



## **Request for Proposals Red Rocks Park & Amphitheatre Mobile Application (iOS / Android)**

Date Issued: August 2, 2017

Submission Deadline: August 16, 2017, 5:00PM MST

Prepared by:

Denver Arts & Venues

Josh Lenz

Marketing & Communications

1345 Champa Street

Denver, CO 80204

**Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached AND TO ACCEPT ALL OF THE MANDATORY TERMS IN THE SAMPLE CONTRACT AS DESCRIBED IN SECTION VI OF THIS RFP.**

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**Print Name**

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**Signature**

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**Date**

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# Section I

## RFP OVERVIEW

Denver Arts & Venues (“A&V”) is requesting proposals for an exclusive multi-platform mobile application for Red Rocks Park & Amphitheatre. The purpose of this Request for Proposal (RFP) is to select a partner for the design, development, testing, launch and maintenance of a mobile application supporting Red Rocks Amphitheatre’s concert, retail, concessions and recreational amenities. Project is intended to be downloadable for free by Red Rocks fans with iOS and Android devices. Project will take into account the needs of fans, venue management, concessionaires, promoters and band management.

The scope of work should include functionality that enhances the fan experience pre-event, live-event and post-event. It will include the following, but not be limited to: event calendar, ticketing system integration, social media, venue & park information, venue maps & directions, weather forecasts, ordering food & beverages, notifications and exclusive venue content.

The City initiated development of a previous version of the mobile application in 2014 and will provide the source code to the selected proposer. The iOS version of this existing app can be downloaded in the App Store. The City would like to use the back-end functionality from this version where possible, to assist with costs. However significant design and functionality reconfiguration will be necessary to meet our goals & objectives.

**About Denver Arts & Venues (A&V):** Denver Arts & Venues is a division of the City & County of Denver’s Department of General Services and operates some of the region’s most renowned facilities, including Red Rocks Amphitheatre, the Denver Performing Arts Complex, Colorado Convention Center, Denver Coliseum and McNichols Civic Center Building. Arts & Venues also oversees the Denver Public Art program, Create Denver economic development initiative, SCFD Tier III granting process, Arts Education Fund, Youth One Book, One Denver literacy program, and entertainment and cultural events such as the Five Points Jazz Festival, and implementation of IMAGINE 2020: Denver’s Cultural Plan. Arts & Venues is committed to diversity, inclusiveness and equity in all our programs, initiatives and processes.

Any contract entered into as a result of this request will be subject to A&V’s partnership policy and any other applicable City agreements.

The selected proposer shall be sensitive to the City’s mission to “create a world-class City where everyone matters.”

For further information regarding Denver Arts & Venues visit:  
[www.artsandvenuesdenver.com](http://www.artsandvenuesdenver.com)

## **TERM OF AGREEMENT**

The purpose of this Request for Proposal (RFP) is to select an exclusive Design and Development Partner for the Red Rocks Amphitheatre mobile application for a three (3) year term.

## **QUESTIONS**

The RFP is issued by the City of Denver, Arts & Venues Division. All questions regarding this RFP process and proposal content may be addressed to Josh Lenz via email [Josh.Lenz@denvergov.org](mailto:Josh.Lenz@denvergov.org). **Question deadline shall be August 9, 2017 by 5pm.**

## **RED ROCKS AMPHITHEATRE OVERVIEW**

Red Rocks Amphitheatre is a rock structure near Morrison, Colorado, 10 miles west of Denver, where concerts are given in the open-air amphitheatre. At 6,450 feet above sea level, Red Rocks Park is a unique transitional zone where the Great Plains meet the Rocky Mountains. The diverse environment allows visitors to see plants, birds and animals of both regions. Red Rocks Amphitheatre is a geological phenomenon – the only naturally-occurring, acoustically perfect amphitheatre in the world. From Sting and The Beatles, to opera stars and U2, every artist aspires to play on this magical, spiritual and emotional stage. Event offerings have increased in recent years – there are currently 130+ concerts held each season. The venue is a top tourism destination and surpassed 1 million attendees in 2016.

## Section II

### SCOPE OF AGREEMENT

The City is seeking a Partner for the design, development, testing, launch and maintenance of a mobile application supporting Red Rocks Amphitheatre, with the intent to enter into a three-year agreement.

**Exclusivity:** The Agreement between City and selected Partner will be exclusive whereas the City will not enter into a contract or other legally binding arrangement conferring creation of the mobile application for Red Rocks Amphitheatre.

**Intellectual Property:** City will be the sole owner of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and Partner will secure all necessary licenses, consents, and authorizations with respect to the use of these underlying elements.

**Scope of Work:** The selected Partner will have the ability to design, develop, test, launch and maintain the mobile application for Red Rocks Amphitheatre. The back-end functionality from the existing version of the app should be used, where possible, to assist with costs.

Phase 1: Deployment Fall/Winter 2017 (Prior to 2018 Show On-Sale Dates)

- App Icon
- Navigation
- User Registration
- Default/Home Screen
- Event Calendar
- Ticket System Integration (AXS)
- My Red Rocks (User Profile: Favorite Artists, Saved Shows, Attendance History)
- Social Media (Tagboard: Instagram, Facebook, Twitter)
- Venue Information (History, General Info, FAQ, Park Rules, Sponsors)
- Venue Maps (Directions, Entrances, Parking, Restrooms, Food/Drink, Accessibility, Virtual Venue)
- Weather
- Notifications (Weather Alerts, Safety Alerts, Saved Artist Show Announcements)
- Car2Go (Pull in API)

Phase 2: Deployment April 2018 (Prior to 2018 Concert Season Beginning)

- Geo-Fencing
- Food/Drink Ordering (Advance Payment / Express Pickup)
- Sponsor Ad Placement
- Find Your Friends (Flaregun App API)
- Red Rocks Store (Pull from Website)
- Flash Seats Integration (Tickets Appear in App, Ticket Scanning, Ticket Forwarding)

Longer Term Opportunities (If included, these will be part of separate agreement)

- Listen / Watch (Exclusive Content)
- Ride Share Partnership
- Donation Program (PreserveTheRocks.org)
- Wait Times for Entrances, Parking Lots, Restrooms
- Rewards Program

## Section III

### PROPOSAL REQUIREMENTS

To be considered, each proposer shall provide a detailed proposal structured as specified below.

1. Please submit two **Sample Projects** of choice that demonstrate your firm's ability to meet the needs of Denver Arts & Venues as described in the RFP OVERVIEW and SCOPE OF AGREEMENT. Electronic files are preferred.
2. Respondents are required to provide **Proposal Details** as specified below.  
Please include details for two scenarios:
  - i. Using source code (to be provided by the City) from existing version of the Red Rocks app in the Apple Store. This is our preferred approach.
  - ii. Building a new app without using source code from the existing version.
    - **Process:** The proposal should outline the proposed process and steps involved for each of the two phases.
    - **Team:** The proposal should list out the team members who will be involved in the project, with their specific roles.
    - **Schedule:** The proposal should outline a developmental timeframe, with key dates that align with Phase 1 and Phase 2 timing:
      - i. Phase 1: Deployment Fall/Winter 2017
      - ii. Phase 2: Deployment April 2018
    - **Pricing:** The proposal should outline costs associated with each of the two phases. Please separate out (for each phase) by design, development, testing and launch.
    - **Maintenance:** The proposal should outline the recommended maintenance plan and associated costs for the duration of the three-year agreement.
3. Please submit the name, address and phone number of at least three references.

### SUBMISSION INSTRUCTIONS

Proposers are required to e-mail one electronic copy and mail two (2) hard copies to Josh Lenz at the contact details provided in Section I of this document.

In addition to the aforementioned details, proposers are required to provide the following documentation to be considered:

1. Sign and return the front page of the RFP
2. Sign and return sample contract approval (Section VII)
3. Complete Diversity and Inclusiveness Form (Section VIII) located at <http://artsandvenuesdenver.com/about/business-opportunities/>

## Section IV

### EVALUATION PROCESS & TIMELINE

The awarding of the Red Rocks Amphitheatre Mobile Application Partner will be based upon a comprehensive review, analysis and negotiation of all proposals that best meet the needs of the City. Proposers may be requested to present their proposals. Additionally, the City reserves the right to conduct negotiations with one or more proposers.

General criteria upon which proposals will be evaluated include, but are not limited to:

- 1. Sample Projects**
- 2. Proposal Details:** Process, Team, Schedule, Pricing, Maintenance Plan
- 3. References**

#### Tentative selection and implementation timeline:

August 7, 2017 3:00 p.m. MT	In-Person Q&A / Denver Arts & Venues offices*
August 8, 2017 3:00 p.m. MT	Phone Q&A (515) 604-9024 / Access: 296162
August 9, 2017 5:00 p.m. MT	Deadline for Proposal Questions to A&V
August 16, 2017 5:00 p.m. MT	Deadline for Proposal Submissions to A&V
Week of August 14, 2017	Meet with Individual Responders (if Necessary)
August 22, 2017	Complete Selection Process/Notify Partners

\* In-person Q&A meeting will be held in the Arts & Venues offices. Entrance is under the Studio Loft awning near the corner of 14<sup>th</sup> & Champa. This will be held in the Founders Room on the 2<sup>nd</sup> floor. Please RSVP to [Josh.Lenz@denvergov.org](mailto:Josh.Lenz@denvergov.org) so we have an approximate count.

The City shall not be bound by and proposers shall not request or rely on any oral interpretation or clarification of this RFP. Therefore, any questions regarding this RFP are encouraged and should be submitted in writing to Josh Lenz at [Josh.Lenz@denvergov.org](mailto:Josh.Lenz@denvergov.org). Josh Lenz will answer questions received up to and by August 9, 2017 in writing. Answers to written questions from any proposer will be provided to all proposers.

All communications regarding this RFP shall only be through Josh Lenz. No communication is to be directed to any other City personnel.

In the event it becomes necessary to revise, change, modify or cancel this RFP or to provide additional information, addenda will be issued to all recipients of this RFP.



## Section V

### TERMS

#### **RFP CONDITIONS AND PROVISIONS:**

Each proposal must be signed by a duly authorized official of the proposing company. The completed and signed proposal (together with all required attachments) must be submitted in accordance with Section 1.

All participating proposers, by their signature hereunder, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineations by a proposer in this proposal shall constitute cause for rejection by A&V. Proposers may not include exceptions or deviations to the requirements set forth in this RFP in its proposal pages; rather, any proposed exceptions or deviations must be made separately on proposer's letterhead and accompany its proposal. Any exceptions or deviations to the requirements of this RFP proposed by a proposer will be taken into consideration when evaluating proposals submitted; however, any such exceptions or deviations are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed modifications.

All proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of a proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its judgment it deems it to be in the interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject any and all proposal(s), or to award a contract for the items herein, either in part or whole, if he or she deems it to be in the interest of the City to do so.

The City shall not be liable for any costs incurred by a proposer in the preparation of proposals or for any work performed in connection therewith.

#### **GRATUITIES AND KICKBACKS:**

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or

other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

### **NON-COLLUSIVE PROPOSER CERTIFICATION**

By the submission of this proposal, the proposer certifies that:

- A. The proposal has been arrived at by proposer independently and has been submitted without collusion with any other proposer.
- B. The contents of the proposal have not been communicated by proposer, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- C. No proposer shall submit more than one proposal for this RFP. It shall be the responsibility of each proposer to obtain the prior written permission of the Director of A&V before proposal opening in every situation in which the proposer, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

### **GREENPRINT DENVER POLICY AND GUIDANCE**

The City & County of Denver, through its Greenprint Denver action plan, is committed to protecting the environment, and the health of the public and its employees. In accordance with this policy, City agencies are directed to procure cost-competitive products and services that minimize resource consumption and negative impacts on the environment and human health.

In requesting proposals for the City, when specifically required in the evaluation criteria, the City expects all responsive proposers to demonstrate commitment to and experience in environmental sustainability and public health protection practices applicable to their line of services. The City during its evaluation processes will actively assess the quality and value of all proposals.

Proposers, when applicable, are to follow standards and recommendations of the United States Environmental Protection Agency EPP program, the Green Seal organization, and standards and practices specified by the U.S. Green Building Council, including the Leadership in Energy and Environmental Design (LEED) program.

*Environmentally Preferable Purchasing (EPP) Guidance and Prohibitions:*

The City defines Environmentally Preferable Products and services as having a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. The City’s EPP evaluation may extend to raw materials acquisition, energy consumption in manufacturing and transport, packaging, recyclability, waste disposal, and many other factors.

The City encourages vendors to demonstrate a commitment to and experience in environmental sustainability and public health protection practices applicable to its line of products and/or services being procured in this proposal. See Section A of this proposal for the Greenprint Denver Policy and Guidance. The following are areas that may be addressed.

Explain how your products and/or service support the City’s goal of environmentally preferable purchasing.

- Manufacturing Process
- Product Content
- Transportation
- Packaging
- Performance
- End of Life
- Third Party Certification (Green Seal, Eco Logo, Design for the Environment, etc.)
- Other

**DISCLOSURE OF CONTENTS OF PROPOSALS**

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal, which are designated by the proposer as Business or Trade Secrets and plainly marked “Trade Secrets”, “Confidential”, “Proprietary”, or “Trade Secret”. Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City’s non-disclosure of such information.

**PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE**

If the successful proposer is a corporation or limited liability company, it will be required to furnish a Certificate of Good Standing from the Colorado Secretary of State’s Office, as proof that it is properly registered to do business in the State of Colorado, prior to finalization of award and contracting.

## Section VI

### SAMPLE CONTRACT

Any award as a result of this proposal shall be contingent upon the execution of an appropriate contract. The sample contract attached hereto contains the proposed terms and conditions. These terms and conditions shall form the basis of a contract covering the subject matter of this proposal. Each proposer is required to complete the Contract Certification Form provided below, by which proposer certifies that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and proposes no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. On such separate sheet, proposer shall, in typewritten form, reference the article or section number, reproduce the subject language, and underline or highlight those words, phrases, sentences, paragraphs, etc. for which proposer proposes an exception, deviation, or modification. Proposer shall include a brief explanation and alternative language, if any. Any such changes to the terms and conditions of the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.

*I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample contract attached to this RFP and understand the terms, conditions, and provisions contained in that contract. I further certify that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and propose no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. I understand that any exceptions, deviations, or modifications to the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.*

Proposer Name:

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Authorized Signatory:

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Name (please print):

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## **CONTRACTOR AGREEMENT (SAMPLE CONTRACT)**

**THIS AGREEMENT** (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **CONTRACTOR NAME**, a **BUSINESS TYPE** registered to do business in Colorado, whose address is \_\_\_\_\_ (“Contractor”), jointly “the parties.”

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **DEFINITIONS.** Whenever used herein, any schedules, exhibits, or addenda to this Agreement, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.
  - 1.1 **“Agreement”** means this Cloud Computing Services Agreement between City and Contractor, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference between the City and Contractor, Contract Number [INSERT CONTRACT NUMBER HERE].
  - 1.2 **“Brand Features”** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
  - 1.3 **“Confidential Information”** means any Data that a disclosing party treats (1) in a confidential manner and that is (2) marked “Confidential Information” or is considered “Protected Information” prior to disclosure to the other party. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the “Receiving Party”) with the prior written approval of the other party; (c) was known by the Receiving Party at the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed.
  - 1.4 **“Data”** means all information, whether in oral or written (including electronic) form, created by or in any way originating with City and End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with City and End Users, in the course of using and configuring the Services provided under this Agreement, and includes City Data, End User Data, and Protected Information.
  - 1.5 **“Data Compromise”** means any actual or reasonably suspected unauthorized access to or acquisition of computerized Data that

compromises the security, confidentiality, or integrity of the Data, or the ability of City to access the Data.

- 1.6 **"Documentation"** means, collectively: (a) all materials published or otherwise made available to City by Contractor that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor that describe the functional, operational and/or performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; and (d) the results of any Contractor "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Contractor to City.
- 1.7 **"Downtime"** means any period of time of any duration that the Services are not made available by Contractor to City for any reason, including scheduled maintenance or Enhancements.
- 1.8 **"End User"** means the individuals (including, but not limited to employees, authorized agents, students and volunteers of City; Third Party consultants, auditors and other independent contractors performing services for City; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of City provided services; and any external users collaborating with City) authorized by City to access and use the Services provided by Contractor under this Agreement.
- 1.9 **"End User Data"** includes End User account credentials and information, and all records sent, received, or created by or for End Users, including email content, headers, and attachments, and any Protected Information of any End User or Third Party contained therein or in any logs or other records of Contractor reflecting End User's use of Contractor Services.
- 1.10 **"Enhancements"** means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers.
- 1.11 **"Intellectual Property Rights"** includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

- 1.12 "**Protected Information**" includes but is not limited to personally-identifiable information, student records, protected health information, criminal justice information or individual financial information (collectively, "Protected Information") that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. These include, but are not limited to: the Colorado Constitution, the Colorado Consumer Protection Act, the Children's Online Privacy Protection Act (COPPA), Health Insurance Portability and Accountability Act (HIPAA), the Family Education Rights and Privacy Act (FERPA), the Payment Card Industry Data Security Standard (PCI DSS), and the Federal Bureau of Information Criminal Justice Information Services (CJIS) Security Policy.
- 1.13 "**Project Manager**" means the individual who shall serve as each party's point of contact with the other party's personnel as provided in this Agreement. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a party at any time upon written notice to the other party.
- 1.14 "**RFP Response**" means any proposal submitted by Contractor to City in response to City's Request for Proposal ("RFP") titled [ENTER RFP NAME, NUMBER, AND DATE HERE].
- 1.15 "**Services**" means Contractor's computing solutions, provided to City pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto and all interfaces.
- 1.16 "**Third Party**" means persons, corporations and entities other than Contractor, City or any of their employees, contractors or agents.
- 1.17 "**City Data**" includes credentials issued to City by Contractor and all records relating to City's use of Contractor Services and administration of End User accounts, including any Protected Information of City personnel that does not otherwise constitute Protected Information of an End User.

## **2. RIGHTS AND LICENSE IN AND TO DATA**

- 2.1 The parties agree that as between them, all rights, including all Intellectual Property Rights, in and to Data shall remain the exclusive property of City, and Contractor has a limited, nonexclusive license to access and use these Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 2.2 All End User Data and City Data created and/or processed by the Services is and shall remain the property of City and shall in no way become attached to the Services, nor shall Contractor have any rights in or to the Data of City.

- 2.3 This Agreement does not give a party any rights, implied or otherwise, to the other's Data, content, or intellectual property, except as expressly stated in the Agreement.
- 2.4 City retains the right to use the Services to access and retrieve Data stored on Contractor's Services infrastructure at any time at its sole discretion.

### **3. DATA PRIVACY**

- 3.1 Contractor will use City Data and End User Data only for the purpose of fulfilling its duties under this Agreement and for City's and its End User's sole benefit, and will not share such Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use such Data for Contractor's own benefit and, in particular, will not engage in "data mining" of Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.
- 3.2 Contractor will provide access to Data only to those Contractor employees, contractors and subcontractors ("Contractor Staff") who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to the Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

### **4. DATA SECURITY AND INTEGRITY**

- 4.1 All facilities used to store and process Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to provide the requested Service availability and to secure Data from unauthorized access, destruction, use, modification, or disclosure. Such measures include, but not limited to, the Telecommunications Industry Association (TIA) Telecommunications Infrastructure Standard for Data Centers (TIA-942); the Health Insurance Portability and Accountability Act (HIPAA); the Family Education Rights and Privacy Act (FERPA); the Payment Card Industry Data Security Standard; or the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy.
- 4.2 Contractor warrants that all City Data and End User Data will be encrypted in transmission (including via web interface) and in storage by a mutually agreed upon National Institute of Standards and Technology (NIST) approved strong encryption method and standard.



- 4.3 Contractor shall at all times use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement.
- 4.4 Prior to the Effective Date of this Agreement, Contractor will at its expense conduct or have conducted the following, and thereafter, Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Compromise:
  - 4.4.1 A SSAE 16/SOC 2 or other mutually agreed upon audit of Contractor’s security policies, procedures and controls;
  - 4.4.2 A vulnerability scan, performed by a City-approved Third Party scanner, of Contractor’s systems and facilities that are used in any way to deliver Services under this Agreement;
  - 4.4.3 A formal penetration test, performed by a process and qualified personnel approved by City, of Contractor’s systems and facilities that are used in any way to deliver Services under this Agreement.
- 4.5 Contractor will provide City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of Contractor’s receipt of such results.
- 4.6 Based on the results of the above audits, certifications, scans and tests, Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide City with written evidence of remediation.
- 4.7 City may require, at its expense, that Contractor perform additional audits and tests, the results of which will be provided to City within seven (7) business days of Contractor’s receipt of such results.
- 4.8 Contractor shall protect Data against deterioration or degradation of Data quality and authenticity, including, but not limited to annual Third Party Data integrity audits. Contractor will provide City the results of the above audits.

**5. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA**

- 5.1 Except as otherwise expressly prohibited by law, Contractor will:
  - 5.1.1 If required by a court of competent jurisdiction or an administrative body to disclose Data, Contractor will notify City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;
  - 5.1.2 Consult with City regarding its response;

- 5.1.3 Cooperate with City’s reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and
- 5.1.4 Upon City’s request, provide City with a copy of its response.
- 5.2 If City receives a subpoena, warrant, or other legal order, demand or request seeking Data maintained by Contractor, City will promptly provide a copy to Contractor. Contractor will supply City with copies of Data required for City to respond within forty-eight (48) hours after receipt of copy from City, and will cooperate with City’s reasonable requests in connection with its response.

## **6. DATA COMPROMISE RESPONSE**

- 6.1 Contractor shall report, either orally or in writing, to City any Data Compromise involving Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of Data, not authorized by this Agreement or in writing by City, including any reasonable belief that an unauthorized individual has accessed Data. Contractor shall make the report to City immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by Contractor regarding Data Compromises will be reduced to writing and supplied to City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.
- 6.2 Immediately upon becoming aware of any such Data Compromise, Contractor shall fully investigate the circumstances, extent and causes of the Data Compromise, and report the results to City and continue to keep City informed on a daily basis of the progress of its investigation until the issue has been effectively resolved.
- 6.3 Contractor’s report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 6.4 Within five (5) calendar days of the date Contractor becomes aware of any such Data Compromise, Contractor shall have completed implementation of corrective actions to remedy the Data Compromise, restore City access to the Services as directed by City, and prevent further similar unauthorized use or disclosure.
- 6.5 Contractor, at its expense, shall cooperate fully with City’s investigation of and response to any such Data Compromise incident.

- 6.6 Except as otherwise required by law, Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from City.
- 6.7 Notwithstanding any other provision of this agreement, and in addition to any other remedies available to City under law or equity, Contractor will promptly reimburse City in full for all costs incurred by City in any investigation, remediation or litigation resulting from any such Data Compromise, including but not limited to providing notification to Third Parties whose Data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Compromise in such a fashion that, in City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Compromise.

## **7. DATA RETENTION AND DISPOSAL**

- 7.1 Contractor will retain Data in an End User's account, including attachments, until the End User deletes them or for the time period mutually agreed to by the parties in this Agreement.
- 7.2 Using appropriate and reliable storage media, Contractor will regularly backup Data and retain such backup copies consistent with the City's data retention policies.
- 7.3 At the City's election, Contractor will either securely destroy or transmit to City repository any backup copies of City and/or End User Data. Contractor will supply City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.
- 7.4 Contractor will retain logs associated with End User activity consistent with the City's data retention policies.
- 7.5 Contractor will immediately preserve the state of the Data at the time of the request and place a "hold" on Data destruction or disposal under its usual records retention policies of records that include Data, in response to an oral or written request from City indicating that those records may be relevant to litigation that City reasonably anticipates. Oral requests by City for a hold on record destruction will be reduced to writing and supplied to Contractor for its records as soon as reasonably practicable under the circumstances. City will promptly coordinate with Contractor regarding the preservation and disposition of these records. Contractor shall continue to preserve the records until further notice by City.

**8. DATA TRANSFER UPON TERMINATION OR EXPIRATION**

- 8.1 Upon termination or expiration of this Agreement, Contractor will ensure that all Data are securely transferred to City, or a Third Party designated by City, within thirty (30) calendar days. Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of City, and that City will have access to Data during the transition. In the event that it is not possible to transfer the aforementioned data to City in a format that does not require proprietary software to access the data, Contractor shall provide City with an unlimited use, perpetual license to any proprietary software necessary in order to gain access to the data.
- 8.2 Contractor will provide City with no less than ninety (90) calendar days notice of impending cessation of its business or that of any Contractor subcontractor and any contingency plans in the event of notice of such cessation. This includes immediate transfer of any previously escrowed assets and Data and providing City access to Contractor's facilities to remove and destroy City-owned assets and Data.
- 8.3 Along with the notice described above, Contractor will provide a fully documented service description and perform and document a gap analysis by examining any differences between its Services and those to be provided by its successor.
- 8.4 Contractor will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to City.
- 8.5 Contractor shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to City. Contractor will work closely with its successor to ensure a successful transition to the new service and/or equipment, with minimal Downtime and effect on City, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

9. **SERVICE LEVELS.** Not used in this Agreement. Incorporated into Agreement and Scope of Work.

10. **INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE.** Not used in this Agreement. Incorporated into Agreement and Scope of Work.

11. **INSTITUTIONAL BRANDING.** Contractor Services will provide reasonable and appropriate opportunities for City branding of Contractor Services. Each party shall have the right to use the other party's Brand Features only in connection with performing the functions provided in this Agreement and as specified in the

attached Plan. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in and to those features. Contractor may not advertise that City is a client, list City as a reference or otherwise use City's name, logos, trademarks, or service marks without prior written permission obtained from City personnel authorized to permit City brand use.

12. **COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES.** Contractor will comply with all applicable laws in performing Services under this Agreement. Any Contractor personnel visiting City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. City will provide copies of such policies to Contractor upon request.

13. **WARRANTIES, REPRESENTATIONS AND COVENANTS**

- 13.1 **Services Warranty.** Contractor represents and warrants that the Services provided to City under this Agreement shall conform to, be performed, function, and produce results substantially in accordance with the Documentation. Contractor shall offer City warranty coverage equal to or greater than that offered by Contractor to any of its customers.

Contractor's obligations for breach of the Services Warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if Contractor is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after City provides notice of such breach, City may, in its sole discretion, either extend the time for Contractor to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to Contractor under this Agreement.

- 13.2 **Disabling Code Warranty.** Contractor represents, warrants and agrees that the Services do not contain and City will not receive from Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code").

In the event a Disabling Code is identified, Contractor shall take all steps necessary, at no additional cost to City, to: (a) restore and/or reconstruct any and all Data lost by City as a result of Disabling Code; (b) furnish to City a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

- 13.3 **Intellectual Property Warranty.** Contractor represents, warrants and agrees that: Contractor has all Intellectual Property Rights necessary to provide the

Services to City in accordance with the terms of this Agreement; City is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and Contractor has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying elements; the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against Contractor by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

- 13.4 Warranty of Authority. Each party represents and warrants that it has the right to enter into this Agreement. Contractor represents and warrants that it has the unrestricted right to provide the Services, and that it has the financial viability to fulfill its obligations under this Agreement. Contractor represents, warrants and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. Contractor represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services. This warranty shall survive the expiration or termination of this Agreement.
- 13.5 Third Party Warranties and Indemnities. Contractor will assign to City all Third Party warranties and indemnities that Contractor receives in connection with any products provided to City. To the extent that Contractor is not permitted to assign any warranties or indemnities through to City, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of City to the extent Contractor is permitted to do so under the terms of the applicable Third Party agreements.
- 13.6 Date/Time Change Warranty. Contractor represents and warrants to City that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. Contractor must repair any date/time change defects at Contractor's own expense.
- 13.7 Most Favored Customer Warranty. Contractor represents and warrants and agrees that the Services and other fees stated herein are and shall be the lowest fees Contractor charges any of its other customers. In any case where City fees are found to be higher, then Contractor will provide City with a retroactive refund for any overpayment.
- 13.8 Compliance With Laws Warranty. Contractor represents and warrants to City that it will comply with all applicable laws, including its tax responsibilities, pertaining to the Agreement and its provision of the Services to City.
- 13.9 THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT

LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **14. CONFIDENTIALITY**

- 14.1 Each party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.
- 14.2 The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However: (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Colorado Open Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.
- 14.3 Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Colorado Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.
- 14.4 Except as expressly provided by the terms of this Agreement, Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Confidential Information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing Data or Confidential Information, the City is not granting to Contractor any right or license to use such data except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the Data or confidential information without written authorization from the Manager and will immediately notify the City

if any information of the City is requested from the Contractor from a third party.

- 14.5 Contractor agrees, with respect to the Confidential Information, that: (1) Contractor shall not copy, recreate, reverse engineer or decompile such Data or Confidential Information, in whole or in part, unless authorized in writing by the Manager; (2) Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such Data or Confidential Information; and (3) Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such Data or Confidential Information or work products incorporating such Data or Confidential Information to the City.
- 14.6 Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose Data or Confidential Information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.
- 14.7 Notwithstanding any other provision of this Agreement, the City is furnishing Data or Confidential Information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Data or Confidential Information. Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Contractor agrees to contact the City immediately.
15. **PROTECTED INFORMATION.** During the course of this Agreement, should Contractor come into possession of any Protected Information, Contractor may not disclose this information to any Third Party under any circumstances.
16. **SERVICES TO BE PERFORMED:**
  - 16.1 Contractor, under the general direction of, and in coordination with, the City’s Chief Information Officer or other designated supervisory personnel (the “Manager”) agrees to provide the Services listed on Exhibit A, and perform the technology related services described on attached Exhibit B (the “Statement of Work” or “SOW”) and provide any other software services described on attached Exhibit C. (B AND C MAY NOT APPLY)
  - 16.2 As the Manager directs, the Contractor shall diligently undertake, perform, and complete all of the technology related services and produce all the deliverables set forth on Exhibit B to the City’s satisfaction.



- 16.3 The Contractor is ready, willing, and able to provide the technology related services and the Services required by this Agreement.
- 16.4 The Contractor shall faithfully perform the technology related services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
- 16.5 **User ID Credentials.** Internal corporate or customer (tenant) user account credentials shall be restricted as per the following, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures:
- a) Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation)
  - b) Account credential lifecycle management from instantiation through revocation
  - c) Account credential and/or identity store minimization or re-use when feasible
  - d) Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expireable, non-shared authentication secrets)
- 16.6 **Vendor Supported Releases.** The Contractor shall maintain the currency all third-party software used in the development and execution or use of the software including, but not limited to: all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jquery pluggins, etc.), whether commercial, free, open-source, or closed-source; with third-party vendor approved and supported releases.
- 16.7 **Oracle Identity Management.** The City's Identity and Access Management (IdM) system is an integrated infrastructure solution that enables many of the City's services and online resources to operate more efficiently, effectively, economically and securely. All new and proposed applications must utilize the authentication and authorization functions and components of the IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions, regardless to where the application is hosted.

## 17. **DELIVERY AND ACCEPTANCE:**

- 17.1 Upon set up of the Service, the City will test and evaluate same to ensure that it conforms, in the City's reasonable judgment, to the specifications outlined in the SOW or the Documentation. If the Service does not conform,

the City will notify Contractor in writing within sixty (60) days. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the Service does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Service, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the Service.

- 17.2 If the City is not satisfied with the Contractor's performance of the technology related services described in the SOW, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the technology related service in its sole discretion. In the event that City finally rejects any technology related service, Contractor will refund to City all fees paid by City with respect to such technology related service.

18. **TERM:** The term of the Agreement is from DATE through DATE.

19. **COMPENSATION AND PAYMENT:**

- 19.1 Fee: The fee for the Service and technology related services described in Exhibits A and B is \$\_\_\_\_\_ (the "Fee"). The Fee shall be paid pursuant to the City's Prompt Payment Ordinance and in accordance with the Payment Milestones in Exhibits A and B.

- 19.2 Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

- 19.3 Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

- 19.4 Maximum Contract Liability:

20.4.1 Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed \_\_\_\_\_ (\$\_\_\_\_\_) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibits A and B. Any services performed beyond those in Exhibits A and B are performed at Contractor's risk and without authorization under the Agreement.

20.4.2 The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**20. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**21. TERMINATION:**

21.1 The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

21.2 Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

21.3 Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

**22. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**23. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent,

expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

## **24. INSURANCE:**

24.1 **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

24.2 **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit \_\_\_\_, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

- 24.3 Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured..
- 24.4 Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
- 24.5 Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- 24.6 Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.
- 24.7 Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- 24.8 Business Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 24.9 Technology Errors & Omissions: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.
- 24.10 Additional Provisions:

- 25.10.1 For Commercial General Liability, the policy must provide the following:
  - 25.10.1.1 That this Agreement is an Insured Contract under the policy;
  - 25.10.1.2 Defense costs are outside the limits of liability;
  - 25.10.1.3 A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - 25.10.1.4 A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- 25.10.2 For claims-made coverage:
  - 25.10.2.1 The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
  - 25.10.2.2 Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**25. REPRESENTATION AND WARRANTY:** Contractor represents and warrants that:

- 25.1 The Service will conform to applicable specifications, operate in substantial compliance with applicable Documentation, and will be free from deficiencies and defects in materials, workmanship, design and/or performance;
- 25.2 all technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;
- 25.3 all technology related services will conform to applicable specifications and the Exhibits attached hereto;
- 25.4 it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and services free and clear from any

and all liens, adverse claims, encumbrances and interests of any third party;

- 25.5 there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;
- 25.6 the Service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;
- 25.7 the software and Service will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data.

**26. DEFENSE AND INDEMNIFICATION:**

- 26.1 Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- 26.2 Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- 26.3 Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.
- 26.4 Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

- 26.5 Contractor will, at Contractor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim that the Services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party. The City will promptly notify Contractor in writing of any claim and cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Software, or (iv) modify or replace the infringing Service so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If Contractor concludes in its reasonable judgment that none of the foregoing options are commercially reasonable, then Contractor will refund the prior two years of fees paid by the City for the Service.
- 26.6 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
27. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).
28. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.
29. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.
30. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.



31. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code.
32. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
33. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.
34. **CONFLICT OF INTEREST:**
- 34.1 No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
- 34.2 The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor’s own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.
35. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Chief Information Officer or Designee  
201 West Colfax Avenue, Dept. 301  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

36. **DISPUTES**: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.
37. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
38. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.
39. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.
40. **LEGAL AUTHORITY**: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and

executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

41. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
42. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
43. **SURVIVAL OF CERTAIN PROVISIONS**: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
44. **INUREMENT**: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
45. **TIME IS OF THE ESSENCE**: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
46. **FORCE MAJEURE**: Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Contractors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.
47. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

48. **CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
49. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
50. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
51. **ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor’s advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
52. **PCI/DSS COMPLIANCE FOR “IN-SCOPE” SERVICES.**
- 52.1 The Contractor covenants and agrees to comply with Visa’s Cardholder Information Security Program/CISP, MasterCard’s Security Data Program and SDP Rules, and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations (generally “Association”), and further covenants and agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS), MasterCard Site Data Protection (SDP), and (where applicable) the VISA Payment Application Best Practices (PABP) (collectively, the “Security Guidelines”). Contractor represents and warrants that all of the hardware and software components that it utilizes for the City or uses under this Agreement is and will be PCI DSS compliant. All service providers that Contractor uses under the Agreement must be recognized by VISA as compliant with PABP. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, subcontractors and any person or entity that may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out in this Section. Contractor further certifies that the meters, as described herein, are to be deployed in a manner that meets

or exceeds the PADSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards.

- 52.2 The Contractor shall not retain or store CVV2/CVC2 data subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, Contractor shall immediately notify the City in writing, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.
- 52.3 Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of the Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are Payment Card Industry Data Security Standards (PCI DSS) compliant.
- 52.4 The Contractor must provide quarterly results of a network scan for all Internet or IVR payment acceptance modules that verify PCI DSS compliance, or in the City's sole discretion, allow the City's contracted PCI DSS compliance auditor full access to the Contractor's system(s) at any time to provide this verification to the City. Any cost associated with the City's contracted PCI DSS compliance auditor will be paid by the City. If any Association requires an audit of the Contractor or any of Contractor's Service Providers, agents, business partners, contractors or subcontractors due to a data security compromise event related to this Agreement, Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City's reasonable costs relating to such audit, including attorney's fees. No review, approval, or audit by the City shall relieve the Contractor from liability under this section or under other provisions of this Agreement.
- 52.5 In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any

losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by Contractor of this Agreement. In furtherance of this, Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS) and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

**53. COMPLIANCE FOR IN-SCOPE SERVICES.** The Contractor covenants and agrees to comply with the processing, handling, and security standards and guidelines as set forth by, but not limited to:

- a) Health Insurance Portability and Accountability Act (HIPAA)
- b) Family Education Rights and Privacy Act (FERPA)
- c) Children’s Online Privacy and Protection Act (COPPA)
- d) Federal Bureau of Investigation Criminal Justice Information Systems (CJIS) Security Policy

and further covenants and agrees to maintain compliance with the same when appropriate for the Data and Services provided under the Agreement. Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, subcontractors and any person or entity that may have access to Data under this Agreement maintain compliance with and comply in full with the terms and conditions set out in this Section. Notwithstanding Force Majeure, the respective processing, handling, and security standards and guidelines referenced by this section may be revised or changed from time to time or Data may be utilized within the Services that change the compliance requirements. In the event that compliance requirements change, the Contractor and City shall collaborate in good faith and use all reasonable efforts to become or remain compliant as necessary under this section. In the event that compliance is required or statutory and no reasonable efforts are available, the City at its discretion may terminate the agreement for cause.

**54. ON-LINE AGREEMENT DISCLAIMER.** Any ‘click-wrap’ agreement, terms of use, electronic acceptance or other terms and conditions which attempt to govern the subject matter of this Agreement that either party might be required to acknowledge or accept before or after entering into this Agreement are of no force and effect as between the City and Contractor and are superseded by this Agreement.

## Section VII

### DIVERSITY AND INCLUSIVENESS – EXECUTIVE ORDER #101

#### Definitions

***Diversity:*** Diversity refers to the extent to which a contractor/consultant has people from diverse background or communities working in its organization at all levels, is committed to providing equal access to business opportunities and achieving diversity in procurement decisions for supplies, equipment, and services, or promotes training and technical assistance to diverse businesses and communities such as mentoring and outreach programs and business engagement opportunities.

***Inclusiveness:*** Inclusiveness, for purposes of Executive Order No. 101, includes the extent to which a contractor/consultant invites values, perspectives and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for each person to participate, contribute and succeed within the organization’s workplace. Inclusiveness also includes the extent to which businesses have an equal opportunity to compete for new business opportunities and establish new business relationships in the private and public sector.

#### Requirements

Using the attached form, entitled “Diversity and Inclusiveness in City Solicitations Information Request Form”, please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service, and provide the additional information requested on the form. The information provided on the Diversity and Inclusiveness in City Solicitations Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/Consultants are not expected to conduct intrusive examinations of their employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

***A completed and signed copy of the “Diversity and Inclusiveness in City Solicitations Request Form” must be included with your bid or RFP response. Failure to include this form will render your bid or RFP non-responsive.***

***Download Diversity and Inclusiveness Form:***

***[http://artsandvenuesdenver.com/images/files/Diversity and Inclusiveness in City Solicitations Information Request Form.pdf](http://artsandvenuesdenver.com/images/files/Diversity_and_Inclusiveness_in_City_Solicitations_Information_Request_Form.pdf)***