

**CITY AND COUNTY OF DENVER - THEATRES AND ARENAS USER AGREEMENT (EXTENSION)**  
**Boettcher Concert Hall**  
**COLORADO SYMPHONY ORCHESTRA ASSOCIATION**

THIS USER AGREEMENT (EXTENSION) is made and entered into at Denver, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between the CITY AND COUNTY OF DENVER, a municipal corporation organized and existing by virtue of Article XX of the Constitution of the State of Colorado, hereinafter referred to as “City,” and COLORADO SYMPHONY ORCHESTRA ASSOCIATION, hereinafter referred to as the “User.” Together, the City and the User are sometimes referred to collectively as the “parties.”

1. For and in consideration of the mutual agreements contained herein and subject to the terms and conditions hereinafter stated, the City hereby grants to the User and the User hereby accepts from the City the use of that portion only of the City’s Theatres and Arenas facilities, located at **14<sup>TH</sup> AND CURTIS STREETS**, Denver, Colorado, described as follows:

**THE BOETTCHER CONCERT HALL AT THE DENVER PERFORMING ARTS COMPLEX**, the “Permitted Premises”, which includes the concert hall (including typical ancillary spaces used for dressing rooms, lobby, rehearsal rooms and loading dock) and 4 parking spaces, as illustrated on Exhibit A attached hereto.

2. The term of this User Agreement shall be from September 1, 2010 to August 31, 2015, for the days specified pursuant to the following procedure:
  - 2.A. For the period September 1, 2010 to August 31, 2011, the days of use shall be as currently reflected in Theatres & Arenas Booking Calendar.
  - 2.B. On or before February 16 of each year thereafter during the term hereof, User shall submit to the City’s Deputy Manager of General Services for the Division of Theatres and Arenas or designee (the “Deputy Manager”), a schedule identifying every load-in, load-out, rehearsal and performance date and time for the upcoming September 1 to August 31 time frame. Once approved by the Deputy Manager, the schedule will be signed by the Deputy Manager and the User’s authorized representative, and will determine the days and times of permitted use by User and the availability of the Permitted Premises for alternative use and users. Any changes to the approved schedule must be communicated to the other party not less than 14 days prior to the date of the proposed change, and an amended schedule must be signed by both parties. User shall release any hold dates that will not be needed for Symphony purposes sixty (60) days before such dates. The User acknowledges there are other annual/historic events (i.e. high school graduations) that occur at the permitted premises and that the City shall notify the User of these dates in conjunction with the User’s annual schedule submittal.
3. If the premises herein included are damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control and without the fault or negligence of either party including, but not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, failure of public utilities or unusually severe weather, prevents occupancy and use, or either, as granted in this permit, the City and the User are each hereby released from any damage so caused to the other party thereby. Likewise, if any of the said unforeseeable causes prevents occupancy and use on the date or dates herein named, the User shall be allowed alternative occupancy and use on alternate date as available in accordance with standard policies as hereinabove stated, subject to all the terms, covenants, and conditions herein. Any paid rents shall be applied toward a rescheduled date for the same or different Theatres and Arenas venue in accordance with the published rental rates. Should previous commitments or bookings of the attraction hereby provided for prevent alternative occupancy and use as above stated, the City will refund to the User all sums paid hereunder except such portions thereof as shall have been necessarily expended or committed. If the expenses which have been expended by the City exceed the amount of the deposit, the User is responsible to pay the City any balance remaining to cover all the expenses customarily paid by the User and actually incurred by the City in connection with the cancelled event. In like manner, the User agrees to make proper restitution to holders of paid admissions and to other such patrons thus affected by the aforementioned action.
4. The User shall have the right to occupy and use said Permitted Premises for the purposes of event move-ins, rehearsals, performances, and move-outs, and no other use by User, or assignment of the rights conferred hereunder, is permitted without the written permission of the Deputy Manager. The City retains the right to permit use of the Permitted Premises and ancillary support areas by other users, and agrees to notify User of the dates and times of such alternative use. As used herein, “event” means each performance attended by members of the public who have purchased tickets therefore.
5. The user fees to be paid to the City by the User are in the amounts and on the basis and terms as follows: (Make all checks payable to the City and County of Denver.)

a) Monthly/annual fees:

<u>Term</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
9/1/10-8/31/11	\$264,915	\$22,076.25
9/1/11-8/31/12	\$272,862	\$22,738.50
9/1/12-8/31/13	\$281,048	\$23,420.67
9/1/13-8/31/14	\$289,479	\$24,123.25
9/1/14-8/31/15	\$298,163	\$24,846.92
 Total Contract Amount	 \$1,406,467	

Monthly user fees shall be payable on the first day of each month during the Agreement term. Commencing September 1, 2010, and on each September 1 thereafter through September 1, 2015, User shall in addition pay the City 1% of the then applicable Annual Fee for each event in excess of 107 held by User at the Permitted Premises during the preceding 12 months.

b) The User also shall pay to the City such other and further sums as may become due the City on account of special facilities, equipment and material, or extra services furnished or to be furnished by the City at the request of the User, or necessitated by the User's occupancy of the Permitted Premises, the compensation for which is not included in the rent or rents specified above. Such extra services or facilities to be paid include, but are not limited to, labor required for User's use of facilities such as stagehands, public address operators, ushers, ticket takers, guards, administrative charges on labor, and service charges (if used) for special equipment, required in setting up, operation and striking of the event. The City will invoice the User on a monthly basis for the prior month's expenses, and User's payment shall be due within thirty days of the date of said invoice.

c) The User shall furnish to the City a certified check payable to the City and County of Denver, or irrevocable letter of credit from a Denver bank, or other security acceptable to the Deputy Manager, in the amount of \$100,000.00, guaranteeing performance of all the provisions of this User Agreement, including the fees payable to the City pursuant hereto, and payment of all claims arising from the User's use of the Permitted Premises. A letter of credit must be in a form acceptable to the Deputy Manager and be capable of being drawn for a minimum of ninety (90) days following the last date of tenancy. Said certified check or letter of credit shall be delivered to the Deputy Manager prior to the first day of the term hereof. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due the City under the terms of this User Agreement, then the City may apply the proceeds of said certified check, or draw upon the letter of credit in settlement thereof, and User shall in such event and upon demand provide a replacement certified check or letter of credit in the amount of \$100,000.00 or such lesser amount as may be necessary to provide the full \$100,000.00 guarantee.

d) The User shall provide the City with an authenticated ticket manifest/audit showing the number and types of tickets printed, sold or distributed for each event. The User is also accountable for reporting unsold tickets and providing them for verification on request of the City. The User shall be responsible for ticket security; therefore, any tickets lost, stolen, or missing shall be considered as sold for purposes of computing gross revenues and Facilities Development Admissions Taxes. Complimentary tickets shall be properly documented and deducted separately by specific quantities from the report of tickets sold.

e) User shall keep a true, accurate, and complete account of all monies received through its operation of the event or events for which this User Agreement is made, and the City's Auditor, Manager of Department of General Services, Deputy Manager or their duly authorized agent, shall at all times have the right to audit such accounts and any records pertaining thereto. The User agrees that it will keep and preserve for at least three (3) years all evidence related to business transacted in connection with this User Agreement.

f) User shall comply with Article VII of the Denver Revised Municipal Code where The City and County of Denver levies a Facilities Development Admissions (FDA) Tax of 10%. The tax is to be computed on the admission price, and separately stated on the ticket. A separate check for Facilities Development Admissions Tax shall be paid directly to Manager of Revenue by User within ten (10) days after event conclusion unless exception is granted by the Manager of the Department of Revenue. **Exemptions to this tax may be granted only by the Manager of the Department of Revenue, City and County of Denver.** Additional information on the FDA tax is available at [denvergov.org](http://denvergov.org) (search FDA tax). User shall comply with current and future procedures related to the FDA tax as determined by the Department of Revenue.

**The FDA Tax Return Form and the FDA Tax Payment may be remitted to:**

**The City and County of Denver - Department of Finance  
Treasury Division  
PO Box 660860  
Dallas, TX 75266-0860**

6. Except as provided below, this User Agreement does not include the rights to broadcast from the Permitted Premises. Broadcast is defined as "the dissemination of video film, or radio content via electronic means including but not limited to high definition, standard and cable television, radio, web casting, web streaming, down loads, and/or other forms of digital transmission, digital broadcast, or digital distribution effectuated by means of the internet in all forms of television media now and hereafter known." However, User's monthly user fees include an annual fee of \$5,000 in consideration for the right to broadcast events locally, and permission for such local broadcasts is hereby granted.

All advertising and marketing rights, including without limitation the right to recognize sponsors and donors, in or around the Permitted Premises, are reserved to the City. This User Agreement does not grant any advertising or marketing or sponsor or donor recognition rights in favor of the User. The City retains all right to sell or lease advertising and/or sponsor recognition opportunities in and on the premises, and to determine whether any display by User of products, logos, ads or other messages may conflict with the City's rights, pursuant to City agreements with sponsors or otherwise. The specific written approval of the Deputy Manager may be requested, and must be obtained, for any advertising by User. The City shall not permit any display on the premises of any objectionable nature, or which would conflict with other advertising or marketing rights or obligations of the City, in the sole and absolute discretion of the Deputy Manager.

The City further reserves the right to make photographs, audio and video recordings in the facility at its option to use for customary advertising and publicity and other non-commercial uses.

7. The City agrees to furnish at no extra charge to the User, the following services as may be required for the use of the Permitted Premises: general house lighting, general stage lighting, heat, ventilation, housekeeping services, typical and standard services of the permanent Theatres and Arenas staff, regular sound system, and certain other available house props and equipment. All equipment provided "as is" with no obligation of City to add to or replace the current equipment. Both parties agree that User may use any available existing City equipment at no charge but that if User needs additional equipment for presentation of their event(s) the User will provide for that equipment at User's expense. In the event that any of the major equipment systems (sound or stage lighting) fails, both parties shall confer on the best option for repair or replacement of the failed equipment. Funding for this repair may come from existing bond project money if it is determined to be the best solution and the proper authorities authorize the expenditure of bond money for this purpose. City shall have sole discretion on expenditure of any of its funds for the repair and/or replacement of equipment.
8. The User shall file with the Deputy Manager, at least ten (10) days prior to holding each event identified in the approved schedule, a full and detailed outline of all facilities required, all stage requirements, and such other information required by the Deputy Manager concerning said event.
9. User shall use and occupy said Permitted Premises in a safe and careful manner and shall comply with all applicable Municipal, State, and Federal laws and rules and regulations pertaining to the Denver Theatres and Arenas Facilities promulgated by the Department of General Services, and all other rules and regulations prescribed by the Fire and Police Departments and other governmental authorities, as may be in force and effect during the tenancy. User shall not use said Permitted Premises or any part thereof for the possession, storage or sale of liquor (except with the permission of the Deputy Manager and according to law), or for any unlawful or immoral purpose or in any manner so as to injure persons or property, in, on or near the Permitted Premises. User shall not do any act or suffer any act to be done during the term of this User Agreement, which will in any way mar, deface, alter, or injure any part of said Denver Theatres and Arenas Facilities.

If at any time, in the judgment of the Deputy Manager, the use of the Permitted Premises by the User is illegal, indecent, obscene or immoral **the Deputy Manager shall so notify the User and**, the User shall either cease and desist from continuing such objectionable use or surrender the Permitted Premises hereunder forthwith upon demand of the Deputy Manager. The User hereby releases the City and its officers, agents, employees and representatives from any loss or damage occasioned by such cancellation.

**10. Food and Beverage:**

The User shall not sell or cause to be sold **or sampled** items of food or drink at or in Theatres and Arenas Facilities. Food and beverage sales, including all liquor service (sold or not), are the exclusive rights of the City's concessionaire (**Centerplate Catering**), the "concessionaire."

**Fliers and Brochures:**

Except for announcement of upcoming events at theatres and arenas facilities or events in which the User is promoting or advertising for artist performing at event, the User shall not distribute fliers or literature of any kind unless otherwise permitted by written approval by Deputy Manager.

**Merchandise Sales:**

The User upon approval from City, may facilitate the sales of non-CSO/gift shop "Merchandise" (third party guest artist(s), novelties, curios, souvenirs) related to the presentation of the show/event described in this agreement. If such sales are conducted the User shall:

- ◆ Negotiate with the third party for an agreed revenue split between the User and the third party. The User shall use their best effort to maximize their portion of the revenue from these sales and provide the City a copy of the documented agreement for the sales of the show merchandise.
- ◆ Facilitate such sales of the merchandise as needed.
- ◆ Ensure proper inventory controls of merchandise are followed.
- ◆ Ensure proper verification of sales and provide City copy of any merchandise settlements and sales summaries.
- ◆ Ensure submittal of appropriate sales tax to the proper taxing authority (note: the current sales tax rate in the City and County of Denver is 7.72%).
- ◆ Submit payment to the City an amount equal to 50% of the User's portion of revenue less any appropriate taxes.
- ◆ If the User contracts with City's concessionaire to sell merchandise, the User shall not be responsible to pay a commission to the City over and above the commission paid by the concessionaire to the City.
- ◆ Commission exemption: User's sale of CSO specific merchandise or sales from the User operated gift shop.

Concessionaire/Caterer may be contacted at: **Centerplate Catering, 700 14<sup>th</sup> Street, Denver, CO 80204, (303) 228-8050**

11. The User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to the permitted area than can be properly and safely seated and move about in said area, and the decision of the Deputy Manager in this respect shall be final.
12. All portions of the sidewalks, entrances, passages, vestibules, halls and all ways of access to public utilities on the Permitted Premises shall be kept unobstructed by the User and shall not be used for any purpose other than ingress or egress to and from the Permitted Premises. The doors, stairways or openings into any place in the structure, including hallways, corridors and passageways, also house lighting attachments, shall in no way be obstructed by the User.
13. The City shall determine the minimum number of, and use of, ushers, doorkeepers or other employees which will be employed to handle and govern the conduct of all in attendance at the function conducted by User. All of said attendants shall be regular members of the City's staff or under contract with the City, to be paid at the User's expense. The User agrees that if it becomes necessary or desirable for the User to hire employees, help or laborers, other than specified herein, that all such employment must first be approved by the Deputy Manager.
14. User shall defend, indemnify, and save harmless the City from all loss, cost and expense arising out of any liability, including, but not limited to, any violations of the ADA as defined and referenced in section 32 of this contract, or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever, by reason of the operation, use or occupation of the facilities hereinabove described, whether such use is authorized or not, or by any act or omission of User or any of its officers, agents, employees, contractors, subcontractors, guests, patrons, or invitees, and User shall pay for any and all damage to the property of City, or loss or theft of such property, done or caused by such persons, except to the extent proximately caused by and apportioned to the negligence or willful misconduct of the City, its agents, employees, officials or design defects.

**User further agrees to execute and deliver to the City at the time of acceptance and execution of this User Agreement a Certificate of Insurance evidencing the following required coverages:**

**Workers' Compensation/Employer's Liability Insurance:** Unless exempt pursuant to applicable Colorado law\*, User shall maintain Workers' Compensation coverage for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**Commercial General Liability:** User shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations policy aggregate, and \$2,000,000 policy aggregate.

**Automobile Liability:** User shall maintain Business Auto Liability minimum limits of \$1,000,000 combined single limit applicable to all vehicles used in performing services under this Agreement. If User does not maintain this type of insurance, User shall provide proof of personal auto insurance with minimum limits of \$100,000 bodily injury per person, \$300,000 per accident. Additionally, User ensures that any subcontractor operating a motor vehicle in providing services related to this Agreement shall maintain auto liability insurance.

**Additional Insureds:** For General Liability, User's insurer shall name "The City and County of Denver, its officers, officials, and employees as owners of the premises" an Additional Insured.

**Waiver of Subrogation:** For all coverages, User's insurer shall waive subrogation rights against the City.

A Certificate of Insurance evidencing the existence thereof shall be delivered to the City *at the time of* execution of this User Agreement. Each such Certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving ten (10) days written notice thereof to the City. It is understood and agreed that should any policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized agent shall mail to the address shown above, thirty (30) days prior, written notice (ten (10) days for non-payment of premium), referencing the contract number set forth herein.

If exempt from carrying Workers' Compensation/Employer's Liability insurance, User will deliver to the City a copy of the Rejection of Coverage letter submitted with the State of Colorado Department of Workers' Compensation.

Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of User under the terms of this User Agreement. The User shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for its proper protection for the operations hereunder.

15. In the event any portion of the Permitted Premises is not vacated at the end of the term of this agreement, then the City shall be and is hereby authorized to remove from said Permitted Premises, at the expense of the User, all goods, wares, merchandise and property of any kind or description which may be then occupying a portion of said facilities on which the term of this User Agreement has expired. City shall not be liable for any damage to or loss of such goods, wares, merchandise or property sustained either during the removal or storage of same and the City, its agents, employees and officials are hereby expressly released from any and all claims for such loss or damage. Upon termination of this User Agreement, the User will deliver to the City the Permitted Premises in as good condition and repair as the same shall be found at the beginning of the term of this User Agreement, except for normal wear and tear.
16. It is agreed that in the handling, control, custody, and keeping of receipts and funds belonging to the User, whether the same are received through the box office or otherwise, the City is acting for the accommodation and the sole benefit of the User.

17. The City assumes no responsibility whatsoever, for any property placed in said Permitted Premises, and said City is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy of said Permitted Premises under this User Agreement. All security services desired by the User must be arranged for by special agreement with the City. In the receipt, handling, care or custody of property of any kind shipped or otherwise delivered to the Denver Theatres and Arenas Facilities, either prior to, during, or subsequent to the use of the Permitted Premises by the User, the City and its officers, agents, and employees shall act solely for the accommodation of the User and neither the City nor its officers, agents, or employees shall be liable for any loss, damage, or injury to such property.
18. The City shall have the sole right to collect and have custody of all articles left on the Permitted Premises by persons attending any function held on the Permitted Premises. Any property left on the Permitted Premises by User shall, after a period of thirty (30) days from the last date of tenancy hereunder, be deemed abandoned and at the City's sole option, become the property of the City, without further notice.
19. Any notice or communication which the City may desire to give the User shall be deemed sufficiently rendered or given if the same be in writing and sent by registered or certified mail, addressed to the User as specified on Page One hereof, or at the latest address submitted therefore by the User in writing to the City, or left at such address or delivered to the User's representative. The time of rendition of such notice or communication shall be deemed to be the time when the same is mailed, left or delivered as herein provided. Any notice from the User to the City shall be validly given if sent by registered or certified mail addressed to the Deputy Manager for Theatres and Arenas, City and County of Denver, 1245 Champa St., First Floor, Denver, Colorado 80204, or at such other address as the City shall hereafter designate by notice to the User. Both parties agree that standard U.S. Mail or Electronic mail is sufficient for operational communication where the terms of this User Agreement are not materially altered or where there is not a notice of breach to the other party.
20. Time is of the essence with reference to all payments. Any extra time desired by User not provided for by this User Agreement must be first allowed and approved in writing by the Deputy Manager, and must be paid for in accordance with the schedule of fees.
21. User agrees to pay promptly all taxes, excise or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses, Municipal, State, or Federal, required for the usage herein permitted, and further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to, and showing that all required permits and licenses are in effect. Appropriate records shall be maintained, and made available per Ordinance requirements. All Users who have incorporated must be registered with the Office of the Colorado Secretary of State. The User agrees that the City's Auditor, or authorized representative(s), may inspect any tax data provided to the Department of Revenue as required by Denver's Revised Municipal Code, Chapter 53, Taxation and Miscellaneous Revenue and any related audit reports and data generated by the Department of Revenue. The User waives any claim of confidentiality that it may have in connection therewith. Such records may include taxpayer's returns or reports, accompanying schedules and data, and associated audit data and information generated by authorized representatives of the City's Manager of Revenue.
22. It is understood and agreed that the City hereby reserves the right to control and manage the entire Denver Theatres and Arenas Facilities and to enforce all necessary and proper rules for the management and operation of the same and for its authorized representatives to enter the portions of the Denver Theatres and Arenas Facilities, hereby permitted for use by the User, at any time and on any occasion. The City also reserves the right, but not the duty, through its duly appointed representatives, to eject any objectionable person or persons from the Permitted Premises and the User hereby waives any and all claims for damages against the City or any and all of its officers, agents or employees resulting from the exercise of this authority.
23. The User hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency, failure, or impairment of the water supply system, drainage system, heating system, steam system, electrical system, ventilation system, or refrigeration system on or related to the Permitted Premises. In the event the Denver Theatres and Arenas Facilities or any part thereof is damaged by fire, or if for any other reason, including strikes, failure of utilities or any act of God which, in the judgment of the Deputy Manager, renders the fulfillment of this User Agreement by the City impossible, the User fees payable pursuant to paragraph 4 a above shall be abated for such the period that the Permitted Premises are not usable. Other than the abatement of the User fees, User hereby expressly releases and discharges the City and its agents from any and all demands, claims, actions, and causes of actions arising from any of the causes aforesaid.
24. It is agreed by and between the Parties hereto that the Rules and Regulations of the Division of Theatres and Arenas shall be and are a part of this User Agreement as though they were set out in full herein, and are specifically incorporated as a part hereof by reference.
25. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this User Agreement, the User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.
26. The User will be required to pay for Denver Police, Denver Fire and Paramedic personnel as required by City, who will be on duty during the engagement. **Denver Police:** Required to maintain proper conduct of all in attendance, and enforce all applicable rules and regulations relating to public permitted premises. **Denver Fire:** Required fire personnel are pursuant to Section 2813 of the Denver Fire Code. The Denver Fire Prevention Bureau will appoint the officers. Special stage effects involving pyrotechnic displays (including fireworks and flash powders) are prohibited except by special fee City permit from the Fire Prevention Bureau (see attached Addendum). If a pyrotechnician is required, arrangements must be made through the Denver Fire Prevention Bureau at the User's expense. **Paramedic:** Required to assist with medical emergencies. Determination of the necessity or advisability of using police, fire and paramedic personnel shall be solely within the judgment of the safety levels as determined by facility management.
27. If rigging is required for any event, it must meet the City's specifications and be approved by the City.

28. It is mutually agreed by and between the parties hereto, that should any dispute arise regarding this agreement, and suit be deemed necessary by either party, that venue for such action shall lie in the District Court in and for the City and County of Denver, Colorado, and that any and all notices, pleadings and process may be served upon the User(s) by service of two copies of said notice, pleading or process upon the Colorado Secretary of State, 1700 Broadway, Suite 250, Denver, CO 80290, and by mailing by certified U. S. mail an additional copy of said notice, pleading or process to the address of said User(s) shown in this agreement. Said service, as above set forth, shall be considered by the parties as valid personal service upon the party so served, and judgment may thereafter be taken if the party so served does not, within the time prescribed by Colorado law or rule of civil procedure appear and plead or answer. Furthermore, this agreement shall be construed and enforced pursuant to the law of the State of Colorado, without regard to any statute or rule of law specifying a different choice of law and pursuant to the Charter, Revised Municipal Code, Rules and Regulations, and Executive Orders of the City of Denver.
29. The User warrants that all copyrighted material to be performed has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City and County of Denver harmless from any and all claims, losses, or expenses incurred with regard thereto.
30. City retains the use of the following House Seats for each of the User's performance at the permitted premises (Boettcher Concert Hall) – Mezzanine 4, Row J, Seats 10-15.
31. "ADA" – Americans with Disability Act Requirements:  
The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act ("ADA") and that the User is subject to the provisions of Title III of the ADA. Concerning compliance with the ADA and all regulations there under, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors and walkways. The User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticket pricing, , sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User.

User represents that it has viewed or otherwise apprised itself that such access to the premises and common areas and accepts such access, common areas and other conditions of the premises as adequate for User's responsibilities under the ADA. User shall be responsible for ensuring that the space rented by City to User complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as the User modifies, rearranges or sets up in the facility in order to accommodate the performance produced by the User. User shall be responsible for any violations of the ADA that arise from User's reconfiguration of the seating areas or modification of other portions of the premises in order to accommodate User's engagement. User shall be responsible for providing auxiliary aids and services that are ancillary to its production and for ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA.

User agrees that user or user's ticketing company with which it contracts shall comply with the ADA and all the regulations hereunder and the following City policy respecting accessible seating.

In accordance with all applicable laws and regulations, at the time that tickets go on sale to the general public, designated wheelchair accessible and companion seating shall be held for sale only to those people requesting such accessible seating. Unsold wheelchair accessible and companion seating may be released for sale to the general public according to the following schedule:

1. Three days (72 hours) after all non-accessible seating is sold out in the entire venue, User shall be permitted to release one half of the unsold designated wheelchair and companion seating locations for sale to the public, including patrons who do not have disabilities.
2. One week (168 hours) before a performance or the beginning of a performance run for multi-performance productions of no more than one week in duration, User shall be permitted to release one half of the unsold designated wheelchair and companion seating locations for sale to the public, including patrons who do not have disabilities.
3. Within twenty four (24) hours of the show, User shall be permitted to release any remaining unsold wheelchair and companion seating locations for sale to the general public, including patrons who do not have disabilities.

Wheelchair accessible and companion seats at Boettcher Concert Hall

Section: Orchestra 3; Row RR – wheelchair seats: 21, 22, 25, 26, 41, 42, 45, 46, 61, 62, 65, 66    companion seats – 20, 23, 24, 27, 40, 43, 44, 47, 60, 63, 64, 67

Section: Dress Circle 1; Row E – wheelchair seats: 31, 33, 35    companion seats – 30, 32, 34

Section: Mezzanine 7; Row O – wheelchair seat: 53    companion seat – 52

User acknowledges and accepts that the City's ADA policies and seating requirements may change from time to time and that User will comply with those changes upon written notification by the City. Any changes in the City's ADA policies shall take effect as soon as reasonably practicable.

32. It is expressly understood and agreed that enforcement of the terms and conditions of this User Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this User Agreement shall give or allow any such claim or right of action by any other or third person on such User Agreements. It is the express intention of the City and the User that any person other than the City or the User receiving services or benefits under this User Agreement shall be deemed to be an incidental beneficiary only.
33. User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this User Agreement. The person or persons signing and executing this User Agreement on behalf of User, do hereby warrant and guarantee that he/she or they have been fully authorized by User to execute this User Agreement on behalf of User and to validly and legally bind User to all the terms, performances, and provisions herein set forth.

34. This User Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other User Agreement properly executed by the parties. This User Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, personal representatives, successors, and assigns.
35. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire or contract for services with any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.
36. It is understood and agreed by the parties hereto that if any part, term, or provision of this User Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the User Agreement did not contain the particular part, term, or provision held to be invalid.
37. Either party may, at its discretion, terminate this User Agreement upon ninety (90) days written notice to the other party.

This User Agreement, though set forth in the form of a new agreement, is an extension of the parties' existing User Agreement which governed use of the Permitted Premises from January 1, 2006 to August 31, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

ATTEST:  
Clerk and Recorder, Ex-Officio Clerk of the City and County  
of Denver

By \_\_\_\_\_  
Deputy Clerk

REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. RC 55024-1

By \_\_\_\_\_  
Auditor

APPROVED AS TO FORM:  
Attorney for the City and County of Denver

By \_\_\_\_\_  
Assistant City Attorney

CITY AND COUNTY OF DENVER

By \_\_\_\_\_  
Mayor

RECOMMENDED AND APPROVED:

By \_\_\_\_\_  
Director, Theatres and Arenas Division

CITY

COLORADO SYMPHONY ORCHESTRA ASSOCIATION

By \_\_\_\_\_

Title: \_\_\_\_\_

USER