

CTBRIDGE™

END USER SOFTWARE LICENSE AGREEMENT

This CTBRIDGE™ END USER SOFTWARE LICENSE AGREEMENT (this “Agreement”) is made and entered into as of the latest date set out on the signature page hereof (the “Effective Date”) by and between the California Department of Transportation (the “Department”), a state agency of the State of California, and the entity indicated on the signature page hereof as the “Licensee.”

1. Grant of License.

(a) **License to Software.** The Department hereby grants to Licensee, during the term, a limited, non-transferable, non-exclusive license, with no right to sublicense, to install and use the software known as CTBridge™ and described in Exhibit A (together with its related documentation, the “Software”) in executable form only, solely for the purpose of Licensee’s internal business use in analyzing and designing bridges. The Software may be used only on the computer equipment and systems that are compatible with the Department’s relevant specifications and only by the number of Concurrent Users for which Licensee has purchased license rights. Each Concurrent User license permits Licensee to operate the Software at a given time on a single individual computer workstation. Licensee may EITHER: (1) install the Software directly on one workstation for each Concurrent User license purchased; or (2) install the Software on a single centralized network server solely for the purpose of loading the Software temporarily into the memory of individual workstations via a local area network (LAN) or a wide area network (WAN), provided in each case that the number of users operating or accessing the Software concurrently does not exceed the number of Concurrent User licenses purchased. Licensee must obtain an authorization code from the Department for the initial installation and all subsequent installations. If the number of concurrent users exceeds the authorized limit, Licensee must acquire additional licenses. The grant of any additional licenses shall be subject to acceptance by the Department and payment of the Department’s then-current applicable license fees. Licensee is authorized to use the Software solely in connection with bridge design projects of Licensee. Licensee shall not use the Software to process information relating to projects of a third party or use the Software to offer any services for the benefit of any third party.

(b) **Restrictions on Use.** Licensee acknowledges that Licensee’s rights in and to Software are solely as set forth in Section 1(a) hereto and do not include any rights of ownership in any of the Software. Licensee agrees that the Department owns all right, title and interest, including but not limited to copyright, patent, trade secret and all other intellectual property rights, in and to the Software (and all copies thereof), and any changes, modifications or corrections thereof. Licensee shall not, and shall not permit any third party to, (i) modify or create a derivative work of the Software; or (ii) decompile, reverse engineer, disassemble or otherwise determine or attempt to determine source code (or the underlying ideas, algorithms, structure or organization) of the Software; or (iii) sublicense, distribute, rent, lease or offer the Software to any third party for timesharing any of the software, including but limited to actual “timesharing,” ASP, service bureau or other similar arrangements; or (iv) physically export, download or otherwise transfer the Software to a location outside the United States. This

Agreement and the license granted pursuant hereto may not be assigned, sublicensed or otherwise transferred by Licensee without the prior written consent of the Department.

(c) **Audit Rights.** The Department reserves the right, upon prior notice to Licensee, to audit usage of the Software at Licensee's premises during normal business hours to verify Licensee's compliance with the terms of this Agreement. If such audit should reveal that Licensee has used the Software in a manner not authorized by this Agreement, the Department reserves all rights and remedies permitted by law, including, but not limited to, prompt collection of any underpayments revealed by such audit. In addition, if such underpayments exceed ten percent (10%) of the amounts actually paid by Licensee under this Agreement, then Licensee will pay all reasonable costs and fees associated with such audit.

(d) **Feedback.** Licensee hereby irrevocably assigns to the Department any and all rights in any Feedback, including all intellectual property rights throughout the world and acknowledges and agrees that the Department may freely use ideas generated from such Feedback for any purpose, including further product development. "Feedback" means comments, criticisms, suggested improvements and other feedback, as prepared by Licensee independently or jointly by the Department and Licensee, in written or oral form, regarding the function, features and other characteristics of the Software, including without limitation the results of any testing conducted on or with the Software.

2. **Term.**

(a) **Term.** This Agreement is effective as of the Effective Date and will remain in effect until terminated: (i) by Licensee upon thirty (30) days prior written notice to the Department; or (ii) by the Department pursuant to Section 2(b) hereof.

(b) **Termination by the Department.** The Department may terminate this Agreement immediately: (i) in the event of the insolvency, bankruptcy or voluntary dissolution of Licensee; or (ii) if Licensee defaults in the performance of any provision hereunder, and if such default continues and is not cured within thirty (30) days after written notice thereof by the Department, provided, however, that no such cure period shall apply in the event of Licensee's breach of Section 4. Such termination right is in addition to, and not in limitation of, any other remedies available to the Department at law or under this Agreement.

(c) **Effect of Termination.** Notwithstanding anything to the contrary in this Agreement, any termination of this Agreement shall not relieve either party of any of its obligations or liabilities accrued prior to such termination. Within ten (10) days after termination of this Agreement, Licensee shall return to the Department or destroy, as instructed by the Department, all copies (including deleting all electronic copies) of Software then in Licensee's possession, and an officer of Licensee shall certify in writing to the Department, within fifteen (15) days of any termination of this Agreement, that through its best efforts and to the best of its knowledge the original and all copies of the Software have been deleted, destroyed or returned to the Department.

3. **License Fees.**

(a) **License Fee.** In consideration of the licenses granted herein, Licensee shall pay the Department's current published licensee fees for the number of Concurrent User licenses purchased hereunder. All fees must be paid in advance, prior to shipment of the Software, by a payment method accepted by the Department. License fees do not include, and Licensee agrees to pay, the cost of shipment and insurance for the delivery of the Software to Licensee by a common carrier selected by the Department in its reasonable discretion. Risk of loss will pass to Licensee upon delivery to the common carrier.

(b) **Taxes.** Licensee is solely responsible for the payment of any taxes (including sales or use taxes, intangible taxes and property taxes) resulting from Licensee's acceptance of this Agreement and use of the Software, exclusive of taxes based on the Department's income. The Department reserves the right to have Licensee pay any such taxes as they fall due to the Department for remittance to the appropriate authority. Licensee agrees to hold harmless the Department from all claims and liability arising from Licensee's failure to report or pay any such taxes.

4. **Confidentiality of Software.**

(a) **Protection of Confidential Information.** The Software contains and embodies the confidential information and trade secrets of the Department ("Confidential Information"). Except as expressly provided herein, Licensee will not disclose or use such Confidential Information without the Department's prior written consent, except disclosure to Licensee's employees or consultants on a need-to-know basis, provided that such employees or consultants have been advised of the license restrictions of this Agreement and have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as Licensee's obligations under this Agreement. In addition to the foregoing nondisclosure obligations, Licensee agrees to use at least the same care and precaution in protecting such Confidential Information as Licensee uses to protect Licensee's own confidential and proprietary information and trade secrets, and in no event less than reasonable care. If any of the Confidential Information, in whole or in part, is deemed to be a public record by law, court, state, regulation or governmental order to be disclosed, Licensee shall give the Department written notice so that the Department may seek a protective order or other appropriate remedy prior to such disclosure and provide full and complete documentation to the Licensee of its claim that the Confidential Information and Software are trade secrets. Licensee shall return all Confidential Information promptly upon the request of the Department or upon termination of this Agreement.

(b) **Licensee Responsibilities.** It is the responsibility of Licensee to provide and prepare, in the configuration specified in the Documentation, the system environment upon which the Software is to be installed. Licensee shall implement reasonable security procedures to prevent the unauthorized use or disclosure of the Software. Licensee shall notify the Department promptly of any known or suspected breach of this Agreement.

(c) **Equitable Remedy.** Licensee acknowledges that due to the unique nature of the Department's Confidential Information, the Department will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of the Department's Confidential Information. In addition to any other remedies that may be available in law, in equity, under this Agreement or otherwise, the Department shall be entitled to obtain any injunctive relief that may be appropriate to prevent such unauthorized use or disclosure.

(d) **Term of Nondisclosure Obligations.** Licensee's obligations set forth in this Section 4 will survive and continue for a period of ten (10) years after the termination of this Agreement, and will bind Licensee's representatives, successors and assigns, if any; provided, however, that such obligations will terminate with respect to any Confidential Information which becomes available for unrestricted public use through no fault of Licensee.

5. **Acceptance Procedure; No Warranty.**

(a) **Acceptance by Licensee.** Licensee shall conduct acceptance tests of the Software during the thirty (30) days following the receipt of the Software. If during this acceptance period Licensee finds that the Software does not substantially conform to its material specifications, Licensee may reject the Software by providing written notice with a description of the nonconformity to the Department. The Department will replace the Software provided the Licensee returns such defective Software to the Department, paying for the return shipping and insurance such that the Software is returned in the same condition as delivered. **FAILURE TO RETURN THE SOFTWARE WITHIN THE THIRTY (30) DAY PERIOD SHALL CONSTITUTE ACCEPTANCE OF THE SOFTWARE BY LICENSEE.** Replacement within such period shall be Licensee's sole remedy for the Software's failure to conform to applicable specifications.

(b) **No Maintenance and Support.** The Department will not offer to Licensee training, support or maintenance, and is not obligated to offer upgrades or updates with respect to the Software. Licensee is responsible for installation, management, operation and maintenance of the Software. Licensee is solely responsible for obtaining and using computer equipment and other required programs. Licensee acknowledges and agrees that the Department shall have no obligation or liability with respect to such equipment or services. At the present time, the Department does not plan to offer training, support, maintenance, upgrades or updates. If, in the future, the Department or a third party, authorized by the Department, offers training, support, maintenance, upgrades, updates or the like, with respect to the Software, such additional services will be offered for separate fees under a separate written agreement or a supplement to this Agreement.

(c) **Warranty.** The Software is provided AS IS and without warranty of any kind, express or implied. NO WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. NO WARRANTY IS MADE THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, OR THAT ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL INTEROPERATE WITH LICENSEE'S SYSTEM, OR THAT THE SOFTWARE'S FUNCTIONALITY WILL MEET LICENSEE'S REQUIREMENTS. NO WARRANTY IS MADE REGARDING THE RESULTS OF USE OF THE SOFTWARE OR THAT THE SOFTWARE WILL ACCURATELY AND RELIABLY TEST CONSTRUCTION DESIGNS FOR COMPLIANCE WITH ANY FEDERAL, STATE OR INDUSTRY STANDARDS, OR THAT THE SOFTWARE WILL PREDICT OR TEST THE SAFETY OR OTHER FEATURE OF A STRUCTURE. ENGINEERING JUDGMENT MUST BE USED TO APPLY THE SOFTWARE TO DESIGNS AND TO ADJUST DESIGNS TO FIT INDIVIDUAL SITE CONDITIONS. THE SOFTWARE IS NOT INTENDED TO BE A SUBSTITUTE FOR ENGINEERING KNOWLEDGE, EXPERIENCE OR JUDGMENT. LICENSEE ACKNOWLEDGES ITS RESPONSIBILITY TO: (i) REGULARLY BACK UP DATA MAINTAINED ON ANY HARDWARE USING THE SOFTWARE; AND (ii) ADEQUATELY TEST PRIOR TO DEPLOYMENT EACH VERSION OF THE SOFTWARE IN A CONFIGURATION WHICH REASONABLY SIMULATES LICENSEE'S PLANNED ENVIRONMENT.

(d) **Limitation of Liability.** THE DEPARTMENT'S LIABILITY UNDER THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT OR OTHERWISE RELATING TO THE SOFTWARE SHALL BE LIMITED TO REFUND OF THE RELEVANT LICENSE FEES PAID BY LICENSEE TO THE DEPARTMENT HEREUNDER. IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE. THE DEPARTMENT SHALL NOT BE LIABLE FOR ANY CLAIMS IN CONNECTION WITH THE LICENSEE'S USE OF THE PROGRAM, INCLUDING, WITHOUT LIMITATION, LIABILITY ARISING FROM THIRD-PARTY CLAIMS, LIABILITY RELATED TO THE QUALITY OF CALCULATIONS OR THE SAFETY OR QUALITY OR STRUCTURES, LIABILITY FOR SCHEDULING DELAYS OR RE-DESIGN, RETROFIT OR RE-WORK OF STRUCTURES, OR OTHER SIMILAR LIABILITY.

6. **Indemnity.**

(a) **By the Department.** Subject to the limitations of liability set forth in Section 5(d) and Section 6(c), the Department will defend, at its expense, any action brought against Licensee based upon the claim that the Software, as used within the scope of the license granted under this Agreement, directly infringes a duly issued U.S. patent or a registered U.S. copyright

or misappropriates any trade secret. Licensee shall notify the Department promptly in writing of any such claim. Licensee shall not enter into any settlement or compromise any claim without the Department's prior written consent. The Department shall have sole control of any such action or settlement negotiations, and Licensee shall provide the Department with information and assistance, at the Department's expense, necessary to settle or defend such claim. The Department agrees to pay all damages and costs finally awarded against Licensee attributable to such claim.

(b) **Department Options.** If any of the Software become, or in the opinion of the Department may become, the subject of a claim of infringement of any a duly issued U.S. patent or registered U.S. copyright or misappropriation of any trade secret, the Department may, at its option: (i) procure for Licensee the right to use such Software free of any liability; (ii) replace or modify such Software to make them noninfringing; or (iii) terminate this Agreement and pay to Licensee a prorated refund of the fees paid for the infringing Software, amortized on a straight-line basis over three (3) years. The Department shall not be liable for any costs or expenses incurred by Licensee in connection with any potential claim of infringement without its prior written authorization. The remedies described in this Section 6(b) are Licensee's exclusive remedies for third party infringement claims.

(c) **No Department Liability.** The Department assumes no liability hereunder for, and shall have no obligation to defend Licensee or to pay costs, damages or attorney's fees for, any claim based upon: (i) any method or process in which the Software may be used by Licensee; (ii) any results of using the Software; (iii) any use of other than a current unaltered release of the Software; or (iv) the combination, operation or use of any Software furnished hereunder with non-Department programs or data if such infringement would have been avoided by the combination, operation, or use of the Software with other programs or data.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE CALTRANS FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

(d) **By Licensee.** Licensee agrees to indemnify, defend and hold harmless the Department, the State of California, its officers, agents and employees from any and all claims, actions or causes of action for damages including, but not limited to demands, costs, expenses, losses or other liabilities, including attorneys' fees, arising out of or connected with: (i) the acts or omissions of Licensee's employees, agents and representatives, or (ii) Licensee's use of the Software for so long as Licensee continues to use the Software, including, but not limited to, any claims related to bridge design, or (iii) the operation of Licensee's business.

7. **General.**

(a) **Modification of the Agreement.** The terms of this Agreement may only be modified by a written agreement duly signed by both parties hereto. Variance from the terms and conditions of this Agreement in any Licensee purchase order or other written notification will be of no effect.

(b) **Assignment.** This Agreement may not be assigned by Licensee without the prior written consent of the Department.

(c) **Survival.** The provisions of Sections 1(b), 1(c) and 1(d) and Articles 2, 4, 5, 6 and 7 shall survive any termination of this Agreement.

(d) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. For any disputes arising under this Agreement, the parties agree to submit to the exclusive jurisdiction of the federal and state courts of the County of Sacramento, California. It is the parties' intent that the provisions of Section 5(c) ("Warranty Disclaimer") and Section 5(d) ("Limitation of Liability") be interpreted according to the California Uniform Commercial Code—Sales, Cal. Comm. Code § 2101 et seq.

(e) **Notices.** Any notice or report required or permitted by this Agreement, except as otherwise set forth in this Agreement, shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(f) **Severability; Waiver.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights or of any other rights hereunder.

(g) **Entire Agreement.** This Agreement, including all Exhibits hereto, is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

The parties have executed this Agreement as of the Effective Date.

THE DEPARTMENT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
Address: _____

Fax: _____

By: _____
Name: _____
Title: _____
Date: _____

LICENSEE

Company Name: _____
Address: _____

Fax: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

DESCRIPTION OF SOFTWARE

CTBridge™ is a frame analysis and design program that runs under the Windows 7® operating system and supports the Sixth Edition of the American Association of State Highway Transportation Officials (AASHTO) Load and Resistance Factored Design (LRFD) and Load Factor Design (LFD) design specifications (with interim revisions and amendments as specified below). CTBridge™ is replacing Caltrans' Bridge Design System (BDS) software as the everyday, mainstream longitudinal analysis and design program for Caltrans bridge engineers. Program features include:

- CTBridge™ allows the user to build a three-dimensional spline model by describing cross sections, materials, spans, bents and columns. A curved bridge can be modeled by describing horizontal curve data.
- CTBridge™ uses both U.S. and metric units, allowing the user to switch display and data entry units at any time. In addition, the user can choose between U.S. or metric specifications.
- The user can add prestress cable paths to the spans. The cable paths are then discretized and prestress loads are generated for the finite element analysis engine to solve.
- The user can view and manipulate the model in three dimensions. The model can be zoomed in to allow the user a close look at modeling details. Input data can be saved and reloaded. The user has control over what loads are applied to the model and can choose from dead load, additional dead load, live loads and user defined loads.
- CTBridge™ factors loads according to the indicated edition of LRFD and LFD specifications. A report of the factored loads is available, as well as graphics of the various load combinations.
- CTBridge™ performs spec checks according to the indicated edition of LRFD and LFD specifications. The spec checks are available in summary form, or the user may view a more detailed level of results.
- After an analysis or design, the user can create reports of results. These reports can be viewed on screen, printed and saved as text reports. Graphical results are also available.
- CTBridge™ supports the Sixth Edition of the AASHTO LRFD Bridge Design Specification (2012) with 2014 Interim Revisions and California Amendments (Blue Sheets).