

EXHIBIT A

AGREEMENT FOR PROFESSIONAL AND CLOUD-BASED SERVICES BETWEEN BRYCER, LLC, AND THE CITY OF DULUTH

THIS AGREEMENT ("Agreement") is made by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("the City"), and Brycer, LLC, of Warrenville, Illinois ("Brycer") (referred to collectively hereinafter as "the parties"). The effective date of this Agreement shall be that date on which all parties have executed this Agreement, as set forth on the latest date of the signatures below.

WHEREAS, the City desires to use Brycer's cloud-based service ("The Compliance Engine" or "TCE") to enhance the City's review, tracking, record-keeping and enforcement of annual inspection and testing requirements applicable to all approved fire protection systems within the City under Chapter 21, Art. II of the Duluth City Code (adopting and incorporating the relevant inspection and testing requirements set forth in the Minnesota State Fire Code and International Fire Code) (hereinafter "the Code"); and

WHEREAS, Brycer has represented that it is qualified to assist and provide the City with enhancements to its record-keeping and code-enforcement activities via its TCE system and is willing to perform these services under the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

ARTICLE I

Scope of Professional and Cloud-Based Services

Brycer will provide the services set forth below, including other professional or technical services generally or necessarily related thereto, as City staff may, from time to time, request:

- A. Brycer will provide the City with use of TCE for purposes of electronic receipt of annual fire protection system inspection and testing reports ("reports") from building owners, licensed fire protection contractors, or their agents in accordance with the Code,

including related TCE functions permitting efficient review, tracking, and follow-up compliance or enforcement notifications, in accordance with the Maintenance Schedule and Minimum Service Levels set forth and attached hereto as Exhibit A;

- B. Brycer will provide City staff with technical training, as may be recommended by Brycer or requested by the City, on the proper use of TCE;
- C. Brycer will generate and deliver the following written or electronic notices to third parties in connection with the use of TCE in forms or formats approved by the City;
 - a. Notices of pending or upcoming inspection, testing, or reporting deadlines;
 - b. Notices of past due or overdue inspection, testing or reporting obligations;
 - c. Notices of completed inspection reports containing one or more deficiencies;
- D. Using one or more scripts approved by the City, Brycer will make phone calls notifying building owners, fire protection contractors or their agents that certain fire protection systems are overdue for inspection, testing, reporting or maintenance;
- E. Brycer will provide commercially reasonable levels of customer service to third parties using TCE to satisfy City Code requirements. For purposes of this provision, "commercially reasonable levels of customer service" means that Brycer shall respond to third-party telephone calls, messages or emails within 24 hours of receipt of the call, message or email, and shall make best efforts to resolve any third-party customer service issues within one week of receipt of the initial call, message or email;
- F. Upon request by the City or within 60 days of termination or expiration of this Agreement, Brycer shall make available to the City, and the City shall have the right to download or obtain, all city data (as defined in greater detail in Article VII herein) retained by Brycer.
- G. Brycer will provide the City with any updates, corrections, or enhancements to TCE during the Term of this Agreement at no cost to the City;

H. All travel or travel costs necessary for Brycer to provide professional services to the City in accordance with this Agreement are included in the scope of services stated herein.

ARTICLE II

Professional Fees

Brycer agrees to provide the City with TCE and its related training or technical services, as set forth herein, at no cost to the City. The City understands that Brycer will charge fire protection contractors for generation and submission of all Fire Protection System reports performed within the City's jurisdiction, whether or not the City is the owner or operator of the building.

ARTICLE III

Assignability

Brycer shall not in any way assign or transfer any of its rights or interests under this Agreement in the absence of the City's written consent, subject to approval by council.

ARTICLE IV

Term

This Agreement shall be effective upon the date on which all parties have executed the Agreement, as set forth on the latest date of the signatures below ("the Effective Date"), and shall remain in effect for a term of three (3) years following the Effective Date, unless terminated earlier as provided for herein, subject to renewal for successive terms upon mutual agreement between the parties.

ARTICLE V

Termination of Services

The City may, by giving 60 days written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. The City reserves the right to terminate this Agreement immediately upon receipt of a notice of claim or commencement of any civil action against the City arising out of its use or access to TCE.

ARTICLE VI

Standard of Performance

Brycer agrees that all services provided to the City under this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

ARTICLE VII

Third-Party Fees - Notification of Increase/Payment Card Industry Data Security Standards

Brycer represents to the City that the present fee charged by Brycer to third parties for submission of annual fire protection system inspection and testing reports via TCE is \$12.00 per report. In accordance with Article XVI below, Brycer agrees to notify the City in writing of any increase in fees charged to third parties for submission of reports via TCE.

Brycer further warrants to the City that, to the extent Brycer requires or accepts credit card payments from third parties for submission of reports via TCE, Brycer is in compliance with current Payment Card Industry Data Security Standards (PCI-DSS). Upon request, Brycer will provide the City with signed attestation of compliance with current PCI-DSS standards.

ARTICLE VIII

Brycer Warranty – Intellectual Property

Brycer represents and warrants to the City that it holds all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, The Compliance Engine, and that Brycer is duly authorized to enter into this Agreement and provide TCE to the City pursuant to this Agreement. Brycer agrees to defend, indemnify and hold harmless the City, its executives, officers, directors, employees, and agents from any and all patent, copyright, trademark, service mark or other intellectual property claims arising out of, or relating to, the City's authorized use of TCE.

ARTICLE IX

Government Data

A. Data Practices Act

All government data collected, created, received, maintained or disseminated for any purpose by the parties pursuant to this Agreement shall be governed by the provisions of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq. ("the Data Practices Act"). Brycer agrees to comply with the Data Practices Act as it applies to any data provided to it by the City or third parties, and further agrees to cooperate and assist City staff in complying with any data practices requests arising out of, or related to, information generated or submitted via TCE.

B. Trade Secret Information

"Trade secret information" means all data defined under Minn. Stat. § 13.37 (General Nonpublic Data), as may be amended. It shall be the responsibility of Brycer to clearly mark any trade secret materials supplied to the City in performance of this Agreement, including a statement with the submission of such information justifying the trade secret designation for each item. Brycer agrees to defend any action seeking release of materials it believes to be trade secret, and indemnify and hold harmless the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with such defense. Brycer agrees that this indemnification survives as long as the trade secret materials are in the possession of the City.

C. Ownership, Security and Retention of City Data

For purposes of this Agreement, "City data" means "government data" as defined by the Data Practices Act, Minn. Stat. § 13.02, subd. 7, as may be amended. The City retains ownership of all City data generated, disseminated or received via TCE, including, without limitation, reports submitted by third parties in accordance with the Code and all

compliance or enforcement letters, notices or other communications issued to third parties. Brycer shall maintain industry-appropriate administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of City data. Brycer agrees to backup and retain City data for not less than five (5) years from the date of receipt or submission, except as may otherwise be required by law.

ARTICLE X

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Brycer as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Brycer and any officers or employees thereof shall not be considered an employee of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Brycer arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors and employees, shall in no way be the responsibility of the City. Brycer and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the City shall not, in any way, be responsible to defend, indemnify or save harmless Brycer from liability or judgments arising out of the intentional or negligent acts or omissions of Brycer or any of its officers, agents, contractors and employees while performing the services specified in this Agreement.

ARTICLE XI

Indemnity and Insurance

A. Indemnity

Brycer agrees that it shall defend, indemnify, and save harmless the City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of the City or of Brycer, by reason of claims or complaints arising under the Minnesota Government Data Practices Act, death or injury to person or persons, or the loss of or damage to property arising out of Brycer's performance of its obligations under this Agreement. On ten (10) days written notice issued by the City, Brycer will appear and defend all lawsuits against the City arising out of such injuries or damage.

B. Insurance

During the term of this Agreement, Brycer shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

City of Duluth shall be named as Additional Insured under the General Liability, Excess Umbrella Liability (an Umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured) and Automobile Liability, or as an alternate, Brycer may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Brycer shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance. Brycer is to provide certificate of insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provocations included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect Brycer's interests and liabilities.

If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than

30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.

ARTICLE XII

Taxes and Fees

Brycer shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Brycer's operations under this Agreement, including but not limited to any applicable sales, income or real estate taxes. Brycer shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date. It is further agreed that the City may pay the same on behalf of Brycer and immediately collect the same from Brycer to avoid any fees, fines or penalties any governmental entity may be imposing or seeking to impose upon the City.

ARTICLE XIII

Use of the City's Intellectual Property (trademarks/logos)

During the Term of this Agreement, Brycer is permitted to use the City's logo[s] in support of its provision of The Compliance Engine to the City. The parties agree that the use of the City's names or logos shall not grant Brycer or any other third party any right, title or interest in the City's names or logos, and all such uses shall inure to the benefit of the City.

ARTICLE XIV

Civil Rights Assurances

Brycer, for itself and its officers, agents, servants and employees, as part of the consideration of this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise

subjected to discrimination with regard to the services to be performed pursuant to this Agreement.

- B. All activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the United States Code, and any regulations and executive orders which may be affected with regard thereto.

ARTICLE XV

Rules and Regulations

Brycer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City, and their respective agencies which are applicable to its activities under this Agreement.

ARTICLE XVI

Restrictions on Use

The City understands and agrees that, by entering into this Agreement, Brycer grants the City no rights to copy, distribute, create derivative works of, disrupt the performance of, alter or modify TCE in any way except as expressly or impliedly authorized by Brycer for use of TCE in accordance with its designed or intended purpose under this Agreement. Use of TCE is restricted to City officers or employees (collectively, the "Authorized Users") for the benefit of the City in accordance with this Agreement. The City agrees to make reasonable efforts to prevent the unauthorized use of TCE, and further agrees not to sell, resell, rent or lease its use or access to TCE.

ARTICLE XVII

Brycer Proprietary Rights to TCE and Derivative Works

Brycer retains all right, title and interest in and to The Compliance Engine, along with all derivative works, modifications, manuals or related materials, subject to the provisions of Article IX of this Agreement.

ARTICLE XVIII

Brycer Reservation of Rights to Adapt or Modify TCE

Brycer reserves the right, in its sole discretion and with prior notice to the City, to discontinue, add, adapt, or otherwise modify any design or specification of TCE or Brycer's policies, procedures or requirements related thereto, subject to Article I.G of this Agreement.

ARTICLE XIX

Disclaimer

All information entered into TCE is produced by third-party building owners, fire protection contractors, inspectors or their agents. Brycer disclaims any representation or warranty as to the accuracy or completeness of any information entered into TCE by third parties or the City.

ARTICLE XX

Limitations on Damages

Except as otherwise provided in Article VIII, in no event shall Brycer be liable for or obligated in any manner for special, consequential, or indirect damages, including, but not limited to, the loss of use, profits or damages of either the City or any third-party, resulting from TCE crashes or system downtime. The City acknowledges and agrees that in no case shall Brycer's liability for any loss of data or data integrity exceed the replacement cost of the media on which the data was stored.

ARTICLE XXI

Risks Inherent to the Internet

Brycer warrants to the City that its own internal IT governance, network and data security policies and procedures satisfy high industry standards. Notwithstanding Brycer's best efforts to protect TCE from security risks or breaches, the City acknowledges that: (a) the Internet is a worldwide network of computers, (b) communication on the Internet may not be secure, (c) the Internet is beyond the control of Brycer, and (d) Brycer does not own, operate or manage the Internet. The City further acknowledges that there are inherent risks associated with using TCE,

including but not limited to the risk of breach of security, the risk of exposure to computer viruses and the risk of interception, distortion, or loss of communications. With the exception of damages to the City resulting from Brycer's own negligent acts or omissions or failure to maintain the high IT governance and security standards referenced herein, the City assumes these risks knowingly and voluntarily, and agrees to hold Brycer harmless from all liability from such risks. Not in limitation of the foregoing, the City hereby assumes the risk, and Brycer shall have no responsibility or liability of any kind hereunder, for: (1) errors in the Solution resulting from misuse, negligence, revision, modification, or improper use of all or any part of the Solution by any entity other than Brycer or its authorized representatives; (2) any version of the Solution other than the then-current unmodified version provided to Client; (3) Client's failure to timely or correctly install any updates to the Client Access Software; (4) problems caused by connecting or failure to connect to the Internet; (5) failure to provide and maintain the technical and connectivity configurations for the use and operation of TCE that meet Brycer's recommended requirements; (6) nonconformities resulting from or problems to or caused by non-Brycer products or services; or (7) data or data input, output, accuracy, and suitability, which shall be deemed under the City's exclusive control.

ARTICLE XXII

Illegal Payments

The City acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or anything of value from any employee or agent of Brycer in connection with this Agreement.

ARTICLE XXIII

Beneficiaries

There are no third-party beneficiaries to this Agreement.

ARTICLE XXIV

Force Majeure

Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond the parties' reasonable control, including, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, earthquakes, blackouts, accidents, or strikes. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay.

ARTICLE XXV

Notices

Notice to the City or Brycer provided for herein shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth:	City of Duluth Fire Marshal Duluth Fire Department 602 W. 2 nd Street Duluth, MN 55802
Consultant:	Matthew B. Rice Brycer, LLC 4355 Weaver Parkway, Suite 330 Warrenville, IL 60555

ARTICLE XXVI

Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE XXVII

Applicable Law, Jurisdiction and Venue

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation arising in relation to this Agreement shall be those courts located within the State of Minnesota, County of St. Louis.

ARTICLE XXVIII

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XXIX

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

[Remainder of page left intentionally blank, signature page to follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
intending to be bound thereby.

CITY OF DULUTH

Brycer, LLC

By _____
Its Mayor
Dated _____

By Matthew B. Rice
Matthew B. Rice, CEO
Dated 7-28-16

Attest _____
City Clerk
Dated _____

Countersigned:

City Auditor
Dated _____

Approved as to form:

City Attorney
Dated _____