

## DENVER PUBLIC ACCESS PRODUCTION AND LICENSING AGREEMENT

This Public Access Production and Licensing Agreement (the “Agreement”) shall be applicable to those who program or submit content to air on the City and County of Denver’s (the “City”) public access television channels. Please review this Agreement before submitting content.

### 1. Representation of Authorizations

- 1.1. Producers represents and warrants that they have obtained all necessary permission for material and individuals appearing in their programs. Producers may be required to provide satisfactory evidence of such permission upon request. Furthermore, Producer represents and warrants that it possesses the legal authority to enter into the Agreement. The City shall have the right, in its sole discretion, to either 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.

### 2. Limitations of Liabilities

- 2.1. Content Producer (“Producer”) assumes all responsibility as producer, originator, author, or distributor of any of the Producer’s programming carried on the City’s designated Public Access Channels managed by Denver Media and Marketing Services (“DMMS”), or any system on which the programming is carried by DMMS (collectively, the “Public Access Channels”).
- 2.2. Producer agrees, as condition of the cablecast, to abide by DMMS Programming Policies 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 Producer’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.
- 2.3. Without limiting the generality of the foregoing, Producer 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 the Producer on the Public Access Channels 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.
- 2.4. Producer agrees to defend all actions to which any indemnity stated herein applies and to conduct defense thereof at its own expense and by its own counsel. The City shall have the right to participate in such defense with counsel selected by it at the Producer’s expense and Producer agrees that it will cause its counsel to cooperate with the City and its counsel.
- 2.5. Producer individually and, if applicable, on behalf of all members of the organization of which the Producer is a member, hereby releases the City from any action, claim, and

demand whatsoever which the Producer 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 including, any mistakes, omissions, interruptions in the cablecast or streaming of Producer's material, changes in scheduling Producer's material or failure to cablecast and/or stream such material, or unauthorized use of the Producer's programming by third parties.

- 2.6. Producer 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 the Producer's programs available in electronic format on the City's website for streaming, while in their custody.
- 2.7. 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, the City's facilities, and/or the City websites, including without limitation use of or reliance on information available on the Public Access Channels 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.
- 2.8. The City provides the Public Access Channels 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.

### 3. Program Content Restrictions

- 3.1. Programs may not contain the following restricted content ("Restricted Content"):
  - 3.1.1. Solicitation, advertising, bartering or promotion of commercial products, services or transactions;
  - 3.1.2. Material that is slanderous, libelous, an invasion of privacy, incites violence towards an individual or group or is otherwise unlawful;
  - 3.1.3. Material concerning lottery information, gift enterprise, or similar scheme;
  - 3.1.4. Unlawful use of material requiring union residual, or other payment including but not limited to talent and crew;
  - 3.1.5. Unlawful use of material that is copyrighted or subject to ownership or royalty rights, right of publicity, or other payment; or
  - 3.1.6. 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.

#### 4. Producer Warranties

- 4.1. Producer warrants and represents that the submitted program content does not contain any Restricted Content as defined in § 3.
- 4.2. Producer also warrants the following:
  - 4.2.1. Producer is 18 years of age or older;
  - 4.2.2. Producer resides within the county limits of the City and County of Denver; and
  - 4.2.3. Producer warrants that all necessary rights and clearances to transmit program content over the Public Access Channel have been obtained and the City will accrue no liability, and the responsibility and liability for program content lies solely with the Producer.

#### 5. Licensing

- 5.1. The program and its content is provided under the terms of this Agreement. By submitting programs for broadcast, the Producer, and any organization they may represent, accepts and agrees to be bound by the terms of this Agreement.
- 5.2. Programs submitted for cablecast and/or streaming on the Public Access Channels are the property of the producer of record. The producer of record is identified as the Producer on this Agreement.
- 5.3. This Agreement does not intend to reduce, limit, or restrict any uses free from copyright or rights arising from limitations or exceptions that are provided for in connection with the copyright protection under copyright law or other applicable laws.
- 5.4. License Grant
  - 5.4.1. Subject to the terms and conditions of this Agreement, Producer hereby grants the City a worldwide, royalty-free, non-exclusive, perpetual license to exercise the rights in the program as stated herein:
    - 5.4.1.1. The City may reproduce the program, incorporate the program into one or more collections, and may reproduce the program as incorporated in a collection;
    - 5.4.1.2. The City may create and reproduce adaptations provided that any such adaptation, including any translation in any medium, takes reasonable steps to clearly label, demarcate or otherwise identify that changes were made to the original program;
    - 5.4.1.3. The City may distribute and publicly display the program;
    - 5.4.1.4. Whether individually or in the event that the Producer is a member of an organization, the Producer waives the right to collect royalties; and
    - 5.4.1.5. The above rights may be exercised in all 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 media and formats.
- 5.5. Programs and its content can be destroyed, distributed, or removed from the City without permission of the Producer 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.

5.6. 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.

## 6. Scheduling

6.1. 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.

### 6.2. Safe Harbor Scheduling

6.2.1. 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 pm to 5 am. 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.

## 7. Program Disclaimer

7.1. The City reserves the right to place a disclaimer before, during, or after any program that may be objectionable to viewers. The disclaimer will advise viewer discretion and indicate that responsibility for the content of the program lies with the Producer and not with the City or the cable provider.

## 8. General Provisions

8.1. Inurement. The rights and obligations of the parties to the 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 the Agreement.

8.2. 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.

8.3. No Authority to Bind City to Contracts. Producer 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.

8.4. Severability. 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.

8.5. 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 (Denver District Court).

- 8.6. Compliance with all Law. Contractor shall, at all times, be 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.
- 8.7. Electronic Signatures and Electronic Records. Producer consents to the use of electronic signatures. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically in the manner specified by the City. Producer agrees 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. Producer agrees 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.