

Agreement For Educational Use of ASSHTOWare® Products

Educational License Agreement Number E- _____

This Agreement is made by and between the American Association of State Highway and Transportation Officials, Inc., (hereinafter “AASHTO”), with offices at 444 North Capitol Street N.W., Suite 249, Washington D.C. 20001, and the Educational Organization named below (hereinafter the “LICENSEE”), for the purpose of providing the LICENSEE a limited Educational Use license for the AASHTO Software Products designated below.

Organization/ Licensee _____
Name _____
Title _____
Address _____
City _____ State _____ ZIP _____
Phone _____ Email _____

Table 1. Software Products, License Periods and License fees under this Agreement:

Network	Annual renewal
	One-time purchase
Local	Annual renewal
	One-time purchase

Definitions:

“Software Product” and “Software Products” shall mean the product(s) listed in Table 1 as described in the current ASSHTOWare® Catalog (hereinafter, the “Catalog”), including related materials and documentation.

“Educational Organization” shall mean a university, college, graduate school, or vocational technical school.

“Educational Use” shall mean use in classroom teaching of students in a course offered by an Educational Organization. Education use shall not include use in connection with any commercial or business activity or application, any work for hire, or any activity for compensation, other than classroom teaching.

“License Period” shall mean the effective dates of the license(s) for the Software Product(s) stated in Table 1.

TERMS of AGREEMENT

1. **Grant of License.** AASHTO hereby grants, and the LICENSEE accepts, a limited, nontransferable and nonexclusive license to use the Software Products for Educational Use only under the terms and conditions described herein. LICENSEE shall not authorize, permit or allow the non-Educational Use of the Software Products.
2. **Support.** AASHTO shall provide limited telephone support for the Software Product(s). No on-site support will be supplied. In addition, AASHTO shall make available to the LICENSEE all published modifications or updates to the Software Products made by AASHTO, or caused to be made by AASHTO, during the term of this Agreement. LICENSEE shall designate an employee or representative of LICENSEE who shall serve as the primary contact person on matters relating to the support of the Software Products.

TERMS continued

3. License Fees. The LICENSEE shall pay a license fee, if any, as listed in Table 1. License fees are not refundable or pro-ratable. AASHTO shall invoice the LICENSEE for the applicable license fees, and the LICENSEE shall make payment of such fees within 60 calendar days of receipt of the invoice.
4. Installation of Software. LICENSEE agrees to install the Software Product(s) on a single classroom computer operated by a teacher at the LICENSEE's facility. Images from the operation of the Software Product(s) by the teacher may be projected onto a classroom screen or onto the screens of the personal computers of the students in the classroom, but the Software Product(s) may not be installed or downloaded onto the personal computers of students.
5. Copying. No part of the Software Products may be copied, reproduced or transmitted by any means or in any form or media.
6. Term. The term of this Agreement for each Software Product shall be the applicable License Period set forth in Table 1.
7. Termination. The rights granted to the LICENSEE under this license shall immediately terminate for each Software Product at the end of the applicable License Period. Unless the LICENSEE executes another Agreement to license the Software Product(s) for an additional term, the LICENSEE shall immediately remove and destroy all copies of the Software Product(s) on LICENSEE's computer, return all CD ROMS, diskettes and all other forms of the Software Product(s) to AASHTO, and certify to AASHTO that all of the Software Product(s) have been destroyed or returned. All returns must be to the location from which they were originally shipped unless otherwise instructed by AASHTO.
8. Defects. In the event there are defects in a Software Product, the LICENSEE shall provide written notice to AASHTO or its designated contractor with a detailed description of the defects. Defects will be addressed by the contractor based on the priorities and procedures established by AASHTO and the contractor.
9. Reverse Engineering. The LICENSEE may not reverse engineer, decompile, or disassemble the Software Product(s).
10. Catalog. AASHTO may modify or change the Catalog from time to time at its sole discretion.
11. Protection and Security. LICENSEE shall insure that only authorized teachers and students have access to and use the Software Product(s). The LICENSEE agrees to notify AASHTO immediately of any unauthorized access, possession, or use of the Software Product(s) by any unauthorized person, organization or entity; take all necessary steps to prevent the recurrence of such unauthorized access, possession, or use; and cooperate with AASHTO in any litigation against third parties deemed necessary by AASHTO to protect its proprietary rights. The LICENSEE's compliance with this paragraph shall not be construed in any way as to waiver of AASHTO's proprietary rights, or for breach of contractual rights.
12. Responsibilities of the LICNESEE. The LICENSEE shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the Software Product(s), and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction.

TERMS continued

13. Transfer. This Agreement and the Software Products may not be assigned, sublicensed, rented, leased, loaned or otherwise transferred by the LICENSEE without prior written consent from AASHTO. Any attempt to transfer any of the rights, duties, or obligations hereunder is null and void.
14. Patent, Copyright, and Trademark. AASHTO retains all rights, titles, and interest, including patents, copyrights, and trademarks in and to the Software Products (including, but not limited to, any images, photographs, animations, video, audio, music, and text incorporated into the Software Product(s) and any copies of the Software Products. AASHTO trademarks may be used only in the manner and form authorized by AASHTO. All rights not expressly granted under this Agreement are reserved to AASHTO.
15. Warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE SOFTWARE PRODUCTS LICENSED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND AASHTO EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATE HEREIN. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCTS. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO THE LICENSEE.
16. Limitation of Liability. AASHTO SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, RELATING TO, OR BASED ON THE USE OF THE SOFTWARE PRODUCTS, EVEN IF AASHTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, AASHTO'S ENTIRE LIABILITY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE SOFTWARE PRODUCTS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO THE LICENSEE.
17. Hold Harmless. Unless otherwise prohibited under applicable law, the LICENSEE shall hold harmless, indemnify, and defend AASHTO, and its officers, directors, employees and members, from and against any and all claims, losses, liabilities, judgments, interest and settlements, including reasonable attorney's fees and expenses, arising out of, or relating to the installation and use of the Software Products.
18. Purchase Orders. In the event of any conflict between the terms and conditions of this Agreement and terms and conditions of any subsequent purchase order, the terms and conditions of this Agreement shall control.
19. Headings. The captions and headings are included for ease of reference only and will be disregarded in interpreting or construing this Agreement.
20. Force Majeure. If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, riot, judicial or governmental action, labor dispute, act of God or other causes beyond the control of either party, the party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.
21. Enforceability. If any provision of this Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of the Agreement shall not be affected and shall remain in force and effect.
22. Remedies. In the event of a breach of this Agreement by LICENSEE, AASHTO shall be entitled to any remedies available under law, but not limited to, an immediate injunction in a Court of competent jurisdiction to specifically enforce this Agreement.

TERMS continued

23. Waiver. A waiver of any term, provision or condition of this Agreement shall not be deemed a continuing waiver of any such term, provision or condition. No waiver shall be valid or binding unless agreed to in writing and signed by authorized representatives of AASHTO and the LICENSEE.
24. Drafting. Each party agrees and acknowledges that no presumption or inference shall be made or drawn against the drafter or drafter(s) of this Agreement.
25. Successors and Assigns. This agreement shall be binding upon and shall insure to the benefit of the parties and each of their respective successors assigns.
26. Authorized Persons. The persons executing this Agreement do hereby declare, represent, acknowledge, warrant and agree that they are duly and fully authorized to execute this Agreement so as to legally bind LICENSEE and AASHTO.
27. Amendments. This Agreement constitutes the entire agreement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement may not be amended or modified except in writing signed by both parties.
28. Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

LICENSEE

Name _____
Signature _____
Title _____
Email _____
Date _____

AASHTO

Name Jag Mallela
Signature _____
Title Project Manager
Email jmallela@ara.com
Date _____

LICENSEE hereby designates the following person to serve as the primary contact person on matters relating to the support of the Software Products as described herein:

Name _____
Title _____
Address _____
City _____ State _____ ZIP _____
Email _____
Phone _____ Fax _____

AASHTOWare® DARWin® 3.1 Order Form

Master Licensing Agreement Number _____ Serial Number (ARA to complete) _____

Acquisition Authority

Name _____
Title _____
Organization _____
Address _____
City _____ State _____ Zip _____
Phone _____
Fax _____
Email _____

Licensing Option Information

Which licensing fee option are you requesting?

- One-time fee option
- Annual-fee option
- Annual fee renewal

What licensing option are you requesting?

- Standard
- Standard Upgrade
- Educational
- Travel Pak

What type of license are you requesting?

- Local
- Network

Are you a prior DARWin licensee?

- Yes
- No

How many users do you want licensed to use DARWin? _____

** If you are running Netware 5.1, please contact DARWin technical support before ordering. The network version of DARWin is not compatible with some features of Netware 5.1

Submit order form, with payment, to:

DARWin Sales
ARA, Inc., Transportation Sector
100 Trade Centre Drive, Suite 200
Champaign, IL, 61820

AASHTO member departments should send to:
AASHTO
444 North Capitol Street NW, Suite 249
Washington, DC, 20001.\

Shipping & Billing Information

Ship to same address as licensee

Name _____
Title _____
Organization _____
Address _____
City _____ State _____ Zip _____

*DARWin will be shipped at no charge by UPS Ground. If you prefer other shipping methods, please call before sending payment. **For International and Canadian orders, consignee pays all shipping charges, duty, and V.A.T.*

Payment Method

- Check (payable to ARA, Inc.)
- Money order (payable to ARA, Inc.)
- Credit card (MasterCard/VISA only)

Credit Card Number _____

Expiration Date _____

Software fee

1. Software fee: \$ _____
2. Add'l. DARWin 3.1 manuals (\$25 each): _____
3. International shipping costs: _____
4. Subtotal (lines 1 + 2 + 3): _____
5. Sales tax (7.25% of line 4): _____
(Illinois organizations only, except
AASHTO member departments)

Total cost \$ _____

Ordering & Use Commitment

I have read the DARWin Licensing Agreement and accept the terms and conditions stated therein. I hereby place an order with Applied Research Associates, Inc. (hereinafter called ARA) for the DARWin computer program, as described in the DARWin Licensing Agreement.

Signature _____

Date _____