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337 E. Bennett Avenue, Cripple Creek, CO 80813

**CRIPPLE CREEK CITY COUNCIL
REGULAR MEETING AGENDA
FEBRUARY 17, 2021
5:30 PM – ONLINE VIA ZOOM**

[FEBRUARY 17, 2021 ZOOM MEETING LINK](#)

Meeting ID: 934 9245 7595

Passcode: 633887

Dial by your location +1 720 928 9299 US (Denver)

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE & INVOCATION
3. ROLL CALL
4. PUBLIC COMMENT
5. APPROVAL OF PRIOR MEETING MINUTES
 - A. February 3, 2021 Regular Meeting
6. REPORTS
 - A. City Administrator
 - B. Finance Director
7. NEW BUSINESS
 - A. **SECOND READING** of Ordinance 2021-03 rezoning property located at Lots 11-15, Block 14, Cripple Creek Freeman Placer, from Industrial District (C-1) to Limited Residential (R-2); Alyssa Rivas, City Planner.
 - B. Consider Agreement with KIVU Consulting for Managed Endpoint Detection and Response; Heather Hildebrand, HR & Risk Management Technician.
8. ADJOURNMENT.

MEETING PARTICIPANTS NEED TO MAKE EVERY ATTEMPT TO ATTEND ONLINE. IN PERSON PARTICIPANTS WILL BE STRICTLY LIMITED TO 10, INCLUDING COUNCILMEMBERS AND CITY STAFF. TO ATTEND IN PERSON, YOU MUST CONTACT THE CITY CLERK AT 689-2502 PRIOR TO NOON ON THE DAY OF THE MEETING TO VERIFY IN PERSON SPACE IS AVAILABLE.



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**REGULAR CITY COUNCIL MEETING MINUTES
WEDNESDAY, FEBRUARY 3, 2021
5:30 PM – ONLINE VIA ZOOM**

Location: Council Chambers, City Hall, 337 E. Bennett Avenue, Cripple Creek, Colorado 80813

1. **CALL TO ORDER** – Mayor Ashworth called the meeting to order at approximately 5:43 PM having previously been posted in accordance with Colorado Open Records Law. The meeting was called to order late due to technical difficulties with Zoom.
2. **PLEDGE OF ALLEGIANCE** – Mayor Ashworth led the Pledge of Allegiance.
3. **ROLL CALL** – City Clerk Sciacca called the roll. Present in Chambers were Mayor Milford Ashworth, Mayor Pro Tem Tom Litherland and Councilwoman Melissa Trenary. Present remotely online were Councilmembers Meghan Rozell and Charles Solomone. Staff present in Chambers were City Clerk Janell Sciacca and Interim City Administrator Ray White while Staff present remotely online via Zoom were Interim City Attorney Erin Smith, Finance Director Paul Harris, HR & Risk Management Director Carol Stotts, and City Planners Alyssa Rivas and Ben Thurston.
4. **PUBLIC COMMENT** – None.
5. **APPROVAL OF PRIOR MEETING MINUTES**
 - A. February 3, 2021 Regular Meeting **MOTION** by Councilwoman Trenary and seconded by Mayor Pro Tem Litherland to approve the minutes of February 3, 2021 as written. Motion carried unanimously.
6. **REPORTS**
 - A. City Administrator – White reported on COVID related impact numbers obtained from the Colorado Municipal League indicating 41% of municipalities cut their General Funds 71%, 31% postponed filling vacant positions, 23% froze salaries, and 6% laid off employees. White stated if current COVID numbers continued to trend in the right direction the City could resume in-person City Council meetings with Zoom still being used to allow participation online. White also read a prepared statement regarding the impacts of COVID on the Salute to American Veterans Rally, the City of Cripple Creek's support for Veterans and hope the event would return in 2022. He submitted a copy of the statement for the official record.
 - B. Finance Director – Harris provided a COVID update announcing another death had occurred and he extended condolences to the family. He stated January's case count was down to 191, and there were 5 total deaths in January and a total count of 14. Cripple Creek's numbers increased by 10 to 63 and Teller County remained at Level Orange. He reported the color dial was being updated by the State and it appeared the County would move to Yellow under the new dial. Harris advised that Teller County was recommending citizens sign up on as many lists as possible to

obtain the vaccine and that 2,235 vaccines had been administered - 1,823 first doses and 412 second doses.

7. PROCLAMATIONS, PRESENTATIONS, UPDATES AND OTHER REPORTS

A. Legislative Update; Sol Malick, Peak Govt, Ltd./City Legislative Liaison. Malick reviewed an interim update and 2021 Session / Pre-Session Report which had been emailed to the City Council earlier in the day. There is a dynamic process occurring with the Legislator trying to get back to normal. Everything is up in the air and tentative and it is difficult to get a handle on what is happening. Malick reviewed the basic 2020 Election changes, House and Senate control and leadership movements. Currently, no one has filed bills. He also reviewed prospective legislation potentially affecting the City related to allowing lottery games in bars and restaurants, taxation, sports book regulation, plumbing regulations and Historic Preservation Funding Audit process.

8. NEW BUSINESS

A. Consider Engagement Agreement with Peak Government, LTD. for services to promote the City of Cripple Creek's Mission; Ray White, City Administrator. White presented providing an overview of the agreement to retain Malick as the City's lobbyist and there were no changes from previous years. There were no questions by the City Council and there was no public comment. **MOTION** by Councilwoman Rozell and seconded by Councilwoman Trenary to approve Engagement Agreement with Peak Government, LTD. for services to promote the City of Cripple Creek's Mission. Motion carried unanimously.

B. Consider Employment Agreement with Ray White for Temporary City Administrator; Carol Stotts, HR & Risk Management Director. Stotts presented providing an overview of the agreement which extended the current agreement from April 1, 2021 to September 30, 2021. There were no questions by the City Council and there was no public comment. **MOTION** by Mayor Pro Tem Litherland and seconded by Councilwoman Trenary to approve Employment Agreement with Ray White for Temporary City Administrator. Motion carried unanimously.

C. Consider Resolution 2021-03 approving a Certificate of Appropriateness as a Project of Special Merit at certain real property described at 201 East Bennett Avenue, Cripple Creek, Colorado; Alyssa Rivas, City Planner. Rivas presented stating this was the follow up from the City Council and Planning Commission January 20, 2021 public hearing and unanimous approval. There were no questions by the City Council and there was no public comment. **MOTION** by Mayor Pro Tem Litherland and seconded by Councilwoman Trenary to approve Resolution 2021-03 approving a Certificate of Appropriateness as a Project of Special Merit at certain real property described at 201 East Bennett Avenue, Cripple Creek, Colorado as presented. Motion carried unanimously.

D. Consider Resolution 2021-04 approving the application for a Building Height Variance to allow a Six (6) Story Building relative to Carr Street and a Seven (7) Story Building relative to Bennett Avenue at certain real property described at 201 East Bennett Avenue, Cripple Creek, Colorado; Alyssa Rivas, City Planner. Rivas presented stating this was the follow up from the City Council and Planning Commission January 20, 2021 public hearing and unanimous approval. City Attorney Smith reviewed additional information included in the resolution on page

3 related to communication paths for the Police Department. There were no questions by the City Council and there was no public comment. **MOTION** by Mayor Pro Tem Litherland and seconded by Mayor Ashworth to approve Resolution 2021-04 approving the application for a Building Height Variance to allow a Six (6) Story Building relative to Carr Street and a Seven (7) Story Building relative to Bennett Avenue at certain real property described at 201 East Bennett Avenue, Cripple Creek, Colorado as presented. Motion carried unanimously.

- E. **SECOND READING** to Consider Ordinance 2021-01 Amending Ordinance 2018-04 Vacating a Portion of Second Street Within the City of Cripple Creek, Described in This Ordinance; Ben Thurston, City Planner. Thurston presented providing and overview of the purpose of the ordinance extending the completion date to December 31, 2022, or 1 year. There were no questions by the City Council and there was no public comment. **MOTION** by Councilwoman Rozell and seconded by Councilman Solomone to approve Ordinance 2021-01 Amending Ordinance 2018-04 Vacating a Portion of Second Street Within the City of Cripple Creek, Described in This Ordinance as presented. Motion carried unanimously.
 - F. **SECOND READING** to Consider Ordinance 2021-02 Amending Ordinance 2018-05 Vacating a Portion of An Alley Within the City of Cripple Creek, Described in This Ordinance; Ben Thurston, City Planner. Thurston presented providing and overview of the purpose of the ordinance extending the completion date to December 31, 2022, or 1 year. There were no questions by the City Council and there was no public comment. **MOTION** by Councilwoman Rozell and seconded by Councilwoman Trenary to approve Ordinance 2021-02 Amending Ordinance 2018-05 Vacating a Portion of An Alley Within the City of Cripple Creek, Described in This Ordinance as presented. Motion carried unanimously.
 - G. Consider Amended and Restated Development Agreement between the City of Cripple Creek and FHR-Colorado, LLC for Bronco Billy's Hotel and Casino Project; Erin Smith, City Attorney. Smith presented providing an overview of the changes from the 2018 approve agreement – a new deadline extending the deadline for construction of the improvements to December 31, 2022 and removal of all referenced of phasing with all portions being constructed concurrently. There were no questions by the City Council and there was no public comment. **MOTION** by Mayor Pro Tem Litherland and seconded by Councilwoman Trenary to approve Amended and Restated Development Agreement between the City of Cripple Creek and FHR-Colorado, LLC for Bronco Billy's Hotel and Casino Project as presented. Motion carried unanimously.
9. **ADJOURNMENT** – There being no further business before the Cripple Creek City Council, Mayor Ashworth adjourned the meeting at 6:25 PM

APPROVED:

ATTEST:

Milford Ashworth, Mayor

Janell Sciacca, City Clerk

ORDINANCE NO. 2021-03

CITY OF CRIPPLE CREEK, COLORADO

AN ORDINANCE OF THE CITY OF CRIPPLE CREEK, COLORADO APPROVING THE REZONING OF PROPERTY CONSISTING OF LOTS 11-15, BLOCK 14, CRIPPLE CREEK FREEMAN PLACER FROM INDUSTRIAL DISTRICT (C-1) TO LIMITED RESIDENTIAL (R-2)

WHEREAS, Article 4, Section 4.6.1 of the City of Cripple Creek Development Code establishes the administration, authority and procedures for the City's review and approval of requests for rezoning applications; and

WHEREAS, Robert Regester has submitted a rezoning application for approval of a zone change to Limited Residential (R-2) for the property consisting of Lots 11-15, Block 14, Cripple Creek Freeman Placer; and

WHEREAS, the City of Cripple Creek has adopted a comprehensive plan titled City of Cripple Creek Master Plan, which seeks to promote a range of attainable housing opportunities for all citizens; and

WHEREAS, the Master Plan states that housing should support all adjacent uses and be interwoven into the overall fabric of the City; and

WHEREAS, rezoning the property to R-2 is consistent with the adjacent zone district; and

WHEREAS, the property is suited for residential uses due to the proximity to other residential uses; and

WHEREAS, the City of Cripple Creek Planning Commission and City Council held a public hearing on January 6, 2021 and voted to approve rezoning the property from Industrial District (C-1) to Limited Residential (R-2).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK, COLORADO, THAT:

Section 1. Upon application by Robert Regester for approval of a zone change from Industrial District (C-1) to Limited Residential (R-2) for property consisting of Lots 11-15, Block 14 Cripple Creek Freeman Placer, and pursuant to the findings made based on testimony and evidence presented at a public hearing before the Cripple Creek City Council, a zone change is approved for the following described land:

Lots 11-15, Block 14, Cripple Creek Freeman Placer, City of Cripple Creek, County of Teller, State of Colorado.

PASSED ON THE FIRST READING AND ORDERED PUBLISHED THIS ____ DAY
OF _____, 2021.

Janell Sciacca, City Clerk

PASSED ON SECOND READING AND ADOPTED BY THE CITY COUNCIL THIS _
____ DAY OF _____, 2021.

Approved: _____
Milford Ashworth, Mayor

Attest: _____
Janell Sciacca, City Clerk

Approved as to form: _____
Erin M. Smith, City Attorney



TO: Mayor and City Council
CC: Carol Stotts, HR/Risk Management Director
FROM: Heather Hildebrand, HR/Risk Management Technician
AGENDA ITEM: Presentation and Recommendation of KIVU Terms of Purchase Renewal
DATE: February 17, 2021

Request:

Staff is requesting approval of a 2-year renewal of our agreement with KIVU for Managed Security Service-Endpoint Detection and Response.

Overview/Analysis:

As you will recall, the City experienced a data security incident involving an encryption attack on October 4, 2019. Through CIRSA, the City contracted with an attorney who specializes in these situations, who recommended we utilize KIVU as a forensic investigator. As part of that agreement with KIVU, they also provided us their Managed Security Service for a short time during their investigation. When that agreement ended the City entered into a 1-year agreement to continue those services, which expires February 23, 2021.

After discussions with Phoenix Technology Group (PTG), our current Managed Service Provider for IT needs, it was recommended that we continue our agreement with KIVU. When staff reached out to KIVU, we had a meeting, including Finance Director Harris and Jim Kennedy from PTG during which KIVU described the new Endpoint Detection and Response system they are transitioning to, Sentinel One. They also offered the City a 2-year agreement at a reduced price.

KIVU's Managed Endpoint Detection and Response service provides endpoint protection and remediation support via KIVU's Security Operation Center (SOC) capabilities. The SOC is comprised of threat analysts and engineers that continuously monitor CC's environment 24x7x365. Regular anti-virus applications notify after an attack has happened, and it is not monitored. The SOC means the analysts will see a threat event as it happens and will execute threat remediation in response.

Budget Impact:

The money for this service is not in the 2021 budget, contingency funds would have to be utilized, if approved. The City paid \$25,000 for our 2020-2021 agreement; KIVU has offered \$15,000 per year if we agree to a two-year agreement. They have also agreed to allow us to pay it annually rather than upfront.

Finance Director Harris has been consulted and supports this request as presented.

Action Requested:

Staff recommends approving the Terms of Purchase and Service Agreement with KIVU for 2 years of Managed Security Service-Endpoint Detection and Response.

Attachments:

Attachment A: KIVU 2021 Terms of Purchase

Attachment B: KIVU Managed Security Services Endpoint Detection and Response Service Description

KIVU TERMS OF PURCHASE

These Kivu Terms of Purchase (“Terms”) govern the Order(s) for Service and/or Third-Party Product between Kivu Consulting Inc. or one of its Affiliates (the applicable entity identified in the Order as providing the Service or Third-Party Product is defined as “Kivu”) and the client described in the Order (“Client”). Kivu and Client may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

1. DEFINITIONS.

- a. **“Active User”** or **“User”** means a Client user established to access the Kivu Resources and/or Sublicenses with a designation of “active” at any time during a subscription period. Client has the ability to determine who is an Active User.
- b. **“Affiliate”** or **“Affiliates”** means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Party hereto, and/or such Party’s successors and assigns.
- c. **“Client Content”** means materials or documents created and/or supplied by Client which is considered Client’s intellectual property.
- d. **“Client Data”** means proprietary or personal data regarding Client, its contractors or its employees made available to Kivu hereunder.
- e. **“Confidential Information”** means all information proprietary to a Party or its Affiliates and any of its customers or suppliers that is marked as confidential or that due to its nature is known or in good faith should be known to be confidential. Confidential Information of Client will be deemed to include, without limitation, all confidential Client Data to which Kivu obtains access by performing Services. Confidential Information of Kivu will be deemed to include, without limitation, all Kivu Intellectual Property, financial and data security information, and non-public features and functions of Sublicenses. The obligations of the Receiving Party shall not apply to Confidential Information: (i) generally available to the public at any time at no fault of the Receiving Party, (ii) furnished at any time to the Receiving Party by a third party having the right to furnish it with no obligation of confidentiality to the Disclosing Party, (iii) independently developed by the Receiving Party by individuals not having access to the Confidential Information of the Disclosing Party, (iv) approved for use or disclosure by written authorization from the Disclosing Party, or (v) required to be disclosed pursuant to a valid order by a court or other governmental entity with jurisdiction, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such order to permit the Disclosing Party to challenge such disclosure.
- f. **“Deliverable(s)”** means the deliverables, if any, specified in an Order.
- g. **“Disclosing Party”** means a Party to these Terms who discloses its Confidential Information to a Receiving Party.
- h. **“Export Control Law(s)”** means all applicable export laws and regulations, including, without limitation, the Arms Export Control Act (22 U.S.C. § 2751-2794), the International Traffic in Arms Regulations (ITAR) (22 U.S.C. § 120 et seq), and the Export Administration Regulations (15 C.F.R. § 730-774), including the requirement for obtaining any export license or agreement, if applicable.
- i. **“Intellectual Property Rights”** means all existing and future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.
- j. **“Kivu Intellectual Property”** means any know-how, processes, techniques, concepts, methodologies, tools, ideas, designs, inventions, patents, copyrights, improvements, computer programs, software, Kivu Resources, source code, object code, graphics, intellectual property, information, and/or pictorial representations that (i) Kivu developed prior to entering into the applicable Order with Client; (ii) is or are developed separate and apart from the Order and Services at any time by Kivu; or (iii) led to or produced the results of the Services or were otherwise used by Kivu to provide the Services.
- k. **“Order”** means the statement of work, service order, purchase order, signed quote, or other order for Services or Third-Party Products executed by the Parties.
- l. **“Kivu Resource(s)”** means all hardware, appliances, equipment, software, support, maintenance, and other products which are manufactured, owned or produced by Kivu and licensed by Kivu to Client in accordance with the terms hereof.
- m. **“Receiving Party”** means a Party to these Terms who receives Confidential Information from a Disclosing Party.
- n. **“Service(s)”** means any service to be provided by Kivu detailed in an Order. Services may incorporate Kivu Resources and/or Sublicenses.
- o. **“Sublicense(s)”** means hardware, appliances, equipment, software, support, maintenance, services and/or other products which are manufactured or provided by Vendors and sublicensed by Kivu to Client in connection with the provision of Services hereunder and subject to the terms hereof.
- p. **“Third-Party Product(s)”** means all hardware, appliances, equipment, software, support, maintenance, services, and other products which are (i) manufactured, licensed, or provided by Vendors, and (ii) resold by Kivu to Client.
- q. **“Vendor(s)”** means third party manufacturers, vendors, suppliers, licensors, or providers of hardware, appliances, equipment, software, support, maintenance, services, and other products that are either sublicensed or resold by Kivu to Client.

2. **ORDER.** Kivu shall provide the Services and/or Third-Party Products to Client as set forth in the relevant Order. Client must be the end user. No resale by Client is allowed hereunder. Each Order shall describe the specific Services to be purchased, if any, including any Kivu Resources and/or Sublicenses; service descriptions and/or service level agreements, as applicable; ThirdParty Products, if any; License Agreement(s), as applicable; fees and expenses; and such other specifications as the Parties may mutually agree. Each Order, when fully executed, shall be deemed to incorporate all the Terms herein (unless any provisions of these Terms are excluded or modified in the Order).
3. **SERVICE DESCRIPTION AND SERVICE LEVEL MANAGEMENT DESCRIPTION.** Copies of relevant Service documentation, including any applicable service description(s), service level management descriptions, and service level agreements will be referenced in the Order and made available to Client for review during the sales process. These documents are subject to change and are updated by Kivu when necessary as processes and technology change.
4. **CHANGE IN SCOPE OF SERVICES.** In the event that unforeseen factors change the scope of Services and/or impact the term and cost of the Services, Client and Kivu may mutually revise the Order, and Kivu shall provide Client with an estimate of the impact of such revisions on the fees, payment terms, completion schedule, and other applicable provisions of the Order. If the Parties mutually agree to such changes, a written description of the agreed change (“Change Order”) shall be prepared, incorporating such changes to the original Order; the Change Order will not be effective unless signed by both Parties. The terms of a Change Order prevail over those of the Order.
5. **FEES AND INVOICING.**
 - a. **Fees.** Fees for the Services and/or Third-Party Products, as applicable, shall be specified in each relevant Order. Client agrees to pay Kivu the fees set forth in each Order. Unless otherwise specified in the Order, Client agrees to reimburse Kivu for actual, reasonable travel and living expenses incurred by Kivu in connection with the performance of Services. Expenses are subject to the Kivu Travel Policy, available upon request.
 - b. **Taxes.** All amounts payable by Client to Kivu hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without limitation, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively “Taxes”). Client shall be solely responsible for payment of any Taxes, except for those taxes based on the income of Kivu. Client will not withhold any Taxes from any amounts due to Kivu. In any case where a local jurisdiction imposes a tax on Client that Kivu is required to bill for, Client will be liable to pay that tax as part of the scheduled payments to Kivu.
 - c. **Invoices.** Kivu shall invoice Client for Services in accordance with the applicable Order. Kivu shall invoice Client for Third-Party Products when such Third-Party Products are shipped or are otherwise made available to Client for access or download. Unless otherwise set forth in the Order, Kivu’s invoices are due and payable by Client in full within thirty (30) days from the invoice date. Undisputed invoices not paid within thirty (30) days from the invoice date will bear interest from the due date until paid at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. Client shall also be responsible for all collection costs, including reasonable legal fees, incurred by Kivu in connection with past due undisputed invoices.
6. **TERM AND TERMINATION.**
 - a. **Service Term and Renewals.** Kivu shall perform Services during the initial term set forth in the Order (“Initial Term”). Unless otherwise expressly stated in the Order, and until either Party gives the other Party written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then-current term, Orders for Service will automatically renew for additional equivalent periods of time (“Renewal Term(s)”) at Kivu’s then-applicable Service fees.
 - b. **Termination for Cause.** Either Party shall have the right to terminate an Order for Services for cause if (a) the non-breaching Party notifies the other within thirty (30) days of the other’s breach, and (b) the breaching Party fails to cure any material breach of the Service Order within thirty (30) days after its receipt of written notice of such breach. Kivu may cure a material breach of Services, at Kivu’s sole option, by either (i) re-performing any defective or non-conforming Services, or (ii) refunding any amount paid by Client to Kivu for the Services that are deemed to be defective or non-conforming. If Client terminates the Order for cause for Kivu’s failure to cure, Kivu shall refund to Client the pro-rated portion of any prepaid Services fees, rounded down to the next whole month, corresponding to Services not yet performed. Termination of the Order does not release either Party from any liability which, at the time of termination, has already accrued to the Party. Activation fees and expenses, if any, associated with the establishment of Services will be set forth in the Order and are nonrefundable.
 - c. **Early Cancellation of Services.** If Client cancels an Order for Service, or any portion thereof, prior to the end of the current term (for any reason other than for an uncured material breach by Kivu), Client agrees to pay Kivu an early cancellation fee equal to the amount of remaining fees that would have been due and payable had the Service Order been performed for the entire term.
 - d. **Cancellation of Product Orders and Return of Products.** Orders for Third-Party Products are non-cancellable and are binding and irrevocable once issued by Client and accepted by Kivu. Third-Party Product returns may be permitted in limited circumstances where allowed by the Vendor’s returns and refunds policy and such return must be approved in writing by the Vendor.

- e. **Device Return.** Upon cancellation, termination or expiration of an Order for Services, Client will return all Kivu-provided equipment and devices (“Devices”) in good condition (less normal wear and tear) to a location designated by Kivu within fifteen (15) calendar days after the cancellation, termination or expiration date. If Kivu has not received such Kivu-provided Devices within thirty (30) days after cancellation, termination or expiration of the Order, Kivu shall invoice Client, and Client shall promptly pay, for the manufacturer’s suggested retail price of such property. For purposes of clarification, “device(s)” do not include any Third-Party Product resold by Kivu and licensed directly to Client by a Vendor.
7. **CLIENT POLICIES.** While on Client’s premises, or if Kivu or Kivu’s agents are given access to Client’s computing equipment, applications, or network, Kivu shall and shall cause Kivu’s agents to abide by the applicable and reasonable policies and procedures of Client, including safety, security, and data privacy and handling policies, referenced in the applicable Order. However, Kivu will not provide Kivu or Kivu’s agents’ employee CPNI/PII data, including but not limited to SSN, last 4 digits of SSN, date of birth, etc. to Client. If applicable and reasonable given the scope of the engagement, Kivu may provide employee names (first and last) and e-mail addresses, solely for the purposes of managing devices on Client’s network.
8. **THIRD PARTY PROVIDERS.** The Services and Third-Party Products provided hereunder may contain features capable of interoperating with third-party applications and systems. To use certain features of the Services and/or Third-Party Products, Client may be required to obtain access to such applications or systems from a third-party provider (“3PP”). Notwithstanding any language contained herein to the contrary, Kivu is not responsible for any limitations, lack of capability, availability, compatibility, responsiveness or general degradation of Service(s) arising from the use of a 3PP. In addition, Kivu is not responsible for Client’s access to, operation or maintenance of third-party applications not sold to Client by Kivu. If Client is utilizing a 3PP, then it shall (i) provide the 3PP a copy of the relevant service description and/or service level management description, if any; (ii) be responsible for notifying and coordinating between Kivu and the 3PP regarding any scheduled downtime, maintenance windows, etc., as necessary; and (iii) provide Kivu the ability to open support tickets and communicate directly with the 3PP on behalf of Client as may be requested from time to time.
9. **CLOUD SERVICE PROVIDER FEES.** In the event that Client utilizes a third party cloud service provider (e.g. Amazon Web Services, Microsoft Azure, Google Cloud, IBM Cloud, or other cloud service provider of a similar nature) in connection with the Services, Client shall be liable for all fees due to such cloud service provider, howsoever arising, regardless of whether such fees are impacted by Kivu’s provision of the Services hereunder.
10. **CYBER SECURITY INCIDENT.** In the event the Services performed by Kivu hereunder involve Kivu’s continuous monitoring of any portion of the Client’s cyber security environment, and a Cyber Security Incident (defined below) occurs in that environment during the time that Kivu is performing such Services, Client agrees to reasonably cooperate with Kivu, including granting Kivu access to Client’s systems as necessary to reduce impact and determine the cause and scope of the incident. “Cyber Security Incident” means a violation or imminent threat of violation of cyber security policies, acceptable use policies, or standard cyber security practices which results in misuse, damage, denial of service, compromise of integrity, or loss of confidentiality of a network, computer, application, or data. Kivu and its Affiliates, directors, officers, employees, and agents will not be liable or responsible for Cyber Security Incidents, third party hacking attempts or attacks, viruses, malware and similar software programs, and denial of service attacks.
11. **WARRANTIES.**
- a. **KIVU Representations, Warranties, and Covenants.**
- i. **General.** Kivu represents and warrants to Client that (i) these Terms have been validly executed and delivered by Kivu and that these Terms constitute the legal, valid, and binding obligation of Kivu enforceable against Kivu, (ii) Kivu has all requisite corporate power and authority to enter into these Terms and to carry out the transactions contemplated by these Terms, (iii) the execution, delivery, and performance of these Terms and the consummation of the transactions contemplated by these Terms have been duly authorized by all requisite corporate action on the part of Kivu, (iv) Kivu’s execution and delivery of these Terms and Kivu’s performance or compliance with these Terms will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any license, sublicense, lease, contract, agreement, or instrument to which Kivu is bound or to which Kivu’s properties are subject, and (v) there are no pending or threatened lawsuits, actions, or any other legal or administrative proceedings against Kivu which, if adversely determined against Kivu, would have a material adverse effect on Kivu’s ability to perform its obligations under these Terms.
- ii. **Third-Party Product.** Kivu warrants that it has full right, power, and authority to sublicense the Sublicenses and to resell the Third-Party Products to Client, and that the Third-Party Products are free and clear of all liens and similar encumbrances of any kind.
- iii. **Kivu Resource Performance.** Kivu warrants that Kivu Resources, when used as permitted by Kivu and in accordance with the instructions in the documentation, will operate substantially as described in the Order. Kivu will, at its own expense, use commercially reasonable efforts to (a) correct any reproducible error that Client reports to Kivu in writing regarding an Kivu Resource, or (b) replace the defective Kivu Resource. In the event that Kivu, in its sole discretion, may not achieve either (a) or (b) as a remedy for breach of this warranty, Kivu agrees to accept return of the non-

conforming Kivu Resource, terminate the Order related thereto, and refund Client all prepaid fees related to the non-conforming Kivu Resource.

iv. Service Performance. Kivu shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform Services in a professional and workmanlike manner in accordance with applicable laws and governmental regulations. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Kivu or by third-party Vendors, or because of other causes beyond Kivu's reasonable control, but Kivu shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, KIVU DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES.

v. Disclaimers of Warranty. KIVU WILL NOT BE RESPONSIBLE FOR NONCONFORMITIES IN SERVICE ARISING FROM INACCURATE OR INCOMPLETE DATA OR INFORMATION PROVIDED BY CLIENT, FOR FAILURES OR DELAYS CAUSED BY CLIENT'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THE ORDER OR THESE TERMS, OR FOR FAILURES, DAMAGES OR DELAYS CAUSED BY THIRD PARTY PROVIDERS, THIRD PARTY VENDORS, OR THIRD-PARTY PRODUCTS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS-IS" AND KIVU HEREBY WAIVES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

b. Client's Representations, Warranties, Covenants and Responsibilities.

i. General. Client represents and warrants to Kivu that (i) these Terms have been validly executed and delivered by Client and that these Terms constitute the legal, valid, and binding obligation of Client enforceable against Client, (ii) Client has all requisite corporate power and authority to enter into these Terms and to carry out the transactions contemplated by these Terms, and (iii) the execution, delivery, and performance of these Terms and the consummation of the transactions contemplated by these Terms have been duly authorized by all requisite corporate action on the part of Client. In addition, Client represents, warrants, and agrees that Client is solely responsible for: (A) Client's information security program, environment, controls, and processes, (B) making all management decisions related to Client's information security program, environment, controls, and processes, (C) the decision whether to implement, and the actual implementation, of any recommendations made by Kivu, and (D) determining the sufficiency of any Services or Third-Party Products purchased by Client.

ii. Services. Client agrees to reasonably cooperate with Kivu in the performance of the Services. Client represents and warrants that it will (i) comply with all relevant security industry standards and practices, and (ii) use the Services only in compliance with Kivu's standard published policies then in effect and all applicable laws and regulations. Although Kivu has no obligation to monitor Client's use of the Services, Kivu may do so and may prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing. Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Client shall also be responsible for maintaining the security of the Equipment, Client account, passwords (including but not limited to administrative and User passwords) and files, and for all uses of Client account or the Equipment with or without Client's knowledge or consent.

iii. Third-Party Products. Client acknowledges that (i) it has made the selection of the Third-Party Products based on its own judgment and expressly disclaims any reliance upon statements made by Kivu, (ii) Client's use of the Third-Party Products is subject to the applicable Vendor's end user license agreement, service level agreement, terms of use or service, or other end user agreements or documents, (iii) the only representations, warranties, indemnities, and other terms relating to the Third-Party Products are those offered by the applicable Vendor, and Kivu will have no responsibility in connection therewith, (iv) it expressly waives any claim against Kivu based upon any infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property rights with respect to the Third-Party Products, and (v) it assumes all responsibility for ensuring that the Third-Party Products are used in accordance with all applicable laws and regulations.

12. INTELLECTUAL PROPERTY OWNERSHIP. Deliverables, as specified in an Order, shall be the property of Client. To the extent Kivu Intellectual Property is incorporated into any Deliverables, Kivu grants to Client an irrevocable, nonexclusive, royalty-free, limited license for Client to use Kivu Intellectual Property to the extent necessary to use such Deliverable for its internal purposes only. All Kivu Intellectual Property is and shall remain the sole and exclusive property of Kivu. Client shall not have or acquire any right, claim, title, or interest in or to any Kivu Intellectual Property. Client acknowledges that Kivu may (a) retain archival copies of any and all derivative works of Deliverables and work product and (b) may use and disclose general statistics and non-Client identifiable information regarding vulnerabilities and security issues but only if the identity of the Client is not disclosed and cannot be reasonably ascertained or inferred. Upon the request of the other Party, each Party shall take such

actions, and shall cause its personnel to take such actions, including execution and delivery of all documents, as may be appropriate or desirable to confirm such rights. The information contained in the Kivu Resources is Confidential Information of Kivu, contains trade secrets, and is proprietary know-how belonging to Kivu. Client is granted access to the Kivu Resources and Sublicense subject to Client's obligation to hold the information provided in confidence. Further, the presence of copyright notices on the Confidential Information does not constitute publication or otherwise impair the confidential nature thereof. Client agrees not to use, print, copy, provide, or otherwise make available, in whole or in part, any portion of the Confidential Information or modifications of it or related material except in accordance with these Terms.

13. LIMITED LICENSE GRANT AND RESTRICTIONS- KIVU RESOURCES AND SUBLICENSES.

a. License and Ownership. Kivu grants to Client a non-exclusive, nontransferable, non-assignable, limited right and license to access and use specified Kivu Resources or Sublicenses, as applicable. Notwithstanding anything to the contrary in these Terms, Kivu, its licensors and/or Vendors, as applicable, own and retain all right, title and interest in and to the Kivu Intellectual Property, as well as the Intellectual Property Rights in the Kivu Property and Sublicensed Property including any enhancements, modifications or derivative works thereof. Client retains all ownership rights to Client Data and Client Content. Unless a particular right is expressly granted herein, it is expressly excluded from this license.

b. Restrictions. Client may only use the Kivu Resources and the Sublicenses for its own lawful, internal business purposes. Except as expressly permitted by these Terms or the executed Order, Client will not, and will not allow any third party to: (a) copy, modify, adapt, alter, translate, or create derivative works of the Kivu Resources or Sublicenses; (b) sell, resell, lend, loan, lease, license, operate as a service bureau, managed service, sublicense or transfer the Kivu Resources or Sublicenses; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Kivu Resources or Sublicenses (except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation); (d) knowingly take any action that would cause the Kivu Resources or Sublicenses to be placed in the public domain; (e) remove, alter or obscure any proprietary notices of Kivu, its licensors or Vendors included in the Kivu Resources, Sublicenses or Order documents; or (f) use the Kivu Resources or Sublicenses for timesharing or service bureau purposes or otherwise for the benefit of a third party, or remove any proprietary notices or labels. Client will not allow any access to or use of the Kivu Resources or Sublicenses by anyone other than Client, or its employees, contractors or agents, and any such use must be consistent with the terms, conditions and restrictions set forth in these Terms. Client will be responsible for its Users' compliance with these Terms and liable for its Users' breach thereof. Client will ensure that it has obtained all necessary consents and approvals for Kivu to access Client Data for the purposes permitted under these Terms. If Client is in breach of this Section, and such breach is not cured in accordance with these Terms, Kivu may suspend access to the Kivu Resources and/or Sublicenses, in addition to any other rights and remedies Kivu may have at law or in equity.

14. IMPORT/EXPORT. Client acknowledges that the Kivu Resources, Sublicenses, and Third-Party Products, as well as any technical data related thereto, may be subject to Export Control Laws and Client hereby agrees not to export, re-export, or otherwise distribute such products in violation of any Export Control Laws. Client warrants that it will not purchase, export, or re-export any Kivu Resources, Sublicenses, or Third-Party Products with knowledge they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless permitted by applicable laws. Client further warrants it will not export or re-export, directly or indirectly, any such products to embargoed countries or transfer or sell such products to companies or individuals listed on applicable restricted parties lists including, without limitation, the Denied Persons List published by the United States Department of Commerce and the Specially Designated National List published by the United States Department of the Treasury.

15. RISK OF LOSS AND TITLE TO THIRD-PARTY PRODUCTS. Title to Third-Party Products shall vest in Client upon delivery to the carrier for shipment (FOB shipping point). Kivu will ship and deliver the Third-Party Products to the Client's specified place of delivery using a carrier selected by Kivu; provided, however, that Client shall be responsible for clearing any necessary customs with respect to the Third-Party Products. Client shall bear the risk of loss, damage, and destruction from every cause once the Third-Party Products have been delivered to the carrier. Client shall unload and inspect the Third-Party Products upon delivery, and Client shall be responsible for notifying Kivu of any defect or damage to the Third-Party Products or of any claim arising hereunder within five (5) days of the delivery of the Third-Party Products. Client's failure to advise Kivu of such defect, damage, or claim within the specified time period will release Kivu and the carrier from any liability for damages related thereto.

16. CONFIDENTIAL INFORMATION.

a. Obligations. The Receiving Party agrees not to disclose or use any Confidential Information of the Disclosing Party in violation hereof and to use Confidential Information of the Disclosing Party solely for the purposes hereof. Upon demand by the Disclosing Party, the Receiving Party shall return to the Disclosing Party all copies of the Disclosing Party's Confidential Information in the Receiving Party's possession or control and destroy all derivatives and other vestiges of the Disclosing Party's Confidential Information; provided that the Receiving Party may retain one archival copy solely for the purpose of administering its obligations under the Order. All Confidential Information of the Disclosing Party shall remain the exclusive property of the Disclosing Party. The Receiving Party may disclose Confidential Information of the Disclosing

Party to its employees, officers, directors and representatives who have a reasonable need to know such Confidential Information in connection with the Services. Notwithstanding anything to the contrary, Kivu shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and Kivu will be permitted to: (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes solely in connection with the Services and other Kivu offerings and for no other purposes whatsoever; and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

- b. **Injunction.** Both Parties agree that violation of any provision of this Section would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that the Disclosing Party will be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

17. INDEMNIFICATION.

- a. Kivu will be entitled to rely on and act in accordance with any verifiable written instructions or directions provided by Client and will incur no liability in doing so.
- b. To the extent permitted by law and subject to the Limitation of Liability in Clause 18 below, each of Kivu and Client (each, an "Indemnifying Party") will defend, indemnify and hold harmless the other of Client or Kivu, respectively, (the "Indemnified Party") and its subsidiaries, successors and assigns, and each of their officers, directors, agents, contractors, subcontractors and employees (collectively referred to as the "Indemnities"), from and against any and all claims, liabilities, damages, fines, penalties or costs (including reasonable attorneys' fees) in connection with third-party claims arising out of or resulting from: (i) the Indemnified Party acting in accordance with the instructions or directions of the Indemnifying Party; (ii) death of or injury to any person or loss of or damage to any tangible property (excluding the loss of data) arising out of or resulting solely from the acts or omissions of the Indemnifying Party, and (iii) any infringement of a United States letters patent, a trade secret, or any copyright, trademark, service mark, trade name, "intellectual property", or similar proprietary rights conferred by statute, by common law, or by contract alleged to have occurred as a result of materials provided, by the Indemnifying Party. In the event that any claim is made or any action or proceeding is brought against the Indemnities, the Indemnities may, by notice to the Indemnifying Party, require that the Indemnifying Party resist such claim or take over the defense of any such action or proceeding and employ counsel for such purpose, such counsel to be subject to the prior approval of the Indemnitees, which approval shall be deemed to have been given hereby in the case of counsel acting for the insurance underwriters of the Indemnitees or engaged in such resistance or defense.
- c. **Client's Use of Services.** Client represents, covenants, and warrants that Client will use the Services (including but not limited to Sublicenses) only in compliance with these Terms, any relevant Service descriptions related to the Order and all applicable laws and regulations. Client hereby agrees to defend, indemnify and hold harmless Kivu and applicable developers of the Sublicenses against any third party claims for damages, losses, liabilities, settlements and expenses (including reasonable costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation based on Client's gross negligence or willful misconduct or otherwise from Client's use of Services. Although Kivu has no obligation to monitor Client's use of the Services, Kivu may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

18. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES, VENDORS OR SUPPLIERS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), FOR LOST PROFITS OR REVENUES, LOSS OF USE OR LOSS OR CORRUPTION OF DATA, FOR EQUIPMENT OR SYSTEMS OUTAGES OR DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE ORDER OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL KIVU'S, KIVU'S AFFILIATES', THEIR VENDORS OR SUPPLIER'S, OR THEIR RESPECTIVE OFFICERS', DIRECTORS', EMPLOYEES' OR AGENTS' AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, THE SERVICES, THE KIVU RESOURCES AND SUBLICENSES, THE THIRD-PARTY PRODUCTS, THE ORDER AND OTHERWISE (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND INTENTIONAL ACTS OR OMISSIONS) EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO KIVU FOR THE SPECIFIC SERVICES OR THIRD-PARTY PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM. NO ACTION REGARDING THE SERVICES OR THIRD-PARTY PRODUCTS, OTHER THAN WITH RESPECT TO PAYMENTS HEREUNDER, MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE FIRST TO OCCUR OF EITHER (A) THE CONCLUSION OF SERVICES OR DELIVERY OF THIRD-PARTY PRODUCTS UNDER THE ORDER, OR (B) THE CLAIMANT PARTY'S KNOWLEDGE OF THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION.

- 19. FORCE MAJEURE.** Neither Party shall be liable for delays, failure to meet its obligations under these Terms, or damages of any kind due to events, circumstances, or causes beyond its reasonable control or otherwise related to war, terrorism, riots, acts of God, floods, fire, earthquakes, hacking attempts or attacks, systems or data not within Kivu's control, viruses, malware, and similar software programs, and denial of service attacks and other malicious conduct. The nonperforming Party must promptly notify the other Party of such event, circumstance, or cause and take all reasonable steps to recommence performance promptly. Notwithstanding the foregoing, no such events, circumstances, or causes shall excuse Client's obligation to pay undisputed amounts when due hereunder.
- 20. NON-SOLICITATION.** Client agrees that it and its Affiliates, and their employees, will not, either during or for a period of twelve (12) months after termination or expiration of the Order, solicit to hire as an employee or contractor any of Kivu's and/or Kivu's Affiliates' employees. Publication of open positions in media of general circulation (e.g., Internet website job postings) will not constitute solicitation of employees. If Client or one of its Affiliates hires any employee(s) of Kivu and/or Kivu's Affiliates prior to expiration of the twelve (12) month period, as an employee or contractor, Client agrees to pay to Kivu or Kivu's Affiliate, as applicable, within thirty (30) days of the hiring date, an amount equal to the person's annual compensation (including bonuses) at Kivu or Kivu's Affiliate at the time of the employee's departure therefrom.
- 21. STAFFING AND LOCATION.** Kivu intends to utilize personnel who are employees of Kivu in provision of Services. However, Kivu may utilize, in performance of the Services, staff augmentation consultants who are used by Kivu in its normal course of business and subcontractor personnel. Unless otherwise expressly stated in the Order, the Services may be rendered at Client's facilities, Kivu's facilities or at other suitable locations within Kivu's discretion.
- 22. KIVU'S AFFILIATES.** Kivu's Affiliates and/or employees or consultants of Kivu's Affiliates may provide Services under the Order. Such Affiliates and/or their employees or consultants who provide Services will be subject to these Terms. Only the entity who provides Services will be liable under these Terms with respect to such Services. There shall be no joint and several liability with respect to entities that do not provide Services under these Terms.
- 23. THIRD PARTY BENEFICIARIES.** Notwithstanding anything to the contrary herein, Client hereby agrees that for any software, hardware or service sublicensed by Kivu to Client hereunder, the developer or Vendor of such software, hardware or service will be deemed a third party beneficiary of these Terms.
- 24. ASSIGNMENT.** Except as otherwise set forth in these Terms, neither Party may assign the Order or these Terms without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign the Order or these Terms without consent to any parent, subsidiary or other Affiliate, in connection with a merger involving any of its Affiliates or in connection with an acquisition of all or substantially all of such Party's assets or equity interests. In addition, Kivu may assign the Order or these Terms to an Affiliate.
- 25. NOTICES.** All notices and other communications hereunder will be in writing and deemed delivered one (1) day after being sent by a nationally recognized overnight courier service or three (3) days after being sent certified U.S. mail, return receipt requested, postage prepaid. All notices and other communications hereunder will be given to the Party at the address indicated in the Order.
- 26. GOVERNING LAW.** The Order and these Terms will be governed by, and construed and enforced in accordance with, the laws of the State of Colorado, excluding conflicts of law principles. Exclusive jurisdiction for any lawsuit or claim in connection with the Order and these Terms shall be in the state or federal courts of the State of Colorado.
- 27. EXECUTION IN COUNTERPARTS.** The Order may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of the Order by electronic transmission or any other reliable means shall be effective for all purposes as delivery of a manually executed original counterpart. Either Party may maintain a copy of the Order in electronic form.
- 28. MISCELLANEOUS.** These Terms are made a part of and incorporated into the Order. The Order and these Terms constitute the entire agreement between the Parties with respect to its subject matter. The Parties agree that as of the Effective Date, these Terms will supersede, terminate and replace in its entirety all prior services agreements, product purchase agreements, and confidentiality agreements between the Parties or their predecessors in interest. These Terms shall govern in the event of a direct conflict with the Order unless the Order expressly specifies that the Order shall control in the event of a direct conflict. During the term of the Order, a purchase order, acknowledgment form or similar routine document may be used. The Parties agree that any provisions of such routine documents, which purport to add to or change, or which conflict with the provisions of the Order or these Terms shall be deemed deleted and have no force or effect. No forbearance, failure or delay in exercising any right, power or privilege is waiver thereof. In the event a court of competent jurisdiction holds any provision of the Order or these Terms invalid or unenforceable, the remainder of the Order and these Terms will continue in effect. Each Party agrees that it will not, without prior written consent of the other Party, use in advertising or other publicity the name of the other Party. Neither Party is liable for non-performance under the Order and these Terms to the extent to which the non-performance is caused by events or conditions beyond that Party's control; provided, however, this shall not apply to either Party's obligations with respect to payments pursuant to the terms of the Order and these Terms.
- 29. GOVERNMENTAL IMMUNITY.** The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the

Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the City and its officers or employees.

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