

**TERMS AND CONDITIONS
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
ALL TDOT GNSS SUSCRIBERS**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as "TDOT" and anyone accessing the TDOT GNSS Reference Network via an authorized user name and password, hereinafter referred to as the "USER," is for the provision of TDOT GNSS Reference Network Access, as further defined in the "SCOPE OF SERVICES."

A. SCOPE OF SERVICES:

- A.1. TDOT shall provide all goods, services or deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
 - a. "GNSS" means Global Navigation Satellite System.
 - b. "NGS" means National Geodetic Survey.
 - c. "NTRIP" means Network Transport of RTCM via Internet Protocol.
 - d. "RTCM" means Radio Technical Commission for Maritime Services.
- A.3. The USER shall have unlimited access to the TDOT GNSS Reference Network with the one user name and password created at registration. Access shall only be used by the individual USER, their company, or public sector entity, if USER represents a public sector entity. If a USER requires more than one access point, they must register and pay associated fees independently for each required access point.
- A.4. The USER shall not transfer access, via its user name and password, to any person or entity not an employee of the USER's company or public sector entity.
- A.5. The USER shall connect to the internet IP address provided by TDOT using NTRIP, for use via the USER's mobile devices for positioning, locating and navigating with satellites of the GNSS.
- A.6. The USER shall be responsible for the purchase, lease, installation, maintenance, and operation of all equipment necessary to use TDOT GNSS Reference Network services, including without limitation, the NTRIP protocol.
- A.7. The USER shall notify TDOT of any unauthorized use of their login.
- A.8. TDOT shall maintain and operate the TDOT GNSS Reference Network, Monday through Friday from 8:00 AM to 4:30 PM CT, excluding State Holidays.
- A.9. TDOT shall operate and maintain a web application to display the TDOT GNSS Reference Network status.
- A.10. TDOT shall broadcast real time GNSS Network corrections in RTCM formats from the TDOT GNSS Reference Network Server to the internet IP address provided by TDOT for use via the USER's mobile devices for positioning, locating and navigating with satellites of the GNSS. TDOT will provide access to the network using the public domain interface Network transport of NTRIP.

- A.11. TDOT shall offer industry standard message formats for GNSS Network corrections.
- A.12. TDOT shall not be responsible for any user equipment or software required to access the TDOT GNSS Reference Network.
- A.13. TDOT shall not be responsible for troubleshooting USER's equipment issues regarding network connectivity.
- A.14. TDOT shall monitor, log and enforce account usage.
- A.15. TDOT shall make static data files available for download via the NGS website www.ngs.noaa.gov/CORS/, at a minimum. Static Data files that are not available via the NGS website, may be available from TDOT, but there is no guarantee. Should the USER be unable to find a Static file on the NGS website, they can e-mail a request to TDOT.GNSSNetwork@tn.gov and TDOT staff will determine if the file is available, and if so, will coordinate distribution of said file to the USER.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on the date of payment acceptance as logged by electronic components of TDOT GNSS Registration webpage ("Effective Date") and extend for a period of twelve (12) months after the Effective Date ("Term"). Upon expiration of this Contract TDOT will turn off access to the TDOT GNSS Reference Network for the USER.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. General Account Information.
 - a. Upon expiration of this Contract, the USER must renew the agreement or complete a new application and pay the required fees to obtain access to the TDOT GNSS Reference Network.
 - b. Payments will only be accepted by credit/debit card via the link provided after digitally signing the Contract.
- C.2. USER Account Information.
 - a. The required fees for each individual access point for this Contract is four hundred and fifty dollars (\$450.00) and is broken down as follows:
 - i. Contract Processing Fee: \$150.00
 - ii. Access Point Fee per Access Point: \$300.00 (12 months x \$25.00/month)
 - iii. Contract Total Fee: \$450.00.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. TDOT is not bound by this Contract until it is signed by the Contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Contract, said officials may include, but are not

limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base Contract and, depending upon the specifics of the Contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of Contract by TDOT. Should TDOT exercise this provision, TDOT shall have no liability to the USER. Should either TDOT or the USER exercise this provision, the USER shall be required to compensate TDOT for satisfactory, authorized services completed as of the termination date and shall have no liability to TDOT except for those units of service which can be effectively used by the USER. The final decision, as to what these units of service are, shall be determined by TDOT. In the event of disagreement, the USER may file a claim with the Tennessee Claims Commission in order to seek redress.
- Upon such termination, the USER shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Subject to Funds Availability. This Contract is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the TDOT reserves the right to terminate this Contract upon written notice to the Contracting State Agency. Said termination shall not be deemed a breach of this Contract by the TDOT. Upon receipt of the written notice, the Contracting State Agency shall cease all work associated with this Contract. Should such an event occur, the Contracting State Agency shall be entitled to compensation for all satisfactory and goods delivered and accepted or authorized services completed as of the termination date. Upon such termination, the Contracting State Agency shall have no right to recover from the Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The USER shall compensate TDOT for completed services.
- D.6. Subcontracting. Neither the USER nor TDOT shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.7. Conflicts of Interest. The USER warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the USER in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.8. Nondiscrimination. TDOT and the USER hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of TDOT or the

USER on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.

- D.9. Records. The USER shall maintain documentation for its transactions with TDOT under this Contract. The books, records, and documents of the USER, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.12. State Liability. TDOT shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.14. State and Federal Compliance. The USER and TDOT shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The USER agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The USER acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.16. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.17. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.18. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.19. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the USER by TDOT or acquired by the USER on behalf of TDOT that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit USER to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the USER due to intentional or negligent actions or inactions of agents of TDOT or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. USER shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. The obligations set forth in this Section shall survive the termination of this Contract.

The USER's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the USER of this Contract; previously possessed by the USER without written obligations to TDOT to protect it; acquired by the USER without written restrictions against disclosure from a third party which, to the USER's knowledge, is free to disclose the information; independently developed by the USER without the use of TDOT's information; or, disclosed by TDOT to others without restrictions against disclosure. Nothing in this paragraph shall permit USER to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the USER due to intentional or negligent actions or inactions of agents of TDOT or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- D.20. Prohibited Contract Terms. The prohibited Contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The USER acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Offshore Resources Statement. All State data must remain in the United States, regardless of whether the data is processed, stored, in-transit, or at rest. Access to State data shall be limited to US-based (onshore) resources only. Configuration or development of software and code is permitted outside of the United States. However, software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the U.S. Secretary of Commerce acting pursuant to 15 CFR 7 has defined to include the People's Republic of China, among others are prohibited. Any testing of code outside of the United States must use fake data. A copy of production data may not be transmitted or used outside the United States