

GIS DATA DISTRIBUTION AGREEMENT

Terms and Conditions Concerning Use of Geographic Information System (GIS) Data provided by KOGIS

This Agreement specifies the terms and conditions under which KOGIS digital data and/or digital data products shall be used where such data has been provided through a GIS Data Distribution Agreement with KOGIS as provided in the **GIS Policy and Procedures (Section 5.1)**. Digital data products are distributed through the different departments of the Municipality, however the Municipality shall remain the custodian of such data sets and the Corporate GIS Department of the Office of the Manager has been entrusted with all GIS responsibilities including but not limited to ownership, maintenance and distribution.

Any consumer or user of any GIS product from the Municipality does consent to abide by the following terms and conditions:

1. DATA TRANSFER

Georeferencing System

All GIS data, unless otherwise specified, are maintained and supplied in Transverse Mercator projection, 1994 Datum, Central Meridian 31 degrees.

Format

All vector spatial datasets for KOGIS area are distributed as shapefiles. Tabular Databases are distributed as dBASE IV (.dbf). Imagery data will be distributed in MrSID format. Other file formats may be considered but are not guaranteed.

Media

All data products are distributed on DVD+R in Microsoft Windows format, depending on file size. FTP sites or compressed e-mail attachments may be considered on an individual basis, but are not common distribution methods utilized by the KOGIS Corporate GIS Department. For large file sizes, removable hard drives must be supplied at the cost of the consumer. Paper maps are obtainable at sizes varying from A4 to A0. It is not the policy of the Corporate GIS Department to fax paper maps. These may be obtained online from the Municipal GIS site at no charge or can be collected at our offices subject to the pricing policy.

GIS Site

KOGIS has an online GIS site for public use. By selecting the "GIS Maps" on the home page; common datasets are accessible to the public via the Internet. The use of the information on the web site is also subject to this agreement and access and restrictions to the site may change from time to time.

2. TERMS AND CONDITIONS

Availability

KOGIS will grant the use of GIS data to agencies, organizations or individuals, hereafter collectively referred to as the User, based upon written requests and pre-existing projects undertaken on behalf of the Municipality. Sections **4.2 and 4.4.i of the KOGIS**

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GIS Policy and Procedures grants the Deputy Head: Corporate GIS the right to limit or refuse access to specific sets of municipal records in terms of the Promotion to Access to Information Act.

Restrictions on Use

Unless the “GIS Data License and Maintenance Agreement” has been concluded, the consumer understands that this is a one-time delivery only and that KOGIS has no responsibility for updating this product or information therein.

Use of GIS data is restricted exclusively to the purpose for which it was requested and may not be used for any other purpose, nor may it be given or sold to any individual or organization, nor may the data be used to generate any form of income without prior written authorization from the Deputy Head: Corporate GIS.

This GIS Data Distribution Agreement does not constitute a transfer of any title or interest in the eThekweni Municipality GIS product.

The consumer agrees to recognize and honor in perpetuity the copyright, and other proprietary claims for GIS databases and other collateral information, and products established or produced by eThekweni Municipality or the vendors furnishing said items to the Municipality.

Graphic displays and printed tabular listings may be used in publications and presentations, provided that credit is given to the KOGIS for geographic data. Credit should be given to the original source of the data if other than KOGIS.

Digital copies of GIS Data Products may be copied for the purpose of back-up ONLY. Paper versions of this data or created by utilizing this data may be copied provided that the guidelines set forth in this document are adhered to.

In order to maintain data quality and consistency and ensure notification to all parties regarding data updates, the consumer agrees that the GIS products or portion thereof will not be licensed, assigned, released, published, transferred, sold or otherwise made available to a third party without the express written permission from the Municipality.

Upon the occurrence of the breach or non-compliance with any term or provision of this agreement, KOGIS may provide written notice of this occurrence to the consumer, and terminate this Agreement. This Agreement shall terminate 60 days following such notice by the Municipality. The consumer shall, within 30 days after termination of this Agreement, return ALL GIS Products that were exchanged through this Agreement and are in the possession of the consumer to the Municipality.

This Distribution Agreement constitutes the entire agreement between the parties hereto. This Agreement may not be changed, modified, or amended, in whole or in part, except in writing and signed by both parties.

The acknowledged data should be followed by a brief description of the data used. GIS data used in publications should be acknowledged.

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Reliability and Data Errors

The User or the Licensee, in the case where the “GIS Data License and Maintenance Agreement” has been concluded, must provide KOGIS with feedback on any perceived problem or shortcoming which affects or influences the quality of spatial information after discovering the error or perceived error. Such notification of any errors must be made within thirty (30) days after detection. Specific and sufficient information must be provided to enable rectification. Such errors shall be rectified with data updates to follow within a reasonable time after such reporting.

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Limited Warranty

The Municipality does warrant, to the User, that the disk on which the Data is recorded is free from defects in materials and workmanship under normal use and service for a period of 90 days from the date of delivery. The municipality's entire liability and the User's exclusive remedy shall be replacement of the disk and/or printed material not meeting Warranty and which is returned to us. If failure of the disk and/or printed material has resulted from accident, abuse, or misapplication of the product, as determined by us, then the Municipality shall have no responsibility to replace the disk and/or printed material under the Limited Warranty.

Copyright

The Municipality grants a non-exclusive, non-transferable license to the Licensee to use the Data located at the Licensee's address stated above. The Municipality retains the copyright of all data, as well as the right to recall this data in the event of any contravention of the conditions of use, or after completion of use of the data for the purposes for which it was requested. This license does not grant the Licensee any right to transfer the Data to other parties. If you transfer possession of any copy, modification, or portion of the Data to another party, you will be in breach and your license is automatically terminated.

Limitations

Unless the "GIS Data License and Maintenance Agreement" has been concluded, the consumer understands that this is a one-time delivery only and that we have no responsibility for updating this product or information therein.

We are not responsible for any hardware or software needed to access and use the product and data therein.

Our GIS products distributed by Corporate GIS contain information from publicly available sources. The products have been developed for internal use by the Municipality. All data is provided as is, with all faults, and without warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

Our GIS datasets do not substitute or modify legal land survey records, deeds, and/or other legal instruments defining real right creation land ownership and use. The Data is provided "as is" without warranty of any kind. The entire risk as to the results and performance of the Data is assumed by the consumer.

The consumer understands and acknowledges that the products and information contained therein are subject to constant change and that its accuracy cannot be guaranteed. We will make every effort to produce quality reliable GIS data, however in case of errors, paragraph 2.4 above shall apply.

We shall not be subject to liability for human errors, defect of failure of machines, or any material used in connection with the machines, including but not limited to tapes and disks.

We shall not be liable for any loss of profits or consequential damages, or claims against the consumer by third parties. The entire risk as to the quality, performance and usefulness of the data rests with the consumer.

The consumer releases eThekweni Municipality and its officers, agents, consultants, contractors and employees from any and all claims, actions or causes of action for damages including, but not limited to, any costs of recovering, reprogramming or reproducing any

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programs or data stored in or used with the KOGIS GIS data, damage to property, damages for personal injury or for loss of profits, lost savings or other special incidental or consequential damages arising out of the use or the inability to use the KOGIS GIS data.

The consumer shall indemnify KOGIS and its officers, agents, consultants, contractors and employees from any and all liability claims for damages to any person or property arising from or connected with the use of eThekweni Municipality GIS data.

Amendment and Termination

Neither this Agreement nor the GIS Data License and Maintenance Agreement may be changed, terminated, or amended without prior written approval of the Municipality. The Licensee shall be bound by the specifications set forth in the terms and conditions of this Agreement. No course of conduct, action, or inaction on eThekweni's part shall be deemed to be a waiver of any of our rights under the Agreement.

This Agreement shall be perpetual and will continue to be in effect until such time as either party terminates. Either party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other party. The Municipality may terminate this Agreement immediately upon any breach.

Upon termination, the Licensee shall, if requested by us, return within thirty (30) days the licensed Data. In the event of such termination or in the event of a discontinuation of use of the Data, the Licensee will promptly certify to Licensor that the original and all copies in whole or in part of the discontinued or terminated licensed Data have been destroyed.

ANY CONSUMER, BY USING ANY GIS PRODUCT, OR BY CONCLUDING A VALID "GIS DATA LICENSE AND MAINTENANCE AGREEMENT" DOES CONSENT TO ABIDE BY THE TERMS CONTAINED HEREIN.

ANY QUERIES SHALL BE:

HANDED TO:

The Deputy Head: KOGIS
Room 311, Last Floor
Hassan Katsina Road, Lokoja.