June 30, 2017
AASHTOWare Project Bids	July 1, 2017 through June 30, 2018
AASHTOWare Project Civil Rights and Labor	July 1, 2017 through June 30, 2018
AASHTOWare Project Construction and Materials	July 1, 2017 through June 30, 2018
AASHTO Project SYNC Service for up to 300 connections	July 1, 2017 through June 30, 2018
AASHTOWare Project Estimator for eight (8) copies	July 1, 2017 through June 30, 2018
AASHTOWare Bridge Management – Super Site License	July 1, 2017 through June 30, 2018
AASHTOWare Bridge Rating – Unlimited Option	July 1, 2017 through June 30, 2018
AASHTOWare Pavement ME Design – Individual Workstation License for one (1) workstation	July 1, 2017 through June 30, 2018

Definitions:

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

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

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

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

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

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

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

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

TERMS

1. Master Agreement. This Supplemental Agreement is available only to an organization, agency or entity that is also signatory to a Master Agreement with AASHTO. In the event of any conflict between the terms and conditions of this Supplemental Agreement and the terms and conditions of the Master Agreement, the terms and conditions of this Supplemental Agreement shall control with respect to the Software Products licensed hereunder. Termination of the Master Agreement automatically terminates this Supplemental Agreement.
2. Grant of License. AASHTO hereby grants, and the LICENSEE accepts, a limited, nontransferable and nonexclusive license to use the Software Products under the terms and conditions described herein and under the Master Agreement.
3. Support. AASHTO shall provide support, maintenance, and enhancements for Production Software based on the Work Plan for the applicable Software Product(s). A copy of the applicable Work Plan shall be made available to the LICENSEE upon request. In addition, AASHTO shall make available to the LICENSEE all published modifications or updates to the Production Software made by AASHTO, or caused to be made by AASHTO, during the term of this Supplemental Agreement. AASHTO shall have no obligation to support or maintain Pre-Production Software Products and will provide only limited telephone support for such products.
4. License Fees. The LICENSEE shall submit to AASHTO a completed AASHTOWare® Products and Services Request Form ("Request Form") specifying the Software Products and licensing options requested by the LICENSEE. The LICENSEE shall pay a license fee for each Software Product licensed hereunder based on the fee schedules in the Catalog for the applicable Software Products and licensing options. If the term of the license is greater or less than one (1) year, the

LICENSEE shall pay a pro-rated license fee based on the term set forth in paragraph 8. License fees are not refundable or otherwise pro-ratable. AASHTO shall invoice the LICENSEE for the applicable fees, and the LICENSEE shall make payment of such fees within 60 calendar days of receipt of the invoice. LICENSEE's total obligation for the SOFTWARE PRODUCTS and licenses is listed in Attachment 1 which is attached and incorporated into this Supplemental Agreement.

5. Licensing Options. AASHTO offers a variety of licensing options which may vary depending upon the Software Product under license. Options may include site licenses permitting use of Software Products on single or multiple workstations and use by cities/counties and contractors/consultants performing work for member agencies. Software Product licensing options, including terms of use, are set forth in the Catalog and incorporated by reference and made a part of this Agreement.
6. Internal Use and Non-Disclosure. The LICENSE granted hereunder is for LICENSEE's internal use only. Licensed Software Product(s) may be used by LICENSEE's employees and authorized Contractors performing work for LICENSEE under this Agreement, to the extent specified under the applicable Software Product licensing option described in the Catalog and selected by LICENSEE. LICENSEE acknowledges and agrees that the Software Products licensed hereunder constitute proprietary and confidential materials of AASHTO. The license granted hereunder is for the LICENSEE's internal use of the Software Products, and the LICENSEE shall not provide or otherwise make available the Software Products in any form to any person other than the LICENSEE's designated employees and authorized Contractors under this Agreement. The LICENSEE shall take all reasonable steps to ensure that the content of the Software Products is not disclosed to any unauthorized person or third party.
7. Primary Contacts. LICENSEE shall submit to AASHTO a completed Primary Designee Form designating the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to the support of each Software Product, and the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to invoices and related financial communications. All communications regarding these matters should be directed through the designated contact person.
8. Term. The term of this Supplemental Agreement for each Software Product shall be the applicable License Period.
9. Termination. The rights granted to the LICENSEE under this license shall immediately terminate for each Software Product at the end of the applicable License Period. Unless the LICENSEE executes another Supplemental Agreement to license the Software Product(s) for an additional term, the LICENSEE shall immediately remove and destroy all copies of the Software Product(s) on LICENSEE's computer(s), return all CD ROMs, diskettes and all other forms of the Software Product(s) to AASHTO, and certify to AASHTO that all of the Software Products(s) have been destroyed or returned. All returns must be to the location from which they were originally shipped unless otherwise instructed by AASHTO. The obligation to remove/destroy or return the Software Products shall include the obligation to ensure that LICENSEE's authorized Contractors and Local Governments using the Software Product(s) also comply with the requirements of this paragraph.
10. Permission to Copy and Modify. Any Software Product materials provided by AASHTO under this Agreement in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by LICENSEE, for archives or emergency restart purposes, to replace a worn copy, to understand the contents of such machine readable materials, or to modify the material as provided. The original and any partial or complete copies of materials named hereunder shall be the property of AASHTO.

11. Responsibilities of the LICENSEE. The LICENSEE shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this Agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the software, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction. Any LICENSEE modifications to the Software Product(s) are the responsibility of the LICENSEE to maintain.
12. Pre-Production Software Products. AASHTO may, at its sole discretion, designate Software Products as Pre-Production Software Products, and such designation shall appear in Table 1. LICENSEE understands and acknowledges that Pre-Production Software Products have the following characteristics: (i) they have not been fully tested, (ii) they contain incomplete design and functionality that is subject to change on a frequent basis and without prior notice, and (iii) there is a greater likelihood of errors, defects, bugs and operational instability in Pre-Production Software Products compared with Production Software. AASHTO makes no representation, warranty or guarantee that any particular functionality will be included in any version released as Production Software.
13. Non-Commercial Use. Pre-Production Software Products may not be used in commercial or business applications by LICENSEE.
14. Release of Production Software. AASHTO shall notify LICENSEE when Pre-Production Software Products licensed under this Agreement have been released as Production Software, and shall provide LICENSEE access to the Production Software via the web, CD ROM or diskette, as applicable. In such a case, LICENSEE shall be entitled to use the Production Software for the remainder of the License Period with payment of the applicable license fee. There is no guarantee that a Pre-Production Software Product will be released as Production Software during the term of this Agreement.
15. Removal of Pre-Production Software Products. Upon notification that the Production Software version of a Pre-Production Software Product has been released and is available under paragraph 12, LICENSEE shall promptly remove and destroy all copies of the Pre-Production Software Product(s) on LICENSEE's computer(s) and certify to AASHTO that all of the Pre-Production Software Product(s) have been removed and destroyed.
16. Defects. In the event there are defects in a Software Product, excluding Pre-Production Software Products, the LICENSEE shall provide written notice to AASHTO or its designated contractor with a detailed description of the defects. Defects will be addressed by the contractor based on the priorities and procedures in the applicable Work Plan. Defects in Pre-Production Software Products reported to AASHTO may be tracked as part of the development process, but AASHTO shall have no obligation to correct any defects, bugs or errors in Pre-Production Software Products.
17. Reverse Engineering and Derivative Works. The LICENSEE shall not reverse engineer, decompile, or disassemble the Software Products. The LICENSEE shall not make any derivative works based on the Software Products except under the terms of a duly executed AASHTO Source Code Agreement.
18. Contractors. Subject to paragraphs 5 and 6, LICENSEE may employ Contractors to perform work for LICENSEE under this Agreement to the extent permitted under the licensing option selected by LICENSEE. Authorized Contractors may access or use the Software Product(s) only while performing work for LICENSEE. Prior to permitting any such Contractors access to or use of the Software Product(s), LICENSEE shall require such Contractor to execute a Software License-

Contractor Agreement in the form specified in Appendix A. LICENSEE shall provide a copy of the executed Contractor Agreement to AASHTO. Copies of the applicable Master and Supplemental Agreements shall be made available to the Contractor, upon request. In the event that the Contractor violates any of the terms of the license, this Supplemental Agreement or the Master Agreement, LICENSEE shall take all steps necessary to remedy the violation including, but not limited to, terminating the Contractor's access to and use of the Software Product(s) and taking appropriate action to recover the Software Product(s) including all copies.

19. Super Site License. Super Site licenses are not available for Pre-Production Software Products.
20. Extended Super Site License. Extended Super Site licenses are not available for Pre-Production Software Products.
21. Estimator, Field Manager and Field Net Software. The terms and conditions of this paragraph are applicable to LICENSEES of AASHTOWare Project Estimator, Project Fieldmanager and Project FieldNet software. Project Estimator and Project FieldNet are proprietary software products of Info Tech, Inc. The Project FieldManager suite (including Project FieldManager, Project FieldBook and Project FieldBuilder) is a proprietary software product jointly owned by Info Tech, Inc. and the State of Michigan. AASHTO and its sublicensees have been granted a license to use these software products under an agreement with Info Tech, Inc. ("Info Tech Agreement"). LICENSEE agrees to abide by the terms and conditions of the Info Tech Agreement and the terms of use for the applicable software product as set forth in the AASHTO Catalog, which are incorporated by reference and made a part of this Agreement. LICENSEE further acknowledges that the Info Tech Agreement is a confidential agreement between AASHTO and Info Tech, and LICENSEE agrees not to disclose the contents of said agreement, or any portions thereof, to any other person without prior written authorization from AASHTO and Info Tech. A copy of the Info Tech Agreement will be provided to any requesting AASHTO member or associate member.
22. Catalog. AASHTO may modify or change the Catalog from time to time at its sole discretion.
23. Transfer. This Supplemental Agreement and the Software Products may not be assigned, sublicensed, rented, leased, loaned or otherwise transferred by the LICENSEE without prior written consent from AASHTO. Any attempt to transfer any of the rights, duties, or obligations hereunder is null and void.
24. Patent, Copyright, and Trademark. AASHTO retains all rights, title, and interest, including patents, copyrights, and trademarks in and to the Software Products (including, but not limited to, any images, photographs, animations, video, audio, music, and text incorporated into the Software Products) and any copies of the Software Products. AASHTO trademarks may be used only in the manner and form authorized by AASHTO. All rights not expressly granted under this Supplemental Agreement are reserved to AASHTO.
25. WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SUPPLEMENTAL AGREEMENT AND THE MASTER AGREEMENT, THE SOFTWARE PRODUCTS HEREUNDER ARE LICENSED "AS IS" AND NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE SOFTWARE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND AASHTO EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCTS.

AASHTO DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE PRODUCTS WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATIONS OF THE SOFTWARE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ALSO ASSUMES RESPONSIBILITY FOR THE SELECTION OF

THE SOFTWARE PRODUCTS TO ACHIEVE THE LICENSEE'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE PRODUCTS.

26. LIMITATION OF LIABILITY. AASHTO SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, RELATING TO, OR BASED ON THE USE OF THE SOFTWARE PRODUCTS, EVEN IF AASHTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, AASHTO'S ENTIRE LIABILITY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE APPLICABLE SOFTWARE PRODUCT(S).
27. Hold Harmless. DELETED.
28. Purchase Orders. In the event of any conflict between the terms and conditions of this Supplemental Agreement and terms and conditions of any subsequent purchase order, the terms and conditions of this Supplemental Agreement and the Master Agreement referenced herein shall control.
29. Headings. The captions and headings are included for ease of reference only and will be disregarded in interpreting or construing this Supplemental Agreement.
30. Force Majeure. If the performance of any part of this Supplemental Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, riot, judicial or governmental action, labor dispute, act of God or other causes beyond the control of either party, the party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.
31. Enforceability. If any provision of this Supplemental Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of the Supplemental Agreement shall not be affected and shall remain in force and effect.
32. Exclusive Remedies. The remedies set forth herein shall be the LICENSEE's exclusive remedies under this Supplemental Agreement.
33. Waiver. A waiver of any term, provision or condition of this Supplemental Agreement shall not be deemed a continuing waiver of any such term, provision or condition. No waiver shall be valid or binding unless agreed to in writing and signed by authorized representatives of AASHTO and the LICENSEE.
34. Drafting. Each party agrees and acknowledges that no presumption or inference shall be made or drawn against the drafter or drafter(s) of this Supplemental Agreement.
35. Successors and Assigns. This Supplemental Agreement shall be binding upon and shall inure to the benefit of the parties and each of their respective successors assigns.
36. Authorized Persons. The persons executing this Supplemental Agreement do hereby declare, represent, acknowledge, warrant and agree that they are duly and fully authorized to execute this Agreement so as to legally bind LICENSEE and AASHTO.
37. Embedded Third Party Software. Software programs or modules under license from third parties may be embedded in the Software Products. LICENSEE shall comply with the terms and conditions of use of such third party licenses, if any.

38. Taxes. LICENSEE shall be responsible for payment of any applicable state and local sales, use, general excise or similar tax arising out of or relating to the licensing and use of the Software Products under this Agreement.
39. Amendments. This Supplemental Agreement and the Master Agreement referenced herein constitute the entire agreement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Supplemental Agreement. This Supplemental Agreement may not be amended or modified except in writing signed by both parties.
40. Governing Law. DELETED.

AASHTO

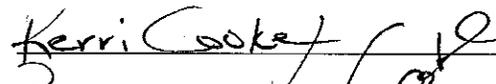
By: 
Title: Frederick G. Wright, Executive Director
Date: 6/20/17

**MN.IT Licensee's Primary Designee
Recommended for Approval**

By: 
Title: Application Portfolio Manager
Date: 6/29/2017

MNDOT ENCUMBRANCE VERIFICATION

The individual certifies funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05

By: 
Title: Buyer 2
Date: July 10, 2017

MN.IT

By: 
Title: CBTO
Date: 6/29/2017

SWIFT
Contract #
SWIFT
Purchase
Order #

Single Source
64601-30000 21024

COMMISSIONER OF TRANSPORTATION

By: 
(with Delegated Authority)
Title: Engineering Services Division Director
Date: 6/29/2017

COMMISSIONER OF ADMINISTRATION

By: 
Title: Acquisition Supervisor
Date: 7/13/17

ATTACHMENT 1

2018 AASHTOWare License COST SUMMARY

AASHTOWare Project (formerly Trans•port):

Project BAMS/DSS Module	\$ 75,000.00
Project Cost Estimation Module	\$ 57,500.00
Project Preconstruction Module	\$ 46,000.00
Project Bids Module	\$ 19,000.00
Project Estimation	\$ 0.00
Project Civil Rights & Labor Module	\$ 46,000.00
Project Construction & Materials Module	\$201,000.00
Estimator (8 copies)	\$ 11,200.00
AASHTOWare SYNC Service (300 Conn)	<u>\$ 42,400.00</u>
AASHTOWare Project Subtotal	\$498,100.00

AASHTOWare Bridge:

Bridge Design (formerly Virtis) Unlimited Option	\$37,500.00
Bridge Management (formerly Pontis) Super Site License	\$36,000.00
AASHTO Bridge Subtotal	\$ 73,500.00

AASHTOWare Pavement:

Pavement Design ME (formerly DARWin-ME)	\$5,500.00
AASHTOWare Pavement Subtotal	\$ 5,500.00

AASHTOWare 2017 Annual License Total **\$577,100.00**