

MONTCALM COUNTY, MICHIGAN - GIS DATA LICENSING AGREEMENT (TERMS AND CONDITIONS)

This agreement is a license and is made and entered into by and between the LICENSED USER, hereinafter called "USER", and Montcalm County.

WHEREAS, Montcalm County is the designer and developer of product(s) specified in the agreement (hereinafter referred to as "PRODUCT") with the right to license and distribute the PRODUCT; and

WHEREAS, the USER is an individual, an organization, a corporation, a government entity or a member of a joint venture who will make lawful use of the PRODUCT in its business activity; and

WHEREAS, the USER desires a license to use the PRODUCT and Montcalm County desired to grant such a license to the USER for the sole purpose of permitting the USER to use the PRODUCT in its business activity and for no other purpose whatsoever;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. PRODUCT

1.1 Licensed PRODUCT(s). This license applies to the PRODUCT(s) as listed on the Montcalm County Digital Geographic Data Order Form per the request date.

1.2 Grant of License. For and in consideration of the USER's covenant to make payments under Section 5 and the performance of the other covenants and obligations of the USER hereunder, Montcalm County hereby conveys to USER a non-exclusive license to the PRODUCT.

2. USE

2.1 Permitted Use. This license is granted for the sole purpose of permitting the USER to use the PRODUCT in its lawful business activity and for no other purpose whatsoever.

2.2 Restrictions on Use.

(a) Unauthorized Use. USER shall not use the PRODUCT on behalf of any other person or organization (including, but not limited to, networks, timesharing, or multiple CPU arrangements) unless authorized in writing by Montcalm County.

(b) Copies. USER shall not duplicate the PRODUCT except for the following: 1. USER may make copies of the PRODUCT for protection purposes as long as the USER agrees not to use the backup copy for any purpose other than to replace original data if lost or damaged.

2.3 Other Formats. USER may translate the PRODUCT into other formats and/or media. These "reformats" shall be subject to the same restrictions as the PRODUCT under this agreement.

2.4 Reserved Rights. Montcalm County shall retain all rights, title and interest in the PRODUCT, including the right to license the PRODUCT's covered by this license to other USERS.

3. MAINTENANCE OF DIGITAL DATA

3.1 Periodic Update. At its option, Montcalm County may supply a data update service for digital data for an additional fee. Montcalm County will provide updates in its then current format.

4. TERM

4.1 The term of this agreement shall not be restricted as to time, except as set forth in 4.2 below, and shall commence the date the agreement is executed.

4.2 The term of the license shall expire at such time as the USER discontinues use of the PRODUCT, unless the USER fails to comply with any of the terms and conditions provided herein at which time the license shall be revoked. The license shall be revoked by Montcalm County giving written notice of such revocation to the USER.

5. PAYMENT

5.1 Time for Payment. Initial payment of fees shall be made at the time the license is granted or as set forth in 5.2. Fees will be set at the current rate schedule adopted under the Montcalm County Enhanced Access Policy by the Montcalm County Board of Commissioners.

5.2 Periodic Update Option. The fees for the periodic update option are due and payable upon receipt of the PRODUCT. These fees will be set at the current rate schedule adopted under the Montcalm County Enhanced Access Policy by the Montcalm County Board of Commissioners.

5.3 Payment Requirements. Full payment is required at the time the PRODUCT is purchased. Upon receiving full payment, the PRODUCT will be available for the USER.

6. DELIVERY

Montcalm County shall deliver the PRODUCT to USER pursuant to the following conditions:

(a) Montcalm County shall package, ship and deliver the PRODUCT to the USER at the address specified in the agreement or a designated alternate address.

(b) Montcalm County shall not assume any liability for shipment of the PRODUCT.

(c) The carrier shall not be considered an agent of Montcalm County.

(d) Montcalm County shall choose the method of delivery in the absence of prior shipping instructions.

(e) Dates specified for delivery of the PRODUCT shall be postponed automatically if Montcalm County is prevented from meeting those dates by any causes beyond its reasonable control.

7. WARRANTY

7.1 Limited Warranty

(a) Montcalm County shall use its best efforts to ensure that the PRODUCT is delivered free of physical defect.

(b) Montcalm County shall have the sole authority to determine whether the PRODUCT, at the time of delivery, was free of physical defect.

(c) Montcalm County disclaims any other warranties, express or implied, respecting this agreement or the PRODUCT.

7.2 Remedy

(a) USER's sole and exclusive remedy for breach of this limited warranty will be to return the PRODUCT within 60 days of receipt. (b) Montcalm County shall, at its discretion, retain the returned PRODUCT and refund the fee for the license, or replace the PRODUCT, or repair the PRODUCT and return it to the USER.

8. ASSIGNMENT AND TRANSFER / NON-DISCLOSURE

USER shall not disclose, lease, sell, distribute, make, transfer or assign the PRODUCT or engage in any other transaction, which has the effect of transferring the right of use or part of the PRODUCT without prior written consent of Montcalm County.

9. LIABILITY

Montcalm County and local government agencies who provide information in the PRODUCT shall not be liable for any activity involving the PRODUCT with respect to the following:

- (a) Lost profits, lost savings or any other consequential damages.
- (b) The fitness of the PRODUCT for a particular purpose.
- (c) The installation of the PRODUCT, its use or the results obtained.
- (d) Any foreseeable or unforeseeable damages.

10. TERMINATION

10.1 USER Rights. Upon the expiration or revocation of this license, the rights of the USER shall cease.

10.2 Return of the PRODUCT and Copies. The PRODUCT and any copies of the PRODUCT shall be returned to Montcalm County within 30 days from the date this license expires or immediately if revoked.

11. MISCELLANEOUS

11.1 Applicable Law: Venue. This license shall be constructed and interpreted under and pursuant to the laws of the state of Michigan. The parties agree that venue for any action or claim arising out of or in connection with this license shall be in Montcalm County, Michigan.

11.2 Invalidity. If any term or provision of this license or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this license shall be valid and enforced as written to the fullest extent permitted by law.

11.3 Entire Agreement. This license contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement or promise made by any party hereto, which is not contained herein, shall be binding or valid.

11.4 Authority. Persons whose signatures appear as "LICENSED USER" on this license agreement represent that they are authorized to do so and represent and warrant that this licensing agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

Signature of Licensed User

Printed Name of Licensed User

Date of Licensed User's Signature

Date Received by Montcalm GIS