



Software by NBS

# D-FAST<sup>®</sup> Software

## D-FAST 3 License Agreement Addendum

In-House Model

The Parties to this D-FAST 3 License Agreement Addendum ("Addendum") are as follows:

**NBS:**

**NBS** Government Finance Group, DBA **NBS**  
32605 Temecula Parkway  
Suite 100  
Temecula, CA 92592

**USER AGENCY:**

City of Rapid City  
300 Sixth St  
Rapid City SD 57701

Effective Date: \_\_\_\_\_  
This Addendum shall become effective on the above date.

Attachments:  
D-FAST 3 Addendum Terms and Conditions  
D-FAST 3 Pricing Exhibit ("Exhibit A")

This Cover-Signature page and the Attachments comprise the entire Addendum between the parties and may be amended or modified only by an agreement in writing. The undersigned parties agree to the Addendum by signing below.

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**NBS Government Finance Group, DBA NBS:**

Signature: \_\_\_\_\_

Printed Name: **Mike Rentner**

Title: **President**

Date: \_\_\_\_\_

**USER AGENCY:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



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# D-FAST<sup>®</sup> Software

## D-FAST 3 Addendum Terms and Conditions

### In-House Model

These Addendum Terms and Conditions ("Addendum Terms") are for the use of the D-FAST 3 software program as licensed by the NBS Government Finance Group, a California Corporation, ("NBS") to the User Agency ("User"). These Addendum Terms, Cover-Signature Page, and Pricing Exhibit ("Exhibit A") form the entire Addendum ("Addendum"). User and NBS are parties to a D-FAST Software License Agreement dated 3/20/2006, pursuant to which User licensed the NBS D-FAST software program (the "License Agreement"). User desires to upgrade to the NBS D-FAST 3 software program by entering into this Addendum to the License Agreement. The User and NBS in consideration of the following mutual promises and conditions agree:

#### 1. DEFINITION OF SOFTWARE

- 1.1. "Software" shall mean the NBS D-FAST 3 software program ("D-FAST 3") and any subsequent program maintenance releases in machine readable or interpreted form. Maintenance releases are defined as updates and/or replacements to the D-FAST 3 software program for the purpose of fixing known bugs and issues. Maintenance releases do not include new features and/or modules that may be added to later versions of the D-FAST software program. "Documentation" shall mean all material other than the licensed software furnished by NBS and including, for example, operating instructions, program specifications, instructional and other documentation including all guides and manuals, and further shall include all permitted copies of related materials made by the User.

#### 2. LICENSE ADDENDUM

- 2.1. NBS grants to the User and the User accepts, a non-exclusive, non-transferable license to use the Software and all Documentation furnished to the User for use in conjunction with the Software subject to the payment of all necessary Fees as set forth in Section 4 - Fees. The Software and Documentation are the sole property of NBS and are licensed to the User for use under the terms and conditions contained herein.
- 2.2. The User may use the Software and Documentation only on User-owned computers located on User premises, and only to process User-related work. The User may not use Software and Documentation as part of a commercial time-sharing or service bureau operation or in any other resale capacity except as specifically allowed under Section 2.3.
- 2.3. The situation may arise where the User might be forced to, or desire to, provide services for a related entity using the Software to provide such services. In this regard, a related entity would have some immediate and direct connection to the User, such as a shared oversight board, a shared controller, a shared joint powers agreement, or a special district agreement. Under these conditions, the User shall notify NBS that the User desires to use the Software to provide administrative services to such closely related entity. In all such cases, the User and NBS shall negotiate the terms and conditions of such use of the software by the User, including additional fees payable by the User.
- 2.4. Software and Documentation is proprietary and trade secret information of NBS and is copyrighted by NBS, which retains all rights of ownership to the Software and Documentation. Nothing in this Addendum constitutes a waiver of NBS's rights under the U.S. copyright laws or any other federal or state law.
- 2.5. User hereby agrees to use the Software and Documentation under strict confidentiality, and shall not disclose any logic, software code or methodologies employed by the Software, or use the Software and Documentation except as expressly authorized by this Addendum.

#### 3. SCOPE OF PRODUCTS AND SERVICES

- 3.1. Software and Documentation. NBS will provide the User with the Software and Documentation.
- 3.2. Planning & Configuration. NBS will collaborate with the User to create an Implementation Plan detailing projected tasks, due dates, task assignments, and time estimates.
- 3.3. D-FAST 2 Data Migration and Verification. NBS will convert existing data from D-FAST 2 to the Software, and verify the migration results by comparing key data and summary reports to ensure conversion accuracy.
- 3.4. Training. NBS will provide standard Software training for User staff.
- 3.5. Technical Support. NBS will provide the User with ongoing technical support in accordance with Section 4 - Fees. The User will be responsible for supporting and maintaining any additional hardware and software required.
- 3.6. Additional Services. NBS is available to provide additional services not specifically listed in Section 3 - Scope of Products and Services. Upon authorization, NBS shall perform such services on a time and materials basis in accordance with NBS's then current hourly fee schedule. NBS's current hourly fee schedule is included in Section 4 - Fees below.
- 3.7. Any proposed additions, changes or deletions to the Scope of Products and Services shall be submitted to the other party hereto, and any such changes mutually agreed to shall be added as an amendment to Section 3 - Scope of Products and Services.

4. FEES

- 4.1. **NBS** agrees to provide the products and services specified in Section 3 of this Addendum, and the User agrees to compensate **NBS** for such products and services in the amount and manner specified in Exhibit A.
- 4.2. Initial License Fee. The Initial License Fee listed in Exhibit A is due upon the signing of this Addendum. The User will be responsible for the installation and configuration of any additional hardware and software. The Initial License Fee may be subject to applicable sales tax and/or use tax, which shall be paid by User.
- 4.3. One-Time Fees. The One-Time Fees listed in Exhibit A will be billed on a monthly basis, paralleling our completion of the work listed in Exhibit A and the Implementation Plan.
- 4.4. Annual Maintenance Fee. The first year of the Annual Maintenance Fee will be billed upon completion of the data migration verification and standard training. Any prior D-FAST 2 annual maintenance fees covering the same period will be credited towards the first year of the Annual Maintenance Fee. In subsequent calendar years, the Annual Maintenance Fee will be billed to the User each January (Year 2 Annual Maintenance is prorated through the end of that calendar year to match anniversary of Year 1 billing). The Annual Maintenance Fee is subject to increases annually based on increases to the Consumer Price Index. The Annual Maintenance Fee is based on 20% of the now-current Initial License Fee, meaning it will increase by 20% of the license fees for any increased Usage. The Annual Maintenance Fee may be subject to sales or use tax, which shall be paid by User.
- 4.5. Increased Licensing Fees. Increased Licensing Fees will be billed if the User requires the licensing of additional accounts/districts/users beyond what their current License Key allows.
- 4.6. Add-on Modules/Data Updates. Add-on Modules are available to the User for an additional cost. Data Update Services (annual or more frequent updates of property or payment data) are also available to the User for an additional cost.
- 4.7. Additional Services. NBS is available to provide additional services and consulting, including process engineering and management consulting. Upon authorization, NBS shall perform such services on a time and materials basis in accordance with NBS's then-current hourly fee schedule. Current hourly rates are as follows:

Title	Hourly Rate
Director	\$ 205
Senior Consultant/Engineer/Programmer	160
Consultant	140
Analyst	120
Resource Analyst	95
Expert Witness	TBD; with minimum fee

- 4.8. Expenses. The User agrees to reimburse NBS for all customary, out-of-pocket expenses for all services provided under this Addendum including in connection with installation and training. These expenses include, but are not limited to; postage, travel, mileage reimbursements, telephone expenses, data conversion fees, and any other reasonable expenses needed to perform NBS's work. Any out-of-pocket expenses will be itemized on our invoices as they occur.
- 4.9. Invoices. The User shall pay all invoices submitted pursuant to this Addendum within thirty (30) days of receipt. All late invoices are subject to a 1.5% per month late fee.

5. PERMITTED USES

- 5.1. Use of the Software on any User workstations in accordance with the terms of this Addendum.
- 5.2. Software furnished by **NBS** may be copied in whole or in part by the User for User use only. However, only the number of actual copies required to serve the User's actual needs on the designated computers shall be made. The User agrees that the original copy of the Software furnished by **NBS** and all copies thereof made by the User are and shall remain the sole property of **NBS**.
- 5.3. NBS shall provide a single copy of the Software source code without charge to the User upon any of the following events: NBS becomes insolvent or files a petition for bankruptcy, NBS ceases to conduct business, or NBS discontinues support of the Software. In the event of the release of the Software source code, User shall have the right to use the Software source code under license from NBS solely for the purpose of maintaining the Software for the use of the Software by User as allowed under this Addendum.

6. PROHIBITED USES BY LICENSEE

- 6.1. Make copies of the Software program media or Documentation except as described above and without the express written consent of **NBS**. Disclose, publish, release, transfer, or otherwise make available the Software (in any form), Documentation to any person other than User's or **NBS**'s employees without prior written consent from **NBS**. The User also agrees to protect the Software or any part thereof from unauthorized disclosure by its agents, employees or customers.
- 6.2. Loan, rent, sublicense, or otherwise transfer the Software and Documentation except as expressly permitted in this Addendum. Alter, modify, reverse engineer, or adapt the Software and Documentation including, but not limited to, translating, decompiling, disassembling, or creating derivative works.

## 7. RESPONSIBILITY OF PARTIES

- 7.1. NBS is and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of the User) under any and all laws, whether existing or future. NBS is not authorized to make any representation, contract or commitment on behalf of the User and is not authorized to make any decisions on the User's behalf.
- 7.2. The User agrees to comply with all reasonable requests by NBS for information and documentation required by NBS and necessary for the performance of NBS's duties under this Addendum. NBS will use and rely upon information provided in the installation and conversion of data for the Software and in providing any other Consulting Services pursuant to this Addendum. NBS shall not be obligated to establish or verify the accuracy of the information furnished by the User, nor shall NBS be responsible for the impact or effect on its Software and the other Consulting Services of the information furnished by the User, in the event that such information is in error.
- 7.3. NBS provides support only when the Software is used with hardware and operating software meeting NBS's specifications and maintained in good operating order. NBS's services under this Addendum do not include program development, coding, isolation of coding problems, consulting, implementation assistance or hardware malfunctions. The User will be responsible for the installation and configuration of the additional hardware and software required.
- 7.4. The User agrees to indemnify, defend and hold NBS harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings and all costs and expenses therewith, including reasonable attorneys' fees, arising out of or connected with its use of the Software and Consulting Services provided under this Addendum, except as may arise from NBS's willful misconduct or gross negligence. If for any reason NBS is not entitled to full indemnification under this Addendum, then the User shall indemnify NBS for a portion of the full indemnity amount based upon the relative fault of the User and NBS as well as any relevant equitable considerations; provided that NBS's portion of the indemnity shall not exceed the aggregate of all amounts paid by User to NBS under this Addendum. This provision shall survive the termination of this Addendum.

## 8. LICENSEE RESPONSIBILITY

- 8.1. Following routine operating procedures for the Software and for maintaining computer hardware in good operating condition and in accordance with system and operating requirements.
- 8.2. Implementing the temporary measures recommended by NBS while it works on any problem.
- 8.3. Maintaining the security of its confidential information.
- 8.4. Knowing and obtaining legal advice concerning the laws governing the administration of the districts.

## 9. WARRANTIES AND LIMITATIONS

- 9.1. NBS warrants it has the right to license the Software and Documentation in accordance with the terms of the Addendum.
- 9.2. Except as specifically provided above, **NBS MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS SOFTWARE OR DOCUMENTATION, INCLUDING THEIR QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY AGAINST INTERFERENCE AND INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THIS SOFTWARE OR DOCUMENTATION.**
- 9.3. The User agrees that its sole and exclusive remedy and NBS's sole obligation, is for NBS to provide programming services to attempt to correct any defect in the Software. Should a problem with the Software arise, the User shall notify NBS immediately. NBS will use its best effort to resolve the problem or to develop a work around so that the User work can continue.
- 9.4. In no event (including without limitation, the failure of the essential purpose of any remedy) shall NBS be liable to the User for any consequential, special, incidental or indirect damages, including lost revenues, arising out of the use of the Software, even if the User has been advised of the possibility of such damages. In no event shall NBS's liability for any claim, whether in contract, tort or any other theory, exceed the aggregate amount of fees paid by the User to NBS under this Addendum. This provision shall survive termination of this Addendum.

## 10. TERMINATION

- 10.1. Either party may voluntarily terminate this Addendum upon thirty (30) days written notice to the other party.
- 10.2. This Addendum is subject to automatic termination by NBS if the User violates any of the terms and conditions of this Addendum.
- 10.3. Upon termination of this Addendum for any reason, the User must return the original and all copies of the Software, Documentation and any other related materials to NBS within five days thereafter.
- 10.4. In the event the User terminates this Addendum, the User shall pay NBS for Consulting Services provided and incidental expenses incurred, up to the date of termination, including any costs associated with data conversion and in preparation of the Software installation. The amount of the payment shall be determined by using the NBS schedule of hourly fees in effect at the time of such termination, plus reimbursement for all usual and customary out-of-pocket expenses. The User agrees to pay the Total Initial Costs (including Initial License Fee) after setup and installation has been performed.

## 11. GENERAL PROVISIONS

- 11.1. Both parties to this Addendum acknowledge that this Addendum, including any exhibits, and amendments hereto, supersede any and all agreements, either written or oral, between the parties hereto with respect to the subject matter of this Addendum and contains all covenants and agreements between the parties with respect to the subject matter hereof.
- 11.2. This Addendum sets forth the full understanding between the parties and may only be modified in writing signed by both parties.
- 11.3. This Addendum shall be governed by and construed in accordance with the laws of the State of California irrespective of such state's choice of law principles.
- 11.4. In the event that any provision hereof or any obligation or grant of rights hereunder is found invalid or unenforceable, any such provision or grant of rights shall be deemed to extend only to the maximum extent permitted by law, and the remainder of this Addendum shall remain valid and enforceable according to its terms.
- 11.5. The parties will settle all disputes, controversies or claims which relate in any way to this Addendum by arbitration to be conducted in the County of Riverside, California, according to the Rules of the American Arbitration Association using an arbitrator mutually agreeable to both parties.
- 11.6. In the event of any legal action, including arbitration, to construe or enforce the provisions of this Addendum, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees, whether or not the matter proceeds to final judgment or arbitration award.
- 11.7. The waiver by either party of any right hereunder or with respect to any failure to perform shall not constitute or be deemed a waiver of any other rights hereunder or of any other failure to perform.
- 11.8. It is expressly understood that this Addendum is not construed as requiring NBS to perform any services that constitute the practice of law. Any Consulting Services performed by NBS shall be in an advisory and administration capacity only.
- 11.9. This Addendum shall inure to the benefit of and be binding upon the respective successors and assigns of NBS and User. However, neither this Addendum, nor any license which it grants, nor any of the Software or Documentation may be transferred, sold, assigned or sublicensed by User without the prior written consent of NBS. All User questions and notices pertaining to this Addendum shall be referred and/or given to the person named in the Addendum, or the representative's appointee.
- 11.10. All notices, requests, demands, and other communications required to or permitted to be given under this Addendum shall be in writing.
- 11.11. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section. A party may change or supplement the addresses given, or designate additional addresses.



**D-FAST<sup>®</sup> Software**  
**Exhibit A - D-FAST 3 Upgrade Pricing**  
**City of Rapid City**  
 Client Server Model  
 Quote Date: 10/31/2013

<b>D-FAST 3 INITIAL FEES</b>	<b>AMOUNT</b>
<b><u>D-FAST 3 Initial License Fee</u></b>	
<u>A. D-FAST 3 Licensing:</u> # of Districts: 84 # of Accounts: 2,120 # of authorized users: 10 Included Modules: 1. <u>Web Access Module</u> 2. _____ Total D-FAST 3 Initial License Fee (1, 2):	\$42,600.00
<u>B. Discounts</u> Existing Software Client: 30%	(\$12,780.00)
<b>(A - B) Discounted D-FAST 3 Initial License Fee:</b>	<b>\$29,820.00</b>
<b><u>D-FAST 3 One-Time Implementation Fees</u></b>	
<b>D-FAST 3 One-Time Implementation Fees</b>	
Phase 1: Planning & Configuration	\$1,500.00
Phase 2: Data Migration from D-FAST 2:	\$0.00
Phase 3: Migration Verification:	\$800.00
Phase 4: Customizations / Integration (Specify):	
1. <u>Automated Property Data Update: SQL-to-SQL DTS package</u>	\$640.00
2. <u>Certification to County of Next Year's Billing Custom Report</u>	\$960.00
3. <u>Monthly Current Year Assessments Paid Custom Report</u>	\$960.00
4. <u>Monthly GL Report Custom Report</u>	\$960.00
Phase 5: Training	
Standard Training (3):	\$1,280.00
Other Training (Specify):	
1. _____	\$0.00
2. _____	\$0.00
Additional Services (4):	\$0.00
<b>Total D-FAST 3 One-Time Implementation Fees:</b>	<b>\$7,100.00</b>
<b>TOTAL D-FAST 3 INITIAL FEES</b>	<b>\$36,920.00</b>
<b><u>D-FAST 3 ANNUAL MAINTENANCE FEE</u></b>	
Annual Maintenance Fee (2, 5)	\$9,500.00
<b><u>D-FAST 3 INCREASED LICENSING FEE (AS NEEDED)</u></b>	
Fee Per Additional Unit (3 Districts or 60 Accounts):	\$900.00

(1) Reflects D-FAST 2 original licensing plus additional licensing, if any, added since original agreement signed.  
 (2) Includes up to one hour of support per year for each \$1,000 of Initial License Fee; additional time will be billed hourly.  
 (3) Standard training session; additional training will be billed hourly.  
 (4) See Implementation Plan for details.  
 (5) Billed upon completion of Phase 5. Based on current D-FAST 2 Annual Maintenance Fee, plus projected 2013 CPI.