

SOFTWARE LICENSE and  
RELATED PROFESSIONAL SERVICES  
AGREEMENT

APPRAISAL TECHNOLOGY INTEGRATION  
TO FACILITATE YAMHILL COUNTY'S DISCOVERY & APPRAISAL  
OF REAL ESTATE AND EQUALIZATION OF VALUES

This Software License and Professional Services Agreement ("Agreement") is made as of the effective date specified in this agreement by and between Data Cloud Solutions, LLC ("DCS") an Ohio Limited Liability Company having a principal place of business at 4 West Main Street - Suite 908, Springfield, Ohio 45501 and Yamhill County, a political subdivision of the State of Oregon, acting by and through its Assessor's Office at 535 NE 5th St #42, McMinnville, OR 97128 ("Customer"). Collectively, DCS and Customer shall be known as the Parties.

**RECITALS**

**WHEREAS** Customer, pursuant to state law, is responsible for uniform and accurate real estate assessments according to fair market value, and

**WHEREAS** Customer has the desire to acquire and implement a number of technology based resources for improved and more cost-efficient performance of assessment demands and responsibilities, and

**WHEREAS** Customer has instituted a performance plan for the discovery and valuation of new construction, scheduled appraisal updates, and on-going equalization based upon the approach of empowering in-house resources in conjunction with its already implemented technologies (e.g., GIS) and CAMA databases without requiring a time consuming rollout period, and

**WHEREAS** Customer wishes to now bring those technologies and databases into an integrated and synchronized mobile environment for onsite property data verification and correction, new construction data collection, Board of Property Tax Appeals and appeal related property reviews, and values equalization including scheduled appraisal updates and on-the-fly uniformity assurance efforts, and

**WHEREAS** DCS is engaged in the business of developing and selling **CAMA Cloud<sup>SM</sup> software**; including MobileAssessor<sup>SM</sup>, and its desktop Administrative & Quality Control modules (hereinafter referred to as "Software"), and providing services with respect to same;

**WHEREAS** DCS possess the expertise and the resources to perform the professional services as required to meet the herein stated goals and requirements of Customer.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS HEREIN CONTAINED, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:**

**1) Term.** This Agreement, including the End User License Agreement ("EULA") attached hereto and incorporated herein by reference, and in which Customer shall be referred to as "Licensee", shall **commence on November 1, 2018 and end on June 30, 2023** then automatically renew each subsequent year with annual maintenance and support running from July 1 through December 31 of the subsequent year until Customer provides written notice to terminate no less than 45 days prior to an upcoming renewal term. The services hereunder shall be provided by DCS in accordance with the following schedule:

- a) **Implementation:** February 11, 2019 – March 15, 2019
- b) **Delivery of Production Software and training:** beginning on or before April 17, 2019; unless a later date is preapproved by Customer
  - i) Provided that Customer has provided DCS with remote access to install Software on a server or virtual machine with **ODBC access to the CAMA database and read/write privileges to the photo storage directories on or before February 26, 2019.**
  - ii) Each day after February 26, 2019 that the above referenced access isn't provided to DCS may shift all delivery dates by one or more days.
- c) **Maintenance and support:** March 15, 2019 – 11:59pm June 30, 2023, then automatically renew each subsequent year with annual maintenance and support running from July 1 through December 31 of the subsequent year until Customer provides written notice to terminate no less than 45 days prior to an upcoming renewal term.

**2) Scope of Services.** DCS shall provide to Customer professional services regarding the provision, set-up, and implementation of up to **51,000 real property accounts**; and training of Software on Customer hardware, including:

- a) **Ten (10)** field appraiser **iPad Pro 2 LTE** (or newer with an A10X Fusion chip with 64-bit architecture and embedded M10 coprocessor; or better) machines remotely loaded with Customer's technology-based resources including CAMA data, GIS data, and up to one street level photograph of each parcel.

Each of the CAMA Cloud<sup>SM</sup> licensed devices (**10 mobile + 7 desktop administrative consoles**) can be operated in at least one or more combinations of the following functions (depending on final configurations, role settings, and mobile field appraisal versus office quality control):

- Automated/Dynamic parcel visitation routing
- New construction field listing
- Updated street level photography
- Sales and market data validation
- Desktop review of properties via the admin console with streaming dashboards, Quality Control, Tracking, and Reporting modules
- Reappraisal data verification / collection
- Market areas statistical review and delineation notation
- Land and building values equalization review

- Reappraisal valuations final field review
  - Administrative monitoring of work performance with real-time management QC review, management of field operations, live mobile application tracking, and audit trails.
  - Appeals field checks
- b) Setup assistance of **ten (10) Customer supplied iPad Pro 2 LTE (or newer with an A10X Fusion chip with 64-bit architecture and embedded M10 coprocessor; or better)** mobile devices.
- c) Onsite, hands-on training of Customer in the use of Software, including the field appraisal functions and administrative management functions; not to exceed 3 days in total. Onsite training shall be in conducted in the following allotment(s):
- i) no more than one session containing 3 consecutive business days; and
  - (1) additional days of training can be purchased on an as-needed basis.

Any onsite training or professional services (including any excess) shall be billable by DCS to Customer on a time and materials basis, as may be needed and only as preapproved by Customer.

- d) Software as a Service (SaaS) hosting and implementation, covering all pertinent residential real property CAMA data-field mapping (see ii below), by DCS for the duration of licensed use by Customer.
- i) Customer must provide CAMA data, GIS shapefiles, and subject matter experts related to Customer data, workflow, and business processes in a format and manner deemed acceptable by DCS (e.g., Microsoft Access database, csv's, and/or SQL export; parcel boundaries shapefile, etc). All such data provided by Customer shall remain the property of Customer, notwithstanding anything in this Agreement, including Exhibit A, to the contrary.
  - ii) up to 150 read-only fields and 100 Editable Fields. Each extra read-only field would require an additional \$75 one-time fee (not recurring costs). Each extra editable field would require an additional \$350 one-time fee plus \$75/field/year in additional maintenance.
- e) Standard Maintenance and Support as described in this Agreement & the attached EULA. In the event of any conflict between the provisions of this Agreement and the EULA, the terms of this Agreement shall control.
- (1) *Premium Support and Professional Services are available for an additional time and materials fee, or a discounted rate for longer term commitments. Some examples of premium services include analyses of Customer specific use cases by DCS staff with executive authority with regard to software enhancements, change orders, and project management decisions; including, (a) mobile device mass appraisal and integrated field review best practices, (b) business process/requirements analysis, change management, and workflow optimization, and (c) appraisal analytics, consultation, and rates development. Onsite observations and findings shall be applied to Software training as applicable to the proper collection and incorporation of market data.*

Any professional services in excess of the amounts described in this Agreement shall be billable by DCS to Customer on a time and materials basis, as may be needed and only as preapproved by Customer.

**3) License and Professional Fees for Software and/or Hardware Services.** All licensing and implementation services set forth in this Agreement shall be completed for a sum not to exceed **\$21,960 plus \$2,900 per mobile license.**

- a) All bills properly rendered shall be due within thirty (30) days of the date of the invoice. Any bill unpaid after thirty (30) days shall be subject to a one percent (1%) per month interest rate for each month or part thereof that the bill remains unpaid.
  - i) 100% of Software license and Professional fees (\$50,960) plus 100% of Hardware services (\$0) shall be invoiced upon the CAMA Cloud Synchronization Service being installed on Customer's server. *First installment not to exceed \$50,960.*
- b) Customer may add additional licenses after the execution of this Agreement under the following conditions:
  - (1) Customer requests a Purchase Order from DCS,
  - (2) Customer signs the purchase authorization on the Purchase Order provided by DCS,
  - (3) 100% of additional license fees are paid within 30 days of activation,
    - (a) additional mobile licenses are \$2,900 each, and
    - (b) additional desktop administrative console licenses are \$1,000 each.
- c) Customer may add additional CAMA Cloud<sup>SM</sup> modules and upgrades after the execution of this Agreement under the following conditions:
  - (1) Customer requests a Purchase Order from DCS,
  - (2) Customer signs the purchase authorization on the Purchase Order provided by DCS,
  - (3) 100% of additional upgrades fees are paid within 30 days of activation,
    - (a) additional modules will be set at then current rates,
    - (b) additional upgrades will be set at then current rates.
- d) If Customer determines that DCS is not in compliance with the terms of this Agreement, Customer may suspend payments until DCS is in compliance with the terms and conditions of this Agreement.
  - i) Full payment by Customer to DCS shall be immediately due if the parties agree that DCS was not able to fulfill the requirements of this Agreement due to any inability of Customer to rectify any unreasonable working environment issues, for which Customer is accountable for, that interferes with DCS's ability to successfully complete agreed upon services.

**4) Annual Maintenance and Support Fees for Software.** Yearly annual maintenance and support for which Customer shall be responsible to pay DCS an annual sum not to exceed **\$8,670 plus \$725 per mobile license.** Customer will be entitled to product Updates during the term of this Agreement at no additional cost, which include releases that correct identified errors in Software (including revisions or dot releases), which are subsequent versions of Software, and may provide new or enhanced functionality.

- a) Full (non pro rata) annual maintenance begins July 1<sup>st</sup> of each year and the first full annual total is due no later than July 31, 2019.

- i) For 3/15/2019 through 6/30/2019, \$3,980 of pro-rated Annual Maintenance and Support fees (15,920 less pro-rata 11,940 = \$3,980) shall be invoiced and paid prior to Customer field appraisal staff receiving training as referenced in subsection 2 c) above. *Pro-rated maintenance installment for 7/1/2019 – 6/30/2019 not to exceed \$3,980.*
  - b) Yearly annual maintenance and support fees may increase to then current rates if Customer adds additional modules, switches CAMA systems, or upgrades after the execution of this Agreement as referenced in Sections 3)b) and 3)c).
  - c) There is no credit or refund in the one-time license fees if the quantity of mobile licenses or upgrades is decreased at any point in the future, but the annual maintenance and support fees shall decrease by the then applicable and respective maintenance rate(s) per removed license or upgrade, per year.
- 5) DCS will provide standard support services on Software products in use by Customer and will use reasonable efforts to respond to all service inquiries within two (2) business days. However, DCS cannot guarantee response times for those inquiries requiring substantial research or if Customer does not provide sufficient details or reproduction steps.
- i) For each software product for which Customer has purchased, they will be provided with installation, basic set-up, problem analysis, problem resolution, and preventative or corrective service information and efforts to reproduce and correct errors identified by Customer or determine that errors are not reproducible.
  - b) Example: The 3/15/2019 – 6/30/2019 pro-rated maintenance amount of \$3,980 will be due between January – April, 2019. Then the first full year annual maintenance and support of \$15,920 shall be due by 7/31/2020; then the second full year annual maintenance and support of \$15,920 shall be due by 7/31/2021; then the third full year annual maintenance and support of \$15,920 shall be due by 7/31/2022 for which maintenance and support shall expire at the end of 6/30/2023 if Customer provided a forty-five (45) day notice to cancel, else renew annually until such notice is provided.
    - (1) Each of the above amounts can increase or decrease based upon the then current, applicable, and respective number of licenses or upgrades added or removed after the execution of this Agreement, in accordance with Sections 3 and 4; or, if in the event of no upgrades then the annual maintenance amounts may increase by an amount not to exceed 3% from one year to the next.
- 6) **Reimbursement of Expenses.** DCS shall be responsible for all direct expenses of DCS with regard to its performance of its services under this Agreement, including travel, lodging and per diem expenses; with exception for any support or professional services in excess of any of the above described hours/days/licenses shall be billable by DCS to Customer on a time and materials basis, as may be needed and only as preapproved by Customer.
- 7) **Mutual Mediation Clause.** Upon demand by either party, the parties agree to mediate any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including but not limited to the determination of the scope or applicability of this Agreement to mediate. This clause shall not prevent either party from initiating any claim or suit, but if exercised by a party, both parties agree to stay any litigation for a reasonable time pending the mediation. If either party chooses to exercise this right to demand mediation, then, by doing so, that party shall also consent and agree to toll any limitations periods applicable to any claims that the other party may have against the party demanding mediation, such that all applicable limitations periods shall be extended by the same number of days as the period of time from when the demand for mediation was first placed into the mail or otherwise

actually communicated to the other party, until the day on which mediation is completed ("Mediation Delay"); and the party demanding mediation shall waive all defenses based on statutes of limitations where litigation is actually commenced within an amount of time from the date that the statute of limitations would have otherwise run equal to the length of the Mediation Delay.

**8) Non-Waiver by Parties.** No act or omission of any party shall be construed as constituting or implying a waiver by such party of any default hereunder or of any breach or non-observance of the provisions hereof on the part of the other party or as a surrender of any of the rights of such party resulting therefrom, unless expressly consented to in writing by the party waiving such right.

**9) Confidentiality.** The parties agree to hold each party's confidential information in strict confidence and to take reasonable precautions to protect such confidential information (including, without limitation, all precautions each party employs with respect to its own confidential information); unless disclosing-party of confidential information authorizes disclosure in writing. Customer shall not be in breach of this Agreement, including Schedule A, in the event Customer is required by law, court order or enforceable subpoena to turn over any information, software or other data that is otherwise confidential hereunder. Provided however Customer will give DCS written notice within twenty four hours of Customer's receipt of any request, order or subpoena to allow DCS to seek whatever protections it deems advisable against such disclosure.

**10) Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable, illegal or otherwise invalid in any respect under the laws governing this Agreement or its performance, such unenforceability, illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall then be construed as if such unenforceable, illegal or invalid provisions had never been contained herein.

**11) Amendments.** This Agreement may not be modified or changed in any respect whatsoever except by written amendment signed by each party.

**12) Designated Representative.** Any notice that must be given under the present Agreement must be communicated in writing at the following addresses:

Person in charge of this project who will be available, knowledgeable, and authorized to execute binding agreements on behalf of DCS or Customer:

DCS: Daniel T. Anderson \*

Customer: Derrick Wharf, Assessor \*\*

E-mail: dandeson@datacloudsolutions.net \*

E-mail: wharffd@co.yamhill.or.us \*\*

*\*or then current DCS President,*

*\*\*or then current Assessor*

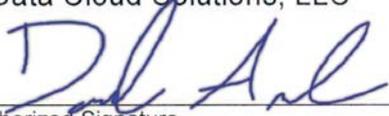
**13) Entire Agreement.** The present Agreement, attached Schedules, and/or Purchase Orders constitutes the full and complete understanding and agreement of DCS and Customer (and Software Licensee) and supersedes all prior negotiations, understandings and agreements pertaining to the subject matter of this Agreement. This Agreement may be supplemented by one or more Purchase Orders, which will be deemed to be part of this Agreement when signed by each party.

\*\*\*\*\*Remainder of this page intentionally left blank.\*\*\*\*\*

THE PARTIES HEREBY AGREE TO ALL OF THE ABOVE TERMS AND HAVE EXECUTED THIS AGREEMENT BY A DULY AUTHORIZED REPRESENTATIVE.

EFFECTIVE DATE: 01-Nov-2018

ACCEPTED BY:  
Data Cloud Solutions, LLC

  
Authorized Signature

President  
Title

ACCEPTED BY:  
Yamhill County Board of Commissioners

  
Name

Chair, Yamhill County  
Title  
Board of  
Commissioners

The undersigned Board secretary and/or custodian of records hereby certifies that the above and foregoing SOFTWARE LICENSE AND RELATED PROFESSIONAL SERVICES AGREEMENT FOR APPRAISAL TECHNOLOGY INTEGRATION TO FACILITATE YAMHILL COUNTY'S DISCOVERY & APPRAISAL OF REAL ESTATE AND EQUALIZATION OF VALUES, was approved by Yamhill County, Oregon.

  
Authorized Signature

Accepted by Yamhill County  
Board of Commissioners on 7  
10/25/18 by Board Order  
# 18-382

**REVENUE CERTIFICATE**

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of an amount not to exceed \$54,940 payable prior to July 1, 2019 which is hereby authorized.

Funds for future years are subject to appropriation in the Customer's then current annual budget and are not guaranteed, but are projected to be \$15,920 - \$17,000 payable in July of each subsequent year for ongoing annual maintenance and support. **See Section 3-5 for proposed schedule of payments' due dates.**

10-26-18  
Date

  
Authorized Signature  
Account No. (if applicable) \_\_\_\_\_

## EXHIBIT A

### End User License Agreement

#### DEFINITIONS.

1.1 "Purchase Order" has the meaning set forth in Section 2.

1.2 "Floating User" means the number of undesignated concurrent users specified in any Purchase Order who may simultaneously access and use the Licensed Software, subject to the license granted herein.

1.3 "Named User" means the number of users specified in any Purchase Order who are employees or authorized contractors of Licensee and specifically designated to use the Licensed Software, subject to the license granted herein.

1.4 "Licensed Software" means the proprietary software of Data Cloud Solutions, LLC (in object code format only) and related documentation that is identified in any mutually agreed upon Purchase Order or Agreement.

1.5 "Business Unit" means the specific county division or operations unit identified in a Purchase Order for which Licensee is authorized to use the Licensed Software.

1.6 "Intellectual Property Rights" means any and all rights, whether or not registered, that may exist from time to time in this or any other jurisdiction under patent law, copyright law, moral rights law, publicity rights law, trade secret law, trademark law, unfair competition law or other similar protections.

#### 2 PURCHASE ORDERS.

2.1 Licensee may issue to Data Cloud Solutions, LLC ("DCS") written Purchase Orders identifying the Licensed Software (as defined below) and services Licensee desires to obtain from DCS (the "Purchase Order(s)"). Such Purchase Orders shall be consistent with the terms and conditions of this Agreement. It is the parties' intent that the initial version of each Purchase Order shall be generated by DCS. DCS shall accept any mutually agreeable Purchase Orders or alterations thereto which do not establish new or conflicting terms and conditions from those set forth in this Agreement and the exhibit(s) attached hereto or entered into pursuant to the terms of this Agreement. In the event of a conflict between the terms of this Agreement and a Purchase Order, the applicable terms of this Agreement shall prevail over the conflicting terms of such Purchase Order. DCS may reject a Purchase Order that does not meet the conditions described above by promptly providing

to Licensee a written explanation of the reasons for such rejection. In order to be valid, all Purchase Orders submitted by Licensee must be substantially in the form of Purchase Order attached hereto and shall be executed by authorized representatives of each party prior to taking effect. Each executed Purchase Order shall be attached hereto and incorporated herein as Purchase Order 1, 2, et seq.

#### 3 LICENSE.

3.1 Grant of License. Subject to the terms of this Agreement and any applicable Purchase Order, DCS hereby grants to Licensee a perpetual, non-exclusive, non-transferable, non-sublicenseable, restricted license to use the Licensed Software for internal purposes only, for the specific business purposes and Business Unit (if applicable), and during the license term specified in a Purchase Order (the "License"). The License permits employees and authorized users of Licensee to use the Licensed Software, subject to the number of Floating Users and/or Named Users specified in the Purchase Order.

3.2 Prohibited Uses. Licensee may not (i) transfer all or any portion of the Licensed Software to a different computer configuration or permit use by third parties or other functionally independent business units affiliated with Licensee or affiliates of Licensee, (ii) reinstall or use the Licensed Software or documentation following the expiration or termination of this Agreement unless it enters into an additional license agreement with DCS, (iii) attempt to circumvent any technical devices of the License Software that are directed at, or have the effect of, enforcing the terms of this Agreement, (iv) make copies of the Licensed Software other than for backup, training, testing or other internal support reasons, or (v) modify, create derivative works, translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code from the object code supplied to Licensee. Licensee may not remove, modify or obscure any copyright, trade secret, confidentiality, trademark, service mark or other proprietary rights, notice or legend on any copy of the Licensed Software, the media on which it is contained, or related data, documentation or other materials. Licensee may not market, sell, lend, rent, lease, or otherwise distribute the Licensed Software. Except as otherwise expressly provided herein, Licensee may not assign, sublicense or otherwise transfer any rights in or to the Licensed Software. The Licensed Software shall not be used under any circumstance whatsoever directly or indirectly in a computer service business or service

bureau or in a rental or commercial timesharing arrangement.

3.3 Designated Hardware. Licensee agrees to operate the Licensed Software on hardware meeting or exceeding the requirements as specified in a Purchase Order or this Agreement or otherwise recommended by DCS. Licensee acknowledges and agrees that the License is restricted to county/Customer operations only, and that the Licensed Software may not be installed on hardware not owned and operated by Licensee.

3.4 Database. Licensee agrees that the database created by DCS and its architecture are key components of Software that is also being licensed concurrently with this Agreement. The database may be subject to copyright protection by DCS. Licensee acknowledges that any alteration of the database – even in the case of changing data that may be owned by Licensee – that is performed by software that is not the Licensed Software and/or by an agent that is not associated with DCS is inconsistent with the License granted under this Agreement and may cause the Licensed Software to malfunction or affect the integrity of the data in the database, and that DCS can no longer warrant the accuracy of the data or the database. Licensee shall not permit any third party or third party software product to access the database except with the prior written consent of DCS.

#### SERVICES.

4.1 Professional Services. DCS shall provide professional services ("Services") as described in Purchase Orders to assist with data conversion, system implementation and configuration, customization, and installation, or in connection with other activities as may be described in Purchase Orders. Subject to the mutual agreement of the parties in a Purchase Order or this Agreement, DCS personnel will perform these Services at the rate and charges set forth in such Purchase Order; plus applicable travel, meal and lodging expenses if preapproved by Customer.

4.2 Maintenance and Support Services. DCS shall provide maintenance and support services ("Maintenance") as described in Purchase Orders or this Agreement to maintain the Licensed Software and to provide technical support, Licensed Software updates, and other services as described in Purchase Orders or this Agreement. Unless otherwise set forth in an applicable Purchase Order, support calls for service will be provided during normal business hours, and will be responded to in a maximum of 2 days for standard inquiries and 3 hours for emergency inquiries from the time the call was placed or 6 hours for premium support services

(if purchased); or otherwise resolved as soon as reasonably possible as defined within this Agreement. Licensee understands and agrees that if Licensee discontinues and then resumes the use of Maintenance, Licensee will be required to pay DCS the entire Annual Maintenance and Support Services Fees for the period of discontinuance, plus any Maintenance Services then commencing.

#### 5 FEES AND EXPENSES.

5.1 In consideration for the License and the Services and Maintenance to be provided by DCS, Licensee shall pay the fees as indicated in the applicable Purchase Order. Licensee will pay these undisputed fees within thirty (30) days of the date of receipt, review and approval of the invoice, unless otherwise stipulated in the Purchase Order or this Agreement. Thereafter, all past due balances shall accrue interest at the rate of 1% per month. Licensee agrees that the SaaS CAMA Cloud<sup>SM</sup> applications are available only through a rental time-based subscription basis and the failure to pay any undisputed fees related thereto greater than sixty (60) days shall permit DCS to deny Licensee- without notice - access to those aspects of the Software until full payment for all amounts owing are paid in full. NB: Any statement or payment not disputed in writing by either Party within the greater of 30 days of the date of such statement or payment; or within 90 days after services were rendered, shall (absent fraud or manifest error) be considered final and binding and no longer subject to dispute or adjustment.

#### 6 PROPRIETARY RIGHTS AND CONFIDENTIALITY.

6.1 Licensee understands and agrees that the Licensed Software, related data, documentation, and all other information and materials provided by DCS to Licensee (the "Proprietary Information") are confidential and that DCS has and will have exclusive Intellectual Property Rights in such Proprietary Information. Notwithstanding the foregoing, DCS understands and agrees that Licensee is a political subdivision of the State of Oregon, and is subject to the Oregon Public Records Laws. DCS further understands that information which DCS considers or treats as confidential may be made public or disclosed to members of the public, if such disclosure is required by law.

6.2 Licensee acknowledges and agrees that no title or ownership of the Licensed Software or any of DCS's Intellectual Property Rights is transferred to Licensee by this Agreement and that the Licensed Software and all Intellectual Property Rights are and will remain the exclusive property of DCS. Except as otherwise expressly set forth in any Purchase Order or this Agreement, DCS shall own all right, title, and interest in and to all Deliverables that are written or created by DCS personnel alone or jointly with

Licensee or third parties in connection with this Agreement. "Deliverable" shall mean any work product, software, co-development, analysis, or other deliverable(s) produced for or delivered to Licensee under this Agreement in connection with a Purchase Order.

6.3 Licensee agrees not to make any claim or representation of ownership of any of the Licensed Software and all related data, documentation and other materials, including any Deliverables. Subject only to the rights expressly granted to Licensee under this Agreement according to the non-exclusive License herein, all rights, title and interest in and to the Licensed Software including without limitation the Proprietary Rights will remain with and belong exclusively to DCS. This is a software license agreement and not an agreement for the sale of the Licensed Software.

6.4 Except as required or prohibited by law, Licensee agrees to keep all Licensed Software (including all related data, documentation and other materials) and other confidential information of DCS confidential and agrees not to sell, assign, distribute or disclose any Licensed Software or any portion of the Licensed Software to any other person or entity. Licensee agrees to advise its employees, agents and consultants of the confidential and proprietary nature of the Licensed Software (including all related data, documentation and other materials) and of the restrictions imposed by this Agreement, and agrees to confine access to Licensee's employees, agents and consultants solely on a need-to-know basis, subject to all restrictions imposed by this Agreement. Except as required or prohibited by law, demonstrating the capability of the system to competing property assessment jurisdictions, competing vendors, and/or competing agents/consultants shall be a disclosure of the Licensed Software that constitutes a material breach of this Agreement.

6.5 DCS agrees to keep confidential all of Licensee's confidential information, and agrees not to sell, assign, distribute or disclose any such confidential information to any other person or entity. DCS agrees to advise its employees, agents, and consultants of the confidential and proprietary nature of such confidential information and of the restrictions imposed by this Agreement, and agrees to confine access to DCS's employees, agents and consultants solely on a need-to-know basis, subject to all restrictions imposed by this Agreement and by law.

6.6 The provisions of this Section 6 apply to the Licensed Software as originally delivered by DCS and as modified or otherwise enhanced and to any data, documentation, other materials and information

regarding the Licensed Software that has been given to Licensee prior to the Effective Date, and apply to Licensee and to all employees, agents, consultants and affiliates of Licensee.

6.7 To the extent that Licensee is authorized by law to do so, Licensee agrees to assist DCS in stopping and preventing any possession or use of the Licensed Software (including all related data, documentation and other materials) by any person or entity not authorized by this Agreement to have such possession or use, and will cooperate with DCS in any litigation at DCS's cost that DCS determines is reasonably necessary to protect the Proprietary Rights.

6.8 The parties agree that any breach of the provisions of this Section 6 will cause substantial damages, that the amount of such damages is difficult to determine with precision, and that any remedies at law for such a breach will entitle the owner of the confidential information or Proprietary Information as the case may be, in addition to any other remedies it may have, to temporary and permanent injunctive and other relief, without the necessity of posting bond or proving actual damages. DCS further agrees that, to the extent that any disclosure of information is required by law, or the concealing of information is prohibited by law, including information of any type considered under this Agreement to be confidential, DCS shall not be entitled to any damages or other legal or equitable relief whatsoever.

## 7 INDEMNITY.

7.1 DCS will indemnify and defend Licensee, at DCS's expense, against any claim or any action brought, and will pay any and all costs, liabilities, expenses, settlements, or judgments finally awarded in favor of a third party against Licensee, based upon any claim that the Licensed Software infringes any valid U.S. patent, copyright or trade secret, provided that Licensee: (i) promptly notifies DCS in writing of any such claim; (ii) gives DCS full authority and control of the settlement and defense of the claim; (iv) has not made any admission or offer to settle and (iv) fully cooperates with DCS in the defense of such claims, including providing adequate assistance and information. DCS shall keep Licensee informed of, and consult with Licensee in connection with the progress of such litigation or settlement. DCS may not settle any Claim unless it unconditionally releases Licensee of all liability. The indemnity provided hereunder shall not apply to amounts paid in settlement of any claim if such settlement is made without DCS's prior written consent.

7.2 This indemnity does not apply to, and DCS will have no obligation to Licensee for, any infringement claim that arises from: (i) any modification to the Licensed Software by anyone other than DCS unless approved in writing by DCS; (ii) modifications made by

DCS at Licensee's request in compliance with Licensee's design, specifications or instructions; (iii) use of the Licensed Software other than as specified in this Agreement or in the applicable documentation; (iv) use of the Licensed Software in conjunction with third-party software, hardware or data other than that with which the Licensed Software is specifically designed to be used, solely as expressly specified in the documentation or this Agreement, or (v) use of a prior version of the Licensed Software, if the infringement claim could have been avoided by the use of the current version of the Licensed Software.

7.3 If an infringement claim arises, or in DCS's reasonable opinion is likely to arise, DCS may at its own expense and in its own discretion obtain for Licensee the right to continue using the Licensed Software, modify the Licensed Software to make it non-infringing, or substitute other Licensed Software of substantially similar capability and functionality. If none of these options are reasonably available to DCS, DCS may terminate the License for the infringing Licensed Software and refund to Licensee the License fee paid for the infringing Licensed Software, less a reasonable charge for Licensee's use of the Licensed Software prior to such termination. THIS SECTION 7 STATES THE ENTIRE OBLIGATION OF DCS AND THE EXCLUSIVE REMEDIES OF LICENSEE WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHTS VIOLATIONS.

## 8 WARRANTY AND LIMITATION OF LIABILITY.

8.1 DCS warrants that as of the Effective Date of this Agreement, (i) it has the authority to grant the License under this Agreement to Licensee; (ii) any Services provided under this Agreement and any Purchase Orders will be performed in a professional and workmanlike manner; and (iii) the Licensed Software will conform substantially to its documentation for thirty (30) days from go-live delivery. Licensee's sole remedy for a breach of the express warranties in this section shall be repair or replacement of the Licensed Software or reperformance of any applicable Services within a reasonable time.

8.2. DCS MAKES NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. DCS DOES NOT WARRANT THAT THE PRODUCT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY APPLICABLE PURCHASE ORDER, DCS HAS NO DUTY TO UPDATE, MAINTAIN OR PROVIDE ANY ENHANCEMENTS FOR THE LICENSED SOFTWARE.

## 9 TERM AND TERMINATION.

9.1. The term of this Agreement shall begin on the Effective Date and continue in effect until terminated as provided herein or otherwise stipulated in the Agreement. In the event that either party fails at any time to comply with any of its obligations under this Agreement and fails to cure such breach within thirty (30) calendar days after the giving of a written notice of breach that describes in reasonable detail the alleged breach, the other party may terminate this Agreement effective on the 31<sup>st</sup> day after the original written notice of breach unless some interim arrangement has been reached between the parties during the 30-day cure period. If Licensee breaches any provision of Section 3 or Section 6, DCS may terminate this Agreement immediately upon written notice to Licensee. Upon termination, Licensee shall immediately destroy all copies of the Licensed Software, and certify to DCS that it has retained no copies of the Licensed Software. Upon termination, regardless of the reason for termination, Licensee shall pay DCS all undisputed Fees or expenses then due or incurred up to the time of termination. The rights and responsibilities of the parties pursuant to paragraphs 3.2, 5, 6, 8.2, 8.3, and paragraph 10 shall survive the expiration or termination of this Agreement.

9.2 NON-APPROPRIATION. DCS acknowledges that Licensee is a governmental entity and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are not appropriated for the performance of Licensee's obligations under this Agreement, then this Agreement shall automatically expire without penalty to Licensee thirty (30) days after written notice to DCS of the non-appropriation of public funds. It is expressly agreed that Licensee shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. Any services performed by DCS prior to its receipt of notice of the Licensee's intent to terminate this Agreement in accordance with this paragraph shall nonetheless be paid to DCS, including all non-refundable amounts.

## MISCELLANEOUS.

10.1 Except for Customer's obligation to pay DCS, Neither party will be liable for any failure to comply with or delay in performance of this Agreement where failure or delay is caused by or results from any events beyond its control, including but not limited to, fire, flood, earthquake, accident, civil disturbances, acts of any governmental entity, war, shortages, embargoes, strikes (other than those occurring in the

workforce of the party claiming relief, or the workforces of its subcontractors), transportation delays, or acts of God.

10.2 This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns; provided however, that (i) Licensee may not assign or otherwise transfer this Agreement or any of its rights and/or obligations hereunder without the prior written consent of DCS, and (ii) DCS may only transfer or assign its rights and obligations under this Agreement to an affiliate, in connection with a merger or acquisition or in connection with a corporate reorganization.

10.3 No delay, omission or failure to exercise any right or remedy under this Agreement will be deemed to be a waiver of such right or remedy or acquiescence to the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and so often as may be deemed expedient by the party exercising such right or remedy.

10.4 DCS and Licensee are independent contractors with respect to one another under this Agreement, and neither one is a partner, joint venture, employee, agent or legal representative of the other for any purpose.

10.5 This Agreement will be governed by and construed in accordance with the laws of the United States and the State of Oregon, without respect to conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement. For all disputes arising out of this Agreement, venue shall lie exclusively in the State Courts of Yamhill County, Oregon, or in the United States District Court for the District of Oregon, Portland Division.

10.6 If any provision of this Agreement or compliance by any of the parties with any provision of this Agreement constitutes a violation of any law, or is or becomes unenforceable or void, then such provision, to the extent only that it is in violation of law, unenforceable or void, shall be deemed modified as necessary so that it is no longer in violation of law, unenforceable or void, and such provision will be enforced to the fullest extent permitted by law. If such modification is not possible, such provision, to the extent that it is in violation of law, unenforceable or void, shall be deemed severed from the remaining provisions of this Agreement, which provisions will remain in full force and effect.

10.7 In the event that any provision of this Agreement is held to be illegal, invalid or

unenforceable, under present or future laws, then (i) such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof, (ii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement, and (iii) there will be added automatically as a part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable.

10.8 This Agreement will be a public document and will be subject to disclosure under Oregon Public Records Laws. Subject to the confidentiality restrictions set forth in Section 6 above and applicable law, the parties may create and distribute media releases, public announcements, or make public disclosures regarding the existence of the Agreement and such releases, announcements and disclosures may include the name trademark or logo of either of the parties, and be posted on the parties respective web sites. Any media release or public announcement by Licensee regarding this Agreement shall be subject to prior approval by DCS. DCS may disclose Licensee's name on a list of customers.

10.9 This Agreement will become effective only upon execution of this Agreement by an authorized officer of DCS and Licensee.

10.10 Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party indicated below, or at such other address as may hereafter be furnished in writing by either party hereto to the other. Such notice will be deemed to have been given as of (i) the date it is delivered in the case of delivery by hand or overnight delivery, (ii) on the date of facsimile if sent by confirmed facsimile, and (iii) three (3) days after deposit in the mail in the case of certified mail delivery. Copies of all notices to DCS shall be sent to: Data Cloud Solutions, LLC, 4 West Main Street, Suite 908, Springfield, OH 45502; and, Data Cloud Solutions, LLC, PO Box 2194, Springfield, OH 45501; and a PDF copy to [records@datacloudsolutions.net](mailto:records@datacloudsolutions.net)

10.11 The Uniform Computer Information Transactions Act does not apply to this Agreement.

10.12 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute

one and the same instrument. Such counterparts may be sent via facsimile or in PDF format via email.

