

DESCHUTES COUNTY GIS PRODUCT PURCHASE TERMS AND CONDITIONS

THIS AGREEMENT is made and entered into by and between Deschutes County, acting by and through the Deschutes County G.I.S. Service Center (hereinafter referred to as "DCGISSC"), and the client (hereinafter referred to as "User").

RECITALS

1. DCGISSC is the designer and developer of the copyrighted product(s) enclosed (hereinafter referred to as "Product") with the right to sell and distribute the Product; and
2. The User is an individual, an organization, a corporation, a government entity or a member of a joint venture who will make use of the Product in its business activity; and
3. The User has purchased the Product and the DCGISSC desires to sell the Product 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.

AGREEMENTS

As terms and conditions of this sale of this copyrighted product, the User hereto agrees a follows:

1. PRODUCT

1.1 Product(s). These terms and conditions apply to the Product(s) enclosed.

1.2 Purchase of Product. For payment received and in consideration of user's agreement to these terms and conditions, the DCGISSC hereby conveys to the User a nonexclusive copy of the Product for use consistent with these terms and conditions.

2. USE

2.1 Permitted Use. This product is sold under the agreement that the User may use the Product in its business activity and for no other purpose whatsoever.

2.2 Restrictions on Use.

(a) Unauthorized Use. User shall not allow access to the Product by any other person or organization by means of networks, Internet, Intranets, timesharing, or multiple CPU arrangements, unless authorized in writing by DCGISSC.

(b) Copies. User shall not duplicate the Product except for the following:

1. User may make one copy 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. 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.

2.3 Reserved Rights. DCGISSC hereby retains all rights, title and interest in the Product, including the right to sell the Products covered by this agreement to other users.

The confidentiality of the source material and data delivered by DCGISSC shall be maintained by User to protect the interests of the DCGISSC in its data incorporated into the GIS database. For uses subject to Public Records Laws, this shall include claiming full exemption from public disclosure available in cases specifically including applicable exemptions in ORS 192.502.

3. RETURN

3.1 These terms and conditions shall commence on the date the product is purchased and continue so long as the Product is in the possession of the User.

3.2 If the User fails to comply with any of the terms and conditions provided herein, DCGISSC shall require return of Product by giving written notice to the user. The User shall return all copies of the product.

4. LIMITED WARRANTY

4.1 Limited Warranty.

(a) Deschutes County's GIS data contained in this product is collected from the region's Federal, State, and Local governments for general planning purposes and Deschutes County therefore does not warrant the accuracy of data originated by these jurisdictions. Deschutes County has collected and is maintaining these data to meet the accuracy requirements of a broad-scale land information system. Therefore, the level of accuracy is deemed adequate for regional planning purposes only.

(b) DCGISSC shall use its best efforts to ensure that the Product is delivered free of physical defect.

(c) DCGISSC shall have the sole authority to determine whether the Product, at the time of delivery, was free of physical defect.

(d) DCGISSC disclaims any other warranties, express or implied, respecting these terms and conditions or the Product.

4.2 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) DCGISSC shall, at its discretion, retain the returned Product and refund the fee for the Product, or replace the Product, or repair the Product and return it to the User.

5. ASSIGNMENT AND TRANSFER

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 DCGISSC.

6. LIABILITY

DCGISSC 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.

7. MISCELLANEOUS

7.1 **Applicable Law: Venue.** These terms and conditions of this purchase agreement shall be construed and interpreted under and pursuant to the laws of the state of Oregon. The parties agree that venue for any action or claim arising out of or in connection with this agreement shall be in the Superior Court for Deschutes County, Oregon.

7.2 **Invalidity.** If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and enforced and written to the fullest extent permitted by law.

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