

## AGREEMENT

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **TOUCHPOINT PARTNERS LLC**, a Colorado limited liability company whose address is 2020 20<sup>th</sup> Street, Boulder, Colorado 80302 ("Contractor")(collectively "the parties").

The parties agree as follows:

1. **COORDINATION AND LIAISON**: The Contractor shall fully coordinate all services under the Agreement with the Director of the City's Division of Theatres and Arenas ("Director"), or the Director's Designee.

2. **SERVICES TO BE PERFORMED**:

a. The Contractor shall diligently undertake and perform the targeted sponsorship and advertisement sales services, as more fully described on **Exhibit A, the Scope of Work**, to the City's satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. **TERM**: The Agreement will commence on April 1, 2012 and will expire on March 31, 2014 (the "Term"). Either party may opt out of the second year of the term and terminate this Agreement by providing written notice to opt out no later than March 15, 2013.

4. **COMPENSATION AND PAYMENT**:

a. **Fees**: The Contractor shall pay to the City an amount equal to fifty percent (50%) of the sales price of certain sponsorship benefits at Red Rocks Amphitheatre, the Denver Performing Arts Complex, and the Denver Coliseum (the "City Venues"), made available to Contractor as more fully described on Exhibit A. The Contractor shall retain and shall accept as the sole compensation for its services rendered and costs incurred under the Agreement, fifty percent (50%) of the sales price of said sponsorship benefits. There are no reimbursable expenses allowed under the Agreement. Contractor will also receive one opportunity during the Term to

12-0429

use an Arts & Venues Denver hospitality room at Red Rocks Amphitheatre or the Denver Performing Arts Complex for a private event with rental fee waived and catering provided at a special sponsor rate during the term of this Agreement. The date must be pre-approved by the Director and is subject to availability.

**b. Payments:** Sponsorship fees shall be paid directly to Contractor by the sponsors, and Contractor shall within three business days of receipt remit to the City the sponsorship fees net of the Contractor's percentage fee as set forth above. If funds are not timely remitted to the City by Contractor, unpaid amounts shall accrue interest at the rate of eighteen percent (18%) per annum, commencing upon the fifth calendar day after the date they are due until paid.

**c. Prior Appropriation:** City payment obligations, whether direct or contingent, extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City is not obligated to make payment of any kind to Contractor, and has not appropriated or encumbered funds for the purposes of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**6. TERMINATION:**

**a.** The City has the right to terminate this Agreement at any time upon written notice if Contractor is in material breach of any provision of this Agreement and such breach is not cured to the City's reasonable satisfaction within fifteen (15) days of Contractor's receipt of written notice from the City specifying the breach. The City has the right to terminate this Agreement without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.

**b.** Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter

into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. Contractor shall keep and make available upon request true and complete records and accounts of all gross sponsorship receipts, commissions earned by the Contractor, and balance payment to the City per the individual sponsorship contracts, including copies of all sponsorship checks received by the Contractor. Not later than February 1, 2013, Contractor shall furnish to the Director or his designee a true and accurate statement of gross sponsorship receipts, commissions earned by the Contractor, and balance payment to the City per the provisions of sponsorship contracts. Such annual report shall include a breakdown of gross sponsorship receipts on a month by month basis and shall be prepared and certified by an independent certified public accountant that has audited the gross sponsorship receipts, commissions earned by the Contractor, and balance payments to the City in accordance with generally accepted accounting principles for special reports. Such statement

shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year. At City's sole discretion, City may conduct a review of Contractor's books and records with respect to the gross sponsorship receipts, commissions earned by the Contractor and balance payment to the City through City's Auditor or by hiring an independent CPA.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. **INSURANCE:**

a. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and, for any claims-made coverage, for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The

Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**c. Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

**e. Subcontractors:** All subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors upon request by the City.

**f. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement,

that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**g. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with 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 aggregate, and \$2,000,000 policy aggregate.

**h. Additional Provisions:**

(a) For Commercial General Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**10. DEFENSE AND INDEMNIFICATION**

a. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to

indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

12. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether

to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-Contractor, subcontractor or assign.

13. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. **NO THIRD PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. **CONFLICT OF INTEREST**:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the



Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**18. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Director of Denver's Division of Theatres and Arenas or Designee  
1245 Champa Street, First Floor  
Denver, Colorado 80204

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**19. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and any amendments (the "Certification Statute"). The Contractor is liable for any violations as provided in the Certification Statute.

**b.** The Contractor certifies that:

**(1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

**(2)** It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**c.** The Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.
- (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.
- (5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

20. **DISPUTES:** All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.

21. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders,

or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

22. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. **COMPLIANCE WITH ALL LAWS**: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. **LEGAL AUTHORITY**: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

25. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. **INTELLECTUAL PROPERTY RIGHTS**: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references,

guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**28. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**29. ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**30. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**31. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject

matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**32. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

**33. BOND OR LETTER OF CREDIT:**

a. Unless the City's Risk Manager determines in his/her sole discretion that third party fidelity insurance coverage, or some other coverage or instrument provided by Contractor for the City's benefit, fully and adequately protects the City's interests, a Performance Bond or an Irrevocable Standby Letter of Credit satisfactory to the City and County of Denver ("Bond"), in an amount not less than One Hundred Thousand Dollars (\$100,000.00) is required of the Contractor to guarantee that it will perform the work in strict accordance with this Agreement and pay all debts incurred under this Agreement. The Issuer of the Bond must be authorized to do business in the State of Colorado.

b. The Bond must be either renewed annually or replaced with an identical Bond covering the subsequent year of the Agreement issued by another Issuer which has been approved in advance by the Director. If the Director does not receive written notice from the Issuer in the manner provided in the Bond at least one-hundred and twenty (120) days before it expires or does not receive a substitute Bond in the form required by the City at least one-hundred and twenty (120) days before the Bond expires, then the Contractor shall be in default of this Agreement and the Director may immediately terminate this Agreement by giving the Contractor written notice of such default. If the City elects to extend the Agreement for up to two additional two year periods at the same prices, terms and conditions pursuant to Section 4 of this Agreement, the Contractor shall obtain and submit either an extension of the existing Bond or an identical Bond from another Issuer that is acceptable to the City.

c. Under no circumstances shall the City be liable to the Contractor for any costs incurred or payments made by the Contractor to obtain an extension of an existing Bond or a new Bond.

**34. GRANT OF RIGHTS:**

a. Contractor warrants and represents that it owns and operates the i4c Campaign, including i4ccampaign.com, and owns the registration of the trademark and/or service mark “i4c Campaign” (“i4c Mark”). Such i4C Mark shall not be work made for hire as set out in Section 27 and shall remain the property of Contractor throughout the term of this Agreement. Contractor hereby grants to the City the non-exclusive right and license to use the i4c Marks approved by Contractor solely in conjunction with the marketing of the Denver-i4c Campaign.

b. The City warrants and represents that it is the owner of the associated trademarks and/or service marks in the City Venues (“the City Marks”) and has the exclusive right and authority to license the rights set forth below to Contractor. The City hereby grants to Contractor the non-exclusive right and license to use the pre-approved City Marks in conjunction with the marketing of the Denver-i4C Campaign, as well as the i4c Campaign in general.

c. Both party’s use of the Marks shall neither diminish, dilute, or devalue the Marks, and shall be considerate of the standards and reputation of the parties and the platforms which they represent.

d. Any re-licensing or sublicensing of either party’s Marks will be subject to that party’s prior written approval, and where applicable, subject to any further agreements, including, without limitation, concerning the right to use such Marks in connection with merchandising activities.

**35. COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

**Contract Control Number:** THTRS-201205232-00

**Contractor Name:** TOUCHPOINT PARTNERS, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: THTRS-201205232-00

Contractor Name: TOUCHPOINT PARTNERS, LLC

By:  \_\_\_\_\_

Name: Rich Frankenstein  
(please print)

Title: CFO  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)





**EXHIBIT A**  
**Scope of Work**  
touchPoint, LLC

Marketing Commitments and Services

The City, through its Arts & Venues Denver Division (“AVD”) will provide touchPoint Partners (“Contractor”) a footprint for vendor displays and certain advertising inventory (“Inventory”) at Red Rocks Amphitheatre, the Denver Performing Arts Complex and the Denver Coliseum (the “City Venues”) in order for Contractor to sell such Inventory and procure third-party sponsors and advertisers (“Campaign Sponsors”).

All Campaign Sponsors must be pre-approved by AVD before any presentation is made to them and before any commitment is made. Specific Inventory elements made available to CONTRACTOR are subject to AVD’s sole discretion.

If AVD disputes the valuation proposed by Contractor, AVD shall have no obligation whatsoever to make available or otherwise provide such Inventory to Contractor or any prospective Campaign Sponsor. Contractor shall have no right to sell or convey Inventory unless AVD has in writing approved the Campaign Sponsor, the specific Inventory elements to be conveyed, and their fair market value, in advance of such sale or conveyance. Contractor further acknowledges and agrees that, due to certain preexisting contractual obligations, the rules, regulations, or laws of the City and County of Denver, the State of Colorado or the United States of America, or any of their respective agencies, now or hereafter in effect, it may be or become impossible or impractical for AVD to provide Contractor with certain Inventory. AVD expressly reserves the right to, at any time, condition or prohibit Contractor from soliciting certain sponsors or advertisers in circumstances where it is contractually obligated to do so or, in AVD’s sole discretion, necessary to preserve or protect a preexisting business relationship. All Inventory sold or conveyed to Campaign Sponsors in connection with this Agreement shall be subject to AVD’s (or its affiliates’, as applicable) standard terms, conditions and restrictions applicable to the particular Inventory. AVD shall use commercially reasonable efforts to provide Contractor support at the City Venues and introductions to its internal representatives. No commitment or agreement with any Campaign Sponsor may continue beyond the term of this Agreement. It is understood by Contractor that most prospective sponsors and advertisers solicited by Contractor pursuant to this Agreement are anticipated to be new and non-traditional sponsors in categories not normally accessed by AVD and not in competition with any current or prospective AVD sponsors and advertisers.

AVD will have reps at each venue to assist Contractor’s on-site activation team as reasonably necessary throughout the term of the Agreement. Upon request from Contractor, AVD will also provide reasonable access to the City Venues to Contractor at mutually acceptable times during normal business hours and during the Term in order to activate successfully on behalf of the Campaign Sponsors.

Contractor shall use its best efforts to solicit and secure approved Campaign Sponsors. Contractor shall manage the Campaign and shall be responsible for the management and execution of the following phases:

- i. Phase I – Setup – Finalize activation strategy, inventory and criteria, in consultation with AVD;

- ii. Phase II – Begin procurement of Campaign Sponsors;
- iii. Phase III – Marketing and public relations efforts, in consultation with AVD.

Each party shall in good faith create awareness of the Campaign through the above commitments, as well as general, positive awareness, and outbound marketing of the Campaign, including, without limitation, public relations, press releases, on-line marketing, and advertisements, the content of which shall be mutually approved by the parties.

Contractor shall be solely responsible for the collection of any unpaid balances due and owing from Campaign Sponsors.

EXHIBIT B  
(EVIDENCE OF INSURANCE)

CBIZ INSURANCE SERVICES INC/PHS  
PO BOX 33015  
SAN ANTONIO TX, 78265

**EXHIBIT B**

The City of Denver  
Amy Lindsey  
1245 CHAMPA ST # 1  
DENVER, CO 80204

---

Additional Certholder Text

A Waiver of Subrogation applies in favor of the certificate holder per WC 000 313,  
attached to this policy.

