

This Amendment to the Production Agreement ("Amendment") amends the Production Agreement ("Agreement") made between DataProse, LLC, a Texas limited liability company ("DataProse") and the City of North Richland Hills ("Client") dated 12/16/2003. The purpose of this Amendment is to amend the terms and conditions agreed to in this prior Agreement. The effective date of this Amendment is the date last signed below ("Effective Date"). In consideration of the mutual promises and benefits contained herein, the parties hereby agree as follows:

**PURPOSE OF AMENDMENT.** This Amendment shall become effective as of the Effective Date and makes the following changes to the prior Agreement.

- Replaces Schedule 1.0 from the Agreement with Schedule 1.1 (below), based on the City of Plano Cooperative Terms. Each reference in the Agreement to Schedule 1.0 shall be changed to Schedule 1.1.
- Replaces Article 3 of the Agreement with Article 3.1 (below) which amends the term of the Agreement. Each reference in the Agreement to Article 3 shall be changed to Article 3.1.
- Replaces Article 5 of the Agreement with Article 5.1 (below) which amends the termination provision of the Agreement. Each reference in the Agreement to Article 5 shall be changed to Article 5.1.
- Replaces Article 8 of the Agreement with Article 8.1 (below) which amends the Indemnification provision of the Agreement. Each reference in the Agreement to Article 8 shall be changed to Article 8.1.
- Replaces Article 10 of the Agreement with Article 10.1 (below) which amends the Limitation of Liability provision of the Agreement. Each reference in the Agreement to Article 10 shall be changed to Article 10.1.
- Replaces Article 14 of the Agreement with Article 14.1 (below) which amends the client notice of the Agreement. Each reference in the Agreement to Article 14 shall be changed to Article 14.1.
- Adds Article 18 which incorporates the City of Plano Cooperative Terms.

DataProse and Client agree that this Amendment is hereby incorporated by reference into the Agreement. The Agreement and this Amendment set forth the entire understanding between the Parties with respect to the Licensed Software/Services, as defined below.

**Schedule 1.1 – Fees for Goods & Services**

<b>ServiceBill</b> (Package Includes: data processing & simplex, CMYK (full color) imaging, 8.5x11, 24# white paper perforated at 3.5" from bottom, #10 window env., #9 single window reply env., folding, inserting, presorting and delivery to USPS)	\$0.105	Per Bill
<b>Optional Services</b>		
Search & ViewBill (Archive Package Includes: data processing, archive creation, search, access & hosting of archive files for six (6) months from creation date)	\$0.00	Per Bill
ViewBill Transmission (includes FTP transmission to client site or files copied to CDROM)	\$150.00	Per Transmission/CDROM
NCOALink – Automated address update service	\$0.50	Per Address Correction
Additional Impressions	\$0.035	Per Impression
Bill Suppression (data processing only – Group Y & Z)	\$0.05	Per Bill
Oversized Surcharge (8-99 page bills – Group C)	\$0.35	Per Bill
Oversized Surcharge (100+ page bills – Group D & E)	\$4.00	Per Bill
Additional Inserts – up to three (3) total	\$0.00	Per Insert
Offline Folding	\$0.01	Per Piece
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)	\$125.00	Per Hour
Freight, Courier & Air Delivery	Cost	Per Request
Minimum Daily Processing/Production Fee	\$75.00	Per Day
Postage (1 oz.)	\$0.408	Per Bill

**ARTICLE 3.1 TERM.** The term of this Amendment shall commence as of the Effective Date and shall continue for a period of not less than three (3) years, ending on the third anniversary of the Effective Date, unless terminated earlier in accordance with provisions found elsewhere in the Agreement. The Amendment shall renew itself for successive one (1) year terms unless written notice of cancellation is received by one party from the other at the end of the initial term or at the end of any succeeding one (1) year renewal term(s) by sending written notice of non-renewal to the other party no earlier than one hundred fifty (150), and no later than ninety (90), days before the expiration of the then current term.

**ARTICLE 5.1 TERMINATION.**

- (a) Client or DataProse may terminate this Agreement for an event of default defined below if such default remains uncured (30) thirty days after written notice of the default has been received from the party declaring the default.
- (1) Failure of Client to pay for all goods and/or services as provided in this Agreement. In such event, DataProse has the right to withhold production and mailing of any further production cycles until Client's account is brought current.
  - (2) Any other breach by Client or DataProse of a term or condition of this Agreement.
  - (3) Bankruptcy or insolvency of either party.
- (b) Client shall have the right to terminate this Agreement in the event Client's City Council does not appropriate sufficient funds to satisfy Client's payment obligations under this Agreement during the initial term or any renewal term. Client will notify DataProse of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except Client shall be responsible for the portions of the payments herein agreed upon for which funds have been appropriated.

If DataProse terminates this Agreement in accordance with Article 5.1(a) herein, or the Client terminates this Agreement for any reason other than those specified in Article 5.1 prior to satisfying its Minimum Commitment, the Client agrees that it shall be liable to DataProse for liquidated damages ("Liquidated Damages") for its early termination, it being understood and agreed to by the parties that the measure of actual damages noted would be difficult to determine. The Liquidated Damages shall be an amount equal to the product of (a) the Minimum Commitment and (b) the sum of the number of months remaining in the current term of the Agreement, not to exceed 12 months, plus the amount of any unpaid invoices for services already provided under the Agreement.

**ARTICLE 8.1 INDEMNIFICATION.** To the extent permitted by law, Client agrees to indemnify and hold DataProse harmless for any and all claims from any person, firm, or entity whatsoever that may arise in connection with Client's supplying to DataProse the data, reports or other documentation necessary to perform its duties under this Agreement, except that such indemnification shall not extend to any claims that result from negligent or intentional action or inaction by DataProse, its officers, employees or agents or anyone acting on behalf of DataProse. Nothing herein shall require Client to create a sinking fund to satisfy any of Client's obligations under this Agreement.

**ARTICLE 10.1 LIMITATION OF LIABILITY.** Except in the event of gross negligence or intentional misconduct, the liability of DataProse with respect to any failure to provide the goods and/or services as required under this Agreement shall in each case be limited to the compensation paid to DataProse for the defective goods or services. NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFIT OR INCOME, even if the party has been advised of the possibility of such loss or damage. Subject to Article 5.1(a), this provision will not be affected by DataProse's failure to correct any defect or replace any defective work product to Client's satisfaction. Each party has accepted this restriction on its right to recover consequential damages as a part of its bargain with DataProse. Client acknowledges what DataProse charges for its goods and services would be higher if DataProse were required to bear responsibility for Client's damages.

**ARTICLE 14.1 NOTICE.** All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight delivery service or by electronic mail. Mailed notices will be effective on the third day after mailing. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party.

Addresses for the purpose of giving notice are as follows:

**If to DataProse:**

DataProse  
1122 W. Bethel Road, Suite 100  
Coppell, TX 75019  
Attention: COO

**If to Client:**

City of North Richland Hills  
4301 City Point Drive  
North Richland Hills, TX 76180  
Attention: City Manager

**ARTICLE 18 COOPERATIVE PURCHASING.** The pricing found in Schedule 1.1 – Fees for Goods and services is pursuant to the City of Plano Interlocal Agreement and as permitted under the Texas Government Code, Chapter 791.025, other government entities may participate under the same terms and conditions contained in this contract (piggyback). Each entity wishing to piggyback must have prior authorization from the City of Plano and vendor. If such participation is authorized, all purchase orders/agreements will be issued directly from and shipped directly to the entity requiring supplies/services. The City of Plano shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this Agreement.

IN WITNESS WHEREOF, The parties hereto have caused this Amendment to be executed and to be effective as of the Effective Date.

DataProse, LLC

By: William K. Murray  
CEO  
Date: 1/04/2019

City of North Richland Hills:

By: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_