

StreetSaver End User License Agreement

Subscriber Agreement for StreetSaver® Online (MTC Pavement Management Software (as a Service))

This Agreement governs your access to and use of any and all StreetSaver® Online services (the "Services") accessible through the StreetSaver® Web site (www.streetsaver.com) (<https://www.streetsaver.com>) and any associated remote connections (including without limitation through Remote Desktop for Microsoft Windows). Accessing or using the Services in any manner means that you accept the terms of this Agreement.

A. GRANT OF LICENSE AND USE RIGHTS

Subject to the terms of this Agreement, the Metropolitan Transportation Commission ("MTC") grants you the nonexclusive, nontransferable license to access and use the Services—without the rights to sublicense or in any way transfer such rights or to engage in any type of resale of the Services or the output of the Services to any third party who has not also paid for a license to the Services. You agree not to make any use of the Services not expressly permitted under this Agreement. You further agree not to modify or remove the MTC logo located in the footer of any displayed or printed reports or other displayed or printed output generated by use of the Services.

B. AUTHORIZED USERS AND SCOPE

Your license to access and use the Services is conditioned on current payment of the applicable subscription fees described in Article F of this Agreement. Your access to and use of the Services will be through the use of a unique username and password; and you are solely responsible for safeguarding this information and any effects of not safeguarding this information. You may authorize your employees to access the Services by means of your username and password. You may not in any way loan, rent, or in any way share your username or password with any other person, outside of your agency or organization; consultants or independent contractors using the Services on behalf of your agency or organization are required to enter into this agreement on their own behalf. MTC reserves the right in its sole and absolute discretion to disable access and use through your username or password—temporarily to address any security or other technical issues or temporarily or permanently relating to your or your organization's breach of this agreement.

C. OWNERSHIP AND CONFIDENTIALITY

You acknowledge and understand that the Services are provided through the StreetSaver® Pavement Management Software (the "Software"). You acknowledge and agree that the Software is the valuable property of MTC, the Association of Oregon Counties, and Marion County, Oregon, which jointly own any copyright, trade secret, patent and other proprietary rights in the Software. You acknowledge and agree that the Software constitutes confidential, proprietary information, unauthorized dissemination of which (including without limitation disassembly or reverse-engineering) could cause irreparable harm to MTC, Association of Oregon Counties, and Marion County, Oregon. You agree not to access or download any copy of the Software or to reverse-engineer, decompile, or disassemble the Software through the use of the Services or otherwise. You agree to notify MTC immediately of the existence of circumstances surrounding any unauthorized access to, copying of, downloading of, reverse-engineering, decompilation, or disassembly of the Software or any part thereof by any person or entity through the use of the Services or otherwise. As between you and MTC, you own all right, title and interest in and to the data developed by the Software.

D. INDEMNIFICATION

You agree to indemnify, defend, and hold MTC, the Association of Oregon Counties, and Marion County, Oregon, their directors, commissioners, officers, employees and agents harmless from any and all losses, costs, claims, judgments, damages, liabilities, law suits, demands, or expenses arising out of or derived in any way, either directly or indirectly, from your use of the Services or from your breach of this Agreement.

E. TERM AND TERMINATION

- 1. Term.** The Services shall be provided for a term of one (1) year from the delivery date of an e-mail notification of your login credentials and shall be extended in one (1) year increments, subject to payment of the applicable subscription fees, unless terminated by either party as provided herein. For additional Software licensed after your initial order, the one (1) year term shall commence upon the delivery date of your login credentials for such order.
- 2. Termination.** You may terminate the Services at the end of the term by giving written notice to MTC at least fifteen (15) days prior to the end of any such term. In the event of early termination, for whatever reasons, you will not be entitled to a pro-rata refund from MTC for the period for which the Services are not used. MTC may suspend or cancel the Services if you fail to make payment pursuant to Article F below. Either party may terminate the Services if the other party breaches any material term or condition of the Services terms and conditions and the breach is not remedied within thirty (30) days after receiving written notice of the breach. In the event the Agreement is terminated, the Services will also terminate automatically.

3. **Furnishing of Data.** Upon request by you made within thirty (30) days after termination for reasons other than your breach of the Agreement, MTC will make available to you for download a file of the data in MTC's custody generated by your use of the Services in Microsoft SQL Server format. After such period, MTC shall have no obligation to maintain or provide any of such data and shall thereafter delete all such data in MTC systems or otherwise in MTC's possession or control, unless legally barred from doing so.

F. FEES AND PAYMENT

1. **Fees.** The subscription fees for the Services and other fees referenced in this Agreement are specified on the Website (www.mtcpms.org) at the "Products" link. For clarity, the subscription fees are solely in consideration for your access to and use of the Services, which includes the online access to and use of the MTC Pavement Management Software as well as the corollary data or technical-support services (if any) currently being offered with the StreetSaver® Online services (with the corollary services being offered at any given time being described on the Website). Additional fees may apply for data migration, support, maintenance, or any other services outside the scope of MTC's applicable development and maintenance agreement, which may be charged separately, including those available under MTC's StreetSaver® Software Services Agreement.
2. **Payment.** Following the initial term, the Services fees will be billed on an annual basis, payable in advance and due within net 30 days from receipt of MTC's invoice.
3. **Lapse of Coverage.** In the event that your license of the Services lapses and your Services are discontinued by MTC as a result of either termination by you for any reason or by MTC for non-payment of the subscription fee, you may reactivate the Services within ninety (90) days of the end of the term by making payment for the current annual period, dating from the end of the previous term.

If you wish to reactivate the Services more than ninety (90) days after the term ends, you may be subject to a reinstatement fee as specified on the Website. In addition, you may be subject to a database conversion fee should MTC determine that the archived database or database to be imported is not compatible with the current version of the licensed Software at the time of renewal. The new term will begin on the delivery date of an MTC e-mail notification of your login credentials and continue for one year, as specified in Article E(1).

G. RETENTION OF RIGHTS

MTC retains all rights not expressly granted. Nothing in this Agreement constitutes a waiver of MTC's rights under the U.S. copyright laws or any other Federal or State of California statutes.

H. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITY

TO THE EXTENT ALLOWED BY LAW, MTC MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES (OR THE SOFTWARE), INCLUDING WITHOUT LIMITATION REGARDING NON-INFRINGEMENT OR THE QUALITY, ACCURACY, PERFORMANCE, SECURITY, UPTIME, AVAILABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES (OR THE SOFTWARE). AS A RESULT, THE SERVICES ARE PROVIDED "AS IS" AND YOU ARE ASSUMING THE ENTIRE RISK RELATING IN ANY WAY TO USE OF THE SERVICES.

TO THE EXTENT ALLOWED BY LAW, IN NO EVENT WILL MTC BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY OR FAILURE TO USE THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LIABILITY FOR ANY PROGRAM OR DATA STORED OR USED WITH THE SERVICES, INCLUDING THE COSTS OF RECOVERING SUCH PROGRAMS OR DATA.

ACCORDINGLY, AND WITHOUT LIMITATION TO THE GENERALITY OF THE FOREGOING, YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT MTC BEARS NO RESPONSIBILITY OR LIABILITY FOR: ANY TAMPERING WITH THE SERVICES; ANY MANIPULATION OF DATABASES UNDERLYING OR USED BY THE SERVICES (OR THE SOFTWARE); YOUR USE OF ANY SOFTWARE PROVIDED BY ANY THIRD PARTY TO BE USED IN CONJUNCTION WITH THE SERVICES; AND THE INTERACTION, OPERATION, OR LACK OF OPERATION OF THE SERVICES WITH OR IN YOUR PARTICULAR COMPUTER ENVIRONMENT AND ANY OTHER SOFTWARE OR HARDWARE YOU MAY BE USING.

YOUR EXCLUSIVE REMEDY AND MTC'S ENTIRE LIABILITY ARISING FROM OR OUT OF THIS AGREEMENT SHALL BE, AT MTC'S OPTION, THE REPAIR OF THE FUNCTIONALITY OF THE SERVICES OR A REFUND OF PART OR ALL OF THE SUBSCRIPTION FEES PAID BY YOU OR YOUR ORGANIZATION DURING THE PREVIOUS YEAR.

No MTC agent or employee is authorized to make any modification or addition to this warranty.

I. GENERAL

This Agreement constitutes the entire agreement of the Parties with respect to matters set forth in this Agreement and supersedes any prior or contemporaneous understanding or agreement, oral or

written, with respect to such matters. The headings in this Agreement are included principally for convenience and shall not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of you or MTC. If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement; and in any event, the remaining provisions of this Agreement will remain in full force and effect.

This Agreement is governed by the laws of the State of California, without reference to any choice-of-law principles. Any action, proceeding, or complaint filed or instituted by any you or MTC to enforce any provision of this Agreement must be brought exclusively in the state courts in the County of Alameda, California or in the United States District Court for Northern District of California; and you and MTC each consent to personal jurisdiction in California.

Should you have any questions concerning this Agreement, you may contact MTC by writing to:

Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA 94105
Attn: StreetSaver® Program Manager
E-mail: pavement@mtc.ca.gov (mailto:pavement@mtc.ca.gov)