

## BROOME COUNTY GIS DATA LICENSE AGREEMENT

**THIS GIS DATA LICENSE AGREEMENT** (“License Agreement”) is made and entered into by and between the Broome County Department of Planning and Economic Development (“Broome County”), and the following individual, organization or entity:

\_\_\_\_\_ (“User”).

**WHEREAS**, Broome County represents that its geographic information system data and imagery (“GIS Data”) are public government data that have commercial value and were developed with significant expenditures of public funds by Broome County; and

**WHEREAS**, New York State Public Officers Law, Article 6, Section 87 (1) (b) (iii) authorizes Broome County to charge a fee for this GIS Data; and

**WHEREAS**, the Broome County Legislature, by Resolution 118 of 1989, as amended by Resolution 163 of 1993, 138 of 1994, 521 of 2000, 425 of 2003, 181 of 2005, and 438 of 2007, established a fee schedule (“Fee Schedule”) for this GIS Data; and

**WHEREAS**, the User wishes to have access to all or a portion of Broome County’s GIS Data at a fee rate determined from the Fee Schedule,

**NOW THEREFORE**, in consideration of the mutual terms and conditions stated in this License Agreement, Broome County and User agree as follows:

### I. GIS Data Use

**1.01 Authorized GIS Data Uses.** User is granted a perpetual, nonexclusive right to have and use the GIS Data, provided User is complying with the terms and conditions of this License Agreement. User may use the GIS Data in the form provided by Broome County for User’s own internal business or organizational purposes and for no other purpose, except upon prior written consent of Broome County. User may have and use the GIS Data on a corporate-wide basis and may use the GIS Data on an unlimited number of User sites, provided the central processing units on which the GIS Data are maintained support only equipment operated by User and the GIS Data are used only for the conduct of the User’s own internal business purposes. User may make a reasonable number of copies, including backup copies, for User’s own internal business purposes. User may modify the GIS Data or merge the GIS Data into other data bases for User’s own use.

**1.02 Derivative GIS Data Products.** User may incorporate portions or all of the GIS Data into the User’s own data products independently developed by User to create derivative products (“Derivative Products”). The User may market, disclose, license or otherwise distribute such Derivative Products provided the GIS Data are not duplicated or disclosed in the form provided to User by Broome County.

**1.03 Unauthorized GIS Data Uses.** User shall not use the GIS Data on behalf of any other individual, organization, corporation, government entity, or any other third party, and shall not duplicate or disclose the GIS Data to any third parties unless such use, duplication or disclosure is expressly authorized in writing by Broome County.

**1.04 Third Party Access.** If it is necessary for User to make the GIS Data available to agents, contractors, consultants or other third parties for User’s business purposes, User must obtain from each agent, contractor, consultant or other third party a signed copy of the confidentiality agreement (*Broome County GIS Data Third Party Confidentiality Agreement*) which is attached to this License Agreement as Attachment A.

**1.05 GIS Data Security.** User agrees to take all necessary and reasonable steps to ensure the GIS Data are not disclosed, duplicated or made accessible in whole or in part for the use of others, except as provided in paragraph 1.04 of this License Agreement. User agrees it will not knowingly or negligently allow its employees, agents or independent contractors to copy, sell, disclose or otherwise make the GIS Data available to others. User agrees to immediately notify Broome County by telephone and in writing if User becomes aware of any unauthorized duplication, sale or other disclosure. User further agrees to prevent unauthorized disclosure by taking appropriate security measures including, but not limited to, providing physical security for copies of the GIS Data and taking all steps User takes to protect information, data or other tangible and intangible property of its own that User regards as proprietary, confidential or nonpublic.

**1.06 Reservation of Rights.** Broome County shall retain all rights, title and interest in the GIS Data, including the right to license to other users the GIS Data covered by this License Agreement.

## **II. License Agreement Term and Termination**

**2.01 Indefinite Term.** The term of this License Agreement shall commence upon execution of this License Agreement by both parties and shall be indefinite, unless terminated according to paragraph 2.02 of this License Agreement. If this License Agreement is terminated by Broome County, all rights to the GIS Data granted to User under this License Agreement revert to Broome County.

**2.02 Termination.** This License Agreement may be terminated by Broome County at any time upon written notice to User if User fails to comply with the terms and conditions of this License Agreement. Unless terminated, this License Agreement shall remain in effect as long as User uses the GIS Data and complies with the terms and conditions of this License Agreement. When User no longer has the right to use the GIS Data, User either must destroy the GIS Data and provide written certification of the destruction, or return the GIS Data to Broome County. Broome County may terminate this License Agreement if User has dissolved, liquidated or permanently terminated its operations.

## **III. Limited Warranty and Disclaimers**

**3.01 Limited Warranty.** The GIS Data provided by Broome County are made available to User subject to the following limitations and restrictions:

(a) Broome County will use its best efforts to ensure the GIS Data are delivered free from physical defect. Broome County shall have the sole authority to determine whether the GIS Data were free from physical defect at the time of delivery. User is responsible for the installation and use of the GIS Data and the results or consequences obtained from User's installation or use of the GIS Data.

(b) Broome County does not warrant that the GIS Data are error free. The GIS Data were developed for Broome County's own internal business purposes and Broome County does not represent that the GIS Data can be used for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The GIS Data are neither a legally recorded map or survey and are not intended to be used as one.

(c) Broome County disclaims any other warranties, express or implied, respecting this License Agreement or the GIS Data.

(d) **THE GIS DATA, AND ASSOCIATED MANUALS, REFERENCE MATERIALS AND TECHNICAL DOCUMENTATION (IF ANY), ARE PROVIDED "AS IS" WITHOUT ANY SUPPORT WHATSOEVER AND WITHOUT WARRANTY AS TO THEIR PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE GIS DATA IS ASSUMED BY USER.**

(e) **BROOME COUNTY SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES OR ANY THIRD PARTY CLAIMS WHICH MAY RESULT FROM THE USE OF THE GIS DATA, EVEN IF BROOME COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.**

**3.02 Sole Remedies.** User's sole and exclusive remedy for breach of these limited warranties shall be to return the GIS Data to Broome County within sixty (60) days of receipt. Broome County shall, at its own discretion, retain the returned GIS Data and refund the fee for the license, or replace or repair the GIS Data and return the GIS Data to User.

**3.03 Liability.** Subject to the warranty disclaimers in paragraph 3.01 of this License Agreement, each party agrees that it will be responsible for its own acts and omissions under this License Agreement and the results thereof to the extent authorized by law and shall not be responsible for the acts or omissions of the other party under this License Agreement and the results thereof.

## **IV. General Terms and Conditions**

**4.01 Invalidity and Severability.** If any term or provision of this License Agreement or the application of this License Agreement or its provisions to any person or circumstance shall to any extent be declared or found invalid or unenforceable, the remainder of this License Agreement shall not be affected by that invalidity or unenforceability.

Each term and provision of this License Agreement shall be valid and enforced as written to the extent permitted by applicable law.

**4.02 Amendment.** The terms and provisions of this License Agreement may be changed or modified only by mutual agreement of Broome County and User. Such amendment, changes or modifications shall be effective only on the execution of written amendment(s) signed by the authorized representatives of Broome County and User.

**4.03 Governing Law.** This License Agreement shall be governed by and interpreted pursuant to the laws of the State of New York, excluding its choice of laws rules, and applicable federal law.

**4.04 Waiver.** No waiver of any breach or violation of this License Agreement shall constitute a waiver of any subsequent breach or violation, whether of the same or any other covenant, term or condition. Subsequent performance of any of the terms, covenants or conditions of this License Agreement shall not constitute a waiver of any preceding breach or violation, regardless of the other party's knowledge of the preceding breach or violation at the time of subsequent performance. The delay or omission of any party's exercise of any right arising from any default shall not affect or impair the party's rights regarding the same or future default.

**4.05 Assignment.** User shall not assign, sublet or transfer this License Agreement in whole or in part, without the prior written consent of Broome County. Any attempt to assign, sublet or transfer this License Agreement without prior written consent shall be void and of no force and effect.

**4.06 Correspondence.** Correspondence regarding this License Agreement or the GIS Data shall be directed to Broome County at the following addresses:

(a) Written correspondence:                   Broome County  
  Department of Planning & Economic Development  
  Attn: GIS Administrator  
  Broome County Office Building  
  P.O. Box 1766  
  Binghamton, New York 13902

(b) Electronic correspondence:           [denglish@co.broome.ny.us](mailto:denglish@co.broome.ny.us)

**4.07 Survival of Provisions.** All obligations and warranties in this License Agreement which by their sense and context are intended or reasonably construed to survive Broome County's and User's performance of this License Agreement, shall so survive the completion of performance and termination or cancellation of this License Agreement.

**4.08 Authority.** The person or persons executing this License Agreement on behalf of User represent that they are duly authorized to execute this License Agreement on behalf of User and represent and warrant that this License Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

**USER**

**BROOME COUNTY**

**By:** \_\_\_\_\_  
  ( *authorized signature* )

**By:** \_\_\_\_\_  
  ( *authorized signature* )

**Name:** \_\_\_\_\_  
  ( *printed* )

**Name:** \_\_\_\_\_  
  ( *printed* )

**Title:** \_\_\_\_\_

**Title:** GIS Administrator

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

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

**BROOME COUNTY GIS DATA THIRD PARTY CONFIDENTIALITY AGREEMENT**  
**(Attachment A to Broome County GIS Data License Agreement)**

**THIS THIRD PARTY CONFIDENTIALITY AGREEMENT** (“Confidentiality Agreement”) is a nondisclosure and confidentiality agreement between the Broome County Department of Planning and Economic Development (“Broome County”), and the following individual, organization or entity:

\_\_\_\_\_ (“Third Party”).

**WHEREAS**, Broome County represents that its geographic information system data and imagery (“GIS Data”) are public government data that have commercial value and were developed with significant expenditures of public funds by Broome County; and

**WHEREAS**, Broome County has made the GIS Data available to \_\_\_\_\_ (“User”) under a license agreement which permits User to have and use the GIS Data for User’s own internal business or organizational purposes but prohibits User from disclosing, duplicating or otherwise making the GIS Data accessible to agents, contractors, consultants or other third parties except upon prior written consent of Broome County; and

**WHEREAS**, Third Party is or will be performing certain work for “User” which will require Third Party to have access to and use the GIS Data on User’s behalf; and

**WHEREAS**, in consideration of Third Party’s execution of this Confidentiality Agreement Broome County consents to the disclosure of the GIS Data to Third Party.

**NOW THEREFORE**, Broome County and Third Party agree as follows:

1. All rights, title and interest in the GIS Data disclosed or made available, in whole or in part, to Third Party are retained by Broome County. Third Party acknowledges and agrees the GIS Data are made available to Third Party on a temporary basis and may be used by Third Party only in furtherance of authorized User business, functions or activities.
2. Third Party agrees it: (a) will not copy the GIS Data; (b) will not sell, disclose or otherwise make the GIS Data available to others; (c) will take all necessary and reasonable steps to ensure the GIS Data are not disclosed, duplicated or made accessible in whole or in part for the use of others and will prevent unauthorized disclosure by taking appropriate security measures including, but not limited to, providing physical security for the GIS Data and taking all steps Third Party takes, or reasonably should take, to protect information, data or other tangible and intangible property of its own that Third Party regards as proprietary or confidential; and (d) will not use the GIS Data except for authorized User business, functions or activities undertaken by Third Party on User’s behalf. Notwithstanding the other provisions of this paragraph, Third Party may make one backup copy of the GIS Data for security purposes.
3. Third Party agrees that, upon completion of the work performed by Third Party for User, Third Party will return the GIS Data furnished to Third Party or will destroy the GIS Data and all copies of the GIS Data.

**ACKNOWLEDGEMENT and SIGNATURE AUTHORITY.** Third Party acknowledges it has read and understands this Confidentiality Agreement and consents to be bound by its terms. The individual signing this Confidentiality Agreement on behalf of Third Party represents and warrants that the individual is duly authorized to do so and represents and warrants that this Confidentiality Agreement is a legal, valid and binding obligation of Third Party and is enforceable in accordance with its terms.

**THIRD PARTY**

By: \_\_\_\_\_  
( *authorized signature* )

Name: \_\_\_\_\_  
( *printed* )

Title: \_\_\_\_\_

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