



# LICENSE AGREEMENT

**WHEREAS**, the Board of County Commissioners of Calvert County, Maryland, a body corporate and politic (hereinafter called “Licensor”), owns certain GIS Data Products, (hereinafter called “GIS Data”), specified in the attached GIS Data Products Request Form, and;

**WHEREAS**, the Licensor agrees to make available to the Customer (hereinafter called “**Licensee**”) the GIS Data in the file format and on the transfer media specified on the GIS Products Request Form for the purposes outlined in Section 3 (“Permitted Uses”) of this Agreement, and;

**THEREFORE**, in consideration for the applicable license fees to the undersigned Licensor, in hand paid by the Licensee, and other mutual covenants and agreements herein contained, the Licensor does grant unto the Licensee its employees or agents, or its successors or agents thereof, a non-exclusive operations license to install, store, load, and display (collectively, "Use") the GIS Data on as many local area networks and/or end-user PC or workstations as Licensee reasonably needs in support of the Uses specified in Section 3 ("Permitted Uses"). In addition to the above, the parties hereby covenant and agree as follows:

## **1. Authorized Users**

Unless otherwise specified in writing, the GIS Data Products will be operated by the Licensee and authorized contractors only ("Authorized Operators").

A contractor shall be deemed authorized to Use the GIS Data Products if such Use is incidental to a larger relationship between the contractor and the Licensee, and is Used for purposes no greater than reasonably needed to achieve the objectives of an actual project undertaken in connection with that relationship, and the contractor has agreed in writing to be bound by the provisions of this Agreement.

## **2. Permitted Uses**

Licensee's Authorized Operators may Use the GIS Data Products strictly in conjunction with the specific project (Project) located in Calvert County, Maryland specified on the order form. Authorized Operators may display the GIS Data in unaltered form, or may incorporate, in whole or part, and use GIS Data for analysis, on plan documents prepared for the Project. Licensee may distribute hard copies of such plans (and corresponding documents) to its customers and contractors in the regular course of business related to the Project, and may submit digital versions of such plans only to public reviewing Agencies, if so required for the Project. Further reproduction or distribution of digital products containing the GIS Data is prohibited.

Licensee’s incorporating any of Licensor’s GIS data into their plans under the terms of this agreement (whether by hand tracing, scanning, or importing of digital data) must place a statement of the following form in a conspicuous location on the face of such documents:

“The planimetric information shown on this plan is based on copyrighted GIS Data from Calvert County, Maryland and may not be copied or reproduced without express written permission from the Board of County Commissioners of Calvert County, Maryland or their

designee. Calvert County GIS Data contains proprietary information belonging exclusively to the Board of County Commissioners of Calvert County, Maryland.”

Licensee should tailor the note as to reflect the nature of the GIS Data used, and may insert the phrase 'in part' between the words 'based' and 'on', if applicable.

### **3. Reservation of Rights**

Licensor claims copyright and trade secret protection in the GIS Data including the selection, arrangement, and coordination of the GIS Data as a whole, and in each constituent element of data provided. Licensee does not obtain any ownership or intellectual property rights in the GIS Data (including any digitally resampled or processed image derived from the GIS Data). Instead, Licensee obtains a limited non-exclusive license to Use the GIS Data and output generated there for the authorized purposes specified herein. Licensee will at all times use due diligence to safeguard and protect all such confidential and proprietary information pertaining to the GIS Data. Licensee will ensure that all marks, notices, or legends pertaining to the origin, identity, or ownership of the GIS Data and all output generated from the GIS Data are properly applied and remain intact and clearly legible. Licensor reserves all rights not expressly granted to the Licensee.

### **4. Price and Payment**

Licensee will pay Licensor a License Fee in the amount set forth in the GIS Data Products Request Form, which is incorporated into this agreement by reference. The fees stated in the GIS Data Products Request Form do not include the price of updates. The applicable fees are payable by Licensee.

### **5. Transfer of License**

Licensee may not assign, sublicense or transfer all or any part of Licensee's rights or obligations under this Agreement without Licensor's written consent and any attempt to the contrary will be void and a material breach of this Agreement. Licensor may withhold such consent in its sole discretion. A transfer of this Agreement will terminate any right to Licensee's continued possession or Use of the GIS Data and Licensee must promptly return the original media and destroy all remaining copies of the GIS Data in Licensee's possession or under Licensee's control.

### **6. Warranties**

Licensor makes no warranty, express or implied, and disclaims all implied warranties of merchantability, integration, title and fitness of GIS data for a particular purpose.

### **7. Limitation of Remedies and Liabilities**

In no event will Licensor be liable, whether in contract tort (including negligence) or otherwise, for any direct, indirect, incidental or consequential damages including lost savings or profit, attorney's fees, lost data or business interruption, even if Licensor is notified in advance of such possibility. This includes damages incurred by Licensee or any Third Party.

### **8. Term and Termination**

The term of this Agreement shall commence as of the date of this Agreement and continue indefinitely on a perpetual basis.

Either party may terminate this Agreement upon sixty (60) days notice to the non-terminating party. Termination of this Agreement will terminate the Licensee's right to possess or use the GIS Data. Upon termination Licensee agrees to immediately destroy the original and all copies of the GIS Data and cease all further use of it.

In the event that the Licensee shall not faithfully perform any and all of the obligations required to be performed under this License, the Licensor shall have the right to terminate and cancel this License immediately. Termination of the License by the Licensor shall not release the Licensee from its obligation to pay any fees due herein.

The Licensor may terminate this License if:

- Licensee attempts to assign its rights without the written consent of Licensor;
- Licensee delivers or attempts to deliver the licensed data to another agency, corporation or person outside of its immediate organization without the prior written consent of the Licensor;
- Licensee attempts to derive revenue from the licensed data. If the damages exceed compensation, the Licensor may pursue any and all remedies available under this Agreement as well as any remedies at law or in equity.

The failure of either party to this Agreement to demand the performance of any of the terms and conditions of this Agreement, or the failure to demand cure of any breach of any of the terms and conditions of this Agreement, shall not be construed as a waiver of such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred

## **9. Disputes, Choice of Law**

This agreement shall be governed by and construed in accordance with the substantive laws of Maryland without regard to principles of conflict of law.

Licensee agrees to bring any action against Calvert County in a court of competent jurisdiction in Calvert County, Maryland.

## **10. Sovereign Immunity**

By entering into this agreement, the Licensor and its "employees," as defined in the Local Government Tort Claims Act, §§5-301 *et seq.* of the *Courts and Judicial Proceedings Article*, do not waive sovereign immunity, do not waive any defenses and do not waive any limitations of liability as may be provided for by law. No provision of this contract modifies and/or waives any provision of the Local Government Tort Claims Act.

## **11. Third Party Beneficiary**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the Licensor and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Agreement.

## **12. No Individual Liability**

No elected official, appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under this Agreement and any extension or renewals thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

### **13. Miscellaneous**

This License Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral. This document and a photocopy in good form shall be considered an original document with authenticated signature admissible into evidence unless the document's authenticity is genuinely placed in question. This Agreement is expressly limited to its terms and may be modified or amended in writing signed by an authorized representative of Calvert County. Any provision found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement of it on future occasions. Headings are for reference purposes only and have no substantive effect.