

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ZIVARO, INC.**, a Colorado corporation, whose address is 3900 E. Mexico, Suite 1000, Denver, Colorado, 80210 (“Contractor”), jointly “the parties.”

RECITALS

WHEREAS, the City is desirous of engaging a contractor provider to aid the City in on-line security and the Contractor has agreed to provide the products, services, support and maintenance and other deliverables under the terms and conditions as set out below; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor incorporate the recitals set forth above agree as follows:

1. SOFTWARE LICENSE, SUPPORT, AND MAINTENANCE TO BE PROVIDED:

A. Contractor, under the general direction of, and in coordination with, the City’s Chief Information Officer or other designated supervisory personnel (the “Manager”) agrees to provide the software (the “Software”) listed on **Exhibit A**, and provide the software support and maintenance services described on attached **Exhibit A**.

B. As the Manager directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on to the City’s satisfaction.

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

D. 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.

2. GRANT OF LICENSE; RESTRICTIONS:

A. Contractor hereby grants to City a perpetual, irrevocable, non-exclusive right and license to: (a) install, display, perform, and use the Software; and (b) use all intellectual property rights necessary to use the Software as authorized in subparagraph (a).

B. Title to and ownership of the Software will remain with Contractor. City will not reverse engineer or reverse compile any part of the Software without Contractor's prior written consent. City will not remove, obscure or deface any proprietary notice or legend contained in the Software or documentation without Contractor's prior written consent.

3. DELIVERY AND ACCEPTANCE:

A. Contractor shall deliver the Software and hardware and perform the services in accordance with the SOW.

B. Upon installation and configuration of the Software, the City will test and evaluate same to ensure that it conforms, in the City's reasonable judgment, to the specifications outlined in the SOW and any available documentation. If the Software does not conform, the City will so notify Contractor in writing within thirty (30) days. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the Software contains a defect or nonconformity not apparent on examination, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Software, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the rejected product.

C. If the City is not satisfied with the Contractor's performance of the services described in the SOW, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion based on the specific deliverables outlined in the SOW. In the event that City finally rejects any service, Contractor will refund to City the fees paid by City with respect to such portion of the service that was not accepted.

E. The Contractor shall warrant the hardware for a period of one year from the date of delivery to the City, unless a longer period is provided by the Contractor.

4. TERM: The term of the Agreement is from February 1, 2022 through February 1, 2027.

5. COMPENSATION AND PAYMENT:

A. Fee: The fee for the software is set out in Exhibit A (the "Fee") and shall be paid pursuant to the City's Prompt Payment Ordinance.

B. Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

C. Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

D. Maximum Contract Liability:

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SIX MILLION THREE HUNDRED SIXTY THOUSAND SEVENTY EIGHT DOLLARS AND THIRTY ONE CENTS** (\$6,360,078.31) (the "Maximum Agreement Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.

(ii) The City's payment obligation, whether direct or contingent, extends 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 does not by the 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.

6. 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.

7. TERMINATION:

A. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) 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 Manager.

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 and shall refund to the City any prepaid cost or expenses. If the Agreement is terminated without cause, refunds shall not apply to any pre-paid software subscriptions.

8. 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, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of

any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

9. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

10. 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, including any extension thereof, and during any warranty period. 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 require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said 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. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. 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 may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD

form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 (if required), Contractor and subContractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

F. Workers' Compensation and 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.

G. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

H. Automobile Liability: Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Technology Errors & Omissions: Contractor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

11. REPRESENTATION AND WARRANTY: Contractor represents and warrants that:

A. the Software will conform to applicable specifications, operate in substantial compliance with applicable documentation, and will be free from deficiencies and defects in materials, workmanship, design and/or performance;

B. all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

C. all services will conform to applicable specifications and the Exhibits attached hereto;

D. it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;

E. there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;

F. the Software will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;

G. the Software will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data; and

H. the media on which all Software is furnished are and will be, under normal use, free from defects in materials and workmanship.

12. 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.

F. Contractor will, at Contractor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim that the Software, services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party. The City will promptly notify Contractor in writing of any claim and cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Software, or (iv) modify or replace the infringing Software so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If Contractor concludes in its reasonable judgment that none of the foregoing options are commercially reasonable, then Contractor will refund a pro rata portion (based on a 5 year straight line depreciation running from City's final acceptance of the Software) of the Software license fee(s) paid by the City under this Agreement and reimburse the City for all reasonable expenses for removal and replacement of the Software.

13. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).

14. TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

15. 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 Manager'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 Manager 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-consultant, subcontractor or assign.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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:

Chief Information Officer or Designee
201 West Colfax Avenue, Dept. 301
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

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.

22. 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 Manager as defined in this Agreement.

23. 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.

24. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

25. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto 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 the City barring Contractor from City facilities or participating in City operations.

26. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. “Confidential Information” means all information or data disclosed in written or machine recognizable form and is marked or identified at the time of disclosure as being confidential, proprietary, or its equivalent. Each of the Parties may disclose (a “Disclosing Party”) or permit the other Party (the “Receiving Party”) access to the Disclosing Party’s Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party other than its employees, subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non-employees, with whom it has executed a non-disclosure or other agreement which limits the use, reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The City will retain all right, title, and interest in its Confidential Information.

B. Contractor shall provide for the security of Confidential Information and information which may not be marked, but constitutes personally identifiable information, HIPAA, CJIS, or other federally or state regulated information (“Regulated Data”) in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor receives Regulated Data outside the scope of the Agreement, it shall promptly notify the City.

C. Confidential Information that the Receiving Party can establish: (i) was lawfully in the Receiving Party’s possession before receipt from the Disclosing Party; or (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; or (iii) was independently developed or discovered by the Receiving Party; or (iv) was received from a third party that was not under an obligation of confidentiality, shall not be considered Confidential Information under this Agreement. The Receiving Party will inform necessary employees, officials, subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.

D. Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to the City for disclosure of confidential materials, the City may advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If

Contractor objects to disclosure of any of its material, Contractor shall identify to the City the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

27. 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.

28. 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.

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

30. 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.

31. INUREMENT: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

32. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

33. FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or

regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, vendors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

34. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

35. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

36. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

37. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

38. 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 Manager. 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 Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

39. PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

ATTACHED EXHIBITS:

Contract Control Number: TECHS-202160488-00
Contractor Name: Zivaro, Inc

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:

Attorney for the City and County of Denver

By:

By:

By:

CCoD_083121_Proofpoint Renewal 5 Year



Quote Contact: Julie Sutton
Quote Number: 114731

Prepared By:
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jluker@zivaro.com
3900 E Mexico Avenue, Suite 1000
Denver, CO 80210-3945
Phone: 908-512-1818



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Inside Account Manager:
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 cocallaghan@zivaro.com

Quotation

Prepared For:

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 (720)913-5516
 julie.sutton@denvergov.org

Date: 08/31/2021

QUOTE#. 114731

Notes:INVOICED ANNUALLY
 Payment 1 in the amount of \$1,083,955.12 due upon receipt

 Payment 2 in the amount of \$1,268,085.12 due no later than one year from the contract start date

 Payment 3 in the amount of \$1,268,085.12 due no later than two years from the contract start date

 Payment 4 in the amount of \$1,334,921.18 due no later than three years from the contract start date

 Payment 5 in the amount of \$1,405,031.77 due no later than four year from the contract start date

Line#	Item Number	Item Description	Qty.	Price	Extended
Year 1 with Co-Term					
1	PP-SUP-PS-12	PFPT Platinum Level Support - 15000 users * 7 months Mfr: Proofpoint, Inc. Start Date: 7/27/2022 End Date: 2/26/2023	1	\$ 0.00	\$ 0.00
2	PP-M-END1-S-A-107	Captures users DLP activity metadata across desktops and servers on supported platforms (US-Only Deployment) - SaaS 11000 users *7 months Mfr: Proofpoint, Inc. Start Date: 7/27/2022 End Date: 2/26/2023	11000	\$ 7.67	\$ 84,370.00
3	PP-M-PBD-S-C-107	Proofpoint Browser Isolation allows for access to any website categories through direct access, web gateway integration, and/or corporate email URLs. This includes all Proofpoint Email Isolation features. 15000 users *7 months Mfr: Proofpoint, Inc. Start Date: 7/27/2022 End Date: 2/26/2023	15000	\$ 10.81	\$ 162,150.00
4	PP-M-SHARE-S-D-105	Secure Share (storage limit 2GB/user) - SaaS 5000 users *7 months Mfr: Proofpoint, Inc. Start Date: 7/27/2022 End Date: 2/26/2023	5000	\$ 2.22	\$ 11,100.00
5	PP-SUP-PREM-I-102	Premium Support for Information Security Products 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2022 End Date: 2/26/2023	1	\$ 55,785.12	\$ 55,785.12

Line#	Item Number	Item Description	Qty.	Price	Extended
DocuSign Envelope ID: D977C521-B6C1-4D83-BC9C-43630D3D1A84					
6	PP-P2PF-S-A-107	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (All Users), Threat Response Auto-Pull, PSAT Enterprise, IMD Enterprise, Email Iso., CASB, Email DLP & Encryption and EFD360 Unlimited - F-Secure - SaaS 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2022 End Date: 2/26/2023	15000	\$ 49.98	\$ 749,700.00
7	PP-M-SYSLOG-S-A-104	Remote Syslog Forwarding 10,001 to 20,000 12 Months 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2022 End Date: 2/26/2023	1	\$ 0.00	\$ 0.00
8	PP-B-DATADIS-D-107	Data Discover 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2022 End Date: 2/26/2023	15000	\$ 1.39	\$ 20,850.00
9	PP-SUP-PS-12	PFPT Platinum Level Support - for 12 months - 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2022 End Date: 2/26/2023	1	\$ 0.00	\$ 0.00

\$ 1,083,955.12

Year 2

10	PP-SUP-PS-12	PFPT Platinum Level Support - 15000 users * 12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	1	\$ 0.00	\$ 0.00
11	PP-M-END1-S-A-107	Captures users DLP activity metadata across desktops and servers on supported platforms (US-Only Deployment) - SaaS 11000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	11000	\$ 13.15	\$ 144,650.00
12	PP-M-PBD-S-C-107	Proofpoint Browser Isolation allows for access to any website categories through direct access, web gateway integration, and/or corporate email URLs. This includes all Proofpoint Email Isolation features. 15000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	15000	\$ 18.54	\$ 278,100.00
13	PP-M-SHARE-S-D-105	Secure Share (storage limit 2GB/user) - SaaS 5000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	5000	\$ 3.80	\$ 19,000.00
14	PP-SUP-PREM-I-102	Premium Support for Information Security Products 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	1	\$ 55,785.12	\$ 55,785.12
15	PP-P2PF-S-A-107	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (All Users), Threat Response Auto-Pull, PSAT Enterprise, IMD Enterprise, Email Iso., CASB, Email DLP & Encryption and EFD360 Unlimited - F-Secure - SaaS 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	15000	\$ 49.98	\$ 749,700.00
16	PP-M-SYSLOG-S-A-104	Remote Syslog Forwarding 10,001 to 20,000 12 Months 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	1	\$ 0.00	\$ 0.00
17	PP-B-DATADIS-D-107	Data Discover 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	15000	\$ 1.39	\$ 20,850.00

Line#	Item Number	Item Description	Qty.	Price	Extended
DocuSign Envelope ID: D977C521-B6C1-4D83-BC9C-43630D3D1A84					
18	PP-SUP-PS-12	PFPT Platinum Level Support - for 12 months - 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2023 End Date: 2/26/2024	1	\$ 0.00	\$ 0.00
					\$ 1,268,085.12
Year 3					
19	PP-SUP-PS-12	PFPT Platinum Level Support - 15000 users * 12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	1	\$ 0.00	\$ 0.00
20	PP-M-END1-S-A-107	Captures users DLP activity metadata across desktops and servers on supported platforms (US-Only Deployment) - SaaS 11000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	11000	\$ 13.15	\$ 144,650.00
21	PP-M-PBD-S-C-107	Proofpoint Browser Isolation allows for access to any website categories through direct access, web gateway integration, and/or corporate email URLs. This includes all Proofpoint Email Isolation features. 15000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	15000	\$ 18.54	\$ 278,100.00
22	PP-M-SHARE-S-D-105	Secure Share (storage limit 2GB/user) - SaaS 5000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	5000	\$ 3.80	\$ 19,000.00
23	PP-SUP-PREM-I-102	Premium Support for Information Security Products 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	1	\$ 55,785.12	\$ 55,785.12
24	PP-P2PF-S-A-107	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (All Users), Threat Response Auto-Pull, PSAT Enterprise, IMD Enterprise, Email Iso., CASB, Email DLP & Encryption and EFD360 Unlimited - F-Secure - SaaS 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	15000	\$ 49.98	\$ 749,700.00
25	PP-M-SYSLOG-S-A-104	Remote Syslog Forwarding 10,001 to 20,000 12 Months 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	1	\$ 0.00	\$ 0.00
26	PP-B-DATADIS-D-107	Data Discover 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	15000	\$ 1.39	\$ 20,850.00
27	PP-SUP-PS-12	PFPT Platinum Level Support - for 12 months - 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2024 End Date: 2/26/2025	1	\$ 0.00	\$ 0.00
					\$ 1,268,085.12
Year 4					
28	PP-SUP-PS-12	PFPT Platinum Level Support - 15000 users * 12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	1	\$ 0.00	\$ 0.00
29	PP-M-END1-S-A-107	Captures users DLP activity metadata across desktops and servers on supported platforms (US-Only Deployment) - SaaS 11000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	11000	\$ 13.85	\$ 152,350.00

Line#	Item Number	Item Description	Qty.	Price	Extended
DocuSign Envelope ID: D977C521-B6C1-4D83-BC9C-43630D3D1A84					
30	PP-M-PBD-S-C-107	Proofpoint Browser Isolation allows for access to any website categories through direct access, web gateway integration, and/or corporate email URLs. This includes all Proofpoint Email Isolation features. 15000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	15000	\$ 19.52	\$ 292,800.00
31	PP-M-SHARE-S-D-105	Secure Share (storage limit 2GB/user) - SaaS 5000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	5000	\$ 4.00	\$ 20,000.00
32	PP-SUP-PREM-I-102	Premium Support for Information Security Products 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	1	\$ 58,721.18	\$ 58,721.18
33	PP-P2PF-S-A-107	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (All Users), Threat Response Auto-Pull, PSAT Enterprise, IMD Enterprise, Email Iso., CASB, Email DLP & Encryption and EFD360 Unlimited - F-Secure - SaaS 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	15000	\$ 52.61	\$ 789,150.00
34	PP-M-SYSLOG-S-A-104	Remote Syslog Forwarding 10,001 to 20,000 12 Months 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	1	\$ 0.00	\$ 0.00
35	PP-B-DATADIS-D-107	Data Discover 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	15000	\$ 1.46	\$ 21,900.00
36	PP-SUP-PS-12	PFPT Platinum Level Support - for 12 months - 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2025 End Date: 2/26/2026	1	\$ 0.00	\$ 0.00
					\$ 1,334,921.18
Year 5					
37	PP-SUP-PS-12	PFPT Platinum Level Support - 15000 users * 12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	1	\$ 0.00	\$ 0.00
38	PP-M-END1-S-A-107	Captures users DLP activity metadata across desktops and servers on supported platforms (US-Only Deployment) - SaaS 11000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	11000	\$ 14.57	\$ 160,270.00
39	PP-M-PBD-S-C-107	Proofpoint Browser Isolation allows for access to any website categories through direct access, web gateway integration, and/or corporate email URLs. This includes all Proofpoint Email Isolation features. 15000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	15000	\$ 20.54	\$ 308,100.00
40	PP-M-SHARE-S-D-105	Secure Share (storage limit 2GB/user) - SaaS 5000 users *12 months Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	5000	\$ 4.21	\$ 21,050.00
41	PP-SUP-PREM-I-102	Premium Support for Information Security Products 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	1	\$ 61,811.77	\$ 61,811.77

Line#	Item Number	Item Description	Qty.	Price	Extended
DocuSign Envelope ID: D977C521-B6C1-4D83-BC9C-43630D3D1A84					
42	PP-P2PF-S-A-107	NPRE, Email Protection, TAP URL & Attachment Defense, TAP URL Iso. (All Users), Threat Response Auto-Pull, PSAT Enterprise, IMD Enterprise, Email Iso., CASB, Email DLP & Encryption and EFD360 Unlimited - F-Secure - SaaS 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	15000	\$ 55.37	\$ 830,550.00
43	PP-M-SYSLOG-S-A-104	Remote Syslog Forwarding 10,001 to 20,000 12 Months 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	1	\$ 0.00	\$ 0.00
44	PP-B-DATADIS-D-107	Data Discover 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	15000	\$ 1.55	\$ 23,250.00
45	PP-SUP-PS-12	PFPT Platinum Level Support - for 12 months - 15000 users Mfr: Proofpoint, Inc. Start Date: 2/27/2026 End Date: 2/26/2027	1	\$ 0.00	\$ 0.00
					\$ 1,405,031.77
45 item(s)				Sub-Total	\$ 6,360,078.31
				Tax	\$ 0.00
				Freight	as applicable
				Total	\$ 6,360,078.31

Customer Comments

INVOICED ANNUALLY

Payment 1 in the amount of \$1,083,955.12 due upon receipt

Payment 2 in the amount of \$1,268,085.12 due no later than one year from the contract start date

Payment 3 in the amount of \$1,268,085.12 due no later than two years from the contract start date

Payment 4 in the amount of \$1,334,921.18 due no later than three years from the contract start date

Payment 5 in the amount of \$1,405,031.77 due no later than four year from the contract start date

Date: 08/31/2021

QUOTE#. 114731

Quote Valid Until: 09/30/2021

Payment Details

Pay by: Company PO

Term: Net 30 days

Shipping and Delivery Details

Shipping via: FEDEX Ground

(DropShip)

Terms and Conditions

Terms with approved credit. Quote is for budgetary purposes only and does not include possible sales taxes and freight charges.

All returns must be pre-approved by Zivaro and in original packaging, otherwise subject to a 20% restock fee if opened, used or in used condition.

Return policies available at <https://zivaro.com/return-policy/>

Upon acceptance of the quote, unless otherwise negotiated, Zivaro's Master Sales Agreement (MSA) will govern the performance and delivery of these items. The most current version of the MSA is available at www.zivaro.com/MSA and may be updated from time to time without notice.

A 3% transaction fee will be assessed to the total for customers choosing to pay via credit card.

Prepared by: **Jeff Luker**

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Phone: **908-512-1818**