



SOFTWARE LICENSE AGREEMENT

This Software License Agreement, herein “Agreement”, is made and entered into as of the following effective date by Transcendent Technologies, LLC, herein “Transcendent”, and the undersigned Licensee, herein “Licensee”. Transcendent and Licensee may be referred to herein individually as “party” or collectively as “parties”.

The effective date of this Agreement is the _____ day of _____, 2019. The exhibits listed below are attached and made part of this Agreement:

- Exhibit “A” – Grant of License
- Exhibit “B” – Maintenance Terms and Conditions
- Exhibit “C” – License/Service Fees & Payment Terms

BACKGROUND INFORMATION

WHEREAS, Transcendent has developed and owns all intellectual property rights to certain software known as Ascent Land Records software, including various copyrighted, copyrightable, and trade secret information related thereto, here collectively referred to as “Software”; and

WHEREAS, the Software may include one or more programs for performing distinct functions, each separate such program being referred to as a “Software Module”; and

WHEREAS, Licensee desires a License from Transcendent to use the Software in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree to the following terms and conditions:

TERMS AND CONDITIONS

1. **Title.** Title and full ownership rights to the Software, copyrights, patents, trade secrets, and all other intellectual property rights connected therewith remain at all times under the sole and exclusive ownership of Transcendent, and no such rights are transferred to the Licensee excepting only the licensed rights and privileges set forth below.

2. **Grant of License.** Subject to the terms and conditions of this Agreement, and upon execution hereof by both Transcendent and Licensee, and further upon payment of the fees set forth below, Transcendent grants to Licensee a non-exclusive/non-transferable License to use the Software at the Site Location specified in **Exhibit A**, for the permitted uses set forth herein. The Software Modules, which are licensed for use, are also identified on **Exhibit A**. The grant of license shall remain in effect even if licensee discontinues maintenance and support as specified in **Exhibit B**.

3. **Permitted Uses.** Licensee's permitted uses for the License granted by Transcendent shall be limited to use of the Software solely for purposes of searching the data base of the Licensee's records, displaying records lists, displaying copies of records in the Licensee's data base, and printing of lists and/or records from the Licensee's data base, and any other use expressly authorized by Transcendent in writing. The Software shall not be used for any other purposes not expressly authorized herein.

4. **Restrictions on License.** The Licensee shall not engage in, cause or permit others to engage in, the reverse engineering, disassembly, decompilation, or similar manipulation of the Software to obtain the source code thereto, nor the modification, alteration, translation or other change of the Software. Licensee shall not make copies, nor allow copies to be made, nor distribute copies of any of the Software to any other person or entity. Licensee agrees not to sell, assign, transfer, convey or publish any instruction materials, user manuals or related written documentation provided by Transcendent without first obtaining the express written consent of Transcendent.

5. **Installation.** As part of the License Fee described below, Transcendent will install the Software at the Site Location set forth in **Exhibit A**.

6. **Maintenance.** As a condition for the grant of License set forth herein, Transcendent shall provide maintenance in accordance with those "Maintenance Terms and Conditions" set forth on **Exhibit B** attached hereto.

7. **Training.** Following the Licensee's personnel having been trained by the Licensees computer vendor, or by the software distributor, to use the hardware and system programs supplied by the computer vendor, Transcendent will then install the Software. At time of installation Transcendent will demonstrate the use of the Software to the Licensee's personnel.

8. **Customized Programming Services.** Transcendent will provide or cause to be provided to the Licensee Customized Programming Services (CPS) beyond the initial installation and demonstration as requested by Licensee on an additional fee basis. Additional fees for CPS shall be based upon time actually spent plus out-of-pocket expenses incurred by Transcendent. Transcendent's fees are based upon established billing rates commensurate with the level and experience of Transcendent's personnel assigned to provide support. Invoices for CPS will be submitted on a monthly basis by Transcendent to the Licensee. Transcendent's billing rates range from \$75 per hour to \$175 per hour, depending upon experience level of the personnel involved. Billing rates for CPS are reviewed each January 1st, and are subject to change without notification.

9. **License Fees and Payments.**

A. **License Fees.** The fees for the License(s), installation, and demonstration services to be provided for each Software Module herein are set forth on **Exhibit C**. All such License Fees are non-refundable.

B. **Payments.** Licensee will be invoiced by Transcendent for the License(s) Fee based on payment terms defined in **Exhibit C**. License Fees or payments are due and payable within 30 days of invoice. Any invoice amount not paid when due shall bear a late fee at the rate of 18% per annum, or the maximum rate permitted by law, whichever is less.

C. **Maintenance Fees.** Maintenance Fees will be billed on an annual basis separately from License Fees in accordance with the fee schedule for Maintenance Fees attached as **Exhibit B**.

10. **Limited Warranty.** Transcendent warrants that the Software as delivered and installed by Transcendent to the Licensee shall perform as designed in accordance with the Software specifications. Transcendent's sole and exclusive responsibility pursuant to this warranty shall be to correct program errors or replace the Software so that the Software will perform as designed. This warranty and remedies herein are further limited as set forth in paragraph 11 below.

11. **Disclaimer of Other Warranties/Limitations.**

A. **Disclaimer of Warranties.** Licensor warrants that the Software has been developed in a workmanlike manner, and in conformity with generally prevailing industry standards. Licensee must report any material deficiencies in the Software to Licensor in writing within the first year after all functions have been used in a production environment. Licensee's exclusive remedy for the breach of the above warranties will be the correction of the material deficiency within a commercially reasonable time. This warranty is exclusive and is in lieu of all other warranties, whether express or implied, including any warranties of merchantability or fitness for a particular purpose and any oral or written representations, proposals, or statements made on or prior to the effective date of this agreement. Licensor expressly disclaims all other warranties.

B. **Modifications.** Licensee acknowledges that Transcendent shall have no obligation to ensure that the Software operates in conjunction with Licensee's other software systems, or hardware, except as otherwise expressly agreed in writing by Transcendent. Licensee shall be responsible for all costs it incurs in connection with any modifications it elects to make to its own software, systems, or hardware.

C. **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement: Transcendent shall not be liable for any indirect, punitive, exemplary, economic consequential or incidental damages of any kind (including without limitation lost profits), even if Transcendent has been advised of the possibility of such damages; and (c) Transcendent shall not be liable for any claims of third parties relating to the Software, the documentation, the maintenance or other support services.

12. **Term of Agreement.** The term of this Agreement shall continue for so long as Licensee continues to pay Maintenance Fees in accordance with **Exhibit B**, unless otherwise terminated in accordance with paragraph 13 below.

13. **Termination.** This Agreement may be terminated by Licensee or Transcendent at any time upon 30 days written notice by either party to the other. In the event of termination the License Fee is not refundable. Pre-paid Maintenance Fees, if any, will be refunded in accordance with the terms set forth in **Exhibit B**.

14. **Relationship of Parties.** Nothing in this Agreement is intended nor shall be construed to create any form of partnership joint venture or employee and employer relationship between the parties hereto.

15. **Waivers.** No waiver of any party's rights to this Agreement shall be deemed to have occurred unless in writing signed by the party against whom the waiver is asserted. The failure of either party to insist upon strict performance of any provision to this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of the right of future performance on the part of either party hereto.

16. **Non-Disclosure of Information.** Licensee agrees that it will not disclose any of the following information without the express authorization of Transcendent:

A. Source codes, trade secrets, or other proprietary information disclosed by Transcendent to the Licensee for operational purposes, which has not generally been made known to the public by Transcendent to the extent that it is exempt from disclosure under section 19.36(5), WIS. Stats..

B. Documentation, drawings, instructional materials, manuals, and other written communications and documentations provided to Licensee by Transcendent pertaining to the Software to the extent that it is exempt from disclosure under section 19.36(5), WIS. Stats..

17. **Equitable Remedies.** The parties acknowledge that breach by Licensee of any of the restrictions of the License herein will result in irreparable harm to Transcendent and accordingly may be enforced by equitable remedies, including, without limitation, injunctive relief and/or specific performance in addition to, or as an alternative to, remedies available to Transcendent at law.

18. **Return of Property.** Upon termination of this Agreement by either party for any reason all Software, manuals, materials and documentation related thereto, including any authorized and unauthorized copies thereof shall be immediately returned to Transcendent by the Licensee.

19. **Force Majure.** Transcendent shall have no liability for damages due to: fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities of the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, unauthorized use of the products, or other causes beyond Transcendent's control whether or not similar to the foregoing

20. **Assignments.** This Agreement shall not be assigned by the Licensee to any other party without the express written authorization of Transcendent, which shall not be unreasonably withheld. Transcendent will not assign the responsibilities under this Agreement to any other entity without the express written authorization of the Licensee, which shall not be unreasonably withheld.

21. **Notices.** Any notice or communication permitted or required hereunder shall be in writing and given to the party at the address shown in this Agreement unless another address is submitted to the other party in writing. All notices given in person, by courier, or by fax shall be effective upon receipt and if any notice is given by mail it shall be deemed effective three business days following the date deposited in the mail.

22. **Modifications and Amendments.** This Agreement may be modified only in writing specifying the terms and conditions of the modifications signed by both parties.

23. **Complete Agreement.** This constitutes the complete agreement between the parties and there have been no other oral representations, warranties or agreements upon which either party has relied. The only other agreements between the parties that shall be binding shall be in writing and signed by both parties.

24. **Governing Law.** This Agreement shall be governed by and subject to the laws of the State of Wisconsin.

25. **Persons Bound.** This agreement is binding on the parties hereto and their respective heirs, successors, and assigns.

TRANSCENDENT TECHNOLOGIES, LLC.

BY: _____
Steve Moore, Business Development Manager

LICENSEE:

Name: SAUK COUNTY

BY: _____ (Signature)
Authorized Representative/Title

EXHIBIT A

GRANT OF LICENSE

Site Location: Sauk County – West Square Bldg, 505 Broadway
City, State, Zip Code: Baraboo, WI 53913

Software Modules licensed for the above-referenced Site Location:

Ascent Land & Water Conservation Software

Ascent Best Management Practice Tracking Software (BMP)

- Project status monitoring
- Provides cost-sharing details
- Tracking of P-reduction from each practice and entire projects
- Time spent by staff can be documented
- Staff member/contractor can be specified for each practice to determine appropriate contact
- Practices are tied with parcel(s) they're located on
- Reporting

NOTE: GIS/Imaging Integration not included – optional future integration project. Additional discussions would need to take place to determine scope of project.

EXHIBIT B

MAINTENANCE TERMS AND CONDITIONS

1. **Term.** Each term of this Agreement shall be one calendar year beginning January 1, and ending December 31, and subject to the termination and renewal provisions set forth below.
2. **Renewals.** This Agreement shall automatically be renewed for successive one-year terms unless terminated by either party pursuant to the termination provisions set forth below. This annual Maintenance Agreement automatically will cease and terminate upon failure of the Licensee to pay the annual maintenance fee.
3. **Maintenance Service.** Transcendent will provide Maintenance Service to the Licensee during the term of this Agreement. For purposes of this Agreement the term “Maintenance Service” consists of the following items and will be provided as set forth in this section:
 - A. **Enhancements.** Providing enhancements for the Software which shall mean any modification or addition that, when made or added to the Software, materially changes its utility, efficiency, functional capability, or application.
 - B. **Program Error Correction.** Transcendent will provide program error correction service, which shall mean a modification or addition that, when added to the Software, causes the licensed Software to function substantially as designed, and in accordance with its published specifications, or otherwise eliminates material adverse effects of the Software to function substantially in accordance with its design and specifications. The error correction procedures shall apply to verifiable and reproducible Program Errors. Error correction service will be provided upon error reporting by the Licensee to Transcendent.
 - C. **Support.** Support will consist of response by Transcendent personnel to Licensee’s questions with regard to use of the Software within a reasonable time after request for such support. Support service responses will include reasonably acceptable answers or suggested approaches to solving problems, if known, or if not then known, an answer will be provided as soon as practical.
 - D. **Provision of Services.** Maintenance services set forth herein will be provided Monday through Friday. Maintenance services will be provided by telephone or other appropriate electronic means. Transcendent’s Maintenance personnel will respond to Licensee’s questions with regard to the use of the Software within a reasonable time after request for such Maintenance. Maintenance services responses will include reasonably acceptable answers or suggested approaches to solving problems, if known, or if not then known, an answer as soon as practical. Secured network access (VPN) from clients (SQL Server Management Studio, Desktop Client, Etc.) running on Transcendent workstations will be required for implementation and support. Database user with permissions to perform backup/restore, run database scripts, execute stored procedures, and alter database schema will be required (dbOwner).
4. **Annual Maintenance Fee.** The annual Maintenance Fee for each one year term of this Agreement shall be shown on page 2 of **Exhibit B**. The annual Maintenance Fee shall be paid within 30 days of billing. Billing for this Maintenance Agreement will be submitted by Transcendent to the Licensee within the first 10 days of production use of the software. If Licensee or Transcendent terminates the annual Maintenance Agreement prior to expiration of the one-year term, a pro-rated portion of the Maintenance fee will be refunded based upon the number of months or partial months elapsed under the term of the Agreement and the number of full months remaining, based upon a 12 month year. Each calendar year thereafter the Licensee will be billed on a calendar basis beginning in January.

5. **Program Error Reporting.** In the event Licensee experiences a program error and desires Maintenance Service from Transcendent, Licensee shall promptly describe the program error in writing and submit the report of this error to the online Support Ticket program together with the Licensee’s request for Maintenance Service. The Licensee shall include the name and telephone number of the person or persons who have either experienced or can reproduce and demonstrate the program error. A support telephone number will also be provided.

6. **Limited Maintenance Warranty.** Maintenance Services to be provided pursuant to this Agreement will be provided free from defects in materials and workmanship. No other warranty of any nature whatsoever is granted by Transcendent pursuant to this Agreement, either expressed or implied, including without limitation, there is no implied warranty of merchantability, fitness for particular purpose, or non-infringement of third party rights. Under no circumstances will Transcendent be liable for an amount pertaining to Maintenance Services greater than the amount paid by the Licensee to Transcendent for such Maintenance Services.

7. **Limitation of Liabilities/Remedies.** Transcendent is not liable for any incidental or consequential damages, if any, incurred by the Licensee.

8. **Termination.** This Agreement may be terminated by the Licensee or Transcendent at any time upon 30 days written notice by either party to the other.

ANNUAL MAINTENANCE FEES

SOFTWARE MODULE LICENSED

FULL ANNUAL FEE*

1. <u>Ascent Land Conservation Suite – BMP</u>	\$ <u>3,000</u>
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*These fees are subject to change based on increased functionality of products in the future and general price increases in the list price of the software. Maintenance for products installed in 2020 will be pro-rated and invoiced immediately following the use of the software in a production environment.

A separate maintenance fee is applicable for each software module licensed in accordance with paragraph 4 of this **Exhibit B**. The above license fee shall be filled in by the software provider for approval by the Licensee and Transcendent as part of this Agreement.

EXHIBIT C

LICENSE/SERVICE FEES

License Fees: Sauk County will be invoiced pursuant to the License fees listed below for the Software in this Agreement:

	<u>Software Module</u>	<u>Amount of One Time License Fee</u>
1.	<u>Ascent Land Conservation Suite - BMP</u>	\$ <u>\$12,000</u>
2.	<u>(Discount)</u>	\$ <u>(\$2,000)</u>
3.	<u>Total One Time License Fee</u>	\$ <u>\$10,000</u>

* Overall discount of \$2,000 provided based on time sensitive discounts.

Payment Terms:

Sauk County will pay the total **One Time License Fee** (\$10,000) based on the following payment schedule:

- A. Transcendent will invoice 100% (\$10,000) of the total software fee listed above, and the County will pay based on the payment terms defined in section 9b of the Software License Agreement, upon use of the software in a production environment.