**Application:** This Agreement is for use with prime consultants under contract with FHWA or an LPA to provide services for a project that will be bid by ODOT, where access to AASHTOWare Project Application (AWProject) is necessary and where FHWA or the LPA has entered an IGA with ODOT for the subject project.

**Instructions:**

* Prime consultant signs this Agreement and submits to ODOT and FHWA or LPA.
* Public Agency performs reporting functions regarding its employees that require AWProject access.
* Prime consultant performs reporting functions for its employees and its subcontractor employees that require AWProject access.
* Prime consultant includes provisions of this agreement in any subcontracts that require AWProject access, but subs do not need to sign and submit this agreement.
* Each individual that requires AWProject access (including employees of other agents of prime consultant and its subcontractors) must complete and submit to ODOT an EUAA form..

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**AASHTOWare Project Application Agreement**

**(March 2021)**

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| **Consultant Company Information** |
| Name of Firm:  Address:  Primary contact for this Agreement:  Phone:  Email: |

This AASHTOWare Project Agreement (“Agreement”) is between the State of Oregon, acting by and through its Department of Transportation (“ODOT”) and [Enter legal company name as provided to IRS (and DBA name if applicable) and state of incorporation if applicable: e,g, "XYZ Inc., an Oregon corporation".] (“Consultant”).

This Agreement continues in effect unless terminated by either party. Either party may terminate this Agreement immediately with written notice to the other party. This Agreement also will terminate if the Consultant is no longer under an existing legal contract with [enter FHWA or name of LPA] pursuant to a specific project (the “Project”) that will be bid by ODOT. Upon termination of this Agreement for any reason, Consultant must stop all use of ODOT’s AASHTOWare Project Application (“AWProject”) by its employees or subcontractors.

As a condition of use of AWProject, Consultant agrees to the terms of this Agreement for the use of AWProject by Consultant and its subcontractors, and their respective agents and employees.

1. **AASHTOWare Project Application Access and General Requirements**

Consultant shall include the provisions set forth in this Agreement in any subcontract that will require subcontractor access to AWProject.

Consultant shall use AWProject for electronic submittal and receipt of data for the Project. As a precondition for access to AWProject, Consultant employees, subcontractor employees, or other agents must have an ODOT-approved ProjectWise account. For a ProjectWise account, follow processes under “Request Access” at <https://www.oregon.gov/odot/Business/Pages/ProjectWise.aspx> .

Each individual that requires access to AWProject must:

* Agree to the Terms and Conditions of Use set forth in the [External User Access Agreement – AASHTOWare Project Application](https://www.oregon.gov/odot/Business/AASHTOWare/AWP_EUAA.pdf) (“EUAA”) and click the “SUBMIT” button to electronically submit a completed EUAA to ODOT (at [AWPAdmin@odot.state.or.us](mailto:AWPAdmin@odot.state.or.us)) for review and approval, and
* Complete ODOT’s online training and certification requirements specified at <https://www.oregon.gov/odot/Business/Pages/AW-Estimation.aspx>.

Individuals with approved accounts will be provided access only to appropriate data and user screens specific to the Project that they have been contracted to work on. Consultant, its subcontractors and each individual seeking or having access to AWProject shall follow the procedures provided in the [External User Roles, Responsibilities and Security Requirements –AWProject Application](https://www.oregon.gov/odot/Business/AASHTOWare/AWP_EURR.pdf) (“EURR”) (as may be revised from time to time by ODOT).

Consultant shall promptly send notice to ODOT at [AWPAdmin@odot.state.or.us](mailto:AWPAdmin@odot.state.or.us) to remove AWProject access for individuals (including employees, subcontractor employees, or other agents) that are no longer employed or that are reassigned or that otherwise no longer need access to AWProject for the Project. ODOT will send an attestation request to Consultant every 30 days (or such other period ODOT deems appropriate) to validate the list of individuals (including employees, subcontractor employees or other agents) with access to AWProject. Consultant shall respond in writing to ODOT within 3 business days of any such validation request.

1. **Correct Use of AWProject**

Any person approved for accessing and using AWProject on behalf of Consultant acquires the status of an “Account Holder”. Consultant shall ensure each Account Holder: a) complies with the Terms and Conditions of Use set forth or incorporated in the EUAA, and b) has appropriate training in the proper use of AWProject and follows the EURR. ODOT reserves the right to monitor Account Holder activity within AWProject and may suspend or terminate any Account Holder ODOT, in its sole discretion, determines to be in violation of the Terms and Conditions of Use.

1. **Responsibility for AWProject Functioning**

ODOT provides use of AWProject “as is”. ODOT does not warrant that the information or access thereto will be error free, uninterrupted or meet Consultant’s needs, nor does ODOT make any representation or warranty regarding the accuracy or completeness of the information. ODOT is not responsible for any damage that may occur due to error, omission, lack of timeliness or any other cause, of the information contained on AWProject or other sites accessible from it. ODOT does not assume any responsibility for information added to the site by Account Holders. ODOT disclaims any liability arising from interferences or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any cause beyond the control of ODOT. ODOT reserves the right to temporarily suspend access to AWProject, without notice, because of maintenance, repair, or any other reason deemed necessary for the proper functioning of AWProject.

1. **Professional Standard of Care; Liability; Indemnity**

**4.1 Professional Standard of Care.** Consultant shall use AWProject and perform all related data entry Services in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the nature of the use.

**4.2 Liability.** Consultant shall be liable for any damage caused by AWProject use, intrusion or illegal or unauthorized access by Consultant or its subcontractors, or their respective agents or employees. In no event shall the State of Oregon, the Oregon Transportation Commission (“OTC”) and its members, ODOT, or their officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of Consultant’s use of AWProject.

**4.3 Indemnity.** Consultant shall indemnify, defend, save, and hold harmless the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the use of AWProject by Consultant or its subcontractors, or their respective agents or employees. However, neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.

1. **Firewall, Virus and Malware**

Consultant will at all times maintain an active and current firewall protection in place for Account Holders who are accessing and using AWProject. Consultant will at all times maintain an active and current virus and malware protection on the individual machines and network being used by the Consultant to access AWProject and shall ensure that such active and current virus and malware protection is maintained on machines and networks used for access to AWProject but not owned or controlled by Consultant. Whether external users are accessing AWProject data through a company-owned or personally-owned machine, ODOT reserves the right to quarantine any infected files, documents or other items that are found to contain a virus, malware, adware or otherwise harmful component. Consultant shall immediately notify ODOT in the event of a breach or security concern at their company. ODOT reserves the right to suspend user accounts, consultant accounts, or both, if they contain harmful software. ODOT also reserves the right to require Consultant to clean devices of harmful software. In the event of chronic infections ODOT reserves the right to deny future access to AWProject.

1. **Governing Law; Jurisdiction; Venue**.

This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONSULTANT HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS.

1. **Signatures.**

**CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**Consultant:**

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| --- | --- |
| Signature & Date |  |
| Printed Name and Title of Authorized Representative |  |

**State of Oregon acting by and through its Department of Transportation**

|  |  |
| --- | --- |
| Signature & Date |  |
| Printed Name and Title of Authorized Representative |  |