

**MEMBERSHIP AGREEMENT
DENVER COMMUNITY MEDIA CENTER**

THIS MEMBERSHIP AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), for and on behalf of **DENVER MARKETING SERVICES**, and the signatory attached hereto (“Member”), whose address is on file with the City, individually a “Party” and jointly the “Parties.”

WHEREAS, this Agreement governs all DCM membership privileges and all media, content, audio, series, or programs (collectively, “Video Content”) submitted by Member to the City’s public website to air on its public access television channels or other media platforms (collectively, “Public Access Channels”) managed by Denver Community Media (“DCM”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

1. **MEMBERSHIP**: In consideration for being permitted to participate in productions, classes, volunteer opportunities, or other activities, including use of equipment and facilities (collectively, Activities) throughout the duration of Member’s membership to DCM, Member agrees, as a condition of being permitted to participate in the Activities, to comply with all DCM policies, as amended. DCM reserves the right to amend its policies without notice. Member agrees that they are responsible for their invitees, including self, crew members, talent, guests, etc. Member agrees that they will be responsible for their invitee’s behavior and will ensure that their invitees comply with all DCM policies, as amended. If Members or their invitees do not comply with DCM or City policies, as amended, their membership may be suspended or terminated, and they and their invitees may be asked to leave DCM facilities. Please review and sign this Agreement before providing any Video Content, taking part in any DCM Activities, or using any DCM facilities. If you are under 18 years old, a parent or legal guardian must also sign this Agreement.
2. **MEMBERSHIP TERM**: Month-to-month memberships shall begin on the date of enrollment, as stated on the attached Member signature page, and will automatically renew on the same date of each month until canceled. As a condition of monthly membership, Member must have a valid credit or debit card on file with DCM’s electronic system of record. Annual memberships shall begin on the date of enrollment and will need to be renewed each year on the anniversary of membership. Members may opt into automatic renewals for Annual memberships. To cancel a membership that is set to auto-renew, Member must send an email to info@denvercommunitymedia.org at least 3 business days prior to the auto-renew date to avoid the next monthly or annual charge. To maintain membership, this Agreement must be renewed three years from the date of execution. After three years from the date of enrollment, this Agreement shall automatically expire and terminate.
3. **MEMBERSHIP FEES**: On either a monthly or yearly basis, beginning on the date of enrollment and continuing until termination of this Agreement, Member shall pay to the City, as directed by DCM, membership fees in the amounts and frequency as detailed on DCM’s website. For month-to-month memberships, beginning on the date of enrollment, Member shall pay the City for each month of membership until canceled. Monthly membership fees, as applicable, are directly charged to the Member’s credit or debit card entered into the DCM’s electronic system of record on the date of enrollment. For annual memberships, Members are charged the first year of membership upon enrollment, and a renewal fee is charged each subsequent year on the anniversary of enrollment. Membership fees are not pro-rated in the month of termination. Membership fees are non-refundable and subject to change with thirty days’ notice to Member. Membership fees, excluding any additional costs, including those related to classes or equipment, will not exceed Ten Thousand Dollars (\$10,000.00) under this Agreement. Current Membership pricing may be found on DCM’s website. No refunds will be given for unused membership costs or services.
4. **COMMERCIAL USE PROHIBITED**: Members and their crews shall not receive personal financial compensation of any type from a third party to produce video projects using DCM Equipment. DCM assets, including equipment and studio facilities, shall not be used for private financial gain or commercial purposes. Equipment may not be used to promote any commercial product, service, or business, and may not be used

for a direct commercial call to action. This Agreement does not prohibit Member from paying any expenses related to the creation and production of content using DCM facilities or Equipment.

5. EQUIPMENT RENTALS

5.1. Rentals: Field and editing equipment (collectively, “Equipment”) may be rented for up to one week. Members must have an up-to-date credit or debit card on file to reserve and rent Equipment. Reserved Equipment can be picked up after 3:00 P.M. for next day reservations. Equipment cancellations should be made at least 48 hours prior to reservation. This cancellation can be made by calling DCM at 720-337-4200 and leaving a detailed voicemail; sending an email to info@denvercommunitymedia.org; or by providing in-person notice during regular business hours. Only the Member who made the reservation is permitted to check-out Equipment. Before leaving the DCM facility, Member is responsible for inspecting, testing, and verifying that the Equipment works properly. If Member discovers defective or inoperable Equipment during a production, they are responsible to report such issues to DCM staff immediately. A complete inventory of Equipment and prices can be provided upon request and can also be found on DCM’s website.

5.2. Returns: Equipment checked out by a Member must be returned within the designated return period. Equipment that is returned after the allotted check-out period will be considered late. If a Member is late in returning Equipment for a third time within six months, Member’s Equipment check-out privileges may be suspended for up to six months. If Equipment is still not returned within 48 hours after the designated check-in time, the Equipment will be considered lost or stolen. Member acknowledges and agrees that their card will be kept on file and automatically charged for additional day(s) if Equipment is not returned on time.

5.3. Damages, Stolen or Lost Equipment: Member is legally and financially responsible for all Equipment while in their possession or under their charge. If Member’s negligence, abuse, or misuse causes damage or results in theft requiring repair or replacement, the City shall charge the credit or debit card on file for all repair or replacement costs, unless specified in an applicable warranty, if any, in accordance with the then current pricing listed on DCM’s website. Repair and replacement costs posted on DCM’s website are subject to change. DCM staff will make the reasonable determination whether an Equipment malfunction is the result of normal wear and tear or damage by Member. When Equipment is returned damaged, DCM staff will provide a cost estimate to Member based on market value of the item and the cost to replace or repair the item. The coordination of the repair will be completed by DCM staff, and Members who disagree with the assessment may appeal the decision to the City’s Director of Marketing Services Programming and Administration (“Director”). Member will contact the Community Access Manager within 48-hours of notification of the need for and cost of repair or replacement to discuss payment. Payment shall be made as directed by the City, and the Marketing Services Director has discretion to approve payment plans for repayment.

5.4. Disclaimers: Member accepts Equipment for use in its AS IS condition. Member accepts full responsibility for the proper and safe use of the Equipment. Members shall exercise common sense and extreme care when operating Equipment whether in the studio or in the field. Member shall not attempt to repair or perform maintenance on any Equipment. Member agrees there are no warranties, express or implied, which have been made to Member concerning Equipment. The City reserves the right to seek all options necessary to recover such damaged, lost, or stolen Equipment, including notification to the local authorities. All Equipment is, and will always be, the City’s sole and exclusive property, and Member shall have no right, title, or ownership interest in Equipment. Violations of rental policies may result in the loss of all DCM membership privileges.

6. CONTENT RESTRICTIONS

6.1. Video Content shall not contain the following restricted content (“Restricted Content”):

6.1.1. Solicitation, advertising, bartering, or promotion of commercial products, services or transactions;

6.1.2. Material that is slanderous, libelous, an invasion of privacy, incites violence towards an individual or group or is otherwise unlawful;

6.1.3. Material concerning lottery information, gift enterprise, or similar scheme;

- 6.1.4. Unlawful use of material requiring union residual, or other payment including but not limited to talent and crew;
- 6.1.5. Unlawful use of material that is copyrighted or subject to ownership or royalty rights, right of publicity, or other payment; or
- 6.1.6. Material that the City reasonably believes contains obscene content, including but not limited to sexual intercourse, sodomy, masturbation, sadism, masochism, excretion, or lewd exhibition of genitals.
- 6.2. **Program Disclaimer**: The City reserves the right to place a disclaimer before, during, or after any Video Content that is indicated as containing "Adult Content" or that may be objectionable to viewers. The disclaimer will advise viewer discretion and indicate that responsibility for the Video Content lies with Member and not with the City or any third-party platform provider.
- 6.3. **Nudity or partial nudity**: Nudity and partial nudity shall be prohibited while onsite at the Denver Community Media Center. Member agrees and understands that all participants in productions that are filmed onsite at the Denver Community Media Center must be dressed appropriately. Any participants who appear in an undressed state as defined below will be asked to leave. DCM reserves the right to shut down any onsite production that is not in compliance with this or any other provision.
 - 6.3.1. Nudity or partial nudity, as defined by 7-156(c), D.R.M.C., as amended, means appearing in an undressed state ranging from complete exposure of genitals, buttocks, or the female breast to wearing some limited clothing such as g-strings, thong bikinis (top or bottom), pasties, or similar items designed to provide minimal coverage for those human body areas around and including the genitals, buttocks, or female breast.
 - 6.3.2. A person commits an act of indecent exposure if they knowingly expose their genitals or buttocks to the view of any person under circumstances which are likely to cause a reasonable person affront or alarm.
- 7. **MEMBER WARRANTIES**: Member warrants and represents that the submitted Video Content does not contain any Restricted Content as defined herein and hereby warrants that Member is 18 years of age or older; and resides within the state boundaries of Colorado. Member warrants and represents that all necessary rights and clearances to transmit program content over the Public Access Channels or other media platforms have been obtained by Member and the City will accrue no liability, and the responsibility and liability for program content lies solely with Member. Member represents and warrants that the Video Content's submission, intended use, technical specifications, and content comply with this Agreement and the latest version of DCM's policies and procedures. Member shall ensure that such Video Content complies with all applicable laws. Member represents and warrants that they have obtained all necessary permissions, rights, and clearances for Video Content and the appearance of individuals appearing in their programs and Video Content. Member may be required to provide satisfactory evidence of such permission upon request.
- 8. **LICENSING**
 - 8.1. The program and its content are provided under the terms of this Agreement. By submitting programs or any content for broadcast, Member, and any organization they may represent, accepts, and agrees to be bound by the terms of this Agreement. Programs submitted for cablecast and/or streaming on the Public Access Channel(s) and media platforms are the property of the producer of record. The producer of record is identified as Member on this Agreement.
 - 8.2. Subject to the terms and conditions of this Agreement, Member hereby grants the City a worldwide, royalty-free, non-exclusive, perpetual license to exercise the rights in Video Content as stated below:
 - 8.2.1. The City may reproduce Video Content, incorporate Video Content into one or more collections, and may reproduce Video Content as incorporated in a collection;
 - 8.2.2. The City may, without limitation, reproduce, copy, adapt, distribute, share, disseminate, publicly display, publicly perform, sublicense, and create derivative content from the Video Content, or any portion thereof without remuneration to Member; and
 - 8.2.3. Whether individually or if Member is a member of an organization, Member waives the right to collect royalties.

- 8.3. Video Content may be destroyed, distributed, or removed from the City without permission of Member as may be required by policy or applicable law, including, but not limited to, subpoenas or requests for information under the Colorado Open Records Act.
- 8.4. No term or licensing provision of this Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party to be charged with such waiver or consent.
- 8.5. Member agrees that the City maintains all rights in its trademarks which include without limitation, DCM and the City's logos, channel branding, and any other trademarks which may be developed in the future. Member shall not utilize those trademarks in any fashion without the express written permission of the City.
- 8.6. Member represents and warrants that they have, before using any facilities, equipment, or uploading any Video Content, obtained prior permission through appropriately executed licenses or releases, all of which are assigned to the City, to use any copyrightable material, any personality rights, any photographic rights, talent, protected content, materials, location, and other rights necessary to permit the use of the same to be distributed through Public Access Channels, mediums, platforms, media or at the City's facilities.
- 8.7. The above rights may be exercised in all mediums, platforms, media, and formats whether now known or hereafter devised. The above rights include the right to make such modifications as are technically necessary to exercise the rights in other mediums, platforms, media, and formats.
9. **PUBLIC ACCESS CHANNELS:** The City provides the Public Access Channels, streaming platforms, and its websites on an "as is" basis without warranties of any kind, either express or implied, including without limitation warranties of title, non-infringement, or implied warranties of merchantability or fitness for a particular purpose. The City does not warrant that any information is complete or accurate, that the Public Access Channels and/or all digital profiles including but not limited to the City's website, social media profiles, digital video channels, and livestreams will be uninterrupted or error free or that any information is free of programming in violation of the City's programming standards and policies.
10. **SCHEDULING:** The City has the sole right to schedule broadcasts of any programming, and the City has the right to refuse to broadcast any submitted programming found to be in conflict with federal law, state law, local law, and City guidelines as they may be adopted or amended from time to time. Programming that contains, in the reasonable judgment of the City or its designee, potentially offensive content is permitted on the Public Access Channels only during safe harbor hours, from 10:30 p.m. to 5 a.m. The City, or its designee, may pre-screen program content for this purpose only if it possesses or is presented with credible evidence of specific prohibited or patently offensive content.
11. **EXPRESS ASSUMPTION OF RISK, RELEASE OF LIABILITY, AND WAIVER:** Member acknowledges that the Activities in which Member proposes to participate have inherent and other risks, hazards, and dangers for a participant. Member understands the risks, hazards, and dangers that may be associated with the Activities and acknowledges they cannot be entirely eliminated and may not be entirely foreseeable. Member understands that these Activities may require good physical conditioning and a degree of skill and knowledge. Member believes they have good physical conditioning and the degree of skill and knowledge necessary to engage in these Activities safely. Member understands the advisability of consulting with a physician before undertaking strenuous Activities and that Member is responsible for protecting their health and well-being. Member agrees to withdraw from participation in the Activities at any time they believe their health or well-being is or could be in danger and not to engage in any behavior that will significantly increase the risks, hazards, and dangers inherent or related to the Activities. Member participation in these Activities is purely voluntary. Member acknowledges that no one is forcing them to participate, and Member elects to participate despite the risks. Member is voluntarily using DCM facilities, equipment, and services with full knowledge of the inherent or other risks, hazards, and dangers involved, and Member hereby assumes and accepts any and all personal risks of injury, illness, disability or death, and the theft, loss or damage to property that may be associated with participation in the Activities or use of DCM facilities, equipment, and services. Member, on behalf of myself, my family, and heirs, agrees and promises not to sue

and forever release, waive, and discharge the City and its elected and appointed officials, employees, contractors, agents, volunteers and any sponsoring agencies and entities from any and all legal liability to Member and their personal representatives, executors, heirs, beneficiaries, children, dependents, spouse, relatives and subrogees, for any and all claims, causes of action, judgments, liens, costs, or expenses of any nature whatsoever that arise from or are in any way connected with any injury or illness (including any disability or death) or any theft, loss or damage to property, directly or indirectly, related to or associated with my participation in the Activities or use of DCM facilities, equipment, or services, regardless of the cause(s) including negligence. Member further agrees, jointly and severally, to defend, indemnify, and hold harmless the City from and against any and all claims that arise from or are associated with any injury or illness (including any disability or death) or any theft, loss or damage to property caused by Member's deliberate acts or by Member's negligence, in whole or part, and resulting from or associated with my participation in the Activities or use of DCM facilities or services. Member further agrees that the City is not responsible for any damage to, or loss or theft of, Member's personal property. No bailment or other legal duty exists on the City's part with respect to Member's personal property.

12. CITY TERMINATION: The City shall have the right, in its sole discretion, to either suspend or permanently terminate this Agreement. Any violation of the provisions of DCM policies or this Agreement may result in the immediate loss of content submission, facility, and membership privileges. The City has the right to terminate this Agreement without cause upon written notice effective immediately. Nothing gives Member the right to continue using DCM services under this Agreement after this Agreement is terminated. The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to Member. Upon termination of this Agreement, Member shall have no claim against the City by reason of, or arising out of, incidental or relating to termination. If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools, and facilities it owns that are in Member's possession, custody, or control by whatever method the City deems expedient.

13. EXAMINATION OF RECORDS AND AUDITS: 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, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Member's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Member shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Member to make disclosures in violation of state or federal privacy laws. Member shall at all times comply with D.R.M.C. 20-276.

14. DEFENSE AND INDEMNIFICATION

14.1. Member 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 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 Member 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.

14.2. Member'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. Member'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.

- 14.3.** Member shall defend any and all Claims which may be brought or threatened against City and shall 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 will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.
- 14.4.** Insurance coverage in no way lessens or limits the liability of Member under the terms of this indemnification obligation. Member is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- 14.5.** Member assumes all responsibility as the producer, originator, author, or distributor of any of Member's programming carried on the City's designated Public Access Channels or any platform on which the programming is carried by the City. Member further agrees, as condition of the cablecast or streaming, to abide by City programming policies, as amended, and to indemnify and hold harmless the City or their respective directors, officers, employees and agents from all loss, liability and damage, including attorney costs, arising out of or caused by the cablecast or streaming of Member's program, including, but not limited to, libel, slander, indecency, obscenity, invasion of privacy or public rights, unauthorized use of copyright material or non-compliance with, or in violation of, any applicable local, state, or federal laws, rules, or regulations.
- 14.6.** Without limiting the generality of the foregoing, Member further agrees to indemnify, hold harmless, and defend the City from any claims, liability, loss or damage of any nature whatsoever, including reasonable attorney costs, arising out of or in connection with any material carried on, transmitted or disseminated by Member on the Public Access Channels or media platforms in violation of or infringement upon the rights, trade names, or the right of privacy of any other owner, licensor, copyright holder, writer, composer, person, corporation, partnership or legal entity.
- 14.7.** Member individually and, if applicable, on behalf of all members of the organization of which Member is a representative, hereby releases the City from any action, claim, and demand whatsoever which Member or its organization ever had, has, and may have against the City, in connection with the programming or delivery of material carried on the Public Access Channels and media platforms including, any mistakes, omissions, interruptions in the cablecast or streaming of Member's material, changes in scheduling Member's material or failure to cablecast and/or stream such material, or unauthorized use of Member's programming by third parties.
- 14.8.** Member releases the City, its directors and officers, agents, employees, and representatives and their respective successors and assigns from all liability if the program or material submitted is damaged, lost, altered or stolen, including, without limitation, unauthorized access and use by third parties of Member's programs available in electronic format on the City's website or managed websites for streaming, while in the City's custody.
- 14.9.** Member shall indemnify, defend, and hold the City harmless from and against any claims, losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from any third-party claim that the Video Content, when used by the City in accordance with this Agreement, infringes, misappropriates or violates any United States patent issued as of the date hereof, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. If an injunction or order is obtained against the City's use of the Video Content by reason of a claim of the type described above, or if in Member's opinion, the Video Content is likely to become the subject of such a claim, Member shall take all necessary action to correct any such infringement or misappropriation to give the City the right to continue using the Video Content.
- 14.10.** Notwithstanding the foregoing, under no circumstances, including negligence, shall the City be liable for any direct, indirect, incidental, special, punitive or consequential damages that may result from the use or inability to use the Public Access Channels, streaming services, the City's facilities, and/or the City website or managed websites, including without limitation use of or reliance on information

available on the Public Access Channels, streaming platforms, and/or the City's websites, interruptions, errors, defects, mistakes, omissions, deletions of files, delays in operation or transmission, non-delivery of information, disclosure of communications, or any other failure of performance.

14.11. The defense and indemnification obligations shall survive the expiration or termination of this Agreement.

15. NOTICES: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, sent by email, or mailed via United States mail, postage prepaid, if to Member at the address on file and to City at the addresses below:

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

With a copy to:

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

Notices hand delivered, sent by email, 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.

16. CONFLICT OF INTEREST: No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. Member 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. Member shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. Member 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 Member by placing Member's own interests, or the interests of any party with whom Member 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 this Agreement if it determines a conflict exists, after it has given Member written notice describing the conflict.

17. LICENSES, PERMITS, AND OTHER AUTHORIZATIONS: Member shall secure, prior to the Term, and shall maintain, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement. This Section is a material part of this Agreement.

18. COMPLIANCE WITH ALL LAWS AND POLICIES: Member shall comply 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. These laws, regulations, and other authorities are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated. Member shall adhere to the policies and standards set forth by DCM as they may exist from time to time. Member acknowledges that their membership and access to DCM platforms and facilities is conditioned upon satisfactory compliance with DCM's policies.

19. MEMBER STATUS: This Agreement does not create nor is it intended to create an association, trust, partnership, joint venture, or any other entity or similar legal relationship among the Parties, or impose a trust, partnership or fiduciary duty, or similar obligation or liability on or with respect to any Party. No Party is or shall act as or be the agent or representative of any other Party, and no Party has the power to obligate or bind any other Party. Neither Member 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.

20. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then

exist on the part of Member. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

- 21. NO CITY FUNDS:** Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed Zero Dollars (\$0.00) (the "Maximum Contract Amount"). The City is not obligated to execute an agreement or any amendments to this Agreement. The City's payment obligations, 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 this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- 22. TAXES, CHARGES, AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Member shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
- 23. INSURANCE:** Insurance coverage is recommended but not required by the terms of this Agreement. If Member obtains insurance coverage, it in no way lessens or limits the liability of Member under the terms of any indemnification obligation. Member is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- 24. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to this Agreement, 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, C.R.S. § 24-10-101, *et seq.*
- 25. GOVERNING LAW; VENUE:** This 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 this 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 this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
- 26. DISPUTES:** All disputes between the City and Producer arising out of or regarding this Agreement will be resolved in accordance with DCM policies and procedures. Alternatively, DCM, within their sole discretion, may seek to resolve any disputes through an 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 Director as defined in this Agreement.
- 27. NO DISCRIMINATION IN EMPLOYMENT:** In connection membership under this Agreement, Member may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Member shall insert the foregoing provision in all relevant subcontracts.
- 28. SURVIVAL OF CERTAIN PROVISIONS:** The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, Member'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.
- 29. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior,

contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing or as stated herein. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City. Notwithstanding anything to the contrary contained herein, the City, within its sole discretion, may modify or add to the terms and conditions of this Agreement at any time by posting the amended terms on DCM's website(s), and any such modification shall be effective upon such posting to DCM's website(s). If Member declines to be bound by the any modification, Member may terminate this Agreement in accordance with its terms.

30. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: Member 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.
31. **SEVERABILITY**: If a court of competent jurisdiction finds any provision of this 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.
32. **ASSIGNMENT; SUBCONTRACTING**: Member shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Member shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.
33. **INUREMENT**: The rights and obligations of the parties to this Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.
34. **NO THIRD-PARTY BENEFICIARY**: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this 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 Member receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.
35. **ORDER OF PRECEDENCE**: If any provision of this Agreement should conflict with any attachments hereto or provisions of DCM's policies, this Agreement shall prevail.
36. **USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS**: Member shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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 contract personnel being barred from City facilities and from participating in City operations.
37. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.
38. **LEGAL AUTHORITY**: Member 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 Member represents and warrants that they have been fully authorized by Member to execute the Agreement on behalf of Member and to validly and legally bind Member 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 Member or the person signing the Agreement to enter into the Agreement. Member represents and warrants that they have the legal authority to enter into this Agreement on behalf of themselves and their organization when applicable.
39. **CITY EXECUTION OF AGREEMENT**: This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

40. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Member consents to the use of electronic signatures. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically in the manner specified by the City. Member agrees not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. Member agrees not to object to the admissibility of this 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.