

MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is made and entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“**Denver Water**”), and [REDACTED] (“**Consultant**”) (Denver Water and Consultant sometimes are individually each referred to as a “**Party**”, and collectively referred to herein as the “**Parties**”). This Agreement shall become effective on the date it is fully signed by Denver Water (“**Effective Date**”).

RECITALS

WHEREAS, Consultant submitted to Denver Water a proposal dated [REDACTED] (the “**Consultant Proposal**”) and represented to Denver Water that it had the expertise, personnel, services, and skills required to meet the requirements of Denver Water.

WHEREAS, Denver Water, in reliance on the information set forth in the Consultant Proposal, other information provided by Consultant and subsequent discussions, has selected Consultant over other Consultants to provide the Services and/or Deliverables (later defined herein) described in this Agreement.

WHEREAS, Denver Water and Consultant want to specify the terms and conditions under which Consultant shall provide the Services and/or Deliverables to Denver Water.

NOW, THEREFORE, in consideration of the agreements, representations, warranties, promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree to the foregoing and as follows:

ARTICLE 1—GENERAL

1.1. Overview of Agreement. This Agreement represents the terms and conditions under which Consultant shall provide the mutually agreed to Services and/or Deliverables to Denver Water.

1.2. Definitions. Capitalized terms used in this Agreement, including in any Schedules, Exhibits, Attachments and/or other documents attached to or otherwise made a part of this Agreement, shall have the meanings ascribed to them in **Schedule 1.2 (Definitions)** or within the main body of this Agreement. SOW-specific definitions, if any, shall be included in the applicable Statement of Work; otherwise, such terms shall have the meaning ascribed to them in Schedule 1.2 or the main body of this Agreement. All defined terms include the plural as well as the singular.

1.3. Conflicts in Interpretation.

1.3.1. General Rules. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Schedules, Exhibits, Attachments and/or other documents attached hereto: (a) first, the terms contained in the body of this Agreement shall control; (b) second, the terms of the Schedules, Exhibits, Attachments and/or other documents attached to this Agreement (excluding Schedules, Exhibits, Attachments, and/or other documents that constitute or are part of a Statement of Work), provided that no order of precedence shall be applied among such Schedules, Exhibits, Attachments, and/or other documents; (c) third, the terms of any Statements of Work, including all Schedules, Exhibits, Attachments, and/or other documents thereto; (d) fourth, the terms of any purchase order signed and issued by an authorized representative of Denver Water, including all Schedules, Exhibits, Attachments, and/or other documents thereto; (e) fifth, the Consultant Proposal; and (f) sixth, the Documentation (excluding Consultant Proposal).

1.3.2. Exception for Statements of Work. Unless the Parties specify in the applicable Statement of Work that a particular provision of the Statement of Work is to supersede a provision of this Agreement, in which case the superseding Statement of Work provisions shall be applicable only to such Statement of Work and shall be effective for such Statement of Work only if such provision expressly references the applicable Section of this Agreement that is to be modified and clearly states that such provision supersedes the conflicting or inconsistent provision in this Agreement, any attempt to alter or amend the terms and conditions contained in this Agreement through conflicting or inconsistent terms in a Statement of Work or any other document shall be void and of no force and effect.

1.4. References to Consultant. As used in this Agreement, references to “Consultant” also shall apply to Consultant Affiliates, subcontractors, and Consultant Personnel in accordance with the following: (a) references to Consultant shall mean at all times that Consultant is responsible for ensuring and causing the compliance of Consultant Affiliates, subcontractors, and Consultant Personnel with the terms and conditions of this Agreement; (b) with regard to complying with the terms and conditions of this Agreement, references to Consultant include Consultant Affiliates and subcontractors to the extent that such Consultant Affiliates and/or subcontractors are providing the Services to Denver Water as permitted by this Agreement; and (c) with regard to complying with the terms and conditions of this Agreement, references to Consultant include the applicable Consultant Personnel who are providing the Services. Notwithstanding the foregoing, under no circumstances shall Consultant Affiliates and subcontractors and Consultant Personnel be eligible for or exercise, use, or enjoy any rights or benefits of Consultant under the terms and conditions of this Agreement unless otherwise explicitly stated in the applicable term or condition of this Agreement.

ARTICLE 2—STATEMENT(S) OF WORK

2.1. Statements of Work. Consultant shall provide Services and/or Deliverables to Denver Water pursuant to one (1) or more Statements of Work that include the following contents: (a) a detailed description of the Services, including (i) identification of all milestone events, (ii) identification of all critical path milestones (“**Critical Path Milestones**”) and the commencement and completion times for such Critical Path Milestones, (iii) a detailed description of all activities to be performed by Consultant and Denver Water, (iv) the number of Consultant personnel-hours required to perform each task and Critical Path Milestone, (v) a detailed description of all activities, if any, to be performed by Third Parties, (vi) the dates and locations of scheduled status meetings, pursuant to **Section 2.5**, and (vii) commencement and completion times or any critical tasks related to or in connection with the Services; (b) the pricing of such Services and payment schedule; (c) the Deliverables (if any) to be generated by or provided in connection with such Services; (d) the benchmarks or levels against which the quality, completeness, timeliness, and accuracy of the Services will be and the metrics used to measure Consultant’s performance of the Services (“**Service Levels**”); (e) personnel designated to perform the Services; and (f) a transition/implementation schedule detailing how the Services will be transitioned from the current provider of the Services, if any, to Consultant. Denver Water shall not be responsible to pay for any Services and/or Deliverables under this Agreement unless such Services and/or Deliverables are the subject of a written Statement of Work or a duly authorized Change Order. The Statement of Work applicable to this Agreement is attached and incorporated into to this Agreement as **Exhibit [REDACTED]** (“**Statement(s) of Work**” or “**SOW**”).

2.2. Consultant’s Responsibilities for Equipment and Labor. Consultant will furnish and pay for all labor, materials, services, tools, software, equipment, and other resources (including, without limitation, computer resources) necessary to perform the Services, except as otherwise expressly specified in a Statement of Work.

2.3. Change Order Procedures.

2.4. Change Request. If either Party believes that a minor scope change or a minor change in the implementation processes, procedures, standards, Service Levels, or time frames is necessary or

desirable, such Party shall submit a written change request to the other Party (a “**Change Request**”). All other changes not specifically listed in the preceding sentence shall be made via a formal amendment to this Agreement. Consultant represents to Denver Water that it has factored into Consultant’s fee adequate contingencies for de minimis change orders. Accordingly, if Change Requests are made, they will be presumed not to impact the fees under this Agreement; provided, however, that if the Change Request consists of other than a de minimis deviation from the scope of the SOW, Consultant shall provide Denver Water with written notification of such other deviation within five (5) business days after receipt of the Change Request.

2.4.1. Change Response. In the event of a Denver Water-initiated Change Request, within five (5) business days of Consultant’s receipt of such Change Request, Consultant shall provide to Denver Water a written statement describing in detail: (a) the impact on any Denver Water System performance, if any, and the modifications to Denver Water System that will be required as a result of the Change Request including changes in Services and/or Deliverables; (b) the effect of the Change Request on the applicable SOW plans and tasks including any impact on any Critical Path Milestone dates; and (c) an estimate of the cost to implement each Change Request (collectively, the “**Change Response**”). If Consultant submits a Change Request to Denver Water, such Change Request shall include the information required for a Change Response. Denver Water shall accept or reject any Change Response or Consultant-initiated Change Request, as applicable, within five (5) business days after receipt of same from Consultant.

2.4.2. Change Order. If Denver Water accepts a Change Response or Consultant-initiated Change Request in writing executed by the representative of a Denver Water and Office of General Counsel, such Change Response, together with Denver Water’s Change Request, or such Consultant-initiated Change Request, shall be deemed to be a “**Change Order**” and shall become part of this Agreement and the applicable Statement of Work. If Denver Water rejects Consultant’s Change Response or Consultant-initiated Change Request, Consultant shall proceed to fulfill its obligations under this Agreement and the applicable Statement of Work.

2.5. Status Meetings and Reports. On the dates and at the locations specified in the SOW, and in any event no less than monthly, the Consultant SOW Manager and other Key Personnel, Denver Water SOW Manager, other appropriate representatives of the Parties and any necessary Third Parties shall meet at a Denver Water-designated site or by telephone conference, as determined by Denver Water, to discuss the status of each SOW, the development or implementation of any individual tasks within each SOW and any difficulties or issues that may exist, including personnel issues and any proposed changes to any Critical Path Milestones and/or changes to any date or other item set forth in the applicable SOW. The Parties acknowledge that any change of a Critical Path Milestone date shall require a mutually agreed-upon Change Order. Consultant shall keep minutes of all status meetings and Consultant shall issue copies of the minutes to all meeting attendees after each meeting. Such meeting minutes shall include a detailed summary of the following to the extent it was discussed during the status meeting: (a) the accomplishments and difficulties encountered during the prior reporting period; (b) suggestions and proposed actions for dealing with and resolving any identified difficulties and the anticipated results during the next reporting period; (c) a consolidated log of all outstanding SOW-related problems identified by Denver Water and Consultant that remain to be resolved; and (d) if applicable, identification of any Denver Water or Third Party delays or other circumstances that Consultant claims have impacted or will impact its ability to meet any Critical Path Milestone. Denver Water shall have the right to assume that Consultant does not know of any problems, difficulties and/or issues that may have an adverse impact on the SOW (whether from a timing, cost or performance standpoint) unless Consultant specifically identifies such problems, difficulties or issues in its written SOW Status Reports.

2.6. References to Denver Water Responsibilities. References to Denver Water’s responsibilities under this Agreement and/or a Statement of Work (other than Denver Water’s obligation to pay for the Services and/or Deliverables in accordance with this Agreement), are intended solely for purposes of identifying what is not Consultant’s responsibility and will not under any circumstance constitute grounds for a claim that Denver Water has breached the applicable Statement of Work or this Agreement.

2.7. Time of the Essence. Provider acknowledges and agrees that time is of the essence with respect

to its obligations under this Agreement and that prompt and timely performance of all such obligations, including all timetables and other requirements of this Agreement and each Service Order, is strictly required.

ARTICLE 3—SERVICES

3.1. Types of Services. As mutually agreed by the Parties and set forth in one or more Statement(s) of Work attached and incorporated into this Agreement as **Exhibit(s)** [REDACTED], Consultant shall provide professional or other services that may be requested by Denver Water, including consulting, design and build, implementation, hosting, integration, testing, development, custom programming, conversion, training, support, maintenance, cloud hosting and support services to Denver Water (individually or collectively, the “**Services**”).

3.2. General Criteria for the Performance of Services. Consultant shall perform the Services in a manner that shall: (a) avoid any adverse impact on the business, operations, financial condition and/or prospects of Denver Water; and (b) not degrade the services then being received by Denver Water from other Third Parties or provided internally by Denver Water. Consultant shall identify and resolve any problems that may impede or delay the timely completion of each task in the SOW that is Consultant’s responsibility and shall use its best efforts to assist Denver Water with the resolution of any problems that may impede or delay the timely completion of each task in the SOW that is Denver Water’s responsibility.

3.3. Compatibility and Interoperability. *As part of the Services, Consultant shall ensure* that all Denver Water Systems shall be successfully integrated, interfaced, and compatible with the Services and Deliverables and that adequate and appropriate (as determined by Denver Water) architectural functions and structural integration exists between and among Denver Water Systems and the Services and Deliverables such that the Services and Deliverables have the capability to communicate, execute programs, or transfer data seamlessly. Further, Consultant shall use commercially best efforts to ensure that the Services and/or Deliverables shall not adversely affect Denver Water Systems, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or similar measures. The requirements of this **Section 3.3** shall be referred to as the “**Interoperability Requirements**”.

3.4. Service Levels.

3.4.1. Service Level Commitment and Reporting. Consultant commits to provide the Services in accordance with the “**Services Levels**” set forth in one or more applicable Statement(s) of Work attached and incorporated into this Agreement. Consultant shall provide monthly reports to Denver Water regarding its performance relative to the Service Levels. If Consultant fails to meet a Service Level in a month, Consultant shall: (a) report that failure to Denver Water, unless such failure has already been reported by Denver Water; (b) promptly investigate the causes of the problem; (c) prepare a report identifying the causes and the methods to be used by Consultant to correct the problem and prevent a recurrence; (d) take commercially reasonable actions necessary to correct the problem and begin meeting the Service Levels as soon as practicable; (e) advise Denver Water of the status of the remedial efforts being undertaken with respect to such problem; and (f) if requested by Denver Water due to the nature of the problem or its recurrence, make available for meetings and consultation with Denver Water those personnel within Consultant who are the recognized experts with respect to the problem. Consultant shall utilize the necessary measurement and monitoring tools and procedures to measure and report Consultant’s performance of the Services against the applicable Service Levels to Denver Water on a monthly basis. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Service Levels and shall be subject to audit by Denver Water in accordance with this Agreement.

3.4.2. Service Level Credits. Consultant recognizes that its failure to meet the Service Levels may have a material adverse impact on the business and operations of Denver Water and

that the damage from Consultant's failure to meet a Service Level cannot be precisely determined. Accordingly, in the event that Consultant fails to meet a Service Level, then, in addition to any other remedies available to Denver Water under this Agreement, in equity, or at law, Denver Water shall recover the corresponding "**Service Level Credit**" specified in the applicable Statement(s) of Work as liquidated damages and not a penalty. Furthermore, if a Service Level falls below [REDACTED] % in any given month, Denver Water may declare the Consultant in default and terminate this Agreement. If Denver Water terminates the Agreement as a result of the Consultant's default hereunder, in addition to any other remedies available to Denver Water under this Agreement, in equity, or at law, Consultant shall (a) issue Denver Water a pro-rated refund of all pre-paid fees within thirty (30) days of the receipt of the notice of termination; and (b) pay Denver Water's deconversion costs in the amount not to exceed [REDACTED] within thirty (30) days of the invoice date. Consultant shall not be required to pay Service Level credits and shall not be in default hereunder to the extent that failure to meet Service Levels is caused solely: (a) by the actions of Denver Water; or (b) circumstances that constitute a Force Majeure Event.

3.5. Included Services. If any services, functions, or responsibilities not specifically described in this Agreement and/or the applicable Statement of Work are an inherent, necessary, or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement and/or the applicable Statement of Work, such as updates or bug fixes, they shall be deemed to be included within the scope of the Services to be delivered for the fees charged under this Agreement, as if such services, functions, or responsibilities were specifically described in this Agreement, unless such services, functions, or responsibilities are expressly excluded in this Agreement or designated in a writing approved by Denver Water to be the responsibility of Denver Water. Except as otherwise agreed in writing by the Parties as a Denver Water responsibility, Consultant shall procure or otherwise provide, at Consultant's cost and expense, all Consultant Personnel with the hardware, software, network facilities, and the other materials, resources, and items required to provide the Services and otherwise perform its obligations under this Agreement.

ARTICLE 4—SOFTWARE

4.1. License Grant. **ALTERNATIVE 1** Subject to the provisions of this Agreement, Consultant grants Denver Water and its end users a limited, personal, nonexclusive, nontransferable, non-assignable license to use the Software described in [REDACTED] for Denver Water's internal business use in connection with and for the duration of the Services. **OR ALTERNATIVE 2** Subject to the provisions of this Agreement, Consultant grants Denver Water a non-exclusive, non-transferable, worldwide right, limited to the Term defined in the applicable SOW, to authorize users within Denver Water's organization to (a) access and use the Services, Documentation, and any Software and hosting environment that Consultant makes available for use by Denver Water as part of the Services; and (b) display and print Documentation for Denver Water's own internal business purposes for the duration of the Term of this Agreement.

4.2. Restrictions. **ALTERNATIVE 1** Denver Water shall not (a) sublicense, resell, distribute or assign its right under the license granted under this Agreement to any other person or entity; (b) modify, adapt, or create derivative works of the Software or any associated Documentation; (c) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software; (d) use the Software for infringement analysis, benchmarking, or for any purpose other than as necessary to use the Services; (e) create any competing Software; and (f) or remove any copyright or other proprietary or confidential notices on any Software. **OR ALTERNATIVE 2** Denver Water shall not (a) sell, rent, lease, sublicense, or knowingly make the any Intellectual Property of the Consultant and any Documentation, to the extent the foregoing do not include Creations, ("**Materials**") available to any Third Party except as expressly authorized by this Agreement; (b) modify or create any derivative works of the Materials; (c) reverse engineer, decompile, decrypt, disassemble the Materials; and (d) remove or modify any proprietary markings or restrictive legends placed on any Materials.

4.3. Reserved for additional OGC approved Software License & M&S terms

4.4. Delivery [and Installation].

4.4.1. Delivery [and Installation]. Within [NUMBER] Business Days after the Effective Date, Consultant shall deliver [and install] the Software in accordance with the specifications set forth in Exhibit B.

4.4.2. Risk of Loss. Risk of loss of any tangible media on which any Software is delivered will not pass to Denver Water unless and until Denver Water's Acceptance of such Software in accordance with **Article 6**.

4.4.3. Documentation. Consultant shall provide Denver Water with complete and accurate Documentation for all Software prior to or concurrently with its delivery. The Documentation will include all technical and functional specifications and other such information as may be reasonably necessary for the effective installation, testing[, and] use[, support and maintenance] of the Software in the operating environment, including the effective configuration, integration, and systems administration of the Software, and the operation and the performance of all its functions. Licensor shall provide all Documentation in both hard copy and electronic form, in such formats and media as are set forth in Exhibit [X], or as Licensee may otherwise [reasonably] request [in writing].

ARTICLE 5—PERSONNEL

5.1. Minimum Personnel Requirements. All Consultant Personnel shall have experience, training, and expertise sufficient to perform Consultant's obligations under this Agreement, including Consultant's obligations with respect to the Specifications, Performance Standards, Interoperability Requirements, and/or Service Levels. All costs and expenses associated with equipping, training, and retaining Consultant Personnel and other staff is included within the fees. Denver Water shall not be required to pay for Services provided by any Consultant Personnel who does not possess the represented levels of experience and expertise.

5.2. Consultant SOW Manager. Each Statement of Work shall designate the Consultant SOW manager ("**Consultant SOW Manager**") and any Key Personnel for that SOW. The Consultant SOW Manager shall: (a) act as a liaison between Consultant and Denver Water for all matters related to this Agreement and the applicable Statement of Work; (b) manage the relationship with Denver Water and will be Denver Water's primary point of contact for all questions and issues relating to the SOW; (c) provide such information and data as is reasonably necessary to enable Denver Water to perform its duties, responsibilities or obligations hereunder; and (d) have overall responsibility for ensuring Consultant's performance of its responsibilities and obligations as set forth in this Agreement and in the applicable SOW.

5.3. Removal of Consultant Personnel by Denver Water. Denver Water shall have the right to require Consultant to replace the Consultant SOW Manager and other Consultant Personnel whom Denver Water deems to be unfit or otherwise unsatisfactory to perform Consultant's duties, responsibilities or obligations hereunder. Without limiting the foregoing, during the forty-eight (48) hour period immediately following Denver Water's notice to Consultant of such request for replacement, designated representatives from each Party shall meet to discuss the request and any alternative solutions. Race, gender, age, religion, national origin, and other legally discriminatory characteristics shall not be valid grounds for any such request by Denver Water.

5.4. Removal/Reassignment by Consultant. Consultant shall not remove or temporarily reassign the Consultant SOW Manager or other Key Personnel: (a) without providing at least ten (10) days prior written notice to Denver Water; and (b) until such time as the Parties have agreed to the replacement personnel. If Consultant replaces or reassigns the Consultant SOW Manager or other Key Personnel as permitted hereunder, the proposed replacement personnel shall possess the experience and training as required under **Section 5.1**. At no time shall there be a vacancy or gap in the position of Consultant SOW Manager or other Key Personnel unless otherwise agreed to by the Parties in writing. Denver Water may withhold an amount equal to fifty percent (50%) of all monies due and to become due to Consultant under

this Agreement until the position of Consultant SOW Manager or other Key Personnel is filled by a qualified employee, as approved by Denver Water. Consultant shall not charge Denver Water for the costs associated with educating any individuals replacing the Consultant SOW Manager or other Key Personnel (e.g., costs resulting from a replaced Consultant SOW Manager educating a new Consultant SOW Manager). Provided the replaced individual remains in the employ of Consultant, such individual shall continue to be available by telephone to answer any SOW-related questions.

5.5. Effect of Change in Personnel. Either Party's request for removal or reassignment of personnel shall not excuse Consultant from meeting any Critical Path Milestones.

5.6. Approval of Subcontractors. Consultant shall obtain Denver Water's written consent, which Denver Water may withhold in its sole discretion, before entering into agreements with or otherwise engaging any subcontractors who may supply any part of the Deliverables and/or Services to Denver Water. At Denver Water's request, Consultant shall provide information regarding the subcontractors' qualifications and a listing of the subcontractors' key personnel including, if requested by Denver Water, resumes of proposed Consultant Personnel. Consultant shall remain directly responsible to Denver Water for its subcontractors and shall indemnify Denver Water for the actions or omissions of its subcontractors under the terms and conditions specified in **Article 11 (Indemnification)**. All subcontractors and their representatives, agents and employees must sign a Confidentiality and Nondisclosure Agreement, in materially the form set forth in **Exhibit 2 (Nondisclosure Terms and Conditions)**, prior to and as a condition of becoming an authorized subcontractor, and shall be subject to the provisions of this Agreement applicable to Consultant Personnel, including but not limited to removal pursuant to **Section 5.3** and all Sections providing for Denver Water's audit rights.

5.7. Computer and Telecommunications Security. Consultant acknowledges that he, she, or an employee, subcontractor, or agent of the Consultant may have access to and use of Denver Water's computer or telecommunication resources to fulfill the terms of this Agreement. Consultant agrees that he, she or any of the Consultant's employees or agents who use such resources will abide by Denver Water's policies and guidelines governing the use of these resources and will comply with the provisions of **Appendix 1, entitled "Use of Denver Water Board Computer and Telecommunications Resources,"** attached and incorporated.

5.8. Responsibility for Consultant Personnel.

5.8.1. The Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making Denver Water and Consultant partners, joint venturers, principals, joint employers, agents, or employees of or with the other. No Consultant Personnel retained by Consultant to perform work on Denver Water's behalf or for Denver Water hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor, or subcontractor of Denver Water for any purpose.

5.8.2. Consultant, not Denver Water, has the right, power, authority, and duty to supervise and direct the activities of the Consultant Personnel and to compensate such Consultant Personnel for any work performed by them on the behalf of or for Denver Water pursuant to this Agreement. Consultant, and not Denver Water, shall be responsible and therefore solely liable for all acts and omissions of Consultant Personnel, including acts or omissions constituting negligence, gross negligence, willful misconduct, and/or fraud.

5.8.3. Consultant and Consultant Personnel, agents, and subcontractors shall in no way represent themselves to third parties as agents or employees of Denver Water in performance of the Services.

5.8.4. Consultant acknowledges that it is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Services for Denver Water.

5.8.5. The Consultant acknowledges that it is obligated and solely liable to pay and/or withhold, if applicable, on behalf of Consultant Personnel federal and state income taxes, payroll taxes, unemployment insurance, social security, disability benefits, FICA taxes, and workers' compensation payments and premiums applicable to this Agreement or the Services. The Consultant shall indemnify Denver Water for any liability resulting

from noncompliance with the Consultant's obligations under this Section.

5.9. Screening of Consultant Personnel.

WORK INVOLVING SECURITY CONCERNS

At least five (5) working days before assigning an employee or agent to perform duties under this Agreement that require the employee or agent to work under circumstances presenting security concerns or to have access to Denver Water's sensitive information, proprietary computer programs, software or servers, Consultant will submit the employee's or agent's name to Denver Water and certify on Denver Water-provided Certification of Personnel Screening form that no more than one (1) year prior to the assignment it performed a background check on the employee or agent, including a review of criminal history, and determined that the employee or agent does not pose a risk to persons or property. Consultant's determination should be based on guidance provided by the U.S. Equal Employment Opportunity Commission regarding the use of arrest and conviction history in employment decisions, which requires a weighing of (1) the nature and gravity of the offense or conduct, (2) the time that has passed since the offense, conduct or the employee's completion of any sentence given as a result of the offense, and (3) the nature of the job held or sought. Background checks must include a Colorado Bureau of Investigation (CBI) Criminal History Check, and, if the employee or agent has lived outside the State of Colorado or the United States during the last five (5) years, a criminal history check from each state or country of residence. For employees or agents who will have access to Denver Water's financial records and/or accounting processes, including purchasing, payables, receivables, and treasury or cash management, Consultant also will conduct a credit history check on the employee or agent and certify on Denver Water-provided Certification of Personnel Screening form that the Consultant has determined that the employee or agent does not pose a risk to Denver Water. Denver Water reserves the right to direct the Consultant to assign another employee or agent, meeting the requirements of this paragraph, to perform the Services if Denver Water has reason to believe that during the term of the Agreement the assigned employee or agent engaged in criminal activity or was involved in financial improprieties, to be determined by Denver Water in its sole discretion.

5.10. Denver Water Personnel. Denver Water shall provide personnel to perform its obligations under this Agreement and any Statement of Work, including a SOW manager for each SOW ("**Denver Water SOW Manager**"), who shall act as a liaison between Consultant and Denver Water, coordinate Denver Water resources, coordinate Denver Water personnel and have overall responsibility for meeting Denver Water's responsibilities and obligations.

ARTICLE 6—TESTING PROCESS

6.1. Test Plan. Consultant shall be responsible for testing of the Services and/or Deliverables, or components thereof, as applicable, in accordance with a test plan to be mutually developed and agreed to by the Parties in writing ("**Test Plan**"), which Test Plan will incorporate testing methodologies to confirm that the Services and/or Deliverables operate in accordance with the applicable Documentation, Specifications, Service Levels, Interoperability Requirements, and Performance Standards. The Test Plan will be developed in accordance with the time frame specified in the applicable SOW, and the date to complete development of the Test Plan shall, unless otherwise agreed to by the Parties, be a Critical Path Milestone. In addition to the above, each Test Plan shall describe the exact scope, methodologies, and procedures (including expected performance results) for testing the Services and/or Deliverables. When approved by Denver Water in writing, the Test Plan will be attached to the applicable Statement of Work.

6.2. User Acceptance Testing. User acceptance testing for the Services and/or Deliverables ("**UAT**") shall commence on the date specified in the applicable SOW. If any Defects in the Services and/or Deliverables are discovered as a result of UAT, Consultant shall promptly correct such Defects. When all Defects identified during UAT have been corrected, Denver Water shall give Consultant written notice thereof and the Services and/or Deliverables shall thereafter be ready for Production Testing.

6.3. Production Testing. Following successful completion of all User Acceptance Testing, Denver Water shall have the period specified for Production Testing in the applicable Statement of Work, but in

no event shall such period be less than thirty (30) business days, (“**Production Testing Period**”) to test the Services and/or Deliverables, or components thereof, under actual, everyday operating conditions to assess whether such Services and/or Deliverables, or components thereof, operate in accordance with the applicable Documentation, Specifications, Service Levels, and Performance Standards (“**Production Testing**”). In the event any Defects in the Services and/or Deliverables, or components thereof, are discovered during the Production Testing Period, Denver Water shall report such Defects to Consultant, and Consultant shall promptly correct all Defects in the Services and/or Deliverables. Upon Consultant’s receipt of notice from Denver Water of any Defects, the Production Testing Period (but not Denver Water’s use of the Services and/or Deliverables, or components thereof) shall be suspended temporarily and shall recommence upon Consultant’s receipt of written notice from Denver Water that such Defects have been corrected; provided, however, that Denver Water shall in no event have less than fifteen (15) days to verify any correction provided by Consultant. Subject to the terms of **Section 6.5**, such process shall repeat as often as necessary until all Defects have been corrected. Successful Production Testing shall occur when all Defects in the Services and/or Deliverables have been corrected to Denver Water’s satisfaction and the Services and/or Deliverables have been operating without experiencing any Defects for at least (10) consecutive days.

6.4. Acceptance. “**Acceptance**” for the applicable Services and/or Deliverables shall occur only when: (a) Consultant has corrected, to Denver Water’s satisfaction, all Defects identified by the Parties during testing; (b) Consultant has provided to Denver Water all Services and/or Deliverables required to be provided to Denver Water pursuant to the applicable Statement of Work, and each of the Parties has completed all tasks required to be completed by such Party that are identified by the Parties as a pre-condition to Denver Water’s acceptance; and (c) Denver Water notifies Consultant in writing that all testing for the Services and/or Deliverables, or components thereof, as applicable, has been completed successfully in accordance with the terms of this **Section 6.4** and the applicable Statement of Work and that the requirements of **subsections (a) and (b)** above have been satisfied to Denver Water’s satisfaction. With respect to Statements of Work involving more than one phase or rollout, the testing and acceptance process may be conducted on a per-phase/rollout basis, with final Acceptance occurring only upon successful completion and Acceptance of each phase/rollout, as mutually agreed by the Parties, set forth in the applicable Statement of Work, and set forth in writing by Denver Water serving as notification of Denver Water’s final Acceptance. Nothing else, including Denver Water’s use of the Services and/or Deliverables, or any components thereof, in a live, operational environment, shall constitute Acceptance (under applicable state contract law, the Uniform Commercial Code (UCC) or the Uniform Computer Information Transactions Act (UCITA), as adopted by Colorado) of any portion of the Services and/or Deliverables, and/or the applicable Statement of Work.

6.5. Failure to Achieve Acceptance. In the event Acceptance is not achieved within ninety (90) days following commencement of Production Testing, Denver Water shall have the right to declare an Event of Default and seek the rights and remedies available to it under **Article 9 (Term and Termination)** of this Agreement. Without limiting the foregoing, the Parties hereby acknowledge and agree that, upon the occurrence of such event with respect to the Statement of Work, Denver Water may elect to terminate this Agreement without any liability to the Consultant and the Consultant shall fully refund any and all fees, expenses, and amounts paid to Consultant in connection with or related to the applicable Statement of Work within fourteen (14) days of such termination.

6.6. Post-Acceptance Correction of Defects. Consultant shall correct any Defects in the Services and/or Deliverables, or any components thereof, remaining to be corrected following Acceptance under the applicable Statement of Work.

ARTICLE 7—REPRESENTATIONS AND WARRANTIES

7.1. Deliverables Functionality and Performance. Consultant represents and warrants to Denver Water that the Deliverables provided under this Agreement shall: (a) conform to and perform in accordance with the functionality and specifications set forth the applicable Statement of Work(s),

Documentation, Specifications, Service Levels and Performance Standards; (b) for the period of time specified in the applicable Statement of Work or, if no time frame for a warranty is specified therein, one (1) year from the date of Acceptance (the “**Warranty Period**”) operate without Defect in accordance with the applicable Documentation, Specifications, Service Levels, Interoperability Requirements and Performance Standards; and (c) shall be updated, maintained, and/or corrected as needed to meet (a) and (b). Consultant further represents and warrants that Deliverables shall perform in accordance with the purposes for which the Deliverables were designed and intended to be used by Denver Water (as such intended use is generally described in the Consultant Proposal and in the applicable Statement of Work), it being acknowledged and agreed that Denver Water selected Consultant to provide the Deliverables based, in part, on Consultant’s representations that the Deliverables are capable of meeting Denver Water’s needs. Consultant shall correct, at no additional cost or expense to Denver Water, any failure of the applicable Deliverables to operate in accordance with the warranties set forth above. If additional software, equipment and/or services are required to remedy the failure, Consultant shall provide to Denver Water, at no additional cost or expense to Denver Water, the additional software, equipment and/or services required for the Deliverables to operate in accordance with the warranties set forth above. In the event Consultant is unable to correct such failure within thirty (30) days after receiving notice thereof, an Event of Default shall be deemed to have occurred. This warranty shall survive the expiration or termination of this Agreement for the applicable Warranty Period. Furthermore, Consultant represents that all Deliverables provided under this Agreement are original or a license to the same has been obtained for Denver Water as required in this Agreement, will perform for the purpose intended, and, if software, contain no malware or undisclosed means of access. This Warranty shall survive the expiration or termination of this Agreement.

7.2. Ability to Perform the Services. Consultant represents and warrants to Denver Water that Consultant has the skills, resources, and expertise to provide and shall provide all Services in accordance with the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Consultant represents and warrants to Denver Water that: (a) all Services provided under this Agreement shall be provided in a timely, professional, and workmanlike manner consistent with the highest industry standards of quality and integrity; provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance; and (b) other than the applicable fees set forth in **Article 8 (Price and Payment)**, no additional cost or expense shall be required of Denver Water in order for Consultant to be able to provide the Services as required under this Agreement.

7.3. Intellectual Property. Consultant further represents and warrants to Denver Water that the Services and/or Deliverables and Denver Water’s use of the Services and/or Deliverables does not and shall not infringe upon any Intellectual Property Rights of any Third Party, and there is currently no actual or threatened suit against Consultant by any Third Party based on an alleged violation of such Intellectual Property Rights. This warranty shall survive the expiration or termination of this Agreement.

7.4. Disabling Code. Consultant represents and warrants to Denver Water that the Deliverables do not contain and will not receive from Consultant’s data transmission via modem or any other Consultant medium any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Deliverables to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively, a “**Disabling Code**”). In the event a Disabling Code is identified, Consultant shall take all steps necessary, at no additional cost or expense to Denver Water, to: (a) restore and/or reconstruct any and all Confidential Information and data lost by Denver Water as a result of such Disabling Code; (b) furnish to Denver Water a new copy of the Deliverables without the presence of Disabling Codes; and (c) install and implement such new copy of the Deliverables. This warranty shall survive any expiration or termination of this Agreement until Denver Water discontinues its use of the applicable Deliverables.

7.5. Open Source. Unless otherwise agreed by the Parties in writing, Consultant represents and warrants to Denver Water that the Deliverables provided pursuant to this Agreement shall not contain any “**Open Source**”. For purposes of this Agreement, “**Open Source**” means any software code that: (a) contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free

software, open source software, shareware (e.g., Linux), or similar licensing or distribution models; and (b) is subject to any agreement with terms requiring that such software code be (i) disclosed or distributed in Source Code or Object Code form, (ii) licensed for the purpose of making derivative works, and/or (iii) redistributable. Open Source includes, but is not limited to, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (A) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (B) the Artistic License (e.g., PERL); (C) the Mozilla Public License(s); (D) the Netscape Public License; (E) the Berkeley software design (BSD) license including Free BSD or BSD-style license; (F) the Sun Community Source License (SCSL); (G) an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces); (H) the Apache Server license; and (I) any licenses listed at <http://www.opensource.org/licenses>.

7.6. Information Furnished to Denver Water. Consultant represents and warrants to Denver Water that all written information (including financial information) furnished to Denver Water prior to the Effective Date by or on behalf of Consultant in connection with this Agreement, including in the Consultant Proposal, and all the information made a part of this Agreement is true, accurate and complete, and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading.

7.7. Third Party Warranties and Indemnities. For any Third Party software provided by Consultant to Denver Water, Consultant hereby assigns to Denver Water all end-user warranties and indemnities relating to such Third Party software. To the extent that Consultant is not permitted to assign any of such end-user warranties and indemnities through to Denver Water, Consultant shall enforce such warranties and indemnities on behalf of Denver Water to the extent Consultant is permitted to do so under the terms of the applicable Third Party agreements. The Consultant obligations set forth in this **Section 7.7** are in addition to and not in lieu of Consultant's warranty and indemnification obligations, responsibilities and liabilities with regard to such Third Party software under this **Article 7 (Representation and Warranties)** and **Article 11 (Indemnification)** and **Article 12 (Insurance)**. This warranty shall survive the expiration or termination of this Agreement.

7.8. Warranty Disclaimer. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EACH PARTY'S ONLY WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WILL APPLY. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, CONSULTANT SPECIFICALLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 8—PRICE AND PAYMENTS

8.1. Total Charges. Consultant's charges for the Services shall all be set forth in this **Article 8** and/or in the applicable Statement of Work. Such charges are the total charges for the Services, and no other fees, costs, or expenses may be charged to Denver Water. Consultant has not received and will not receive any other compensation in connection with this Agreement. Consultant warrants that it has not paid or promised to pay any compensation to anyone in order to obtain this Agreement.

8.2. Time and Method of Payment. All amounts payable under this Agreement shall be payable in U.S. Dollars. Denver Water shall pay all net undisputed amounts due to Consultant under this Agreement within thirty (30) days of Denver Water's receipt of Consultant's invoice. Denver Water may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to Services covered in the invoice (and with respect to Colo. Rev. Stat. Article 26 of Title 38 if applicable), or resolve a dispute with the Consultant regarding an invoice. **Denver Water will not issue payments unless Consultant has current insurance coverage in accordance with this Agreement.** Consultant shall submit invoices following completion of each Critical Path Milestone OR on a monthly basis (but not until the last day of each month during which Services and/or Deliverables were delivered).

8.3. Fees. The rates for all Services rendered and/or Deliverables provided by Consultant to Denver Water shall be payable as set forth herein and/or in the applicable Statement of Work. The applicable Statement of Work and each invoice submitted pursuant to this agreement shall detail the following: (a) the Services performed (e.g., each activity, task and/or Critical Path Milestone); (b) the identity of the

Consultant Personnel performing the Services; (c) the number of hours and corresponding fees attributable to each such person's performance of the Services for the pay period; and (d) such other information as reasonable requested by Denver Water. Consultant must submit documentation supporting the charges in the invoice, which must be consistent with this Agreement, and must include the contract number of this Agreement on each invoice. The Parties agree that payments to Consultant for Services shall be invoiced as follows:

CHOICE 1 – if the Consultant is to be paid based on hourly/time-and-materials basis.

8.3.1. Time-and-Materials Services. All Services identified in a Statement of Work as Services to be paid on a time-and-materials basis shall be invoiced in accordance with the terms set forth in this **Article 8**. The applicable Statement of Work shall identify no less than three (3) Critical Path Milestones. Upon Consultant's successful completion of each Critical Path Milestone and delivery to Denver Water of any Services and/or Deliverables corresponding to such Critical Path Milestone, Consultant shall invoice Denver Water for an amount equal to _____ (____%) of the fees for all Services rendered by Consultant for completion of the applicable Critical Path Milestone. The remaining _____ (____%) of such fees for each Critical Path Milestone shall be invoiced by Consultant upon Acceptance. The hourly rate to be paid to the Consultant includes labor, payroll, all overhead expenses, and profit. Overhead expenses include charges for clerical, administrative, accounting, legal, and computer personnel and may not be billed separately. The hours billed by the Consultant shall not exceed hours actually worked on the Services, as shown in the Consultant's timekeeping records, and shall be limited to the hours actually paid to the employee for the Services. The following chart identifies the particular persons or classes of persons who will perform the Services under this Agreement and the hourly rate for each. Consultant shall not bill Denver Water for persons or classes of persons not listed below or at hourly rates different from those specified below.

Insert hourly rates for persons who will perform Services under this Agreement and names of those persons if appropriate.

CHOICE 2 – if the Consultant is to be paid based on Fixed Rate basis.

8.3.2. Fixed Fee Services. All Services identified in a Statement of Work as Services to be paid at a fixed rate shall be invoiced in accordance with the payment schedule set forth in the applicable Statement of Work and this **Article 8**. If no payment schedule is set forth in the applicable Statement of Work, such Service fees shall be invoiced as follows:

% of Services Fee	Event
____%	Execution of the Statement of Work
____%	Spread equally among no less than three (3) Critical Path Milestones
____%	Acceptance

CHOICE 3 – if the Consultant is to be paid based on a per- work product basis

8.3.3. Work Product Services. All Services identified in a Statement of Work as Services to be paid on a per work product basis shall be invoiced in accordance with the terms set forth in this **Article 8**. The Consultant will be paid the respective amount listed below upon completion of each work product described.

Insert list of work products and amount to be paid for each

CHOICE 4 – if the Consultant will be paid software license fees and/or software maintenance and support fees.

8.3.4. Recurring Fees. Any recurring fees, including software license fees, maintenance, support, and the like shall be invoiced upon Acceptance, and thereafter annually on the anniversary date of such Acceptance in accordance with the terms of this Agreement and at the rates and schedule listed below OR in the applicable Statement of Work.

8.4. Not to Exceed Services.

SELECT THE FOLLOWING SUBPARAGRAPH IF CONSULTANT WILL NOT BE REIMBURSED FOR OUT-OF-POCKET COSTS.

The total compensation under this Agreement shall not exceed \$Insert not-to-exceed amount. Denver Water's obligations with respect to Services performed under the applicable Statement of Work shall not exceed such amount (the "**Not to Exceed Amount**"), regardless of the amount of time and materials expended by Consultant. There are no reimbursable out-of-pocket costs associated with this Agreement.

SELECT THE FOLLOWING SUBPARAGRAPH IF CONSULTANT WILL BE REIMBURSED FOR OUT-OF-POCKET COSTS.

The total compensation under this Agreement, excluding out-of-pocket costs, shall not exceed \$Insert not-to-exceed amount. Denver Water's obligations with respect to Services performed under the applicable Statement of Work (other than to reimburse for out of pocket costs in accordance with this **Article 8 (Price and Payments)**) shall not exceed such amount (the "**Not to Exceed Amount**"), regardless of the amount of time and materials expended by Consultant. The Consultant will be paid for the following out-of-pocket costs, as long as they are approved in advance by Denver Water:

Insert those reimbursable costs that will be paid in addition to the hourly rate. Approved costs should not include more than the following: travel expenses; long distance telephone calls; postage; faxes; express delivery services; printing and reproduction; photocopying; materials specified in the Agreement; and subcontracted work.

The Consultant shall bill for the out-of-pocket costs listed above at actual costs without markup. For any out-of-pocket costs that exceed \$200.00, this amount may need to be adjusted based on the size of the contract the Consultant shall provide a copy of the underlying invoice, travel voucher or other document supporting the out-of-pocket cost.

8.5. Disputed Amounts. If Denver Water disputes any portion of the invoice, it will provide written notice to the Consultant before the invoice payment is due, identifying the reason for the dispute and the amount being disputed. All undisputed portions will be paid when due. The Parties will then work in good faith to resolve the dispute. If the Consultant determines in good faith that a disputed charge is in error, the Consultant will issue a credit against the next invoice or reverse the amount incorrectly billed no later than thirty (30) days after such determination. If the Consultant determines in good faith that a disputed charge was billed correctly, Denver Water's payment will be due no later than thirty (30) days after Denver

Water's receipt of the notice of such determination. All of Consultant's obligations shall continue unabated during the duration of the dispute resolution. Denver Water shall have the right to set off any undisputed amounts owed to Consultant against any credits due Denver Water by Consultant.

8.6. No Charge for Reperformance. At no additional cost or expense to Denver Water, Consultant will reperform (including any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with Denver Water's reasonable cooperation) any Services and/or reprovide any Deliverables that result in incorrect outputs due to an error or breach by Consultant, and the resources required for such performance or provisioning will not be counted in calculating the fees or charges payable or resources utilized by Denver Water hereunder.

8.7. Set Off. Denver Water may set off against any and all amounts otherwise payable to Consultant pursuant to any of the provisions of this Agreement any and all amounts owed by Consultant to Denver Water under the provisions of this Agreement or any other agreements between the Parties including Service Level credits. Within thirty (30) days following any such set off, Denver Water shall provide to Consultant a written accounting of such set off and a written statement of the reasons therefor.

8.8. Records and Audits. Consultant shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Services, purchases, and billings under this Agreement. Consultant shall retain all such accounting records and documentation for at least two (2) years after final payment. Denver Water has the right to audit the accounting records and documentation of Consultant related to Services at any time during the period of this Agreement and for two (2) years after final payment. Consultant shall refund to Denver Water any charges determined by Denver Water's audit to be inconsistent with this Agreement.

ARTICLE 9—TERM AND TERMINATION

9.1. Term.

9.1.1 Term of Agreement. Times of performance and deadlines for completion of Critical Path Milestones shall be included in the SOW. The Consultant shall commence the Services after the Effective Date of this Agreement. The Term of this Agreement shall begin on the Effective Date and shall terminate no later than **insert date of termination**. Denver Water may elect to renew the Agreement for additional year terms by amending this Agreement, after providing a written notice of the intent to renew 30 days prior to the expiration of the term or any renewal term, as the case may be. The Parties agree that in the event of a renewal, the Consultant shall not increase its fees by more than () percent of the Service **fees** paid by Denver Water for the immediately preceding term or renewal term, as the case may be.

9.1.2 Survival. Notwithstanding the foregoing, any terms and conditions of this Agreement expressly identified or that would by their nature survive the expiration or termination of this Agreement and/or the applicable Statement of Work (including any terms pertaining to Consultant's grant to Denver Water of any perpetual licenses hereunder) shall so survive.

9.2. Termination for Convenience. Denver Water reserves the exclusive right to terminate or suspend all or any portion of the Services by giving fourteen (14) days' written notice to the Consultant. If any portion of the project shall be terminated or suspended, Denver Water will pay the Consultant for all Services already properly provided by Consultant but not paid for by Denver Water, pro-rated as appropriate for any fixed-fee SOW, in each case as of the date of Consultant's receipt of Denver Water's written notice of termination. If the project is suspended and the Consultant is not given an order to resume work within sixty (60) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, the Consultant shall immediately deliver to Denver Water any Deliverables then in existence that have been prepared by the Consultant pursuant to this Agreement and that have been paid for by Denver Water.

9.3. Termination for Force Majeure. The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement when and to the extent such failure or delay is solely caused by the following events: natural disaster, flood, fire, war, or public enemy (collectively or

individually, "**Force Majeure Event**"). Events not listed in the preceding sentence, including, but not limited to, epidemics such as the current COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. As a condition precedent to invoking this force majeure clause, the invoking party must provide timely written notice detailing the reasons why the force majeure event has made performance under the original contract terms impossible, and the invoking party must immediately take all reasonable measures to mitigate or avoid damages to the other party. In the event a portion of the Services, or Consultant's performance of the Services, is delayed or interrupted because of a Force Majeure Event for a period of five (5) consecutive days or more, and such delay or interruption impacts Denver Water business and Consultant fails to provide a temporary alternative reasonably acceptable to Denver Water, Denver Water shall have the right, in its sole discretion without liability to: (a) terminate the Agreement; (b) terminate the affected Statement of Work; or (c) terminate the affected portion of the Services by providing Consultant with written notice of termination and paying Consultant for any accrued fees for such portion of the affected Services pro-rated to the effective date of termination. If Denver Water terminates only the affected portion of the Services pursuant to subsection (b) above, and performs such services itself or contracts for an alternate provider to provide such services, upon Consultant's request Denver Water may transfer such services back to Consultant; provided that Consultant pays all costs (including fees imposed by the alternate provider) relating to such transfer. Except as set forth in this **Section 9.3**: (a) Denver Water shall in no event be required to pay any other fees, costs, or expenses to Consultant with respect to any such termination; and (b) Denver Water shall have no further liabilities or obligations to Consultant under this Agreement.

9.4. Events of Default. Every term and condition of this Agreement is a material term of this Agreement. In the event either party should fail or refuse to perform according to the material terms of this Agreement, such party may be declared in default by the other party by a written notice.

9.5. Remedies. Unless a specific cure period has otherwise been established for an Event of Default (in which case such cure period shall apply instead of the cure period listed in this **Section 9.5**), in the event a Party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to correct, or commence correcting, the Event of Default (the "Cure Period"). If the Event of Default has not been corrected or begun to be corrected within the Cure Period, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If this Agreement is terminated in whole or part for Consultant's default, Denver Water shall have the right, at Consultant's expense, to engage third parties to correct Consultant's default and to deliver any Deliverables and/or perform any Services that Consultant failed to deliver and/or perform; however, Consultant shall continue performance of this Agreement to the extent not terminated. The Parties agree that no profits that the Consultant might realize from this or other work are within the scope of this Agreement. The Parties further agree that the Consultant waives any right to recover and shall not be compensated for any such lost profits or other consequential damages arising from a breach by Denver Water.

9.6. Equitable Relief. Notwithstanding anything contained in this Agreement to the contrary, the Parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a Party to seek such equitable relief in a court of competent jurisdiction.

9.7. Remedies Not Exclusive. Except as otherwise expressly provided in this Agreement, the rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement. Notwithstanding the foregoing and anything contained herein to the contrary, Consultant expressly waives and disclaims any right or remedy it may have to de-install, disable, or repossess any Services and/or Deliverables without due process of law.

9.8. Termination Assistance Rights. Service Provider understands and agrees that Customer's business operations are dependent on the Services and/or Deliverables contemplated under this Agreement, and that Customer's inability to receive the Services and/or Deliverables would result in irreparable damages to Customer. Therefore, upon the expiration of this Agreement or its termination by either Party for any reason, including the breach of this Agreement by the other Party, Denver Water shall have the option, for up to nine (9) months ("**Termination Assistance Period**") beyond the termination date, to

continue to use the Services and Deliverables for the purposes set forth in the applicable Statement of Work and upon payment of the fees at the rate set forth in such Statement of Work as and when due. After such nine (9) month period, Consultant shall provide extensions of the Services (including the Termination Assistance Services) as requested by Denver Water in serial thirty (30) day extension terms for up to **an additional six (6) months**. The total Termination Assistance Period shall not exceed **fifteen (15) months**. The terms and conditions of this Agreement, including Service Levels, shall apply to the Services during the Termination Assistance Period. Consultant and Denver Water will cooperate in good faith during the Termination Assistance Period in order to facilitate Denver Water's transition either to a new consultant or to perform the Services on its own, and Consultant shall provide all such assistance as may be requested by Denver Water to effectuate such transition at the rates set forth in the Agreement, or, if applicable rates are not contained in this Agreement, at the rates comparable to or better than the equivalent pricing terms being offered by Consultant to any present customer of the Consultant. Notwithstanding anything to the contrary in this Agreement, Service Provider shall have no right to withhold or limit any of the Services (including the Termination Assistance Services) other than for a failure by Customer to timely pay the undisputed amounts due for the Services (including Termination Assistance Services). Denver Water shall have the right to seek specific performance of this Section.

ARTICLE 10—PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION AND AUDIT RIGHTS

10.1. Prior Works All information and materials, including Software, provided to Denver Water by Consultant or otherwise used by Consultant in connection with the Services, that Consultant developed or acquired prior to or independently of this Agreement (the "**Prior Works**") are and shall remain the property of Consultant or its licensors, which shall retain all Intellectual Property Rights therein. Prior Works shall also include derivative works created to the foregoing, even if the derivative works were created as part of the Services, to the extent such derivative works do not incorporate any Creations, Denver Water Confidential Information, and/or Denver Water Materials. The Consultant agrees that no Prior Works shall be incorporated into the Creations and/or used in performing Services and/or providing Deliverables unless the Consultant obtains Denver Water's prior written consent to the use of the Prior Works, and unless the Consultant grants a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, create derivative works of, copy, publicly display, use, sell, and distribute such Prior Works as incorporated in the Services and/or Deliverables. Consultant shall disclose all Prior Works incorporated in the Creations in writing to Denver Water. Consultant further agrees that it shall not use or incorporate any Third Party works, Third Party inventions, or open-source software in the Deliverables without prior disclosure to Denver Water, without provision of a valid license providing Denver Water with all rights necessary to use such as used or incorporated in the Deliverables, and without written approval from Denver Water.

10.2. Denver Water Information and Materials. All information, materials and technology, including computer software, and any and all Confidential Information provided to Consultant by Denver Water or otherwise used by Denver Water in connection with the Services, including modifications, changes and derivatives thereto whether or not created as part of the Services (the "**Denver Water Materials**") are and shall remain the property of Denver Water, which shall retain all Intellectual Property Rights therein. Consultant obtains no right, title, or interest therein, except that during the term of this Agreement Consultant may use Denver Water Materials for the sole, exclusive, and limited purpose of performing the Services in compliance with the terms and conditions of this Agreement. Consultant shall comply with the terms of any license and or other agreement applicable to such Denver Water Material. In addition, with respect to any Denver Water Confidential Information, Consultant shall comply with the provisions of the **Exhibit 2 (Non-Disclosure Terms and Conditions)**. Consultant shall not encumber Denver Water Materials in any way, and promptly shall return to Denver Water any and all Denver Water Materials in Consultant's possession or control upon Denver Water's request and, in any event, upon termination or expiration of the Agreement.

10.3. Ownership of Creations

10.2.1 Definition of Creations; Denver Water Ownership Rights. The Parties hereby agree that all software programming (including all Object Code, Source Code, and Source Code

Materials pertaining thereto), printed material, original works of authorship, electronic documents, work product, and other Deliverables (including APIs), and all related written reports, requirements documents (including newly created technical and non-technical data embodied therein), specifications, program materials, flow charts, notes, outlines and the like, and all intermediate and partial versions thereof, that are developed, authored, conceived, originated, prepared, reduced to practice, or otherwise created by Consultant or its employees, agents, or subcontractors for or on behalf of Denver Water in connection with Consultant's performance under this Agreement (collectively, "**Creations**"), and all Intellectual Property Rights in and thereto and derivative works created therefrom, shall be the sole and exclusive property of Denver Water. Such ownership shall inure to the benefit of Denver Water from the date of the conception, creation, or fixation of the Creations in a tangible medium of expression, as applicable. All newly created copyright aspects of the Creations shall be considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent the Creations, or any part thereof, is found by a court of competent jurisdiction not to be a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Consultant agrees that all exclusive right, title, and interest in and to those newly created copyrightable aspects of the Creations, and all copies thereof, are hereby expressly assigned automatically to Denver Water without further consideration. Notwithstanding the foregoing, all Intellectual Property Rights in and to the Creations and any of the ideas contained therein shall be automatically assigned to Denver Water without further consideration. Consultant hereby waives and quitclaims to Denver Water any and all claims of any nature whatsoever which Consultant now or may hereafter have for infringement of any Intellectual Property Right assigned to Denver Water. All Creations shall be turned over to Denver Water in the format requested by Denver Water upon completion of the Services or at such time that may otherwise be requested by Denver Water. For custom developed software, Consultant shall furnish to Denver Water, concurrently with the delivery of the Creations and any thereto, the Source Code for the Creations and all related Documentation and Source Code Materials.

10.2.2 Prohibitions and Limitations on Consultant. Consultant shall not use, reuse, sell, license, or dispose of the Creations, or any intermediate or partial version thereof, or any derivative work based upon the Creations in any manner without Denver Water's express written consent, which consent may be withheld by Denver Water in its sole discretion. Without limiting the foregoing, Creations shall not be incorporated by Consultant into Consultant's technology or otherwise made available to others, unless otherwise specifically approved by Denver Water in writing in its sole discretion.

10.4. Confidential Information. The Parties shall comply with the Non-Disclosure Terms and Conditions attached and incorporated hereto as **Exhibit 2**, which shall survive termination of this Agreement.

10.5. Audits. Upon notice from Denver Water, Consultant shall provide Denver Water, its auditors (including internal audit staff and external auditors), inspectors, regulators, and other reasonably designated representatives as Denver Water may from time to time designate in writing (collectively, the "**Denver Water Auditors**") with access to, at reasonable times, to any facility or part of a facility at which either Consultant or any of its subcontractors is providing the Services, to Consultant Personnel, and to data and records relating to the Services for purposes of verifying compliance with this Agreement and to support Denver Water's audits of the business of Denver Water relating to the Services. Consultant will provide any assistance that Denver Water Auditors may reasonably require with respect to such audits. All financial and non-financial transactions resulting from this Agreement shall be documented by Consultant and subject to audit by Denver Water Auditors.

ARTICLE 11—INDEMNIFICATION

ALTERNATIVE 1 – KEEP THIS LANGUAGE BY DEFAULT

11.1. *Indemnification Obligations.* Consultant shall indemnify, hold harmless, and defend Denver Water from and against any and all Losses based upon, relating to, or arising from any and all Third Party Actions relating to or resulting from this Agreement or any Services provided by Consultant pursuant to this Agreement.

ALTERNATIVE 2 – USE THIS LANGUAGE WITH OGC APPROVAL ONLY

11.1. *General Indemnification Obligations.* Consultant shall indemnify, hold harmless, and defend Denver Water from and against any and all Losses based upon, relating to, or arising from any and all Third Party Actions relating to or resulting from:

[(a) Consultant's breach of any representation, warranty, covenant, or obligation under this Agreement (including any action or failure to act by any Consultant contractor that, if taken or not taken by Consultant, would constitute such a breach by Consultant);

(b) any action or failure to take a required action, negligence, gross negligence, or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance of any Services or other activity required of, or performed by or on behalf of, Consultant or any Consultant's contractor under this Agreement.]

OR [this Agreement or any Services provided by Consultant pursuant to this Agreement].

This Section shall survive the expiration or termination of this Agreement.

11.2. *Intellectual Property Indemnification.* Consultant shall indemnify, defend, and hold Denver Water harmless from and against any and all Losses based upon, relating to or arising from any and all Third Party Actions alleging that the Services and/or Deliverables misappropriate, infringe and/or violate (and/or that Denver Water's use of the Services and/or Deliverables in accordance with the terms of this Agreement constitutes a misappropriation, infringement, and/or violation of) any Intellectual Property Right of any Third Party. If Denver Water's right to receive and use the Services and/or Deliverables, or any part(s) thereof, is enjoined or interfered with in any manner or appears likely to be enjoined or interfered with, Consultant promptly (but in any case within thirty (30) days of such injunction or interference) shall, at Consultant's sole cost and expense and in such a manner as to minimize the disturbance to Denver Water's business activities and rights under this Agreement, do one of the following: (a) obtain for Denver Water the right to continue receiving and using such Services and/or Deliverables free of claims of infringement, misappropriation and/or violation; (b) modify the Services and/or Deliverables so that they no longer infringe, misappropriate and/or violate (provided that such modification does not degrade the performance or quality of the Services and/or Deliverables or adversely affect Denver Water's use or intended use of the Services and/or Deliverables as contemplated by this Agreement); or (c) replace the Services and/or Deliverables with non-infringing, non-misappropriating, and non-violating Services and/or Deliverables of equivalent or greater functionality that is acceptable to Denver Water. In the event Consultant is unable, after exercising its best efforts to implement one of the options set forth in subsections (a), (b), or (c) above, the Consultant shall accept Denver Water's return of the Deliverables at Consultant's sole cost and expense and refund Denver Water an amount equal to the amounts paid by Denver Water to Consultant for the Deliverables and Services under the applicable Statement of Work, plus all out-of-pocket expenses and costs incurred by Denver Water in connection with procuring

substitute deliverables and services, to the extent such costs and expenses exceed the refunded amount. This Section shall survive the expiration or termination of this Agreement.

11.3. Limitations of Liability. EXCEPT AS OTHERWISE PROVIDED IN SECTION 11.5, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

11.4. Cap on Monetary Liability. EXCEPT AS OTHERWISE PROVIDED IN SECTION 11.5, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT LAW, WARRANTY, OR OTHERWISE, SHALL NOT EXCEED \$1,000,000. NOTWITHSTANDING THE FOREGOING SENTENCE, IF ANY CLAIM AGAINST CONSULTANT IS A CLAIM COVERED BY ANY INSURANCE POLICY MAINTAINED BY THE CONSULTANT, ANY RECOVERY OF PROCEEDS UNDER SUCH POLICY SHALL BE PAID TO DENVER WATER TO THE EXTENT DENVER WATER'S DAMAGES EXCEED THE FOREGOING LIMITATION OF LIABILITY.

11.5. Exceptions. Notwithstanding anything to the contrary in this Agreement, the exclusions, limitations, and caps set forth in **Section 11.3 and 11.4** shall not apply to any of the following:

11.5.1. Losses arising out of or relating to a Party's failure to comply with its obligations under **Section 7.5** or **Section 10**;

11.5.2. Losses arising out of or relating to Consultant's indemnification obligations under **Section 11.1** and **11.2**;

11.5.3. Losses arising out of or relating to a Party's negligence, gross negligence, or more culpable conduct, including recklessness, any willful misconduct or intentionally wrongful acts;

11.5.4. Losses for death, bodily injury, or damage to real or tangible personal property;

11.5.5. Losses to the extent covered by a Party's insurance;

11.5.6. Losses arising out of breach of the Consultant's representations and warranties set forth in this Agreement;

11.5.7. Losses arising out of any loss of data or other damage to data caused by any Disabling Code;

11.5.8. Amounts paid as late charges pursuant to **Section 2.3** for failure to achieve timely a Critical Path Milestone;

11.5.9. Consultant's wrongful termination of this Agreement and/or a Statement of Work or repudiation or wrongful abandonment of all or any part of the Services;

11.5.10. Amounts withheld by Denver Water in accordance with this Agreement due either to incorrect charges by Consultant or nonconforming Services;

11.5.11. Amounts paid by Denver Water but subsequently recovered from Consultant due either to incorrect charges by Consultant or nonconforming Software or Services; and

11.6. Acknowledged Recoverable Damages. In addition to, and without limiting any other damages, the Parties shall consider the following as direct damages recoverable under this Agreement, and neither Party shall assert that they are indirect, incidental, collateral, consequential, or special damages, or lost profits:

11.6.1. Reasonable costs and expenses of recreating or reloading any lost, stolen, or damaged data;

11.6.2. Reasonable costs and expenses of implementing a work-around in respect of a failure of the Software or Services or any part thereof;

11.6.3. Reasonable costs and expenses of replacing lost, stolen, or damaged equipment, software, and materials;

11.6.4. Reasonable costs and expenses incurred to procure the Software or Services or corrected Software or Services from an alternate source to the extent in excess of Consultant's charges under this Agreement;

11.6.5. Reasonable straight time, overtime, or related expenses incurred by Denver Water, wages and salaries of additional employees, travel expenses, overtime, expenses, telecommunication charges, and similar charges due to failure of the Consultant to provide all or a portion of the Software or Services incurred in connection with 11.6.1 through 11.6.4 above;

11.6.6. Reasonable costs and expenses incurred to contract to obtain the Software or Services from an alternate source and any deconversion costs, including the costs and expenses associated with the retention of external consultants and legal counsel to assist with any re-sourcing;

11.6.7. Liquidated damages assessed under (Transition Services);

11.6.8. Service Level Credits and any other SLA related charges; and

11.6.9. Any refunds due under this Agreement.

ARTICLE 12—INSURANCE

12.1. Insurance. The Consultant shall maintain 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 Consultant shall provide to Denver Water certificates of insurance (and renewals thereof) demonstrating that the following insurance requirements have been met.

12.1.1. Commercial General Liability Insurance: Commercial general liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Such insurance shall include the City and County of Denver, acting by and through its Board of Water Commissioners, as additional insured and shall be primary and non-contributing with respect to any insurance or self-insurance program of Denver Water.

12.1.2. Automobile Liability Insurance: Consultant shall maintain automobile liability insurance as required by Colorado law. Denver Water does not require a certificate of insurance unless this subparagraph (b) requires insurance that exceeds the statutory requirements.

12.1.3. Professional Liability Insurance: Professional liability insurance with limits not less than \$1,000,000 per claim covering all licensed professionals performing Services and/or providing Deliverables under this Agreement.

12.1.4. Workers' Compensation Insurance:

DELETE THE TWO ALTERNATIVES BELOW THAT DO NOT APPLY.

ALTERNATIVE 1:

The Consultant is located in Colorado and maintains workers' compensation insurance, as required under the laws of the State of Colorado. **IF THE CONSULTANT IS A COLORADO SOLE PROPRIETOR WITH EMPLOYEES, SELECT THIS ALTERNATIVE.**

ALTERNATIVE 2:

The Consultant is located outside of Colorado and does not maintain workers' compensation insurance effective in Colorado. The Consultant warrants that during the term of this Agreement it will not hire employees in Colorado or transfer employees to Colorado without maintaining workers' compensation insurance, as required by Colorado law, in full force and effect during the full term of this Agreement.

12.1.5. Technology Errors & Omissions: The Consultant 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. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage

or self-insurance maintained by Denver Water.

12.1.6. Other Requirements:

- 1) The Consultant's insurers shall maintain an A.M. Best rating of A-, VII or better.
- 2) All self-insured retentions or deductibles must be declared and acceptable to Denver Water.
- 3) Thirty (30) days' advance written notice of cancellation shall be provided to Denver Water, except for ten (10) days' advance written notice in the event of cancellation due to non-payment of premium.
- 4) For all coverages required under this Agreement, Consultant's insurer shall waive subrogation rights against Denver Water.

12.1.7. The Consultant shall provide copies of insurance policies upon request of Denver Water and in redacted form if necessary to protect Confidential Information.

12.1.8. Denver Water reserves discretion to accept alternative types of insurance.

12.2. In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided as described above, upon written request, Consultant shall provide Denver Water with a certified copy of the involved insurance policy or policies within ten (10) business days of receipt of such request.

12.3. The terms of this Article 12 shall not be deemed to lessen or limit the liability of Consultant to Denver Water, or to limit any rights Denver Water may have including rights of indemnity or contribution. Additionally, any approval by Denver Water of any of Consultant's insurance policies or limits shall not relieve Consultant or its subcontractors of any obligation obtained in this Agreement.

ARTICLE 13—MISCELLANEOUS

13.1. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.

13.2. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.

13.3. Notice and Contact. The Parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to the Consultant:

Insert name of the Consultant

Insert mailing address of the Consultant

Insert e-mail address of the Consultant

If to Denver Water:

Insert title of person responsible for contract

Denver Water Department

1600 West 12th Avenue

Denver, Colorado 80204

Insert e-mail address of person responsible for contract

or such other persons or addresses as the parties may have designated in writing.

13.4. Charter of the City and County of Denver. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. The Charter provisions are incorporated by this reference and supersede any apparently conflicting provisions otherwise contained in this Agreement.

13.5. Governmental Immunity Act. The parties understand and agree that Denver Water is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

13.6. Standards of Conduct – Nondiscrimination and Respectful Workplace. The Consultant agrees not to discriminate against any Denver Water employee, or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, pregnancy, military status, marital status, or disability. The Consultant further agrees not to conduct business in a manner that brings discredit to Denver Water or creates a hostile or disrespectful work environment for Denver Water employees, Denver Water customers, or other Third Parties performing work for Denver Water. Denver Water reserves the right at its sole discretion to terminate this Agreement if the Consultant is an individual, or to direct the Consultant to assign another employee or agent to perform the Services, if Denver Water has reason to believe that during the term of the Agreement the Consultant, or the assigned employee or agent engaged in activity prohibited by this Section.

13.7. Compliance with Laws. In performing this Agreement, the Consultant shall comply with all applicable laws, rules, and regulations, including, but not limited to, the Colorado Workers' Compensation Act, federal and state tax laws, and any applicable minimum wage requirements including Denver R.M.C. sec. 58-16, *et seq.* The Consultant certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of the Consultant on this Agreement: (1) certifies that the Consultant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, *et seq.*, and the Consultant utilizes subcontractors or employees in the Consultant's business.

13.7.1. The Consultant shall not:

- 1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
- 2) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

13.7.2. The Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, *et seq.*). The Consultant may not use either the e-verify program or the department program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

13.7.3. If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall:

- 1) Notify the subcontractor and Denver Water within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph 1) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

13.7.4. The Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law.

13.7.5. The Consultant acknowledges that in the event the Consultant violates any of the provisions of the foregoing **Sections 13.7.1 – 13.7.4**, Denver Water may terminate this Agreement for breach of contract. If this Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to Denver Water.

13.8. Safety and Security. The Consultant must comply with applicable safety and occupational health standards, specifications, reporting, and any other relevant requirements. The Consultant also must check in with Denver Water's Security personnel at each location, where applicable; display appropriate identification at all times while on Denver Water's premises; and notify Denver Water's security personnel in writing in advance of any anticipated third-party deliveries with the name of the delivery person and the approximate time of arrival.

13.9. Small Business Enterprises; Minority- and Women-Owned Business Enterprises. Denver Water recognizes the desirability, need and importance to the City and County of Denver of encouraging the development of Small Business Enterprises ("**SBEs**") and Minority- and Women-Owned Business Enterprises ("**MWBEs**"). The Consultant agrees to make a good faith effort to involve SBEs and MWBEs in the work if and when the opportunity arises.

13.10. Environmental Compliance. Denver Water strives to adhere to all applicable environmental laws, regulations, and policies. In addition, it utilizes an Environmental Management System to monitor and improve its environmental performance. In the performance of the work, Consultant must comply with all applicable environmental laws, regulations, ordinances, specifications, reporting requirements, and any other relevant requirements. [IF THERE ARE ADDITIONAL BEST PRACTICES THE CONSULTANT SHOULD FOLLOW THAT ARE NOT DESCRIBED IN THE SCOPE OF WORK, INCLUDE THE FOLLOWING: In addition, Consultant shall adhere to applicable best practices that a reasonable person performing the Work would follow, including but not limited to _____.]

13.11. Acceptance Not Waiver. Denver Water's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials does not in any way relieve the Consultant of responsibility for the technical accuracy of the work. The Board's approval or acceptance of, or payment for, any Services and/or Deliverables is not a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

13.12. Effective Date. This Agreement shall become effective on the date it is fully signed by Denver Water.

13.13. Neither Party Considered Drafter. Despite the possibility that one Party may have prepared the initial draft of this Agreement and/or played the greater role in the preparation of subsequent drafts, the Parties agree that neither of them shall be deemed the drafter of this Agreement, and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other Party.

13.14. Electronic Signatures and Records. The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically in the manner specified by Denver Water. 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.

13.15. Assignment. Consultant shall not assign or otherwise transfer this Agreement, or any part hereof, nor delegate any of its duties hereunder, whether by operation of law or otherwise, to any Third Party or Affiliate without the prior written consent of Denver Water. Without limiting the generality of the foregoing, the phrase “by operation of law” shall include a Change of Control. Any attempted assignment in contravention of this provision shall be void. This Agreement is intended to benefit only the Parties, and neither subcontractors nor suppliers of the Consultant nor any other Third Party, person, or an entity is intended by the Parties to be a third-party beneficiary of this Agreement. Subject to the foregoing, this Agreement shall be binding on the Parties and their successors and permitted assigns.

13.16. Media Releases and Public Disclosures of Agreement. The Consultant shall not issue or release any statement, article, advertisement, public or private announcement, media release, or other similar publicity relating in any manner to: (a) any aspect of this Agreement, including Statement of Work(s); (b) any aspect of any Services and/or Deliverables; or (c) the fact that the Parties have engaged in any discussions or negotiations regarding any of the foregoing. Neither Party shall use the name or any business name, trade name, trademark, service mark, or logo of the other Party.

13.17. Waiver. No delay or omission by either Party hereto to exercise any right occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

13.18. Entire Agreement; Modification. This Agreement, together with all of the Schedules, Exhibits (including Statement of Works), Attachments and Addenda hereto, sets forth the entire, final, and exclusive agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the Parties. This Agreement may be modified only pursuant to a writing executed by authorized representatives of Denver Water and Consultant. Consultant expressly agrees that all amendments to this Agreement executed by Denver Water after the Effective Date must be signed by Denver Water’s Office of General Counsel in order to be effective and enforceable against Denver Water. The Parties expressly disclaim the right to claim the enforceability or effectiveness of any amendments to this Agreement that are not executed by Denver Water’s Office of General Counsel.

13.19. Survival of Terms. All terms of this Agreement which, by their nature, are intended to survive termination of this Agreement will survive termination, including, but not limited to, all payment obligations, confidentiality obligations, ownership terms, indemnification obligations, limitations of liability, and effects of termination.

13.20. Captions, References, and Construction. Captions, titles, and headings to articles and sections of this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement. Any reference herein to a particular Section number (e.g., “Section 2”), shall be deemed a reference to all Sections of this Agreement that bear sub-numbers to the number of the referenced Section (e.g., Sections 2.1, 2.1.1, etc.). The terms “this Agreement,” “herein,” “hereof,” “hereunder,” and similar expressions refer to this Agreement and not to any particular article, section or other portion hereof. Unless otherwise specified, “days” means calendar days. Any use of the term “including” in this Agreement shall be construed as if followed by the phrase “without limitation” or “but not limited to.”

THEREFORE, the parties have executed this Agreement. This Agreement must have the signature of an authorized representative of the Consultant.

Insert the following attestation for

Board signature only

ATTESTED:

By: _____
Secretary

APPROVED:

By: _____
Insert appropriate Chief title if Board or
CEO/Manager signs above

APPROVED AS TO FORM:

By: _____
Office of General Counsel

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

By: _____
Insert "President," "CEO/Manager" or appropriate
Chief title depending on \$ amount (See
Contracting Procedures in Financial Manual)

DATE: _____

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: _____
Timothy M. O'Brien, CPA
Auditor

SCHEDULE 1.2

DEFINED TERMS

“Action(s)” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.

“Affiliate(s)” means any person, corporation, or other entity that now or in the future, directly or indirectly, controls, is controlled with or by or is under common control with a Party. For purposes of the foregoing, “control” shall mean, with respect to: (a) a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof or, for purposes of foreign corporations, if less than fifty percent (50%), the amount allowed by applicable law; and (b) any other entity, the power to direct the management of such entity.

“Agreement” means this Master Services Agreement by and between Denver Water and Consultant, inclusive of all Statement of Works, Schedules, Exhibits, Attachments, and other documents attached hereto or incorporated herein by reference.

“API” means application programming interfaces including any interfaces necessary to achieve interoperability between the Deliverables and any Third Party systems.

“Bankruptcy Code” means the U.S. Bankruptcy Code, as amended.

“Change of Control” means: (a) any transaction or combination of transactions as a result of which either a person, an entity, or a group of persons and/or entities that customarily has acted in concert and that presently is in control of Consultant ceases to be in control of Consultant; or (b) the sale, exchange, or other disposition (including disposition in full or partial dissolution) of the stock of Consultant or the assets of Consultant that constitute a substantial or material business segment of Consultant; or (c) the divestiture, in whole or in part, of the business unit or division of Consultant that has provided the Services and/or Deliverables to Denver Water. A Change of Control shall not include any public stock offering.

“Defect” means any failure of the applicable Services and/or Deliverables, or components thereof, to operate in accordance with or otherwise conform to the applicable Documentation, Specifications, Service Levels, Interoperability Requirements, and Performance Standards.

“Deliverables” means all Software, Documentation, and any **Creations** to be delivered pursuant to this Agreement.

“Documentation” means, collectively or individually, all user, operator, system administration, technical, support and other manuals, and all other written, printed, electronic, or other format materials published or otherwise made available by Consultant that describe or otherwise relate to the functional, operational, and/or performance capabilities of the Services, Software, **Creations**, and/or any APIs.

“Intellectual Property Rights” means all inventions, patents, copyrights, trade secrets, trade names, know-how, intellectual property, software, shop rights, moral rights, licenses, developments, research data, designs, processes, formulas, and other intangible proprietary or property rights, whether or not patentable (or otherwise subject to legally enforceable restrictions or protections against unauthorized Third Party usage), and any and all applications for, and extensions, divisions, and reissuances of, any of the foregoing, and rights therein, and whether arising by statute or common law.

“Key Personnel” are Consultant Personnel set forth in the applicable Statement of Work as being “critical” for the performance of such Statement of Work.

“Law” or **“Laws”** means all national, intergovernmental, common law, federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, orders of a court or governmental agency, supervisory requirements, directives, circulars, opinions, interpretive letters, and

other official releases of or by any government, or any authority, department or agency thereof.

“Losses” means all settlements, judgments, awards, fines, penalties, interest, liabilities, losses, costs, claims, injuries, damages, deficiencies, and expenses (including reasonable attorneys’ fees, disbursements, court costs, the cost of enforcing any indemnification or other obligation under this Agreement, and the cost of pursuing any insurance providers).

“Object Code” shall mean computer programming code, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly.

“Performance Standards” means, collectively: (a) the representations and warranties and performance standards set forth in **Article 7**; and (b) any other performance standards and criteria set forth in this Agreement and/or a Statement of Work.

“Consultant Personnel” shall mean those employees, representatives, contractors, subcontractors, and agents of Consultant, Consultant Affiliates, and subcontractors who perform any Services and/or provide any Deliverables under this Agreement.

“Source Code” shall mean computer programming code, other than Object Code, and related source code level system documentation, comments, and procedural code, such as job control language, which may be printed out or displayed in human readable form.

“Source Code Materials” means (a) available sub-programs, routines, program files, data files, file and data defined terms and relationships, data definition specifications, data models, program and system logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts related to interacting with or a part of the applicable software, whether in human-readable, electronic or machine-readable form; (b) Consultant-developed maintenance and support tools, utilities, diagnostic programs, and supporting programs used or utilized by Consultant internally in the support or maintenance of the applicable software, or externally in connection with supporting other Denver Water locations, whether or not such items are made available to licensees generally or at an additional fee, whether in human-readable, electronic, or machine-readable form; and (c) available reference manuals, user and operating guides and manuals, design specifications, functional specifications, flow charts, internal use listings or manuals relating to error corrections, fixes and workarounds, file and program cross-reference information (whether in manual, guide or other format), whether in human-readable, electronic, or machine-readable form.

“Software” means the software, applications, and components thereof provided or made available by Consultant to Denver Water pursuant to this Agreement, more fully described in _____ [reference the document describing functional and technical Specifications of the software].

“Specifications” means any written functional, technical, design, or other specifications applicable to the Deliverables and/or APIs, as the case may be, which are furnished or approved by Denver Water.

“Statement of Work” means a document that sets forth the specific terms and conditions pursuant to which Consultant shall perform certain Services. Each Statement of Work will be in a form substantially similar to the Statement(s) of Work attached hereto as **Exhibit 1**.

“System” means any inter-connected grouping or aggregation of the services, equipment, networks, hardware, software, resources and materials, including those provided or utilized by Consultant, in use by Denver Water or required to be used as of the Effective Date, and including all additions, modifications, substitutions, upgrades, and/or enhancements to such services, equipment, networks, hardware, software, resources, and materials.

“Third Party” means persons, corporations, and entities other than Consultant, Denver Water, or any of their Affiliates.

THIS AGREEMENT IS ACCEPTED BY:

CONSULTANT: Insert name of the Consultant

By execution, signer certifies s/he is authorized to bind the Consultant to the terms of this Agreement.

By: _____

DATE: _____

TITLE: _____
[for other than individual]

For Board records only, Consultant shall check the applicable box(es) below:

- ☐ Consultant is a Small Business per federal SBA guidelines
☐ Consultant is not a Small Business per federal SBA guidelines
☐ Consultant is a Minority-owned Business Enterprise (MBE) and/or Women-owned Business Enterprise (WBE) per _____ (name of certifying entity)
☐ Consultant is not an MBE or WBE
☐ Consultant elects not to answer this question

If Consultant is an MBE and/or WBE, Consultant must submit evidence of certification from an agency such as the City and County of Denver or the Mountain Plains Minority Supplier Development Council.

(If Contractor/Consultant/Company is an individual, the "Affidavit of Lawful Presence in the U.S." attached to this template and proof of identity are also required.)

(If Contractor/Consultant/Company is not an individual (e.g. corporation), you may disregard the Affidavit at the end of this template, and no proof of identity is required.)

YOU MUST INCLUDE THE NOTARIZATION BELOW FOR CONTRACTORS WHO ARE PERFORMING THE WORK AS INDIVIDUALS AND NOT AS A SEPARATE LEGAL ENTITY. FOR ALL OTHER CONTRACTORS, THE NOTARIZATION BELOW MAY BE DELETED.

CONSULTANT'S SIGNATURE MUST BE NOTARIZED BELOW:

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by **INSERT NAME OF THE CONSULTANT**.

Witness my hand and official seal. My commission expires: _____

(SEAL)

Notary Public

APPENDIX 1

USE OF DENVER WATER BOARD COMPUTER AND TELECOMMUNICATIONS RESOURCES

The Consultant and its employees and agents may have access to and use of Denver Water's computer or telecommunications resources to fulfill the terms of this Agreement. As a condition of this access and use, the Consultant agrees to abide by all applicable laws and Denver Water policies, including Denver Water Policies and Procedures and applicable manuals, and all other policies, procedures, guidelines and standards that relate to the use and security of Denver Water computer and telecommunications resources.

The Consultant will not knowingly use or permit the use of Denver Water's resources for any purposes other than those necessary to perform the Services and/or provide Deliverables required under this Agreement. The Consultant will not use any access mechanism that Denver Water has not expressly assigned to the Consultant or its employees, and the Consultant will not disclose information concerning access to these resources unless properly authorized to do so by Denver Water. The Consultant will treat all information maintained on Denver Water computer systems, networks and telecommunications resources as strictly confidential and will not release information to any unauthorized person.

Denver Water reserves the right without notice to limit or restrict the Consultant's access and to inspect, remove or otherwise alter any data, file or system resource that may undermine or expand the limited scope of Consultant's authorized use of Denver Water's network computing facilities. Should the Consultant fail to abide by the terms of this Appendix 1, Denver Water may immediately terminate this Agreement.

Print Name: _____

Title: _____

Signature: _____

Date: _____

AFFIDAVIT OF LAWFUL PRESENCE IN THE U.S.

I, _____ (print name legibly), swear or affirm under penalty of perjury under the laws of the State of Colorado that **(check only one)**:

___ I am a United States citizen, or

___ I am not a United States citizen, but I am a Permanent Resident of the United States and authorize Denver Water to verify this statement with the Department of Homeland Security using my alien registration number, which is _____, or

___ I am not a United States citizen, but I am lawfully present in the United States pursuant to Federal law and authorize Denver Water to verify this statement with the Department of Homeland Security using my alien registration number, which is _____.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

Attach Copy of Applicable Identification Form Here

CERTIFICATION OF PERSONNEL SCREENING BY CONSULTANT/CONTRACTOR

To be completed by Denver Water's Contract Administrator:

Contract No: _____ Consultant/Contractor: _____

The work under the Agreement involves:

(Check one or more and describe the duties in the spaces provided, and check the corresponding numbered box in the Consultant/Contractor section below.)

1. ☐ Operating a Board vehicle *(driving record and license check required)*
 2. ☐ Performing work involving security concerns. Describe duties: _____

(criminal background check required)
 3. ☐ Accessing Board's financial records or accounting processes *(credit check required)*
 4. ☐ Performing safety-sensitive work. Describe duties: _____

(criminal background check and drug and alcohol screening required)
-

To be completed by the representative of Consultant/Contractor:

Name of Employee/Agent: _____ Start Date of Work for Denver Water: _____

I, _____, as a representative of the Consultant/Contractor, certify that the above-named employee or agent of the Consultant/Contractor is assigned to complete the work described above and (check the applicable options below):

1. ☐ Has a valid Colorado driver's license and a satisfactory driving record, defined as having no more than six (6) points on his/her driving record in the three (3) years prior to the assignment. *(Applies if work involves operating a Board vehicle.)*
2. ☐ Has been the subject of a background check no more than one (1) year prior to the assignment, and I have determined that he/she does not pose a risk to persons or property. Background checks must include a Colorado Bureau of Investigation (CBI) Criminal History Check, and, if the employee or agent has lived outside the State of Colorado or the United States during the last five (5) years, a criminal history check from each state or country of residence. *(Applies if work involves security concerns or safety-sensitive duties.)*
3. ☐ Has been the subject of a credit history check, and I have determined that he/she does not pose a risk to the Board. *(Applies if work involves accessing the Board's financial records or accounting processes.)*
4. ☐ No more than one (1) month prior to the assignment under this contract, he/she passed a drug and alcohol screening performed at a certified testing facility using a Rapid Screen test (negative results only will be accepted) or by a federally certified laboratory using a Federal (HHS, FMCSA or DOT) 5-Panel Drug Test. *(Applies if work involves safety-sensitive duties.)*

Under penalty of perjury, I swear the above statements are true and correct.

Signature: _____ Date: _____

Phone: _____ E-mail: _____

Approval by Denver Water's Contract Administrator:

Print Name: _____

Signature: _____

Date: _____

**Consent to Perform Background Checks
In Compliance with the FCRA (Fair Credit Reporting Act)**

Contract No. _____	Check all that apply: <input type="checkbox"/> Criminal Background <input type="checkbox"/> Credit Background
Name of Contractor/Consultant: _____	

The information requested below is to be used by Denver Water for the purpose of obtaining criminal or credit history background information. Denver Water will not retain this information.

Last Name: _____ First Name: _____ Middle Name/Initial: _____
Maiden or other name(s) used in any and all other records of birth or records of residence: _____

Date of Birth: _____ Social Security Number: _____ Gender: _____
Current Address: _____ Apartment No: _____
City: _____ County: _____ State: _____ Zip: _____

Previous Addresses (during the last five years):

Address: _____ Apartment No: _____
City: _____ County: _____ State: _____ Zip: _____
Address: _____ Apartment No: _____
City: _____ County: _____ State: _____ Zip: _____
Address: _____ Apartment No: _____
City: _____ County: _____ State: _____ Zip: _____
Address: _____ Apartment No: _____
City: _____ County: _____ State: _____ Zip: _____

Consent to Background Checks: I understand that before I am permitted to perform work under the Contract identified above, Denver Water will conduct criminal and/or credit history background checks on me. I do hereby consent to Denver Water's use of the information I have provided for the purpose of conducting criminal and/or credit history background checks on me. Denver Water has informed me of the following in accordance with the Fair Credit Reporting Act:

- I have the right to review and challenge any negative information that would adversely impact a decision to authorize me to perform work under the Contract.
- Upon my request, Denver Water will provide me with the name, address and telephone number of the reporting agency or agencies used to conduct background checks, and with the nature, substance and source of all background information obtained.
- Upon my request, I will be provided a reasonable amount of time and a reasonable opportunity, as determined by Denver Water, to clear up any mistaken information reported about my criminal or credit history.

Signature

Date

Occupational Medicine clinics:

1. **Concentra** – www.concentra.com
Multiple locations throughout the state:
<http://maps.concentra.com/corporatev3/ListSearch.aspx>
See list for individual location telephone numbers
2. **HealthOne** – www.healthoneclinics.com
Occupational Medicine site:
<http://www.healthoneclinics.com/CustomPage.asp?guidCustomContentID=25FF9FDE-F37D-4712-85A7-679915BE40F3>

Initial W/C, Drug Screen, Breath Alcohol
Phone: 303-861-7878
1515 Wazee, Ste D
Denver, CO 80202

Multiple locations throughout Denver.
Referral form w/addresses for testing available on website.
3. **Exempla** - www.exempla.org
Occupational Medicine & Physical Therapy Customer Service Line:
303-813-5140
Occupational Medicine site: http://www.exempla.org/body_epn.cfm?id=1352
Multiple locations throughout the state:
http://www.exempla.org/documents/EPN/epn_occmedmap.pdf
4. **Midtown Occupational Medicine** - www.midtownoccupationalhealth.com
Diamond Hill Office Complex
Speer & I-25
2420 W. 26th Ave.
Building D Suite 200
Denver, CO 80211
(303) 831-9393
Fax: (303) 831-6335
Hours of Operation:
Monday - Friday, 7am-6pm
5. **Denver Occupational/Aviation Medicine Clinic** - <http://www.denveroccmed.com/>
Denver Occupational and Aviation Medicine (DOAM)
3700 Havana Street, Suite 200
Denver, CO 80239
303.373.4456
303.373.4501 (F)

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>	
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)	
Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.	
Social security number [][][] - [][] - [][][][][][]	
or Employer identification number [][] - [][][][][][][][]	
Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.	

Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and	
3. I am a U.S. citizen or other U.S. person (defined below); and	
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.	
Sign Here	Signature of U.S. person ▶
	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

SCHEDULE 2.5

SOW STATUS REPORT

Each SOW status report shall be developed in accordance with **Section 2.4** and include the following items:

- 1. Accomplishments.** A written summary of all of the Critical Path Milestones achieved and, if not achieved, the reasons why, during the prior reporting period.
- 2. Current Status.** A written summary of the current status of the SOW and the status of milestones that are due during the reporting period and of any milestones that were due during the previous reporting period but were not completed.
- 3. Jeopardy Items.** A written summary of all concerns or issues for the current reporting period, along with the plan and projected date for resolution.
- 4. Scheduling and Staffing Items.** A written summary of any special staffing or scheduling issues for the upcoming period.
- 5. Open Issues.** A comprehensive and consolidated list of all outstanding SOW-related problems identified by Denver Water and Consultant that remain to be resolved.
- 6. Resolved Issues.** A written summary of the concerns or issues that were reported in the previous reporting periods that have been resolved and a description of the resolution.
- 7. Delays.** Identification of any Denver Water or Third Party delays affecting Consultant's ability to perform.
- 8. Suggestions.** Suggestions and proposed actions for dealing with and resolving any identified difficulties and the anticipated results during the next reporting period.
- 9. Miscellaneous.** Any other concern or information that will or may affect the SOW.

EXHIBIT 1

STATEMENT(S) OF WORK

EXHIBIT 2

NON-DISCLOSURE TERMS AND CONDITIONS

These Nondisclosure Terms and Conditions are entered pursuant to and form part of the contemporaneous overarching Agreement between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS ("Denver Water"), a municipal corporation of the State of Colorado, and [REDACTED] ("Consultant"). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to them in the Agreement.

1. **Confidential Information Defined.** The Parties recognize that it may be necessary to exchange Confidential Information for the sole and exclusive purpose of the Services to be performed and/or Deliverables to be provided under the Agreement.
 - a. **"Confidential Information"** means: (a) all information marked confidential, restricted, or proprietary by either Party; and (b) any other information that is treated as confidential by the Disclosing Party and would reasonably be understood to be confidential, whether or not so marked or disclosed orally. In the case of Denver Water, Confidential Information shall also include information related to Denver Water's water system and components thereof, Denver Water Systems, **Creations and any derivative works thereof**, Personal Information, Denver Water Materials, attorney-client privileged materials, attorney work product, financial/accounting information, human resources and personnel information, and any other information or data obtained, received, transmitted, processed, stored, archived, or maintained by Consultant under this Agreement.
 - b. **"Personal Information"** means all personally identifiable information (e.g., name, address, credit card number, email address, static IP address, etc.) that is generated, collected, or obtained as part of this Agreement, including but not limited to information defined in C.R.S. § 24-73-101, *et. seq.*, as well as transactional and other data pertaining to individuals. Consultant will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of Personal Information. Consultant will not, without the prior written consent of an authorized representative of Denver Water, use Personal Information for any purpose other than to provide the Services under this Agreement. In no event may Consultant: (a) use Personal Information to market its services or those of a Third Party; (b) sell or transfer Personal Information to Third Parties, or otherwise provide Third Parties with access thereto; or (c) merge or aggregate Personal Information obtained through the Services with information not obtained through the Services.
2. **Exclusions from Confidentiality.** Except with respect to Personal Information, Confidential Information does not include any information that is: (a) publicly available or later becomes available other than through a breach of this Agreement; (b) known to the Receiving Party or its employees, agents, or representatives prior to such disclosure other than through a breach of this Agreement; (c) is independently developed by the Receiving Party or its employees, agents, or representatives subsequent to such disclosure; (d) subsequently lawfully obtained by the Receiving Party or its employees, agents, or representatives from a Third Party without obligations of confidentiality; or (e) information subject to disclosure under the Colorado Open Records Act.
3. **Disclosure Format.** Denver Water, in its sole discretion, may provide to Consultant the

Confidential Information in the form of Denver Water's choosing. If Denver Water provides or Consultant requests the Confidential Information in a format requiring particular software, it will be Consultant's responsibility to secure at its sole cost any and all necessary software licenses, authorizations, or other intellectual property rights for the transfer and use of the Confidential Information.

4. **Site Visits.** As part of the Agreement, Denver Water may permit Consultant to visit one or more Denver Water facilities according to a schedule to be determined by Denver Water. Consultant is prohibited from taking any pictures or video or making any electronic recordings of any kind during its visit(s) to Denver Water's facilities without the prior approval of Denver Water's site or area supervisor. Consultant acknowledges that it may learn information about and receive documentation about Denver Water's facilities during the visit(s), and Consultant agrees that such information and documentation will be considered Confidential Information under these Non-Disclosure Terms and Conditions.

5. **Obligations of Confidentiality.** The Party that has received Confidential Information (the "**Receiving Party**") shall exercise the same degree of care and protection with respect to the Confidential Information of the Party that has disclosed Confidential Information to the Receiving Party (the "**Disclosing Party**") that it exercises with respect to its own Confidential Information, but in no event shall the Receiving Party exercise less than a reasonable standard of care. The Receiving Party shall not disclose, copy, distribute, republish, or allow any Third Party to have access to any Confidential Information of the Disclosing Party.

Notwithstanding the above: (a) Denver Water may disclose Consultant Confidential Information to its employees, consultants, auditors, agents, and representatives, to the extent they are providing services to or on behalf of Denver Water; (b) Consultant shall limit disclosure of Confidential Information to only its employees, representatives and/or agents who are required to assist the Consultant in meeting the Consultant's obligations under the Agreement, provided that each such representative and/or agent has previously executed a confidentiality and nondisclosure agreement in the form substantially similar to these Non-disclosure Terms and Conditions prior to and as a condition of receiving or getting access to Denver Water's Confidential Information; (c) either Party may disclose Confidential Information if so required by law (including court order or subpoena), provided that such Party will comply with paragraph 7 (Notification Obligations) prior to such disclosure; and (d) Consultant shall take reasonable steps to ensure that its employees to whom it provides the Confidential Information comply with these Non-Disclosure Terms and Conditions.

6. **Security and Other Protective Measures.** Without limiting any other obligations under these Non-Disclosure Terms and Conditions, with respect to Denver Water's Confidential Information, the Consultant shall also implement and comply with the following:

- a. Consultant shall implement and maintain commercially reasonable security procedures and technologies that are appropriate to the nature of the Confidential Information and designed to protect such Confidential Information from unauthorized access, use, modification, disclosure, or destruction.
- b. Consultant shall maintain or shall ensure the maintenance of the restricted and controlled access to the infrastructure and systems where the Confidential Information is stored, shared, or transported.
- c. Confidential Information shall not be hosted, processed, stored, or transmitted outside of the continental United States.
- d. Confidential Information shall be encrypted when transmitted and while at rest.
- e. Consultant shall communicate Confidential Information only through secure

means.

f. Consultant's network and any other systems storing, processing, and/or hosting the Confidential Information shall be monitored for intrusion using standard intrusion detection system technology. Security events shall be recorded and available to Denver Water upon request.

g. Consultant shall ensure that virus protection is in place and virus signatures are updated on a regular basis for any location containing Confidential Information. Consultant shall ensure that software patching shall be performed in a timely manner to ensure that security vulnerabilities are addressed and impact to Denver Water's operations are minimized.

h. Consultant shall ensure that Confidential Information and its associated application/system hosted environment are segregated from other Consultant's customer systems and data by appropriate physical and technical means.

i. Consultant shall ensure architecture design isolates (e.g., firewalls) web servers from back-end processes and that web servers are dedicated to serving web-based applications or sites. Consultant shall utilize an SSL certificate to encrypt browser traffic.

j. To the extent that the following actions are not Denver Water controlled functions, Consultant will perform or ensure performance of the following functions related to security administration:

- i) Execute security-related processes consistent with applicable industry best practices for creating, changing, deactivating and removing logon IDs and associated access authorities including such activities for Consultant's technical support staff;
- ii) Require password or key console access to systems hosting Confidential Information;
- iii) Consultant shall log and monitor employee logons to the systems in which Confidential Information resides, retain such logons in an audit log, and shall make such audit logs available to Denver Water;
- iv) Consultant shall log and monitor Consultant employee logons to systems hosting Confidential Information, retain such logons in an audit log for a minimum of 60 days and shall make such audit logs available to Denver Water upon request;
- v) Conduct periodic reviews of access logs to identify unusual occurrences;
- vi) Authorize the resetting of logon ID passwords and disclosure of new passwords to authorized users; and
- vii) Remove logon IDs no longer authorized.

k. Consultant's systems will comply with the following security practices:

- i) Require password or key console access to systems;
- ii) Provide individual and unique user IDs (i.e., no shared IDs);
- iii) Accounts will lockout after 5 incorrect attempts; and
- iv) All passwords shall be required to meet the following criteria:
 - 1. Minimum of 8 characters and require a combination of alpha, numeric or special characters;
 - 2. A new password must differ from an old password;
 - 3. Password expiration of 120 days or less; and
 - 4. Passwords will be encrypted when stored or transmitted.

7. **Notification Obligations.**

a. If the Consultant becomes aware of any unauthorized use, disclosure, loss, or destruction of Denver Water's Confidential Information, or of a suspected or actual

security incident or data breach involving such Confidential Information, the Consultant shall notify Denver Water thereof immediately in writing. Such notification shall include: (a) the specific details of all facts known to the Consultant concerning such unauthorized use, disclosure, loss, or destruction or the security incident or data breach; (b) a thorough description of Confidential Information that may have been accessed or affected; and (c) the effect of the security incident or data breach on the Confidential Information. In addition, the Consultant shall (a) immediately take all reasonable steps to mitigate any potential harm or further use, disclosure, loss, or destruction of such Confidential Information; (b) take all steps reasonable and necessary to retrieve all such Confidential Information; and (c) provide Denver Water with the information on the corrective action taken or to be taken by the Consultant as well as the identity of each affected individual, as soon as such information can be determined or collected. The Consultant will provide timely updates on the foregoing details and any other information Denver Water may reasonably request relating to any unauthorized use, disclosure, loss, or destruction of Denver Water's Confidential Information and/or the security incident or data breach affecting such Confidential Information. Consultant will not release or publish any filing, communication, notice, press release, or report concerning the security incident or data breach without Denver Water's prior written approval (except where it is required to do so by law and then only following written notice to Denver Water). At its sole expense, the Consultant will promptly take all appropriate corrective actions and will cooperate with Denver Water in all ongoing, reasonable, and lawful efforts to mitigate or rectify such unauthorized use, disclosure, loss, or destruction of Denver Water's Confidential Information and/or security incident or data breach (including, without limitation, cooperation in complying with applicable breach notification laws).

b. If the Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party shall not disclose the Confidential Information without providing the Disclosing Party at least forty-eight (48) hours prior written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, the Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential Information including by reasonably cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

8. **Return/Destruction of Confidential Information.** Confidential Information (including all documentation in any medium that contains, refers to, or relates to the Confidential Information) of Denver Water then in the Consultant's possession or control and any other information or materials provided by Denver Water to Consultant shall be returned to Denver Water within fourteen (14) days of (a) Denver Water's request or (b) termination of the Agreement, whichever is earlier. Upon such return of Confidential Information, the Consultant shall delete or destroy any copies, duplicates, summaries, abstracts, or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Consultant and cease all use of such information. Upon Denver Water's request, the Consultant shall deliver to Denver Water the written certification of its compliance with this paragraph signed by an authorized representative of the Consultant.

9. **Restricted Period.** These restrictions upon disclosure and use of Confidential Information shall continue during the Term of this Agreement and shall extend beyond the Term of

this Agreement at least for a period of ten (10) years; provided, however, that with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), Denver Water's safety/security related information, information related to Denver Water's water system or plant, or Personal Information, such restrictions on disclosure and/or use shall survive the termination, expiration, or non-renewal of this Agreement and in case of a trade secret for so long as such Confidential Information remains a trade secret.

10. **Audit:**

a. Upon ten (10) days prior written notice, Consultant shall provide such auditors and inspectors as Denver Water may from time to time designate with reasonable access to Consultant's computer operating environment and other areas of support services, for the limited purpose of confirming that adequate controls and security measures are being maintained, and Confidential Information is being safeguarded in accordance with the requirements set forth herein. Denver Water may conduct up to one audit and verification review per year and may be assisted by a third-party organization if deemed necessary by Denver Water. Any third party auditor retained by Denver Water who is granted access to Consultant's records pursuant to this paragraph shall, if requested by the Consultant, execute a confidentiality agreement in form and substance reasonably satisfactory to the Consultant.

b. With regard to adequate controls and security measures, and Personal Information privacy, if Denver Water's audit results demonstrate Consultant's failure to maintain controls and security measures or to safeguard Personal Information, each in accordance with this agreement, Denver Water will provide Consultant with written details of such failures and Consultant shall correct all such failures within ninety (90) days after receipt of such notice. Consultant's failure to correct all such failures within the specified time period shall constitute a material breach of its obligations of the Agreement.

11. **Indemnification.** Consultant shall indemnify Denver Water for any and all costs and expenses related to Consultant's failure to comply with the terms of these Non-Disclosure Terms and Conditions.

12. **Miscellaneous.**

a. These Non-Disclosure Terms and Conditions shall supersede the provisions of any inconsistent language that may be affixed to any information provided by Denver Water or by Consultant, and the inconsistent provisions of any such language shall be without any force or effect during the term of these Non-Disclosure Terms and Conditions.

b. In providing any information to Consultant, Denver Water makes no warranty or representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall Denver Water incur any liability or obligation whatsoever by reason of providing such information.

c. Consultant shall provide Denver Water with access to Denver Water's Confidential Information in the Consultant's possession or control at any time as Denver Water may request.

d. The main body of the Agreement and these Non-Disclosure Terms and Conditions contain the entire agreement relative to the protection of the Parties' Confidential Information for purposes of the Agreement and shall supersede all inconsistent prior or contemporaneous oral or written understandings and agreements regarding this issue. These Non-Disclosure Terms and Conditions shall not be modified or amended, except

by an amendment to the Agreement executed by Denver Water and Consultant.

e. Nothing contained in these Non-Disclosure Terms and Conditions, by express grant, implication, estoppel or otherwise, shall create in Consultant any ownership, right, title, interest, or license in or to Denver Water's Confidential Information.

f. Notwithstanding that the Board and Consultant may exchange information for the purposes of the Agreement, neither Party waives any claim that the information it provides is privileged, proprietary, and/or confidential.

g. Nothing contained in these Non-Disclosure Terms and Conditions shall grant to Consultant the right to make commitments of any kind for or on behalf of Denver Water without the prior written consent of Denver Water.

h. Nothing contained in these Non-Disclosure Terms and Conditions shall be construed as restricting Denver Water's right to restrain use or dissemination of Denver Water's information in accordance with applicable federal, state, or local law or regulation, or at common law.

i. Despite the possibility that one Party may have prepared the initial draft of this Agreement and/or played the greater role in the preparation of subsequent drafts, the Parties agree that neither of them shall be deemed the drafter of this Agreement, and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one Party on the ground that such provision was drafted by the other Party.

Add signature block for DW and Consultant and have both sign the NDA.