

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-52

A RESOLUTION APPROVING AN AGREEMENT FOR WEBSITE REDESIGN AND LICENSE

WHEREAS, the city of Cottonwood Heights (“City”) desires to update and redesign its website, www.cottonwoodheights.utah.gov (the “Website”), and heretofore has requested proposals from qualified providers to perform, *inter alia*, redesign, licensing and hosting services for the Website; and

WHEREAS, after analyzing the qualifications, availability and pricing of various providers, it has been proposed that Intrafinity, Inc. d/b/a CivicLive (“Consultant”) should be retained to perform the subject services pursuant to a proposed “Platform Suite–License and Services Agreement” (the “Agreement”) between City and Consultant; and

WHEREAS, the City’s city council (the “Council”) met in regular session on 12 August 2014 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

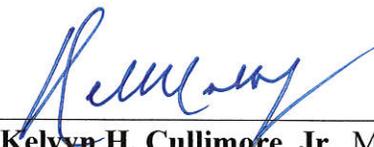
NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and be it

FURTHER RESOLVED by the city council of the city of Cottonwood Heights that the City’s mayor and recorder are authorized and directed to execute and deliver such additional instruments, agreements and documents, and take such additional actions, as may be deemed (in consultation with the city attorney) reasonably necessary or advisable to effect and consummate the transactions contemplated by the Agreement.

This Resolution, assigned no. 2014-52, shall take effect immediately upon passage.

PASSED AND APPROVED effective 12 August 2014.

COTTONWOOD HEIGHTS CITY COUNCIL

By 
Kelynn H. Cullimore, Jr., Mayor

ATTEST:



Kory Solorio
Kory Solorio, Recorder

VOTING:

| | | |
|--------------------------|---|------------------------------|
| Kelvyn H. Cullimore, Jr. | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael L. Shelton | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| J. Scott Bracken | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael J. Peterson | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Tee W. Tyler | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |

DEPOSITED in the office of the City Recorder this 12th day of August 2014.

RECORDED this 13 day of August 2014.



Intrafinity Inc. o/a CivicLive
60 Adelaide St. E., 11th Floor
Toronto, ON M5C 3E4
Phone: 416-367-2149
Fax: 1-866-204-6147

PLATFORM SUITE

LICENSE AND SERVICES AGREEMENT

Between:

and:

Intrafinity Inc. o/a CivicLive

city of Cottonwood Heights, Utah

60 Adelaide Street East, 11th Floor
Toronto, ON
M5C 3E4
Canada

1265 East Ft. Union Blvd, Suite 250
Cottonwood Heights, Utah
84047
United States

(hereinafter referred to as "CivicLive")

(hereinafter referred to as "Customer")

This Agreement sets out the terms pursuant to which Customer may use the Licensed Materials (as that term is hereinafter defined).

The "PLATFORM SUITE License Agreement - Terms and Conditions" on the following pages of this document and the attached Appendices form an integral part of this Agreement. These documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and cancel and supersede any prior understandings and agreements between the parties hereto with respect thereto. There are no provisions, representations, undertakings, agreements, or collateral agreements between the parties other than as set out herein in this Agreement.

The parties by their authorized representatives and intending to be legally bound have entered into this Agreement as of the mutual execution dates below (the "Effective Date").

Intrafinity Inc. o/a CivicLive

city of Cottonwood Heights, Utah

Signature: _____

Signature: _____

Name: John Carbrey

Name: Kelvyn H. Cullimore, Jr.

Title: Director

Title: Mayor

Date: August 6, 2014

Date: _____

ATTEST: _____

Kory Solorio, Recorder



**PLATFORM SUITE
LICENSE AND SERVICES AGREEMENT -
TERMS AND CONDITIONS**

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Agreement and in Appendix A the following terms shall have the respective meanings ascribed to them as follows:

- (a) "Components" mean the components of the PLATFORM SUITE referred to in Appendix A.
- (b) "Confidential Information" means (i) all information of either party or its affiliates or of third persons to whom a party owes a duty of confidence that is marked confidential, restricted or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; and (ii) the Licensed Materials.
- (c) "Derivative Works" means a work which is based on the Licensed Software, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which the underlying work may be recast, transformed, or adapted, and which, if prepared without authorization of the owner of the copyright in the underlying work, would constitute a copyright infringement. Derivative Works are subject to the ownership rights and licenses of others in the underlying work.
- (d) "Delivery Date" means the date when access to the Licensed Software is provided to the Customer by CivicLive.
- (e) "Development License" means a Software License which entitles the Customer to make one copy of the licensed software for the purposes of developing Modifications and not for the processing of Real Data;
- (f) "Documentation" means in relation to the Licensed Software, the user documentation made generally available by CivicLive to customers which have been granted a license from CivicLive to use the Licensed Software.
- (g) "Intellectual Property Rights" includes all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, service marks, patents, inventions, industrial designs, trade secrets, trade dress and all other proprietary rights.
- (h) "License" means Customer's license to use the Licensed Materials described in Article 2 and in Appendix A.
- (i) "License Fees" means the license fees to be paid by Customer to CivicLive which are described in Section 4.1.



- (j) "Licensed Materials" means the Licensed Software and Documentation and includes Maintenance Releases which CivicLive may from time to time provide to Customer hereunder.
- (k) "Licensed Software" means the Components of the PLATFORM SUITE in executable format licensed to Customer hereunder and described in Appendix A and such additional Components of the PLATFORM SUITE which Customer and CivicLive hereinafter agree shall be added to Appendix A.
- (l) "Maintenance Fees" has the meaning given to it in Section 4.2.
- (m) "Maintenance Release" means new versions and releases of the Licensed Software which CivicLive makes generally available to its customers who have contracted with it to receive Maintenance Service for the Licensed Software.
- (n) "Modifications" means the source code version of any Derivative Works or other enhancements or modifications to the Licensed Software developed by CivicLive or Customer or developed for Customer by a party other than CivicLive.
- (o) "Real Data" means data input by users of the Licensed Software for actual use, as opposed to data input by developers for testing purposes only.
- (p) "Server License" means a Software License which entitles the Customer to make one copy of the executable code for the purposes of compiling, installing and executing application for processing Real Data.
- (q) "Software Licenses" means the utilization licenses and associated restrictions with respect to the Licensed Software granted to Customer hereunder which are set forth in Appendix A.
- (r) "Third Party Materials" means certain compilers or libraries required to use the Licensed Software.
- (s) "Territory" has the meaning ascribed to it in Appendix A.
- (t) "User License" means a Software License which authorizes one named user of Customer to use the Licensed Software.
- (u) "Warranty Support" means the warranty support set forth in Section 6.1(a).
- (v) "Website License" means a Software License which entitles the Customer to use the Licensed Software for processing Real Data for a single website (domain or sub-domain). For example, this would allow the customer to run one website at "www.domain.com" or at "subdomain.domain.com".



ARTICLE 2 - LICENSE

2.1 License

(a) Subject to the provisions of this Agreement including the provisions of Article 8, CivicLive hereby grants to Customer and Customer hereby accepts from CivicLive the perpetual, personal, non-transferable and non-exclusive Software Licenses to use the Licensed Software in the Territory for Customer's internal business purposes. Customer may also make a reasonable number of back-up copies, but not to exceed two (2) copies, of the Licensed Software for use as part of Customer's disaster recovery plan.

(b) The Licensed Materials may be used only as set out in this Agreement and Customer agrees not to make any copies (whether in electronic or any other form) or use thereof other than as expressly permitted herein or by CivicLive in writing in advance, even if it is technically feasible to do so. Without limiting the generality of the foregoing, Customer agrees to use the Licensed Software only to the extent authorized by the Software Licenses.

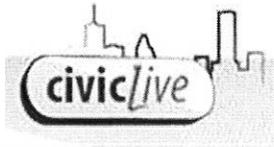
(c) Customer's License to use the Licensed Materials shall commence on the Effective Date.

2.2 Documentation

The Documentation may be used by Customer at Customer sites for the purpose of assisting Customer in using the Licensed Software for the internal business purposes of Customer. CivicLive agrees to deliver one copy of the Documentation to Customer in either printed or electronic form. Documentation provided in machine readable form may be printed and used solely for the internal business purposes of Customer. No other reproduction or use of the Documentation is permitted.

2.3 Third Party Users

For the purpose of operating Customer's business, the parties intend that certain unrelated third parties with whom Customer has a business relationship such as a supplier or customer and the employees of such third person (hereunder "Business Third Parties"), will have limited right to use certain Components of the Licensed Software solely for the purpose of providing services to Customer. All such persons must execute an agreement in writing with Customer to maintain the Confidential Information in confidence and to use the Licensed Materials only as permitted. Customer agrees to strictly enforce the provisions of such non-disclosure agreements set forth in this Section 2.3 and all other provisions of this Agreement as applicable to any and all uses of the Licensed Materials.



ARTICLE 3 - DELIVERY AND INSTALLATION

3.1 Delivery of Licensed Materials

CivicLive agrees to deliver to Customer one (1) copy of the most current release and version of the Licensed Materials. The Documentation will be provided solely in the English language.

ARTICLE 4 - PRICE AND PAYMENT TERMS

4.1 License Fees

Customer shall pay to CivicLive the license fees described in Appendix A (the "License Fees"). The License Fees shall be due and paid as provided for in Appendix A.

4.3 Taxes and Interest

(a) Customer shall pay (and CivicLive shall have no liability for), any taxes, tariffs, duties and other charges or assessments imposed or levied by any government or governmental agency within the United States of America in connection with this Agreement, including, without limitation, any federal, state and local sales, use, goods and services, value-added and personal property taxes on any payments due CivicLive in connection with the Licensed Materials and/or Maintenance Services and other services provided hereunder, excluding only income taxes payable by CivicLive.

(b) **All overdue payments shall bear interest at twelve percent (12%) per annum on the amounts outstanding from ten business days after the time such amounts become due until payment is received by CivicLive.**



ARTICLE 5 - PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION

5.1 Title to Licensed Materials

(a) Customer acknowledges and agrees that CivicLive shall retain all right, title and interest in and to the Licensed Materials and Modifications and all copies thereof, including, without limitation, the Intellectual Property Rights therein, and that nothing herein transfers or conveys to Customer any ownership right, title or interest in or to the Licensed Materials and Modifications or to any copy thereof or any license right with respect to same not expressly granted herein, including, without limitation, with respect to the Intellectual Property Rights therein.

(b) Customer acknowledges that the Licensed Software is designed to work in conjunction with Third Party Materials. Customer shall enter into license agreements directly with any such third parties with respect to the Third Party Materials. Customer agrees that CivicLive makes no warranties in respect of Third Party Materials and Customer's rights in respect of the Third Party Materials will be only as provided in the applicable licenses with the third party providers. Further, Customer understands and agrees CivicLive will not be providing Customer with Third Party Materials and it is Customer's sole responsibility to obtain copies and licenses for Third Party Materials.

5.2 Confidential Information

(a) Each party agrees to maintain the confidentiality of the Confidential Information of the other party and to use same only as expressly authorized herein. Each party shall safeguard and maintain the other party's Confidential Information in strict confidence and shall not disclose, provide, or make the Confidential Information or any part thereof available in any form or medium to any person except to such party's employees, and to contractors and consultants of such party who have executed an agreement in writing to protect such Confidential Information and who have a need to access such Confidential Information hereunder.

(b) The provisions of Section 5.2(a) shall not apply to any information which: (i) was at the time of disclosure to a party, in the public domain, (ii) after disclosure to a party becomes part of the public domain through no fault of the receiving party, (iii) was in the possession of the receiving party prior to the time of disclosure to it without any obligation of confidence or any breach of confidence, (iv) was received after disclosure to a party from a third party who had a lawful right to disclose such information to it, (v) was independently developed by a party without reference to the confidential information of the other party or (vi) was ordered to be disclosed by a court, administrative agency, or other governmental body with jurisdiction over the parties hereto, provided that the ordered party will first have provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, the ordered party will promptly cooperate with and assist the disclosing party in connection with obtaining such protective order.



(c) Customer is a governmental entity, and its obligations with respect to Confidential Information are subject to Customer's obligations under the Government Records Access and Management Act, **Utah Code Ann. 63G-2-101** *et seq.*

5.3 Protection of Proprietary Rights

(a) Customer shall not remove any proprietary, copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Licensed Materials.

5.4 Export of Software

Customer will not export or re-export the Licensed Materials or any copies thereof, either directly or indirectly, to any country except in compliance with all applicable laws, ordinances and regulations. Customer shall have the exclusive obligation to ensure that any export of the Licensed Materials is in compliance with all applicable export laws and the laws of any foreign country.



ARTICLE 6 - WARRANTIES OF CIVICLIVE

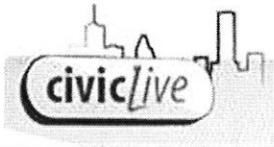
6.1 Warranty and Disclaimers

(a) CivicLive warrants that: (i) the Licensed Software will conform in all material respects to the description thereof in the Documentation, and (ii) the media upon which the Licensed Software and Documentation are provided will be free from defects in materials and workmanship.

(b) Customer's exclusive remedy and CivicLive's sole obligation with respect to the breach of any of the foregoing warranties is for CivicLive to (i) make commercially reasonable efforts to correct or provide Customer with a workaround for the failure of the Licensed Software to conform substantially to the description thereof in the Documentation or, at CivicLive's sole option, provide Customer with a refund for the Licensed Fees paid with respect to such Licensed Software, and (ii) provide Customer with replacement media in the event there are defects in materials or workmanship in the media upon which the Licensed Software and Documentation are provided if the media is returned to CivicLive within the Warranty Period.

(c) OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 6.1(a), CIVICLIVE EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS, WARRANTIES AND CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, MAINTENANCE SERVICES, INSTALLATION SERVICES AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE. SUBJECT TO SECTION 6.1(a) and ARTICLE 7, CIVICLIVE DOES NOT REPRESENT OR WARRANT THAT (i) THE LICENSED MATERIALS WILL MEET CUSTOMER'S BUSINESS REQUIREMENTS, (ii) THE OPERATION OF THE LICENSED SOFTWARE WILL BE VIRUS-FREE OR ERROR-FREE OR UNINTERRUPTED OR (iii) THAT ALL PROGRAMMING ERRORS CAN BE CORRECTED. ALL PROGRAMMING CHANGES, BUG FIXES, ERROR CORRECTIONS, OR OTHER CHANGES, WHETHER OR NOT MADE AS PART OF THE MAINTENANCE SERVICES, ARE PROVIDED ON AN "AS IS" BASIS.

(d) Customer is responsible for taking precautionary measures to prevent the loss or destruction of customer data and databases such as, for example, making regular backups and verifying the results obtained from using the Licensed Materials, and CivicLive shall have no obligations or liability whatsoever with respect to any such loss or destruction.



6.2 Limit of Liability

(a) FOR ANY BREACH OR DEFAULT BY CIVICLIVE OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR WITH RESPECT TO ANY CLAIM ARISING HEREFROM OR RELATED HERETO, CIVICLIVE'S ENTIRE LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED (i) THE AMOUNT PAID BY CUSTOMER HEREUNDER FOR THE LICENSED MATERIALS, (ii) THE AMOUNT PAID BY CUSTOMER FOR THE MAINTENANCE SERVICE THAT IS THE SUBJECT OF THE CLAIM IF THE CLAIM RELATES TO A BREACH OR DEFAULT BY CIVICLIVE OF THE PROVISIONS OF ARTICLE 7, OR (iii) IN THE AGGREGATE WITH RESPECT TO ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT, THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT.

(b) IN NO EVENT WILL CIVICLIVE BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSS OR DAMAGE, LOST BUSINESS REVENUE, LOSS OF PROFITS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS OR ANY CLAIM AGAINST CUSTOMER BY ANY OTHER PERSON (EVEN IF CIVICLIVE HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE).

(c) CIVICLIVE SHALL BE LIABLE TO CUSTOMER AS EXPRESSLY PROVIDED IN THIS AGREEMENT BUT SHALL HAVE NO OTHER OBLIGATION, DUTY, OR LIABILITY WHATSOEVER IN CONTRACT, TORT OR OTHERWISE TO CUSTOMER INCLUDING ANY LIABILITY FOR NEGLIGENCE. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY CUSTOMER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN.

6.3 Limitation Period

Neither party may bring an action, regardless of form, arising out of or related to this Agreement (other than to recover License Fees or Maintenance Fees) more than two (2) years after the cause of action has arisen or the date of discovery of such cause, whichever is later.

6.4 Intellectual Property Claims

CivicLive will defend or (at its option) settle any claim or action brought against Customer to the extent that it is based on a claim that the Licensed Materials infringe any copyright, patent, trade secret or trademark enforceable in the United States of America of any third person (an "Infringement Claim") and will indemnify Customer against damages and costs awarded against Customer by a court of competent jurisdiction by final order from which no appeal is taken or the time for appealing has expired, provided that Customer notifies CivicLive promptly in writing of same, and



provided further that Customer permits CivicLive to control the litigation and to defend, compromise or settle the claim and provides all available information, assistance and authority to enable CivicLive to do so. CivicLive shall not be liable to reimburse Customer for any compromise or settlement made by Customer without CivicLive's prior written consent, or for any legal fees or expenses incurred by Customer in connection with such claim. Customer shall have no authority to settle any claim on behalf of CivicLive.

(d) Should the Licensed Materials or any of them become, or in CivicLive's sole opinion be likely to become, the subject of a claim of infringement, misappropriation, or violation of an Intellectual Property Right (an "Infringement Claim") CivicLive may (i) procure for Customer, at no cost to Customer the right to continue to use the Licensed Materials which are the subject of the Infringement Claim (ii) replace or modify the Licensed Materials or part thereof subject to such Infringement Claim software or documentation of at least comparable functionality, at no cost to Customer, or (iii) if neither of the forgoing alternatives are reasonably practical in CivicLive's sole judgement, remove the component that is the subject of the Infringement Claim or any or all other parts of the Licensed Materials and refund to Customer the Licensed Fees paid by Customer for the part removed as depreciated on a straight line five (5) year basis from the date of delivery of the part to Customer.

(e) Notwithstanding the foregoing, CivicLive shall have no liability for any claim that is based on (i) the use of other than the latest release and version of the Licensed Materials, if such infringement could have been avoided by the use of the latest version and release and such version or release had been made available to Customer, (ii) the use or combination of the Licensed Materials with software, hardware or any other product not provided by CivicLive, or (iii) any modification to the Licensed Materials or use of the Licensed Materials other than as expressly authorized herein or as expressly described or recommended in writing by CivicLive.

(f) This Section 6.4 states the entire liability of CivicLive and Customer's sole remedies with respect to any Infringement Claim.

ARTICLE 7 – WEBSITE REDESIGN

7.1 Background

Customer, a governmental entity, desires to update and redesign its website, cottonwoodheights.utah.gov (the "*Website*"). Consequently, on or about 12 May 2014, Customer issued a request for proposals (the "*RFP*") requesting proposals from qualified proposers to perform redesign, licensing and hosting services for the Website, together with all ancillary and additional services as may be reasonably required to accomplish the desired result in a competent, comprehensive and finished manner. Such work and services are collectively referred to in this Article 7 as the "*Project*."



CivicLive timely submitted a proposal (the "Proposal") in response to the RFP, informing Customer that CivicLive has significant experience and expertise in providing such website-related services to governmental entities and businesses.

7.2 Scope of Services.

CivicLive shall provide website redesign and related services (collectively referred to in this Article 7 as the "Services") to Customer as necessary, advisable or reasonably requested for the purpose of completing the Project, as contemplated by all applicable legal requirements and best practices. The scope, description and timetable of the Services are described in the RFP, the Proposal and this Agreement; provided, however, that CivicLive shall cause the redesigned Website to appear fresh and unique when compared to other governmental websites in Utah, rather than merely a slightly modified version of another governmental website.

In the event of inconsistencies within or between this Agreement, the RFP, the Proposal, or applicable legal requirements, CivicLive shall (a) provide the better quality or greater quantity of Services, or (b) comply with the more stringent requirements, either or both in accordance with Customer's reasonable interpretation.

7.3 Performance of Services.

Except as otherwise provided in this Agreement, CivicLive shall furnish all supervision, personnel, labor, materials, supplies and shall obtain all licenses and permits required for performance of the Services. The Services shall be performed at CivicLive's offices and other mutually-agreeable places.

7.4. Suspension of Services.

Customer's shall have the absolute right to terminate the Services at any time without cost or liability to CivicLive except as provided in section 7.5, below. Customer also may by written notice direct CivicLive to temporarily suspend performance of any or all of the Services for a specified period of time. If such suspension is not occasioned by the fault or negligence of CivicLive, this Agreement may be modified to compensate CivicLive for extra costs reasonably incurred as a result of said suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within 20 calendar days after the date that Customer issues an order for resumption of the Services. Upon its receipt of any such suspension notice, CivicLive immediately shall (a) discontinue the Services; (b) place no further orders or subcontracts in connection with the Services; (c) suspend all outstanding orders and subcontracts in connection with the Services; (d) protect and maintain the existing work and work-product in connection with the Services; and (e) otherwise mitigate Customer's costs and liabilities for the suspended areas of the Services.

7.5. Termination for Convenience.

Customer may terminate the Services, or any part hereof, at any time with or without cause prior to its completion by sending to CivicLive written notice of such



termination. Upon any such termination, Customer shall pay to CivicLive the full amount due for all Services satisfactorily performed by CivicLive as of the date of termination, excluding damages or anticipated profits on work not yet completed or performed.

7.6. Independent Contractor.

CivicLive shall perform the Services as an independent contractor, and all persons employed by CivicLive in connection with this Agreement or the Services shall be employees of CivicLive and not employees of Customer in any respect or for any purpose.

7.7. Non-Exclusive Rights.

Nothing in the Agreement is to be construed as granting to CivicLive the exclusive right to perform any or all of the Services from time to time required by Customer.

7.8. Indemnification.

(a) Notwithstanding anything in this Agreement to the contrary, CivicLive shall indemnify, save and hold harmless Customer (including its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, costs (including Customer's attorney fees) actions and/or proceedings resulting from CivicLive's performance of the Services, whether such matters are based on simple negligence, conflict of interest, gross negligence, recklessness or intentional misconduct by CivicLive (or any employees, subcontractors or agents of CivicLive). In the event of a lawsuit brought against Customer as a result of the Services (or lack thereof), Customer shall notify CivicLive of such lawsuit and afford CivicLive the option of providing at CivicLive's cost separate qualified legal representation to Customer (including its elected and appointed offices, employees, successors and assigns) that is reasonably acceptable to Customer. CivicLive's failure to exercise its option to affirmatively defend Customer in such an action shall not excuse CivicLive from responsibility to indemnify Customer from and against all liabilities, claims, damages, costs (including attorney fees) or other losses incurred by Customer in, or as a result of, such lawsuit, provided that the same are attributable to CivicLive's improper performance of the Services hereunder.

(b) Customer agrees to indemnify, defend and hold harmless CivicLive, its parents, subsidiaries, affiliates, officers and employees, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of: (a) any content provided by Customer for use in the the Services or the Software, (b) Customer's misuse of the Services and/or Software, (c) any breach of this Agreement by Customer, (d) the infringement by Customer, or any third party obtaining access to the Services through Customer's Access Information, of any intellectual property or other right of any person or entity, or (e) Customer's violation of any third-party rights or any applicable laws.



7.9. Professional Responsibility.

CivicLive shall perform the Services using equal or higher standards of care, skill and diligence as normally provided by a professional in the performance of consulting services similar to those contemplated hereunder. Without limiting any other remedies available to Customer, if CivicLive fails to comply with such professional standards, CivicLive shall, upon notice from Customer, promptly re-perform the sub-standard work at CivicLive's sole cost.

7.10. Examination of Work.

All Services shall be subject to examination by Customer at any reasonable time(s). Customer shall have the right to reject any unsatisfactory work. Neither examination of the Services, lack of the same, acceptance of the Services by Customer nor payment therefor shall relieve CivicLive from its obligations under this Agreement regarding the quality and accuracy of the Services.

7.11. Progress.

CivicLive shall submit periodic written progress reports as reasonably requested by Customer. Customer or its agents or representatives also may visit CivicLive's offices at any reasonable time(s) to determine the status of the Services.

7.12. Customer's Cooperation.

Customer will provide the following assistance to CivicLive in connection with the Services:

- (a) Designate a representative of Customer to act as CivicLive's point of contact with respect to the Services.
- (b) Provide to CivicLive access to all non-confidential information pertaining to the Services that is in Customer's possession or is reasonably available to Customer. CivicLive shall not be responsible for errors or omissions in any Customer-provided information, nor for delays in completing the Services attributable to Customer's delay in providing required information.
- (c) Such support of Customer's staff as Customer determines, in its sole discretion, to make available to CivicLive.

ARTICLE 8 - TERM AND TERMINATION



8.1 Term

This Agreement shall be effective on the Effective Date and subject to the provisions of this Article, shall automatically terminate when Customer ceases on a regular basis to use the Licensed Materials.

8.2 Termination

Either party may terminate this Agreement in whole or in part with at least thirty (30) days' prior written notice to the other party.

8.3 Returning Licensed Materials

Within fifteen (15) business days after CivicLive's written request following termination or expiration of this Agreement for any reason, Customer shall return to CivicLive the original and all copies of the Licensed Materials in the possession or control of Customer (including any copies in the possession or control of Business Third Parties or other Users) and shall certify to CivicLive in writing that all such copies have been so returned and/or deleted from all computer records. Customer shall also cease to use the Licensed Materials and ensure that all Business Third Parties to whom Customer has given access to the Licensed Software also cease to use the Licensed Materials.

8.4 Survival

The parties hereto agree that the provisions of Sections 4.3, 6.2, 6.3 and 8.3, 9.9 and 9.10 and Article 5 shall survive and remain in full force and effect after the termination of the License or this Agreement for any reason.

ARTICLE 9 - GENERAL

9.1 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement, as the case may be. The terms "this Agreement", "hereof", "hereunder" and similar expressions in this Agreement refer to this Agreement and not to any particular Article, Section or other portion and include any Agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

9.2 Extended Meanings



In this Agreement words importing the singular number only shall include the plural and *vice versa*, and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations. The terms "provision" and "provisions" in this Agreement refer to terms, conditions, provisions, covenants, obligations, undertakings, warranties and representations in this Agreement.

9.3 Notices

For the purposes of this Agreement, and for all notices and correspondence hereunder, the addresses of the respective parties have been set out at the beginning of this Agreement and no change of address shall be binding upon the other party hereto until written notice thereof is received by such party at the address shown herein. All notices shall be effective upon receipt if delivered personally or sent by facsimile and seven (7) days after mailing if sent by registered mail.

9.4 Currency

All references to currency are deemed to mean lawful money of the United States of America unless expressed to be in some other currency.

9.5 Force Majeure

If the performance of this Agreement, or any obligation thereunder except the making of payments hereunder is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labour disputes; inability to procure or obtain delivery of parts, supplies, power, equipment or software from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

9.6 Severability

The parties agree that it is the intention of each party not to violate any public policy, statutory or common law or government regulation. To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted herefrom or limited so as to give effect to the intent of the parties insofar as possible and the parties will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provisions and each remaining provision so remaining shall be enforced.



9.7 Assignment

Customer may assign this Agreement without CivicLive's consent (i) to an affiliate of Customer (for the purpose of this Section, the term "Affiliate" shall have the meaning given to it in the *Canada Business Corporations Act*); or (ii) to a purchaser of all or substantially all of Customer's assets. Otherwise, neither this Agreement nor any rights granted hereby may be transferred or assigned by Customer to any other person without CivicLive's prior written consent, (such consent shall not be unreasonably withheld or delayed), and any such attempted assignment shall be null and void. In the event Customer assigns this Agreement to a third person as permitted by this Section 9.7 or with consent from CivicLive, Customer shall cease all use of the Licensed Materials and destroy or cause to be destroyed all copies thereof within its possession or control and the third party assignee shall agree in writing with CivicLive to assume all of Customer's obligations hereunder. Customer shall also certify in writing to CivicLive that the foregoing has been accomplished. This Agreement shall enure to the benefit of and be binding upon any successor or assign of CivicLive or, any permitted successor or assign of Customer. The parties agree that CivicLive may delegate to affiliates of CivicLive and to agents, suppliers, contractors and resellers of CivicLive any of the obligations herein imposed upon CivicLive and CivicLive may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation shall not relieve CivicLive of its performance obligations hereunder.

9.8 Waiver

No modification, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

9.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without reference to its conflict or choice of law rules or principles. Customer and CivicLive each hereby submits to the exclusive jurisdiction of the Third Judicial District Court of the State of Utah for any legal action arising out of this Agreement or the performance of the obligations hereunder or thereunder. This Agreement shall be deemed to be made in the State of Utah and each party agrees not to commence any action, suit or proceeding against the other party, any affiliate of such party, or any of their employees, officers or directors in any jurisdiction other than the Third Judicial District Court of the State of Utah.

9.10 Dispute Resolution

In the event that any dispute or disagreement between Customer and CivicLive with respect to the interpretation of any provision of this Agreement, the performance of



CivicLive or Customer under this Agreement, or any other matter that is in dispute between the parties related to this Agreement, upon the written request of either party, the parties will meet for the purpose of resolving such dispute. The parties agree to discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto. No formal proceedings for the resolution of such dispute may be commenced until either party concludes in good faith that the applicable resolution through continued negotiation of the matter in issue does not appear likely.

9.11 Language

The parties hereto have requested that this Agreement be drafted in English.

9.12 Non-Solicitation

Each Party agrees that as long as this agreement is active and for a period of twelve (12) months after the termination of this agreement for any reason whatsoever, not to directly or indirectly recruit, solicit or otherwise induce or attempt to induce any employee of the Other Party to terminate his or her employment with the Other Party or otherwise act contrary to the interests of the Party.



APPENDIX A – LICENSED SOFTWARE AND FEES

The Components which are the subject of the License, the Software Licenses granted to the Customer and the fees payable to CivicLive hereunder are as follows:

1. Licensed Software

The Components of the Platform Suite which are licensed to *city of Cottonwood Heights, Utah* hereunder are the following:

- SitePublish Web Content Management System.

2. Software Licenses

The utilization rights of the Customer are as follows:

- (a) Customer is granted 1 Website License;
- (b) The Territory is the State of Utah

3. Professional Services Fees

The following one-time professional services fees and costs are included as part of the implementation and other performance of the Services under Article 7:

| | |
|---|------------------------|
| Website Design, Development & Implementation | \$35,000 |
| Three Sessions of <u>Onsite</u> Training (6 hours each) | Included* |
| 100% Content Migration | Included |
| Year Four Website Redesign Plan (if desired) | Included |
| <u>Total Professional Services Fees:</u> | <u>\$35,000</u> |

* *No travel, lodging or other expenses to be charged.*

4. Payment Schedule re: Professional Services Fees

- 30% on Contract Signing
- 40% on Delivery (installation of software in Customer environment)
- 30% on Acceptance (UAT completion)



APPENDIX B – SAAS: HOSTING, MAINTENANCE AND SUPPORT

1. Software-as-a-Service (SAAS)

The following are included as part of the Software-as-a-Service (SAAS):

- a) Website Hosting
- b) CMS Software Version Upgrades & Maintenance
- c) Unlimited Access to Technical Support
- d) Unlimited-User Software License

Customer will pay CivicLive each year (each such term is referred to here as an “Annual Hosting, Maintenance & Support Term”) an **annual fee of \$6,500*** due to CivicLive hereunder and is payable annually in advance on the Delivery Date.

This annual fee may be reasonably increased annually by CivicLive by providing Customer with written notice not less than thirty (30) days prior to the end of a Maintenance Term.

***There is no annual SaaS fee for Contract Year #1**

2. Technical Support & Maintenance

CivicLive will provide the following Support & Maintenance Services for the Licensed Software:

(a) Support: CivicLive will provide one (1) Support Contact with a single point of contact for questions and problems regarding the Licensed Software, and the repair of minor errors. The Maintenance Fees paid by Customer include four (4) incidents per calendar month (“Incidents”), each incident being up to one hour of support (“Support Time Per Incident”). The Support Time Per Incident are not cumulative between Incidents. The Incidents are not cumulative between months. Any further Support may be provided by CivicLive to Customer at the then current support rate (“Support Rate”), being \$100/hour at the time this contract was executed.

(b) Availability: CivicLive Support will be available through CivicLive’s Bug Tracking System and CivicLive’s Support Email account (support@civiclive.com) to Customer between the hours of 9:00 a.m. and 5:00 p.m. (Eastern timezone), during any day, other than a Saturday, Sunday, statutory or civic holiday in the Williamsville, New York (“Normal Service Hours”).

(c) Response Time: During Normal Service Hours, CivicLive will respond to Customer’s Support requests within twenty four (24) hours of the initial request. The time to solve, identify, diagnose, and correct errors (if necessary) will depend on the complexity of each problem.



3. Customer's Obligations

(a) Access: During each Hosting, Maintenance & Support Term, Customer will provide CivicLive with reasonable access (via remote telecommunications or on-site access at Customer's premises) to Customer's copies of the Licensed Software to the extent necessary, in CivicLive's discretion, to enable CivicLive to meet its support obligations as set forth in this Agreement.

(b) Communications Link: During this Agreement, Customer may, at its sole expense, provide access via the Internet. CivicLive may be entitled to use this Internet connection in discharging its responsibilities under this Agreement. CivicLive shall have no liability to Customer if CivicLive's ability to render support is impaired by Customer's inability to provide telecommunications functionality required for remote support.

(c) Maintenance: Customer shall designate two (2) individuals to be generally available to confer with CivicLive regarding Maintenance Services ("Maintenance Contacts"). CivicLive will provide Maintenance Services only to Customer's Maintenance Contacts.

4. Fees for Other Services

Customer shall reimburse CivicLive for reasonable travel expenses, and reasonable incidental expenses relating to Maintenance Service at CivicLive's then current prices then in effect, provided that airfare shall be economy class, and lodging and per diem shall be reasonably pre-approved by Customer. CivicLive shall bill such fees and expenses on a monthly basis, attaching time sheets normally used by CivicLive. Customer shall not be liable for the aforesaid expenses unless Customer has given CivicLive approval to incur them.



APPENDIX C – MARKETING

1. Customer will make a reasonable attempt to work with the CivicLive Marketing Department to gather information and meet deadlines associated with website award contest entries throughout the term of this Agreement.
2. Customer permits CivicLive to include an example of the Customer's home page and a link to the Customer's website on the CivicLive corporate website.
3. Customer will make a reasonable attempt to work with the CivicLive Marketing Department to create a case study related to their website.
4. Customer agrees to allow CivicLive to display a "Powered by CivicLive" insignia and web link at the bottom of their web pages.
5. Customer understands that the pricing and any related discount structure provided under this Agreement assumes such perpetual permission.

APPENDIX SIGNATURE BLOCK

Intrafinity Inc. o/a CivicLive

city of Cottonwood Heights, Utah

Signature:  _____

Signature: _____

Name: John Carbrey

Name: Kelvyn H. Cullimore, Jr.

Title: Director

Title: Mayor

Date: August 6, 2014

Date: _____

ATTEST: _____

Kory Solorio, Recorder