

## WisDOT STANDARD BRIDGE DESIGN TOOL USE AGREEMENT

Customer:	Contact:
Address:	Phone:
Address:	E-Mail:
City, State, Zip:	Other:
<b>Services:</b> Wisconsin Department of Transportation ("WisDOT") Standard Bridge Design Tool (the "Service(s)").	
<b>Services Fees:</b> There shall be no fee for the use of this service. If fees are assessed in the future an amendment to this contract will be required in the manner provided in Section 8, below.	<b>Initial Service Term:</b> 5 years, or until Customer's quality control - quality assurance plan terminates or is renewed, whichever is earlier, unless terminated at the end of the pilot period or under the termination provisions set forth in Section 4, below.
<b>Services:</b> WisDOT will use reasonable efforts to provide Customer the Standard Bridge Design Tool services. The Services are intended to increase the efficiency with which single span slab bridge designs and plans are completed. Customer is required to perform preliminary structure layout including, but not limited to, establishing preliminary type, size, and location design; hydrology and hydraulics designs; and foundation support designs. The initial review of the project shall include an alternatives analysis to determine whether a single span slab bridge is the most cost-effective structure type for the identified location. If a single span slab bridge design is appropriate, the Services can be used to design the structure and assemble the plans for submittal to the WisDOT Bureau of Structures Consultant Review Unit for preliminary and final review following the WisDOT guidelines.	
<b>Pilot Use:</b> The Department intends to initially test the Services on pilot projects. The Department expects to continue the services beyond the end of that pilot stage. The Department reserves the right to discontinue the services in the event it concludes the pilot is unsuccessful or for any other reason.	

### AGREEMENT

This Standard Bridge Design Tool Agreement ("Agreement") is entered into on the date of the later signature below. It is between the State of Wisconsin, Department of Transportation, 4822 Madison Yards Way, Madison, Wisconsin ("WisDOT"), and Customer identified above. This Agreement includes and incorporates the information above, and the Terms and Conditions below. It contains, among other things, warranty disclaimers, liability limitations and use limitations. This agreement may only be amended in accordance with Section 8 below. No purchase order, similar form, nor any consulting engineering contract, even if signed by the parties after the date of this agreement, may alter, amend or change the provisions of this agreement.

Wisconsin Department of Transportation

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

By: \_\_\_\_\_  
(Name)

By: \_\_\_\_\_  
(Name)

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

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

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

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

**WisDOT STANDARD BRIDGE DESIGN TOOL USE AGREEMENT**  
**TERMS AND CONDITIONS**

**1. SERVICES AND SUPPORT**

1.1 Subject to the terms of this Agreement, WisDOT will use reasonable efforts to make Services available unless maintenance or a system problem renders it unavailable. Support, however, may only be available 7:45 a.m. to 4:30 p.m. Monday to Thursday, and 7:45 a.m. to 12:00 p.m. on Fridays. The Department shall not be liable for any damages resulting from unavailability of the Services.

1.2 Access to the Services shall be made available by WisDOT through its Web Access Management System (“WAMS”). Each Customer employee will login to WAMS by his or her individual user ID and password to access the Services. WisDOT reserves the right to refuse registration of or cancel user IDs or passwords it deems inappropriate.

1.3 Subject to the terms hereof, WisDOT will provide Customer with reasonable technical support services in accordance with WisDOT’s standard practice.

**2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 The customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted in writing by WisDOT or authorized within the Services); use the Services or any Software for timesharing or otherwise for the benefit of a third party. Nor may Customer remove any proprietary notices or labels from plans or documents created by the Services.

2.2 Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with WisDOT’s standard published policies then in effect (the “Policy”) and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless the State of Wisconsin and WisDOT against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an unauthorized use of Services or use of Services in a manner inconsistent with the Policy. Although WisDOT has no obligation to monitor Customer’s use of the Services, WisDOT may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but

not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party understands that use of the Services is related to work performed for government purposes and does not require either party to disclose business, technical or financial information relating to the Party's business. Data provided by Customer to WisDOT to enable the provision of the Services ("Customer Data"), including any document or data related to or created using the Service for the provision of engineering services to WisDOT or any Wisconsin county, town or municipality, is not property of Customer and is not confidential. The parties agree that information provided by Customer as part of the Services is subject to disclosure under the Wisconsin open records law.

3.2 WisDOT shall own all right, title and interest in and to Customer Data, as well as any data that is based on or derived from Customer Data and provided to Customer as part of the Services. WisDOT shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, WisDOT shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and WisDOT will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other WisDOT offerings, and (ii) disclose such data in connection with its business or pursuant to the Wisconsin Open Records law. No rights or licenses are granted except as expressly set forth herein.

### **4. TERM AND TERMINATION**

Subject to earlier termination as provided herein, this Agreement is for 5 years, or until Customer's quality control - quality assurance plan terminates or is renewed, whichever is earlier, unless terminated at the end of the pilot period described above. This Agreement, may be renewed for additional periods at the time Customer submits a new quality control – quality assurance plan to the Department's Bureau of Structures. Either party may, without penalty, request termination of this agreement at any time.

4.1 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice, if the other party materially breaches any of the terms or conditions of this Agreement.

4.2 Upon any termination, WisDOT will retain and dispose of Customer Data in accordance with applicable state Record Disposal Authorizations. Nothing in this paragraph shall change obligations of Customer to retain and provide to WisDOT other project data and documents associated with any project, which shall be treated in accordance with any contract governing the applicable project. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **5. WARRANTY AND DISCLAIMER**

WisDOT shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by WisDOT or by third-party providers, or because of other causes beyond WisDOT's reasonable control, but WisDOT shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

THESE SERVICES MAY BE USED SOLELY FOR WORK ON PROJECTS OVER WHICH WISDOT EXERCISES SUPERVISION AND CONTROL INCLUDING, BUT NOT LIMITED TO, WISDOT, COUNTY, TOWN OR MUNICIPAL HIGHWAY PROJECTS ("BRIDGE PROJECTS"). WISDOT DIRECTS CUSTOMER TO THE SERVICES FOR BRIDGE DESIGN PURPOSES ON BRIDGE PROJECTS AND REQUIRES THE USE OF THE SERVICES AS A CONDITION OF CONTRACTING WITH THE DEPARTMENT TO PROVIDE ENGINEERING SERVICES. WISDOT AFFIRMS THAT THE DECISION TO USE THE SERVICES ON BRIDGE PROJECTS IS A GOVERNMENT DECISION THAT IS SUBJECT TO DISCRETIONARY IMMUNITY CONSISTENT WITH *ESTATE OF LYONS V. CAN INSURANCE*, 207 WIS.2D 446, 558 N.W.2D 658 (CT. APP. 1996), AND THAT CUSTOMER CONTRACTOR HAS NO DISCRETION TO PERFORM THE REQUIRED ENGINEERING SERVICES USING OTHER TOOLS OR METHODS. WITH RESPECT TO ANY UNAUTHORIZED USE OF THE SERVICES, WISDOT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT WHEN USED AS DIRECTED AND AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND WISDOT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **6. INDEMNITY**

As set forth in section 5, WisDOT is directing Customer to use the Services when providing consultant services requiring structure design for which use of the Services is appropriate. Customer shall perform preliminary structure layout including, but not limited to, establishing preliminary type, size, and location design; hydrology and hydraulics designs; and foundation support designs. The initial review of the project shall include an alternatives analysis to determine whether a single span slab bridge is the most cost-effective structure type for the identified location. If a single span slab bridge design is appropriate, the Services shall be used to assemble the plans for submittal to the WisDOT Bureau of Structures Consultant Review Unit for preliminary and final review following the WisDOT guidelines. Customer is responsible for preliminary engineering work needed for use of the Services and for using the Services appropriately and in the manner specified in the Policy. WisDOT has created the Services and is the person legally responsible for engineering work, decisions and designs created by the Services when used for Bridge Projects.

WisDOT shall indemnify and hold harmless Customer and its subcontractors, consultants, agents, officers, directors and employees from and against any liability that arises out of the use of the Services to provide structure designs pursuant to contracts negotiated and let by WisDOT, but only to the extent state law imposes that liability upon the state, its agents, employees or officers.

Customer agrees not to use the Services for design of any structure for any project not negotiated and let by WisDOT, and Customer shall hold WisDOT harmless from liability to any third party resulting from use of the Service or errors in the materials or plans produced by the Services on a project that is not a Bridge Project.

## **7. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON WISDOT AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND WISDOT'S REASONABLE CONTROL, REGARDLESS OF WHETHER WISDOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING HEREIN SHALL CONSTITUTE A WAIVER OF THE SOVEREIGN IMMUNITY OF THE STATE OF WISCONSIN, WHICH WISDOT OFFICIALS LACK AUTHORITY TO WAIVE.

## **8. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with WisDOT's prior written consent. WisDOT may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers, modifications or changes to this Agreement must be in a writing signed by both parties that expressly states its purpose is to amend this agreement. This agreement or any amendment to it may be signed in counterpart form. No other purchase order, similar form, or any consulting engineering contract, even if signed by the parties after the date of this agreement may alter, amend or change the provisions of this agreement. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind WisDOT in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, WisDOT will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Wisconsin without regard to its conflict of laws provisions.