

ATTACHMENT A

**PRIMARY LICENSE AGREEMENT –NCOMPASS AND USERS
LICENSING AGREEMENT REGARDING
NCOMPASS TECHNOLOGIES GEOGRAPHIC BASE FILE
(NCT Data)**

THIS LICENSE AGREEMENT, is made and entered into by and between N-Compass Geotech, LLC., a Minnesota corporation d/b/a NCompass Technologies ("Licensor") and _____ ("Licensed User").

WHEREAS, Licensed User is government entity within the State of Minnesota or Minnesota post-secondary education institution which will use the "NCT Data" in its business or organization activities.

WHEREAS, Licensed User desires a license to use the NCT Data and Licensor wishes to grant a non-exclusive license to Licensed User for the sole purpose of permitting Licensed User to use the NCT Data and other Licensor electronic data.

WHEREAS, Licensee desires a license to use the NCT Data or portion of the NCT Data within an Internet-accessible application and Licensor wishes to grant a non-exclusive license to Licensee for the purpose of utilizing all or a portion of the NCT Data within an Internet Mapping Application pursuant to the terms of the license granted herein.

WHEREAS, the NCT Data and the other Licensor electronic data governed by this Licensing Agreement are made available to Licensed User through funding provided by the Metropolitan Council and under a separate contract and license agreement; and,

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions stated in this Licensing Agreement, the parties to this Licensing Agreement agree as follows:

I. DEFINITIONS

1.01 "**Authorized Agent**" means a third party contracted by a Licensed User requiring use of the NCT Data for a Licensed User application or project. Authorized Agents shall have no entitlements to the Data and may not, in any manner, copy, distribute, or otherwise make available to third parties the NCT Data.

1.02 "**License**" means this Licensing Agreement and the rights and obligations which it creates.

1.03 **“NCT Data”** means geographic street centerline and associated data for the Twin Cities Region licensed by Licensor to the Metropolitan Council for distribution pursuant to Council Contract No. 17P114 and as specifically described in the associated metadata.

1.04 **“Internet Mapping Application”** means a computer application that enables a user of the Internet to view or otherwise make use of spatial and attribute data directly over the web via web-based clients.

1.05 **“NCT Internet Mapping Application Provider”** means a Licensed User of the NCT Data that has been authorized by this License Agreement to create, host, or otherwise provide an Internet Mapping Application that utilizes the NCT Data pursuant to the terms of this License Agreement.

II. USE OF THE NCT DATA

2.01 **Authorized Use.** This License is granted to Licensed User for the sole purpose of permitting Licensed User to use the NCT Data in Licensed User's business or organizational activities and for no other purpose whatsoever. Licensed User shall obtain the NCT Data from the Metropolitan Council. Licensor will not supply or disseminate any data to Licensed User directly. Moreover, Licensed User may share the NCT Data with other Licensed Users and Authorized Agents. Licensed User may update its own related data sets using the positional alignment of the NCT Data without restricting Licensed User's distribution of its own related data sets. Licensed User may use the Licensor assigned unique identification number in Licensed User's own related data files, but must not attach the Licensor-assigned unique segment identification number to Licensed User's own digital street centerline data.

Prior to sharing any NCT Data for business or organizational purposes with a third party, a Licensed User must provide Licensor an executed Third Party Confidentiality Agreement, which is attached as Attachment C. The License Number associated with this Agreement must be referenced on each of the Third Party Confidentiality Agreements issued by Licensee.

Licensed User states and agrees that Licensor represents it is the sole owner of all NCT Data made available under this Agreement and all Data is the proprietary work of Licensor and qualifies as "trade secret information" and is non-public data for the purposes of the Minnesota Government Data Practices Act. Metadata may be made available to the general public by Licensed User. In the event Licensor becomes insolvent or files for bankruptcy, during the time of such bankruptcy proceedings, Licensed User shall continue to have the right to use and modify the existing data, but shall not have authority to distribute it and may not receive updates from Licensor.

2.02 **Unauthorized Use.** Unless otherwise provided in this Licensing Agreement, Licensed User shall not use the NCT Data on behalf of any other individual, organization, corporation, government entity, public or private institution, member of a joint venture or other entity unless expressly authorized in writing by Licensor.. Licensed User agrees to take all reasonable steps to ensure the NCT Data is not disclosed, duplicated, or made accessible in whole or in part for the use of others. Licensed User agrees that it will not knowingly allow its employees, agents, or independent contractors to copy, sell, disclose, or otherwise make the NCT Data available to

others. Licensed User agrees to immediately notify Licensor by telephone and in writing if Licensed User becomes aware of any unauthorized duplication, sale or other disclosure. Licensed User further agrees to prevent unauthorized disclosure by taking appropriate security measures including, but not limited to, providing physical security for copies of the NCT Data and taking all steps Licensed User utilizes to protect information, data, or other intangible property of its own that Licensed User regards as proprietary, confidential, private, nonpublic or protected nonpublic data. Hosting of an Internet Mapping Application by any entity other than Licensed User or Licensor is not permitted without the prior written consent of the Licensor. Licensed User acknowledges and agrees that Licensor represents that the NCT Data and any updates, additions, modifications or changes thereto made by Licensor are Licensor's exclusive property and constitute a valuable trade secret of Licensor. Licensed User has no ownership or proprietary interest in said data or information outside that granted under this Licensing Agreement.

2.03 Internet Mapping Application and Data Security. The Licensed User may provide an Internet Mapping Application which utilizes any portion of the NCT Data in Licensed User business or organizational activities pursuant to the terms of this License Agreement and for no other purpose. The Internet Mapping Application must be designed to not allow downloading of copies of the source NCT Data to unlicensed users. The primary purpose of this requirement is to secure the source NCT Data so that it cannot be obtained by non-licensees. Internet Mapping Applications utilizing the NCT Data and accessible by the general public or which require functionalities that possess commercial value which might conflict with Licensor's business practices may be subject to an annual fee and may have limitations imposed by Licensor on the geographic extent of the data and the functionality of the Internet Mapping Application. Whether the Internet Mapping Application is hosted by the Licensed User or an agreed-upon third party contractor, the requirements set forth in Section 2.02 must be satisfied.

2.04 Copies and Access. Licensed User may make copies of the NCT Data for their own internal purposes and may use and share the NCT Data with other Licensed Users of the NCT Data as provided in this Agreement.

Licensed User may make its own updates, modifications, additions and changes to the NCT Data and may share those modifications, additions and changes with other Licensed Users. The updates, modifications, additions and changes to the NCT Data, including, but not limited to, any additions of line segments or modifications to positional accuracy or attributes of the NCT Data do not entitle Licensed User to distribute or otherwise transfer the NCT Data to individuals, organizations or entities that are not Licensed Users and do not permit Licensed User to resell the NCT Data or claim any ownership in the NCT Data made available under this Agreement. Licensed User shall provide Licensor with such additions, modifications or changes. Licensor shall not be held responsible or liable for any such modifications, changes or amendments to the NCT Data made by Licensed User. Furthermore, modifications, additions or alterations of any kind made to the NCT Data by Licensed User will not entitle Licensed User to distribute, resell, or otherwise transfer data or claim any ownership to the NCT Data.

2.05 Reserved Rights. Licensor shall retain all rights, title, and interest in the NCT Data, including the right to license the NCT Data covered by this Licensing Agreement to other Licensed Users.

2.06 Derivative Products. Licensed User may use the NCT Data to develop graphic displays, maps, summary tabular listings and other digital graphic display products, and non-digital hard copy products for its own internal purposes and may make those products available to the public. Licensed User may charge a reasonable cost recovery fee for the hard copy products as permitted by the Minnesota Government Data Practices Act. Summary tabular listings shall not be created for public use in a way which identifies a substantial portion of the NCT Data for individual street line segments and their attributes. On any graphic displays or maps made available for general distribution to the public, Licensed User will use its best efforts to include a notation identifying "NCompass Technologies" as a source of the information. As the NCT Data is for internal use by Licensed User, it cannot be made available for public access or use on the Internet, except as defined by this license agreement.

III. TERM OF THE AGREEMENT

3.01 NCT Data License Term. To obtain a License, a prospective licensee must complete a Licensing Agreement Registration Form in the form attached to this Licensing Agreement as Attachment B. The term of this License shall commence upon execution of this Licensing Agreement by both parties. The right to delivery of the data to Licensed User by Metropolitan Council shall be indefinite, unless terminated according to the terms of section 4.01 of this Licensing Agreement. If the License is terminated by Licensor, all rights to the NCT Data granted to Licensed User under this Licensing Agreement shall cease and revert to Licensor

IV. TERMINATION OF THE LICENSE

4.01 License Termination.

- (A) Licensor may terminate/cancel this Agreement and license granted hereunder if:
- (i) Licensed User fails to comply with the terms and conditions of this Agreement; whether such act or omission is intentional, negligent, by mistake or otherwise, and
 - (ii) Licensed User becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law or is otherwise unable to meet its commitments; or
 - (iii) The Metropolitan Council fails to make installment payments identified in a separate contract and licensing agreement between Licensor and the Metropolitan Council.
- (B) In the event of any termination of this Agreement or of any license granted to Licensed User hereunder, Licensor may:
- (i) require that Licensed User cease any further use of the licensed information, data or product, or any portion thereof, and immediately return the licensed information, data or product and all copies thereof in whole or in part; and,
 - (ii) Cease performance of all of Licensor's obligations hereunder without liability to Licensed User.

- (C) Licensor's foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available to Licensor in law and in equity, including, but without limitation, obtaining temporary or permanent injunctive relief from a Minnesota District Court.
- (D) The termination of a Licensed User's right to have and use the NCT Data shall not affect the rights of the Metropolitan Council or any other Licensed Users to have and use the NCT Data which are the subject of this Licensing Agreement. This provision shall survive the expiration, completion or termination of this Licensing Agreement and shall apply at all times during the term of the License granted under this Licensing Agreement.

V. LIABILITIES, REMEDIES AND INDEMNIFICATION

5.01. Limitation on Liability.

- (A) In no event shall Licensor or the Metropolitan Council be liable to Licensed User, its agents, employees, representatives or assigns for any direct, special or consequential damages or lost profits arising out of or related to this agreement or license granted hereunder; or the performance or breach hereof, even if Licensor or the Metropolitan Council has been advised of the possibility thereof.
- (B) In no event shall Licensor or the Metropolitan Council be liable to Licensed User, its employees, agents, representatives or assigns for any damages resulting from or related to any failure of the licensed data or Internet Mapping Application or information; including, but not limited to, cases where either Licensor or Metropolitan Council is hosting the Internet Mapping Application for Licensed User, loss of data, or delay of Licensor or the Metropolitan Council in the delivery of the data or information or in the performance or services under this agreement or license or related agreements or the installation or use of the NCT Data by Licensed User or the results or consequences obtained from the installation or use of the NCT Data by Licensed User.
- (C) Licensed User shall be solely responsible for the selection, use and suitability of the Internet Mapping Application and data.
- (D) In no event shall the Licensor be obligated in any way to provide technical assistance to the Licensed User.
- (E) The NCT Data and all information and data outlined herein are provided on an "as is" basis, and there are no warranties, express or implied, including, but not limited to, any warranty of merchantability or fitness for particular purpose. Licensed user shall be solely responsible for the selection, use, efficiency and suitability of the licensed information and data and neither Licensor nor the metropolitan council shall have any liability therefor.
- (F) Neither Licensor nor the Metropolitan Council shall have any liability to Licensed User, its employees, agents, representatives or assigns for the infringement of

proprietary rights by the licensed data or information or any portion thereof.

(G) Licensed User and Licensor agree that each of them is responsible for their own negligent acts or omissions and the negligent acts of their agents and employees and neither party shall bear any responsibility for the acts or omissions of the other party or the other party's agents, employees or representatives.

(H) In all license agreements where the Metropolitan Council is not the Licensed User, Licensed User agrees that the limitations on liability set forth in this section 5.01 shall apply to and limit the liability of the Metropolitan Council the same as they limit the liability of Licensor

VI. GENERAL TERMS AND CONDITIONS

6.01 Invalidity and Severability. If any term or provision of this Licensing Agreement shall to any extent be declared or found invalid or unenforceable, the remainder of this Licensing Agreement shall not be affected by that invalidity or unenforceability. Each term and provision of this Licensing Agreement shall be valid and enforced as written to the fullest extent permitted by law.

6.02 Exclusive Agreement. Except for any existing license agreements pertaining to the NCT Data between Licensee and Licensor, this Licensing Agreement contains the entire agreement of Licensor and Licensed User with respect to the matters covered by this Licensing Agreement. No other agreement, statement, or promise made by Licensor and Licensed User which is not contained in this Licensing Agreement shall be binding or valid. Maintenance and upgrades are made available through the Metropolitan Council and are included in this Licensing Agreement. Training is not included in this Licensing Agreement.

6.03 Conflict. If any of the terms or provisions of this Licensing Agreement conflict with any rule or law or statutory provision or are otherwise unenforceable under the laws or regulations for any government or governmental subdivision, such terms or provisions shall be deemed stricken from this Licensing Agreement. Such invalidity or unenforceability shall not invalidate any of the other terms of this Licensing Agreement and this Licensing Agreement shall continue in force unless the invalidity or unenforceability of any such term or provision does substantial violence to, or when the invalid or unenforceable terms or provisions comprise an integral part of, or otherwise are inseparable from, the remainder of this Licensing Agreement.

6.04 Amendment. The terms or provisions of this Licensing Agreement may be changed or modified only by mutual agreement of Licensor, and Licensed User. Such amendment, change or modification shall be effective only on the execution or written amendment(s) signed by Licensor and Licensed User.

6.05 Governing Law. This Licensing Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota.

6.06 Waiver. No waiver of any breach or violation of this Licensing 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 Licensing Agreement shall not constitute a waiver of any preceding breach or violation, regardless of the other parties' 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 parties' rights as to the same or future default.

6.07 Written Notice. Written Notice to Licensor shall be directed to the following address: NCompass Technologies, Attn: Kevin Nieuwsma, President, 9855 West 78th Street, Suite 50, Eden Prairie, Minnesota 55344. Any written notice to Licensed User shall be directed to the address provided by Licensed User on the attached Registration Form.

6.08 Warranty of Legal Capacity. The individual(s) executing this Agreement on behalf of Licensed User represents and warrants that the individual(s) is duly authorized to execute this Agreement on behalf of Licensed User and that this Agreement constitutes Licensed User's valid, binding and enforceable agreement and obligation.

6.09 Survival. Notwithstanding the termination, cancellation or expiration of this Agreement, the obligations outlined in paragraphs 2.02, 2.03, 2.04 and 5.01 shall survive.

6.10 No Partnership or Joint Venture. This Agreement shall not be construed as creating, directly or indirectly, a partnership, joint venture or other relationship between Licensed User and Licensor.

IN WITNESS WHEREOF, Licensed User and Licensor have caused this Agreement to be executed by their duly authorized representatives.

LICENSED USER

**N-COMPASS GEOTECH, LLC. d/b/a
NCOMPASS TECHNOLOGIES**

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

License Number: _____
Assigned by Licensor

ATTACHMENT B
NCOMPASS (NCT) DATA
LICENSING AGREEMENT REGISTRATION FORM
N-Compass Geotech, LLC.
d/b/a NCompass Technologies

Licensed User Information (TO BE COMPLETED BY LICENSED USER)

Licensed User: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact: _____ Phone: _____ Fax: _____

Email: _____

Instructions. The Licensing Agreement consists of seven (7) pages, in addition to this Registration Form. Please complete and sign the Agreement and this Registration Form and return the documents to NCompass Technologies ATTN: Dan Och at the following email address: dan@guidek12.com (612-598-0435).

Execution and Compliance. NCompass Technologies will make the NCT Data available to Licensed User through the Metropolitan Council and as provided in the Licensing Agreement. The person(s) signing this Licensing Agreement and Registration Form represent that they are duly authorized to execute this Licensing Agreement on Licensed User's behalf and that the Licensing Agreement constitutes Licensed User's valid, binding and enforceable agreement and obligation.

LICENSED USER

**N-COMPASS GEOTECH, LLC. ,
d/b/a NCOMPASS TECHNOLOGIES**

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: _____

Signature: _____

ATTACHMENT C

THIRD PARTY CONFIDENTIALITY AGREEMENT

Third Party Organization:	
Licensed User:	License #:

THIS AGREEMENT is a nondisclosure and confidentiality agreement by and between N-Compass Geotech, LLC d/b/a NCompass Technologies (NCompass) and "Third Party."

WHEREAS, NCompass has developed a geographic electronic data set; and

WHEREAS, USER (identified above) has a license to use NCompass' Data (NCT Data); and

WHEREAS, Third Party will be doing work for "User" which will require Third Party to have access to the NCT Data; and

WHEREAS, NCompass has made the NCT Data available to User under a licensing agreement which permits User to use the NCT Data only in User's business or organizational activities and prohibits User from disclosing, duplicating, or otherwise making the NCT Data accessible in whole or in part to agents, subcontractors, consultants, independent contractors or other third parties; and

WHEREAS, NCompass permits the disclosure of the NCT Data to Third Party in consideration of Third Party's execution of this third-party confidentiality agreement.

NOW, THEREFORE, it is agreed that:

1. All rights, title, and interest in the NCT Data disclosed or made available, in whole or in part, to Third Party are retained by NCompass Technologies. Third Party acknowledges NCompass Technologies has an interest in prohibiting unauthorized access to the NCT Data and agrees it will hold the NCT Data in confidence. Third Party further acknowledges and agrees the NCT Data is made available to Third Party on a temporary basis and may be used only in furtherance of authorized User business or User organizational activities.

2. Third Party agrees it: (a) will not make unauthorized copies of NCT Data – where authorized copies include copying the NCT Data from the provided media as may be required for the Licensed User project as well as making backups to ensure the security of NCT Data on behalf of the Licensed User and the current project that NCT Data pertains to; (b) will not sell, disclose, or otherwise make any part of the NCT Data available to others; (c) will take all necessary and responsible steps to ensure the NCT Data is 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 copies of the NCT Data and taking all steps Third Party takes to protect information, data, or other tangible and intangible property of its own that Third Party regards as proprietary or confidential; (d) will not make the data available for use by others through the use of an Internet application and (e) will not

use the NCT Data except in furtherance of authorized User business or User organizational activities undertaken by Third Party on User's behalf.

3. Third Party agrees to immediately notify NCompass in the event that it becomes aware of any condition of Section 2 above being breached. NCompass should be notified in writing at:

NCompass Technologies
Attn: Dan Och
dan@guidek12.com
612-598-0435

4. Third Party agrees that, upon completion of the work performed by Third Party for User, Third Party will return to User the NCT Data furnished to Third Party or destroy the NCT Data.

ACKNOWLEDGEMENT. Third Party acknowledges it has read and understands this third-party confidentiality agreement and consents to be bound by its terms. Persons signing this third-party confidentiality agreement on behalf of Third Party represent that they are duly authorized to do so and represent and warrant that this third party confidentiality agreement is a legal, valid, and binding obligation and is enforceable in accordance with its terms.

THIRD PARTY

Organization Name: _____

Organization Phone: _____

Organization Address: _____

Signature: _____ Date: _____

Name (printed): _____ Title: _____

Phone: _____ Email: _____

The undersigned hereby attests that the above-named Third Party is its Authorized Agent

LICENSED USER

Licensed User: _____

Signature: _____ Date: _____

Name (printed): _____ Title: _____

Phone: _____ Email: _____