

# STEARNS COUNTY WEB PORTAL USER AGREEMENT

## Terms and Conditions of Access and Use

**CAREFULLY AND THOROUGHLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT PRIOR TO ACCESS AND USE OF THE STEARNS COUNTY WEB PORTAL. ACCESS AND USE OF THE STEARNS COUNTY WEB PORTAL IS SUBJECT TO COMPLIANCE BY YOU WITH THE TERMS AND CONDITIONS SET FORTH HEREIN.**

### Definitions

(The following capitalized words shall have the following meanings when used in this Agreement.)

**AGREEMENT:** Stearns County Web Portal User Agreement Terms and Conditions of Access and Use; formal and legally binding agreement.

**BUSINESS ADMINISTRATOR:** Authorized business entity representative who has authority to release Stearns County Web Portal access to a select group of the business entity employees and who is also responsible for monitoring and managing the web portal user accounts of the business entity.

**COUNTY OF STEARNS:** County of Stearns, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as "Stearns County" or "County".

**DATA MINING:** Massive data downloads causing system crashes and major slow downs affecting County systems.

**STEARNS COUNTY WEB PORTAL:** Internet portal that provides access to certain public records and information maintained by Stearns County and its various departments on a fee for service basis; Interchangeably referred to, in portion or in whole, as **Web Portal, Web Portal Internet Site, Web Portal Site, Web Portal Program, or Web Portal System.**

**SUBSCRIBER:** A person and/or business entity that registers for and receives authorized access to the Stearns County Web Portal.

**WEB PORTAL INTERNET SITE:** Stearns County's Beacon or LandShark portal websites.

**YOU/YOUR:** Any individual or business entity who receives access to any portion of the Stearns County Web Portal. The following terms which are interchangeably used hereinafter have the same meaning as you or your: **subscriber, user, subscriber's personnel, employees, agents or representatives.**

### Terms and Conditions

- NATURE OF SERVICE.** Stearns County has developed a Web Portal to provide access to certain public records and information maintained by Stearns County and its various departments on a fee for service basis.
- LEGAL REPRESENTATION.** This document is a legally binding Agreement. Prior to entering into this Agreement you have the right to seek advice from legal counsel of your choice. By entering this Agreement you represent that you have either sought such legal advice or knowingly, voluntarily and intelligently waive your right to obtain such advice prior to entering this Agreement.
- AUTHORITY TO ENTER INTO AGREEMENT.** All subscribers represent that they have actual authority to enter into this Agreement and to bind the respective entities or persons with whom they are legally associated to the terms and conditions herein contained.
- TERMS AND CONDITIONS OF USE.** Access and use of the Stearns County Web Portal is subject to compliance with the terms and conditions set forth herein. Stearns County reserves the right to change, amend or modify any and all terms and conditions of use without notice to any subscriber/user. Any such change, modification or amendment shall be effective immediately upon posting on the web-portal internet site. You agree to periodically review such changes, modifications and amendments on-line. By accessing and continued use of the web-portal internet site, you agree to be bound and abide by the then current terms and conditions of use.

5. **RIGHTS / TITLE / INTEREST.** All rights, title, and interest to all processes, formats, languages and media throughout the world, which record, demonstrate, and or facilitate, the creation and utility of Stearns County's data bases and electronic data compilations, including all copyrights available thereto, are and shall continue to be the exclusive property of Stearns County.

You shall not acquire or assume to have acquired any proprietary rights to any computer programs, data bases, data compilations, data information, or record images associated with this Agreement.

Neither subscriber, nor their employees, agents or representatives shall be considered employees, agents or representatives of Stearns County.

Nothing contained in this Agreement is intended or should be construed by subscriber, their employees, agents or representatives as creating the relationship of co-partner, joint ventures, or an association with Stearns County.

6. **RESPONSIBILITY OF SUBSCRIBER.** The subscriber shall be responsible for providing and maintaining all hardware, software, modem, telephone service, and all other equipment required for accessing the Stearns County Web Portal, any of its data bases and data compilations.

The subscriber shall be responsible for all actions performed by any and all of subscriber's personnel and/or remote access users in regard to remote access and use of the County's data bases and data compilations, and for any use or misuse of the subscriber's equipment and/or passwords, regardless of the subscriber's knowledge of the authorized or unauthorized actions of their personnel and/or remote access users.

7. **CONTACT INFORMATION.** By subscribing to this service, you become a party to this Agreement and are legally bound by all of its terms and conditions, without exception. In subscribing to this service, you have voluntarily provided certain information that allows Stearns County to identify and contact you. Communication and correspondence between you and Stearns County incident to the administration of this Agreement and provision of services shall be directed in accordance with the contact information you provide, including billing for services. Stearns County is unable to provide service to you without this information. Therefore, it is your obligation to keep such information current in our records. Failure to keep your contact information current will result in discontinuance of service.

8. **BILLING AND PAYMENT.** The subscriber shall pay fees as set and approved by the Stearns County Board of Commissioners for remote access and use of certain Stearns County databases and data compilations referenced within and pursuant to the terms of this Agreement.

The subscriber shall maintain a credit card account for payment of all charges related to remote access and use of Stearns County's data bases and data compilations.

Upon the County's approval of the subscriber's registration, the initial subscription fee(s) for the full current month will be payable and collected through credit card transaction. Thereafter, on the 1<sup>st</sup> day of each month, the subscriber's credit card account shall be charged for any 'system use fees' which accumulated during the prior month plus applicable monthly subscription fee(s) for the current month. Monthly subscription fees will not be divided or assessed for fractional portions of a month.

9. **TAXES.** Charges are exclusive of sales, use and other taxes, which are the responsibility of the subscriber.

10. **FEE FOR ACCESS AND SERVICE.** The fee for access and service will be set annually by the Stearns County Board of Commissioners. Stearns County reserves the right to change, amend or modify any and all pricing terms without notice to any subscriber/user. Any such change, modification or amendment shall be effective immediately upon posting on the Web Portal internet site. You agree to periodically review such changes, modifications and amendments on-line. By continued access and use of the Web Portal, you agree to be bound and abide by the then current pricing terms applicable to the Web Portal.

11. **PASSWORDS / CONFIDENTIALITY.** Authorized users will be provided with remote access through the internet via a secured, password protected computer interface. Passwords are provided by the County for the sole use of the subscriber/user to whom it was originally assigned. Users shall not disclose any information relating to access codes, passwords, or any other information relating to Stearns County's computer security systems. Users shall immediately notify Stearns County of any loss, theft, or unauthorized use of access codes, passwords, or any other information. Any violation of this section shall constitute a material breach of this Agreement.

12. **PROHIBITION ON TRANSFER OR ASSIGNMENT.** The County will provide limited, nonexclusive, nontransferable remote access to certain real property data bases and electronic data compilations to authorized subscribers during the term of this Agreement. You shall not subcontract any computer data access rights made available under this Agreement, nor transfer or assign any rights or interest in this Agreement to any other person or entity. Any violation of this section shall constitute a material breach of this Agreement.

13. **PROHIBITION ON ALTERATION OR SALE OF DATA OR IMAGES.** You shall not in any way enhance or alter public records accessed, or attempt to do so. Any copies of public records accessed pursuant to this Agreement or duplicates so made by you shall be at your risk and expense and **EXCLUSIVELY FOR YOUR SOLE USE. YOU MAY NOT WHOLESALE OR RETAIL COPIES OF ANY MATERIALS RECEIVED.** Independent business entities are **PROHIBITED** from using Stearns County Public Records to establish public record distribution businesses/centers. Any such action would be a misuse of Stearns County property, programs, systems, data bases and data compilations. Any violation of this section shall constitute a material breach of this Agreement.

**14. PROHIBITION ON DATA MINING.** Data mining is **PROHIBITED**. Massive downloads of data, files, images, etc., cause major slow downs and crashes of County systems. Stearns County's Web Portal and associated data bases are not designed for, nor are they intended for large data downloads. **LARGE, MASS, and/or CONTINUOUS DOWNLOADING is PROHIBITED**. Using web technologies such as "bot" programs or any other program, system, or method to perform massive downloads of images or data from any Stearns County program or system is **PROHIBITED**. Any use of any portion of Stearns County data base systems and data compilations to create private company data base systems for data or image distribution of Stearns County records is **PROHIBITED**. Any such action would be a misuse of Stearns County property, programs, systems, data bases and data compilations. Any violation of this section shall constitute a material breach of this Agreement.

**15. DATA PRACTICES.** Stearns County provides data for the Public benefit as defined in Minn. Stat. 13.85. Stearns County and subscriber, their employees, agents and representatives shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13.

Neither the databases, electronic data compilations, nor any portion of either thereof, accessed through means of the enhanced remote access, may be used outside the scope of the Fair Use Provision of the United States Copyright Act, 17 U.S.C. & 107.

**16. GENERAL SUBSCRIBER REPRESENTATIONS.** By subscribing to this service you represent that you seek and have requested enhanced remote access from Stearns County, within the meaning of Minn. Stat. §13.03, subd. 3(b), to certain data generated, compiled and stored by Stearns County. You further acknowledge, represent and agree that the information, and access to information, contemplated and provided to you pursuant to this Agreement have commercial value within the meaning of Minn. Stat. §13.03, subd. 3(d).

You acknowledge and agree that both the access to information, and the information itself, have been enhanced in order to provide this service. The access is enhanced because: (1) the information is not regularly available to you via remote internet access; (2) access extends beyond normal Stearns County business hours; and (3) Stearns County has developed the technological means to provide remote access that is different and unique in comparison to how data is stored in the normal course of its governmental operations. Likewise, the actual information has been enhanced to a format that allows secure access through a web-based application. You further acknowledge and agree that the information provided pursuant to this Agreement, both in its raw form and enhanced form, has commercial value.

**17. PRIVACY STATEMENT; TENNESSEN WARNING.** You acknowledge and agree that to facilitate service and access to data, as per Minnesota Statutes, §13.05, subd. 12, you have agreed to provide certain identifying information. You further acknowledge and agree that any such information is provided voluntarily and that the County may not require disclosure, but that refusal to disclose means that the service requested by you cannot be provided. Stearns County respects the privacy of its subscribers. Therefore, the County does not intend to monitor, edit, or disclose the content of any email or other communication with the County through the web-portal unless necessary in the course of normal maintenance and operation of the web-portal system or unless required to do so by law or in the good faith belief that such action is necessary to (a) comply with the law or comply with legal process served on the County; or (b) protect or defend the rights or property of Stearns County; or (c) to further legitimate law enforcement investigations or efforts. You remain solely responsible for the content of messages sent, regardless of what that content is. All personal information is collected on a voluntary basis through visible means of either data entry by you or use of a registration form completed by you. Stearns County does log IP addresses for system administration, operation and troubleshooting purposes. Your IP address indicates the location of your computer on the Internet. Stearns County may also gather anonymous information for use by the County or third parties. This information does not personally identify you, but may be helpful to the County and its consultants in improving the service offered. Generally, this information is collected through "traffic data" and may entail the use of "cookies", "IP addresses" or other numeric codes used to identify your computer.

**18. ONLINE INFORMATION EXCHANGE.** "Cookies" give users a special, random identification in the form of small text files, which are stored on the hard drive of a user's computer. The use of cookies is an industry standard. Stearns County employs cookies to recognize you and your access privileges for certain locations on the web-portal sites as well as to track site usage. You can set your browser to refuse all cookies or to indicate when a cookie is being sent. Subscribers/users who do not accept cookies from Stearns County may not be able to access some areas of the web-portal internet site. Stearns County may, in its sole discretion, perform statistical analysis of the collective characteristics and behavior of subscribers to measure interests in the various areas of the web-portal (for product development and other similar service development purposes). You acknowledge that when on the Web Portal, you could be directed to other sites that are beyond the control of Stearns County. There may be links to other sites from the web-portal pages that take you outside our services. These other sites may send their own cookies to users, collect and track data, or solicit personal information. Stearns County does not endorse the content found on such third-party sites. You assume sole responsibility for your use of third-party links and pointers.

You acknowledge that whenever you give out information online – including, without limitation, posting a message to a discussion group – that information can be collected and used by parties unknown to you. Stearns County cannot guarantee the security of any information you disclose online, and you do so at your own risk. Stearns County cannot control the acts of parties who access and use the interactive features of the Web Portal. You provide personal information, such as name, email address, mailing address, and phone number during such use at your own risk, and such information may be used by other parties outside of Stearns County for unsolicited email or other contact. Further, if you participate in any discussions through the Web Portal internet site, you agree not to use any language that is threatening, abusive, vulgar, discourteous or criminal. You also agree not to post or transmit information or materials that would violate the rights of a third party or which would contain a virus or other harmful component.

19. **DISCLAIMER OF WARRANTIES.** Stearns County, its licensors, consultants and suppliers do not warrant that the web-portal sites will be uninterrupted or error free. Stearns County and its licensors, consultants and suppliers make no warranty, expressed, implied, statutory or otherwise and specifically disclaim any implied warranty of merchantability, fitness for a particular purpose, or non-infringement with respect to the web portal or a related internet site. The availability of any information depends on many factors, including Stearns County's connection to the internet, your connection to the internet, the availability of the internet and the internet backbone, and equipment that, by its nature, is not fault tolerant. Stearns County and its licensors and consultants make no guarantee of access to or accuracy of any information obtained through the web portal or related internet sites. You expressly assume the entire risk as to the quality and performance of the web portal and the accuracy or completeness of any information obtained therefrom.

20. **GENERAL DISCLAIMER AND LIMITATION OF LIABILITY.** Stearns County may from time to time include links to other online information, products or services. Stearns County makes no representation that the information, products or services accessed or obtained through such links are appropriate or authorized for use in all countries, states, provinces, counties or any jurisdiction whatsoever. If you choose to access an internet site linked to any Stearns County site, you do so of your own initiative and risk and you are responsible for compliance with all applicable laws.

Stearns County does not in anyway operate, control or endorse any information, products or services which may appear through links to third-party sites. Stearns County cannot and does not warrant or guarantee that files, software or information of any kind from any source available for downloading through the web portal will be free of infection, viruses, worms, trojan horses, or other code or defects that may manifest harmful and destructive properties.

Because of the possibility of human, technical and mechanical error, as well as other factors, Stearns County is not responsible for any errors or omissions from the information contained in or accessed through the web portal. The materials and information available in and through the web portal are provided "as is" and without warranties of any kind whether expressed or implied. To the fullest extent permissible pursuant to applicable law, Stearns County disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Furthermore, Stearns County does not warrant that the functions contained in the web portal, or the material and information available through the web portal, will be uninterrupted or error-free, that defects will be corrected, or that the site or server(s) that make the web portal available are free of viruses or other harmful components. Stearns County does not warrant or make any representations regarding the use or the results of the use of the information and materials available through the web portal in terms of correctness, accuracy, reliability, or otherwise.

Stearns County does not warrant or guarantee the performance of the main computer system, the telephone lines, or any equipment in connection or in association with the web portal. Stearns County shall have no obligation or liability whatsoever concerning any aspect of the telephone lines, including, without limitation, the installation, de-installation, repair, operation, malfunctioning, maintenance, implication or circumstances regarding injury to personal property and/or signal/data transmission quality or deficiencies.

Stearns County shall not be liable for any delay or inability to access the computer data directly or indirectly, caused by or resulting from industrial or labor disputes, strikes, accidents, explosion, fire, flood, weather conditions, power failure, equipment failure, war, riot, civil disorder, inability to obtain necessary supplies, delays of transportation, acts of any government, acts of God or other causes beyond reasonable control of Stearns County.

The County, at its sole option may interrupt the enhanced remote access to its databases and electronic data compilations, at any time, without prior notice, and for any reason. Interruption for backups, downed systems, etc., will and may occur without notice and for any reason.

You, not Stearns County, shall bear the entire cost of all necessary servicing, repairs or correction of any information obtained by you from the Stearns County Web Portal and provided by you to any third party. You expressly assume the entire risk as to the quality and performance of the web portal and the accuracy and completeness of its content without limitation or qualification.

Under no circumstances shall Stearns County, its officers, employees, agents, representatives, suppliers and licensors be liable for lost profits, lost data or costs of procurement of substitute goods and services, or for any indirect, special, incidental or consequential damages, however caused or under any theory of liability. You agree that the foregoing limitation of liability represents a reasonable allocation of risk.

21. **SEVERANCE CLAUSE AND NON WAIVER OF REMEDIES.** Should any provision of this Agreement be held to be void, invalid or unenforceable or illegal by a Court of competent jurisdiction, such provision shall be severed from this Agreement and all other terms and conditions shall remain and continue in full force and effect. Failure of Stearns County to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

22. **NO THIRD-PARTY BENEFICIARY.** Under no circumstances shall Stearns County be liable to you, any subscriber, user, or third-party regardless of the form of action, arising from the use of the Stearns County Web Portal, for any indirect, special, consequential or incidental damages that result from the use of, or the inability to use, the materials and information available on or through the Stearns County Web Portal, even if Stearns County, its officials, employees, agents or assigns have been advised of the possibility of such damages. In no event shall Stearns County's total liability to you, any subscriber, user, or third-party, for damages, losses, and causes of action (whether in contract or tort, including but not limited to negligence or otherwise) exceed the amount paid by you in accessing the Stearns County Web Portal and using the information and materials obtained.

**23. LIMITATION OF CLAIMS.** No limitations will be applicable to claims initiated by Stearns County relating to charges of improper use of the County's data bases and/or data compilations.

No claim initiated by any subscriber/user, regardless of form, which in any way arises out of this Agreement or the use or inability to use the County's data bases and/or data compilations, may be made nor action based, upon such claim brought by any party hereto, more than one year after the basis for the claim becomes known to the party desiring to assert it.

**24. CHOICE OF LAW; FORUM.** Your use and access to the Stearns County Portal, and the terms and conditions of this Agreement, are governed by the laws of the State of Minnesota, without reference to conflicts of laws and without regard to its location of execution or performance. You agree that any legal action initiated in relation to the terms and conditions of this Agreement shall have venue in Stearns County District Court.

**25. TERM OF AGREEMENT.** This Agreement remains in effect until terminated by either party. You may terminate this Agreement by providing written notice of termination to Stearns County. Written notice of termination must be received by Stearns County no later than the 25<sup>th</sup> day of the current month in order to avoid the next upcoming monthly subscription fee charge(s). Termination will be effective upon the date such written notice is received by Stearns County. All outstanding 'system use fees' will be billed through the effective date of termination. The terms and conditions of this Agreement apply from the date of subscription for service and for all periods prior to termination of this Agreement by either party. This Agreement will terminate immediately without notice from Stearns County if, in the sole discretion of Stearns County, you fail to comply with the terms and conditions of this Agreement. Stearns County reserves the right, in its sole discretion, to suspend or terminate your access to all or any part of the Web Portal at any time for any reason without prior notice or liability. Licensors and Suppliers of Stearns County may change, suspend, or discontinue all or any aspect of the content of the Web Portal.