



**DRAFT**

3815 Plaza Drive  
 Ann Arbor, Michigan 48108  
 734.995.0200 Fax 734.995-0599  
 www.ms2soft.com

## TRANSPORTATION DATA MANAGEMENT SYSTEM ORDER FORM (MARCH 11, 2019)

<b>Organization:</b>	Lake County Division of Transportation
<b>Contact Person:</b>	Jonathan Nelson, P.E.
<b>Address:</b>	600 W Winchester Road
	Libertyville, Illinois 60048
<b>Phone:</b>	847.377.7400
<b>Fax:</b>	847.984.5606
<b>Email:</b>	JPNelson@lakecountyil.gov

MODULE	QUANTITY	UNIT PRICE	AMOUNT
<b>TCLS Annual Support</b> (September 1, 2019 – August 31, 2020)	1	\$ 9,810	\$ 9,810
<b>TCLS Annual Support</b> (September 1, 2020 – August 31, 2021)	1	\$10,300	\$10,300
<b>TCLS Annual Support</b> (September 1, 2021 – August 31, 2022)	1	\$10,810	\$10,810
<b>TOTAL AMOUNT</b>			<b>\$30,920</b>

METHOD OF PAYMENT	
<input type="checkbox"/> <b>Check Enclosed</b> (payable to Midwestern Software Solutions)  <b>Bill My</b> <input type="checkbox"/> <b>VISA</b> <input type="checkbox"/> <b>MasterCard</b> (fax to 734-995-0599)  <input type="checkbox"/> <b>Purchase Order Enclosed</b>	Credit Card Number <span style="float: right;">Expiration Date</span>
	Cardholder's Name
	Cardholder's Signature

NOTE: Orders are subject to acceptance of MS2 and prices are subject to change. Additional services related to historic data conversion or tailoring TMS to meet specific needs can be provided on a fee to be agreed upon prior to furnishing those services. BY ORDERING THE SOFTWARE AND SERVICES, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT

# Transportation Data Management System Software License Agreement

Midwestern Software Solutions (MS2) provides its Software and services to its customers based upon the terms and conditions herein. By ordering the Software and services, you (Licensee) indicate your acceptance of the terms of this License Agreement:

## 1. DEFINITIONS

(a) "Software" means the Transportation Data Management System (TMS) Software and includes any upgrades and additional modules provided by MS2.

(b) "Documentation" means any materials and documentation provided by MS2 to describe the features and operation of the Software.

2. LICENSE GRANT. Subject to the terms and conditions of this Agreement, MS2 grants to Licensee a non-exclusive license to use the Software.

3. SINGLE AGENCY USE. Licensee may use the Software only for the purposes of its own agency and may not use the Software to store or process data for another agency without first obtaining a separate license for such use.

4. OWNERSHIP. The Software and associated documentation are being licensed, not sold, to Licensee. MS2 owns all rights, title, and interest in and to the Software and associated documentation, including copyrights, patents and other intellectual property rights. Thus, Licensee may not copy, distribute, modify, or use the Software and associated documentation, or any portion thereof, other than what is expressly authorized by this Agreement. The data stored in the Software is the property of the licensee. MS2 may not use, sell or share the data without the licensee's express written consent. These provisions shall not apply if MS2 is required by law to share the data or ordered to produce the data by a court or other legal entity having the legal jurisdiction. MS2 may also share the data if the disclosure is reasonably necessary to defend itself from any legal action or claim. The data shall be delivered to the licensee upon demand or termination of this agreement.

5. NO REVERSE ENGINEERING. Licensee may not cause or permit the Software to be reverse engineered, decompiled, or disassembled, except to the extent that applicable law permits such activity notwithstanding contrary contractual obligations.

6. GOVERNMENT - RESTRICTED RIGHTS. The Software and associated documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in DFARS 252.227-7013 (c)(1)(ii) or FAR 52.227-19, as applicable. Manufacturer is Midwestern Software Solutions, LLC., 3815 Plaza Drive, Ann Arbor, Michigan 48108.

7. WARRANTIES. Licensee acknowledges that (a) the operation of the Software may not be uninterrupted or error-free; and (b) the functions of the Software may not meet Licensee's requirements. MS2 warrants that the Software will function substantially in accordance with the Documentation for a period of which the support fee is paid. MS2 disclaims any and all other warranties as to the Software, including any implied warranties of merchantability and fitness for a particular purpose of use.

8. EXCLUSIVE REMEDIES. Licensee's exclusive remedies for any claims against MS2 arising out of this Agreement will be limited to the following, at the option of MS2: (a) replacement by MS2 of the Software with software which functions substantially in accordance with the Documentation; (b) repair by MS2 of the Software, by patch or workaround, so that it functions substantially in accordance with the Documentation; or (c) refund by MS2 of the funds paid by Licensee and received by MS2 with respect to the Software and services.

## 9. LIMITATION OF LIABILITY.

(a) Limited Liability of MS2. MS2's liability in connection with the Software, any services, any license granted under this Agreement, or any other matter relating to this Agreement will not exceed the fee that licensee actually paid to MS2 for the Software or services giving rise to the liability.

(b) Exclusion of Damages. Regardless of whether any remedy set forth in this Agreement fails its essential purpose or otherwise, in no event will MS2 be liable to licensee for any special, incidental, or consequential damages—including, but not limited to, loss of data, loss of revenue or profits, failure to realize savings, personal injury, property damage, or commercial loss—whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not MS2 has been advised of the possibility of such damage.

(c) Special Exclusions. The Software is intended to be used as a supplement for normal office procedures and is not intended to be a substitute for good professional interpretation, analysis, and judgment. MS2 assumes no liability for any type of damage or injury resulting from use of the Software or from conclusions drawn on information obtained using the Software. Use of the Software and reliance on data obtained using the Software is entirely at the user's risk.

(d) Basis of the bargain. Licensee acknowledge that MS2 has set its fees and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that those limitations and disclaimers form an essential basis of the bargain between the parties.

## 10. TERMINATION.

(a) Termination. This Agreement will take effect upon acceptance by MS2 and will continue in effect as long as the annual support fee is paid. Either party has the right to terminate this Agreement. To terminate this Agreement, the party seeking termination must give the other party written notice thirty (30) days before the termination. In the event that Licensee fails to comply with any of the provisions of this Agreement, this Agreement will automatically terminate without notice.

(b) Effect of Termination. Upon termination of this Agreement for any reason, Licensee will discontinue further use of the Software, will promptly return to MS2 or, at MS2' request, will destroy all copies of the Software, and will certify to MS2 in writing that Licensee has done so. MS2 will provide the Licensee with a copy of the Licensee's data stored in the Software at the time of termination.

(c) Survival Of Obligations. The provisions of Sections 5 and 9 shall survive termination of this Agreement.

(d) Termination Is Without Prejudice. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

11. RENTAL. Licensee may not rent, lease, or lend the Software or any portion thereof.

12. ASSIGNMENT. Neither party shall without advanced written notice assign or otherwise transfer any of its rights or obligations under this Agreement and the Software may not be transferred to or used by any other person or entity for any reason whatsoever.

13. SEVERANCE CLAUSE. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

14. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter, including any prior or subsequent purchase order terms that are contrary or inconsistent with the terms and conditions of this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

15. GOVERNING LAW. This Agreement shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19th Judicial Circuit Court, State of Illinois.