

## ESRGC GIS DATA PRODUCTS DISTRIBUTION AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the ESRGC, hereinafter called the “Distributor”, and \_\_\_\_\_ hereinafter called “Distributee,”

WHEREAS, the Distributee has requested Distributor to provide Geographic Information Systems, (hereinafter called “GIS”), data identified in Article II below.

NOW, THEREFORE, in consideration of mutual covenants set forth herein and for such other consideration as the parties deem sufficient, the parties agree to the following:

### 1. TERMS AND DEFINITIONS

As used in this Agreement, the following terms shall have the meaning indicated:

- 1.1 GIS Data: Shall mean the data generated by the GIS, and takes the form in Article II.
- 1.2 Updates: Shall mean data maintenance which includes current geographical data.
- 1.3 Medium: Products used to store and access digital data.
- 1.4 National Map Accuracy Standards: A set of published guidelines by United States Geological Survey for Map Production.
- 1.5 Metadata: Documentation relating to the source GIS data.

### 2. SCOPE OF AGREEMENT

- 2.1 Distributee hereby accepts the terms and conditions of this Agreement unless terminated pursuant to the terms of this Agreement.
- 2.2 Distributee hereby accepts a nonexclusive and nontransferable license (the “License”) from the “Licensor”, identified in the SPATIAL DATA LICENSE AGREEMENT, to use the GIS data, in accordance with the terms and conditions of the attached License Agreement unless terminated pursuant to the terms of the attached License Agreement.
- 2.3 This Distributor will provide GIS digital data to the Distributee in the form of digital medium requested by the Distributee, including CD’s, DVD’s, external hard drive, and e-mail, which are identified on the GIS DATA PRODUCTS ORDER FORM.

### 3. TERM AND TERMINATION

- 3.1 The term of this Agreement shall commence as of the date of this Agreement and continue indefinitely on a perpetual basis.
- 3.2 Either party may terminate this Agreement upon sixty (60) days notice to the non-terminating party.
- 3.3 In the event that the Distributee shall not faithfully perform any and all of the obligations required to be performed under this Agreement, the Distributor shall have the right to terminate and cancel this Agreement immediately. Termination of the Agreement by the Distributor shall not release the Distributee from its obligation to pay any fees due herein.
- 3.4 The Distributor may terminate this License if:
  - 3.4.1 Distributee attempts to assign its rights without the written consent of the Distributor,
  - 3.4.2 If the Distributee 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 Distributor;
  - 3.4.3 Distributee attempts to derive revenue from the licensed data. If the damages exceed compensation, the Distributor may pursue any and all remedies available under this Agreement as well as any remedies at law or in equity.
- 3.5 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.

### 4. WARRANTIES, LIABILITIES AND DAMAGES

4.1 The Distributor makes no warranty of any kind, expressed or implied, as to the use or appropriateness of the use of the GIS data, by the Distributee including, but not limited to, warranties of merchantability or fitness for a particular purpose or with respect to accuracy. The Distributee acknowledges that the Distributor does not guarantee or warrant that the GIS data is complete or current and the Distributee further acknowledges that the GIS data is subject to constant change and Distributor is under no obligation to update. Any use of this GIS data is done at the sole risk and liability of the Distributee.

4.2 The Distributor shall not be subject to liability for human errors, defect or failure of machines, or any material used in connection with the machines, including, but not limited to, CD's, and DVD's.

4.3 Any liability Distributor may have for damages, regardless of the form of action, shall not exceed the License fee paid under this Agreement. In no event, shall the Distributor be liable for lost profits, consequential damages, or claims against third parties.

4.4 The Distributor warrants that the medium on which the GIS digital data was provided is free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery, as evidenced by a copy of the invoice or receipt. If the Distributor cannot deliver a replacement for the digital data on a medium that is free of defects in materials and workmanship, the Distributee may return the data and the License fee will be refunded.

## **5. USE RESTRICTIONS AND OTHER PROHIBITED ACTIVITIES**

5.1 The Distributee understands and agrees that the GIS data is solely owned by the Licensor, distributed by the Distributor and that the GIS data shall not be reproduced or reformatted without the Distributor's prior written consent, which shall be at the Distributor's sole discretion.

5.2 The Distributee is familiar and understands the provisions of the National Map Accuracy Standards and assumes the responsibility and liability for the use of this data at other than the compilation scale (scale at which the digital data was intended to be output in hard copy format).

5.3 The Distributee understands that the GIS digital data is licensed solely for the internal use of the Distributee. The Distributee has the right to copy this data for use on multiple machines or to a file server within the immediate organization. The data cannot be transferred to any other organization without the prior knowledge and consent of the Distributor. The data can also be copied for backup purposes only, but for no other purposes.

5.4 The Distributee shall not provide, transfer or allow access to the data to any party not part of the License Agreement.

5.5 The Distributee may modify the digital data or merge the data with other data sets or file structures. Any portion of the digital data modified or merged continues to be subject to the conditions of this Agreement.

5.6 The Distributee may derive hard copy products or printed tabular listing from the digital data that may be used in publications and presentations, provided that published credit is given to the Licensor.

5.7 The Distributee may not derive digital or hard copy product from the GIS data with the intent to sell them.

5.8 The Distributee is solely responsible for the integration between the GIS digital data in the format requested from the Distributor and the Distributee's software accessing the data.

5.9 Distributee shall comply with all laws, rules, regulations, whether Federal, State, County, or local, relating to the possession and use of the above-described data.

## **6. UPDATING DATA**

6.1 The Distributee is solely responsible for obtaining updated data at its own expense.

6.2 All updates will be covered by, and subject to, the provisions of this Agreement.

6.3 Updates may be obtained by any of Distributee's authorized employees or agents during the term of this Agreement.

## **7. FEES**

7.1 Distributor is providing this licensed GIS data to the Distributee for a data maintenance fee and/or a reproduction fee. The schedule of fees is provided on the ESRC website ([www.esrc.org](http://www.esrc.org)).

7.2 Distributor will waive the data development fee for internal County Contractors only for use on a specific project as referenced by a job number. Distributee may use the data for the specific project only, pursuant to this Agreement.

## **8. REMOVAL OF GIS DATA**

Upon completion of a specified project, GIS data provided by the Distributor must be removed from all State and/or County Contractor's computer systems. The data may not be used for other non-State and/or County projects unless requested and purchased.

## **9. INDEMNIFICATION**

Distributee hereby agrees to indemnify and hold the Distributor, its employees, agents and officials harmless from any claim, suit, proceeding or damages of any kind arising out of the use of the GIS data licensed hereunder including, but not limited to, attorney's fees, any cost of recovering, reprogramming or reproducing any programs or data stored in or used with GIS data, damage to property, damages for personal injury or for any lost profits, lost savings, or other special, incidental or consequential damages arising out of the use of or inability to use the GIS data, even if said parties have been advised of the possibility of such damages.

## **10. DISTRIBUTEES REPRESENTATIONS**

10.1 If the Distributee is a Corporation, it represents that it is duly formed and validly existing under the laws of \_\_\_\_\_ and is qualified to do business and is in good standing in the State of Maryland.

10.2 The person executing this Agreement for the Distributee warrants that he/she is duly authorized by the Distributee to execute this Agreement on the Distributee's behalf.

## **11. GENERAL PROVISIONS**

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party, except to the extent incorporated in this Agreement.

## **12. MODIFICATION**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

## **13. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Maryland and Wicomico County, Maryland.

## **14. ASSIGNMENT**

This Agreement may not be assigned by the Distributee without the express written consent of the Distributor.

## **15. SEVERABILITY**

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

## **16. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by different parties hereto in separate Counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

DISTRIBUTE:

Print Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

DISTRIBUTOR:

Eastern Shore Regional GIS Cooperative, Salisbury, Maryland

By: \_\_\_\_\_

Michael S. Scott, Director  
ESRGC

Witness: \_\_\_\_\_