Denver Regional Council of Governments
Focus **Regional Travel Model**
RELEASE AGREEMENT

This Release Agreement is made and entered into by and between the undersigned recipient and the Denver Regional Council of Governments (DRCOG) with respect to DRCOG's release to recipient of a copy of DRCOG's *Focus* regional travel model.

The recipient hereby acknowledges and agrees as follows:

1.0 Current version of *Focus*

1.1 DRCOG has recently released the latest version of its regional travel model *Focus* 2014, based on the TransCAD software platform. *Focus* 2014 is properly calibrated to run using TransCAD Version 6.0 Build 9055, Microsoft Visual Studio Professional 2012 version 11.0.50727.1, and Microsoft SQL Server 2008 R2 developer version with Microsoft SQL Server Management Studio 10.50.2550.0, unless more recent versions are indicated below and initialed by an authorized representative of DRCOG:

TransCAD: _____

Visual Studio: _____

SQL Server: _____

Initials of DRCOG representative: _____

1.2 *Focus* 2014 is not calibrated to operate accurately using any other versions of TransCAD, Visual Studio, or SQL Server, due to ongoing updates made by Caliper Corporation and Microsoft Corporation to those software platforms. Recipients wishing to use *Focus* 2014 with other versions of TransCAD, Visual Studio, or SQL Server shall be responsible for insuring the model's calibration against various observed travel measures. DRCOG reserves the right to review such calibration efforts.

1.3 Software code to operate *Focus* 2014, (including C# programs, SQL queries, GISDK scripts, and model parameter database tables) is stored on DRCOG's GitHub repository. Recipient shall provide DRCOG with a registered GitHub account, to which DRCOG will give access. Recipient shall not upload any revisions to *Focus* to the GitHub repository without prior authorization by DRCOG.

1.4 This Release Agreement gives to recipient solely a non-exclusive revocable license to access and use, as limited herein, *Focus* and the data therein. Recipient agrees that *Focus* is the sole property of DRCOG and that the data therein is the sole property of DRCOG and/or third-party providers of data.

2.0 Conditions for Release

As consideration for the release to recipient of *Focus* and the technical assistance provided by DRCOG described below, the recipient agrees to all terms and conditions of release described in this Release Agreement.

2.1 The recipient is responsible at its expense for purchase and maintenance of TransCAD from Caliper Corporation, and Visual Studio and SQL Server from Microsoft Corporation. The recipient agrees to abide by all copyright use restrictions, and other conditions of sale

of TransCAD by Caliper Corporation, and of Visual Studio and SQL Server by Microsoft Corporation.

2.2 The recipient will not distribute *Focus* to any party in any form without the prior written consent of DRCOG. DRCOG authorizes recipient to distribute *Focus* as received from DRCOG to the parties explicitly identified below as contractors or agents of recipient, as initialed by an authorized representative of DRCOG. These contractors and agents agree to be bound by the same terms of this release as the recipient. Authorized representatives of contractors and agents will execute a copy of this release agreement providing the same information requested of recipient. Any additional parties interested in using *Focus* will be referred by recipient directly to DRCOG.

1. _____

2. _____

3. _____

4. _____

Initials of DRCOG representative: _____

2.3 The recipient will not make any changes to Focus software or parameters without the prior written consent of DRCOG, other than minor software customizations necessary to allow *Focus* to operate on the recipient's hardware (such as software installation paths, name of SQL Server host, or number of processing cores available), and any modifications explicitly listed below and initialed by an authorized representative of DRCOG.

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_____

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_____

Initials of DRCOG representative: _____

Any request for further modifications shall be limited to the changes as presented in writing by the recipient to DRCOG for its consent. No consent for changes not outlined herein is given or implied by this Release Agreement.

2.4 To the extent permitted by law, the recipient shall indemnify and hold harmless DRCOG, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney's fees, arising out of recipient's performance or non-performance of this Release Agreement or from the recipient's use of Focus and any data or information therein.

2.5 The recipient agrees to strictly limit the use of the *Focus* travel model to the development of the following project: _____
_____PROJECT NAME HERE (Project).

2.6 At DRCOG's option, all results of recipient's modeling will be submitted to the DRCOG for review and concurrence before release of the results to any other parties. DRCOG will, at its option, re-run any of the recipient's models to verify proper use of the travel model.

2.7 In the event that DRCOG has authorized modifications to *Focus* software or parameters, recipient agrees to provide to DRCOG upon request electronic versions of such modifications and/or technical documentation describing such modifications.

3.0 Technical Assistance; No Warranty

3.1 DRCOG will provide to the recipient copies of DRCOG network, zone system, demographic data set, program control batch files, and any other files necessary to operate *Focus*. Recipients are asked to attend periodic model users group meetings.

3.2 DRCOG retains the right to change, update, or withdraw permission to use *Focus* and to terminate this Release Agreement without notice at any time for any or no reason. In the event of termination, recipient shall return to DRCOG all copies of *Focus* and any other files and information released pursuant to hereto without penalty or right to cause of action or recourse against DRCOG.

3.3 DRCOG MAKES NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY OR SUITABILITY FOR A PARTICULAR PURPOSE OF *Focus* OR DATA PROVIDED FOR USE WITH *Focus*, AND DRCOG DISCLAIMS ALL WARRANTIES, SPECIFICALLY THE WARRANTIES OF MERCHANTABILITY AND PARTICULAR PURPOSE. RECIPIENT RELEASES DRCOG FROM ANY CLAIMS, JUDGEMENTS, OR DAMAGES, CONSEQUENTIAL OR DIRECTLY ARISING FROM ANY ERRORS OR OMISSIONS CONTAINED WITHIN *Focus* AND THE DATA PROVIDED, OR ANY PART THEREOF, OR ARISING FROM ANY RELIANCE UPON THE *Focus* MODEL OR DATA OR OMISSIONS THEREFROM.

3.4 Any opinions expressed by the recipient or representations made by the recipient based upon *Focus* output data are the sole responsibility of the recipient. Should recipient make any modification to the transportation networks, demographic data sets, software, or model parameters, recipient shall not characterize the resulting forecasts as originating from, belonging to, or being endorsed by DRCOG, until such modifications are formally adopted by DRCOG. Instead, recipient shall characterize such results as recipient's modifications of DRCOG's *Focus* model.

4.0 Confidential Information

4.1 Recipient acknowledges that the *Focus* regional travel model released to recipient includes certain Quarterly Census of Employment Wages data collected by the Colorado Department of Labor and Employment (DLE), specifically total employment numbers by business class, and latitudinal and longitudinal location (QCEW Data). Recipient agrees to maintain the QCEW Data as confidential and to use the same, and any part thereof, solely to assist the recipient's Project. Recipient's use of QCEW Data shall be consistent with all terms hereof and the provisions of any applicable state or federal regulations.

4.2 Recipient shall restrict access to the QCEW Data to only those employees or agents of the recipient whose access is necessary to assist the recipient's Project. Upon request of DRCOG or DLE, recipient shall provide in a timely manner a listing of all individuals who have access to Focus and the QCEW Data therein. Except in the event it is necessary for the recipient to utilize a third-party to format, process or use the QCEW Data for recipient's Project, the recipient shall not copy or permit others to copy or access the QCEW Data, or

any part thereof. In the event the recipient must utilize a third-party to format, process, or use the QCEW Data, the recipient shall not allow the third-party to use the same, or any part thereof, for any purpose other than the recipient's Project. The recipient shall ensure the QCEW Data is adequately secured from non-authorized access or publication, and that any such third-parties are bound to terms identical to this agreement.

4.3 Recipient shall not publish, sell, or disclose the QCEW Data, or any part thereof, to the extent that the information published of any area, industry, federal department or federal agency level contains fewer than three (3) reporting units (as defined in C.R.S. 8-70-103(9), 1987 Rep. Vol., as amended), or eighty percent (80%) of the total employment of the applicable reporting level is made up by a single reporting unit.

4.4 If requested by DRCOG or DLE, recipient, and any third-party that the recipient engages, shall permit the DLE, the U.S. Department of Labor, or any other duly authorized agent or governmental agency, to monitor all activities conducted by the recipient or third-party related to the use of QCEW Data provided within the *Focus* model. Such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with recipient's work on the Project.

4.5 In the event of recipient's breach of the QCEW Data's confidentiality, breach of QCEW Data confidentiality by any third-party engaged by recipient, or any of the recipient's duties specified herein, the recipient shall, to the extent permitted by law, indemnify, save and hold harmless the DRCOG, and its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the recipient, or its employees, agents, subcontractors, or assignees, and the recipient shall return all QCEW Data to the DRCOG and pay any penalty imposed upon DRCOG by DLE as a result of such breach, act or omission by recipient, or its employees, agents, subcontractors, or assignees.

5.0 Miscellaneous Terms and Conditions

5.1 All terms and conditions of this Release Agreement shall be binding upon recipient and any employee, agent or third-party of recipient. Any breach of any QCEW Data confidentiality or any other duties or obligations specified herein by any of recipient's employees, agents or third parties shall be deemed to be a breach on the part of the recipient.

5.2 The laws of the State of Colorado and any applicable rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Release Agreement. The terms of this Release Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term of provision hereof.

5.2 This Release Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment signed by both parties. Any

DRCOG waiver of any alleged breach of confidentiality by the recipient or third-party agents of the recipient is not to imply a waiver of any subsequent breach.

5.3 All notices required and permitted pursuant to this Release Agreement shall be in writing and shall be deemed given when personally served or three days after deposit in the United States Mail, postage prepaid, registered or certified, return receipt requested, and addressed to the party to whom notice is intended to be given.

5.4 The recipient warrants that it possesses the legal authority to enter into this Release Agreement. The undersigned also warrants that she/he is duly authorized to enter into this agreement on behalf of the recipient and to bind the recipient to its terms and conditions.

_____

Focus model recipient NAME HERE

_____

SIGNER AND TITLE

_____

_____

_____

Recipient address and phone number

Accepted by DRCOG _____

Date _____