REPORT TO CITY COUNCIL

DATE: AUGUST 9, 2017

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: CHRISTY PINUELAS, DIRECTOR OF FINANCE

SUBJECT: REQUEST TO APPROVE AGREEMENTS WITH KEY INFORMATION SYSTEMS FOR COLOCATION AND CONNECTIVITY SERVICES

Key Information Systems, Inc., ("Key Info") provides storage of the City's computer network servers (colocation) and internet service (connectivity) for the City. Their data storage facility is located directly across the street from City Hall and, therefore, provides the most convenient access to the City's equipment. The City has been utilizing this data storage facility since 2009. There are no comparable services located within the City; therefore, staff is requesting that this service be sole sourced.

Key Info's colocation service provides an environment that is temperature controlled, "clean power" back-up generators, and raised flooring for ideal climate control. This safeguards the City's computer equipment and helps to ensure that the City's equipment is not damaged. Furthermore, the data center is wired with Category 5e wiring, which provides fast connectivity to the internet. The internet service provided has been fast and reliable.

The proposed agreement is for a three-year term. The City has used the services of Key Info for the past four years and found them to be reliable. Key Info has reduced pricing for the Half Cabinet Colocation (storage of our servers off-site) and the Dark Fiber Connection (Internet to the Civic Center and Recreation Center) since the last contract.

	Current Pricing	Renewal Pricing	Savings
Half Cabinet Colocation	$1,190.00/month	$1,002.00/month	$188.00/month
Dark Fiber Connection	$1,666.00/month	$1,566.00/month	$100.00/month

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council approve the agreements for colocation and connectivity services with the City of Agoura Hills and Key Information Systems, Inc., and authorize the City Manager to sign the agreements to commence on August 1, 2017, for a three-year period.

Attachment: Key Information Systems, Inc., Agreements

keyinfo

dedicated to our clients

Colocation Renewal and 16IP Add Half Cabinet at Agoura Court

City of Agoura Hills

June 23, 2017

Client Master Agreement

This Master Agreement ("**Agreement**") is made and entered into as of this 23rd day of June 2017 ("**Effective Date**") by and between Key Information Systems, Inc., a California corporation ("**KeyInfo**"), and the Client identified on this page below ("**Client**").

This Agreement governs transactions by which Client may acquire Products and/or Services from KeyInfo. Additional terms applicable to specific Products and Services may be set forth in documents referred to as "**Addendums**". This Agreement includes (1) this cover page, (2) the General Terms and Conditions attached to this cover page, and (3) any Addendums that may be signed by Client and KeyInfo.

For each specific transaction, Client and KeyInfo will also enter into a Statement of Work or Order Form. This Agreement shall be deemed to be incorporated into each Statement of Work and each Order Form. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of a Statement of Work or Order Form, the terms and conditions of, as applicable, the Statement of Work or Order Form shall control.

By signing below, Client and KeyInfo agree to be bound by this Agreement.

CLIENT   **Key Information Systems, Inc.**

By: _____   By: _____

Name: _____   Name: _____

Title:_____   Title:_____

Client Name and Address for Notices: Address for Notices:

Christy Pinuelas   Key Information Systems, Inc.
City of Agoura Hills   Attention: President
30001 Ladyface Ct.   30077 Agoura Court – First Floor
Agoura Hills, CA 91301   Agoura Hills, CA 91301

1.   **Certain Defined Terms**.   As used in this Agreement, the following terms have the meaning ascribed to them below:

"**Bankruptcy Code**" means Title 11, United States Code, as amended from time to time.

"**Change Request**" means a written request to make a substantive change to a Statement of Work in the form attached to the applicable Statement of Work, or if no such form is attached, in the form established by KeyInfo from time to time.

"**Client Data**" means any and all data (including, without limitation, personally identifiable information), records, files, input materials, reports, software, forms and other information that is received, stored, or transmitted using the Managed Hosting Services.

"**Client Equipment**" means the computer hardware, wiring, cabling, software and other IT equipment, tangible or intangible, owned by Client and located, installed or used in connection with the Client Space or the KeyInfo Data Center.

"**Client Space**" means the space assigned to Client for the provision of Colocation Services, as identified in a Statement of Work.

"**Colocation Services**" means colocation services whereby Client's equipment is located at KeyInfo's data center or space subcontracted by KeyInfo as further described in an applicable Statement of Work. Colocation Services are provided only if Client and KeyInfo have executed the KeyInfo Addendum for Colocation Services and an applicable Statement of Work.

"**Connection Areas**" means any property or premises of KeyInfo that Client has the right to access (whether exclusively or non-exclusively) for connections and interconnections to telecommunications carriers, ISPs, content providers and/or enterprises.

"**Connectivity Services**" connectivity services described in an applicable Statement of Work provided, and managed by, KeyInfo through one or more third parties. Connectivity Services are provided only if Client and KeyInfo have executed the KeyInfo Statement of Work for Connectivity Services and an applicable Statement of Work.

"**Data Center**" means the facility (or facilities in the event that Client has selected multiple KeyInfo sites) owned, leased or licensed by KeyInfo in which the Client Space is located.

"**Equipment**" means the computer hardware and related peripheral devices manufactured by one or more third parties that Key agrees to provide, or arrange for the provision, to Customer, as expressly set forth in a Statement of Work or Order Form.

"**GLBA**" means Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 et seq.) as amended from time to time.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the regulations promulgated by the United States Department of Health and Human Services pursuant thereunder.

"**KeyInfo Facilities**" mean the equipment, machinery, facilities, fixtures, hardware, software and other personal property, tangible or intangible, owned, leased or licensed by KeyInfo and used for the operation of the Data Center and/or the provision of Colocation Services to Client.

"**Licensed Space**" means any property or premises of KeyInfo that is licensed or leased to Client (or which Client otherwise has the right to occupy) pursuant to a Statement of Work.

"**Managed Hosting Services**" means managed hosting services whereby KeyInfo maintains and operates the applicable servers and devices and Client controls the operating systems and applications as further described in an applicable Statement of Work

"**Professional Services**" means professional services provided by KeyInfo as may be further described in an applicable Statement of Work, which professional services (a) may include, without limitation, managed service whereby KeyInfo manages certain aspects of the Client's technology operations, and (b) shall not include Managed Hosting Services, Colocation Services, Connectivity Services, or KeyInfo Software as a Service as such Services.

"**Order Form**" means the ordering document for Client's purchase from KeyInfo of Products and which is executed by KeyInfo and Client.

"**Products**" means, as applicable, (a) Equipment, and (b) Third Party Software.

"**Third Party Software**" means third party computer software that KeyInfo agrees to provide, or arrange for the provision of, to Client, in each case as expressly set forth in a Statement of Work or Order Form.

2. Payments.

2.1   Services and Products. Client shall pay to KeyInfo all fees, prices, and other amounts specified in all Statements of Work and Order Forms but subject to Section **2.3.** In addition, Client shall reimburse KeyInfo for all travel and other out-of-pocket expenses incurred by KeyInfo and agreed upon in advance by Client, in connection with any Services and/or any Products. With respect to any travel expenses, KeyInfo shall comply with all reasonable travel and expenses policies of Client that are provided to KeyInfo in advance. All fees and expenses are quoted and payable in United States dollars. Amounts for Services are based on Services purchased and not actual usage. Except as otherwise provided herein, payment obligations are non-cancelable and amounts paid are non-refundable.

2.2   Invoicing and Payment. Fees for all Services, Products and expenses will be invoiced by KeyInfo. Unless otherwise stated in the Statement of Work or Order Form, (a) invoiced amounts for Managing Hosting Services, Colocation Services and KeyInfo SaaS shall be paid monthly, in advance, and (b) all other invoiced amounts shall be due thirty (30) days from the invoice date. Client is responsible for maintaining complete and accurate billing and contact information with KeyInfo. Colocation, Connectivity, and cloud Services are subject to an annual escalation of 3% of the rate charged for the previous year

2.3   Interest and Collection. Any payment not received from Client by the due date may accrue, at KeyInfo's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Client agrees to pay KeyInfo's reasonable costs of collection of overdue amounts, including collection agency fees, attorney's fees and court costs. Disputes as to the accuracy of an invoice must be presented in writing to KeyInfo by Client within forty-five (45) days after the date of the invoice, and invoices that are not so disputed within such forty-five (45) day time period shall be conclusively deemed accurate and accepted.

2.4   Taxes. Unless otherwise stated, KeyInfo's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, **"Taxes"**). Client is solely responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on KeyInfo's net income or property. If KeyInfo has the legal obligation to pay or collect Taxes for which Client is responsible under this section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides KeyInfo with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.   Term and Termination.

3.1   This Agreement. The term of this Agreement shall commence on the Effective Date and continue until expiration or terminated as provided herein. If all Statement of Works have expired or been terminated and all Products subject to an Order Form have been delivered, then either party may terminate this Agreement by giving prior, written notice thereof to the other party in which event this Agreement shall terminate on the date specified in such notice, or if no

date is specified in such notice, on the date such notice is given. This **Section** shall not be incorporated into any Statement of Work or Order Form.

3.2   Term of each Statement of Work. The term of each Statement of Work shall commence on the effective date of the Statement of Work and shall continue until the date of expiration set forth therein; subject, however, to earlier termination as provided in the Statement of Work (which includes the terms and conditions of this Agreement). If there is no date of expiration set forth in a Statement of Work, such Statement of Work shall be considered expired upon, as applicable, the later to occur of the completion of, as applicable, the performance of the applicable Services and/or the delivery and acceptance of all Products under such Statement of Work.

3.3   Mutual Termination. Either party may terminate a Statement of Work or cancel an Order Form by giving prior, written notice thereof to the other party if the other party breaches any provision of such Statement of Work or Order Form (each of which, for the avoidance of doubt, includes the provisions of this Agreement) and fails to cure such breach within thirty (30) days after notice thereof is given to the allegedly breaching party by the other party (except that such cure period shall be limited to three (3) days in the event of a breach by Client due to the failure to pay any amount due hereunder to KeyInfo), and any such termination or cancellation shall be effective on the date set forth in such notice.

3.4   Termination by KeyInfo. KeyInfo may terminate a Statement of Work or cancel an Order Form immediately by giving notice thereof to Client if (a) Client voluntarily files a petition for relief under the Bankruptcy Code, (b) an involuntary petition under the Bankruptcy Code is filed against Client and the proceeding initiated by such filing is not terminated within sixty (60) days after the day on which such an involuntary petition is filed, (c) any of Client's assets are attached or foreclosed, (d) KeyInfo discovers and provides evidence to Client that any information Client provided to KeyInfo about Client or Client's proposed use of any Service is materially inaccurate or incomplete, (e) KeyInfo believes and provides evidence to Client that Client is violating, or has violated, the Acceptable Use Policy, and/or (f) KeyInfo reasonably believes and provides evidence to Client that Client has, or is, infringing the intellectual property rights of others or is aiding or threatening such infringement.

3.5   Termination Due to Infringement Claims. KeyInfo may also terminate a Statement of Work by giving notice to Client in the event a third party makes a claim that the Services provided by KeyInfo under such Statement of Work (or Client's use of such Services) infringe or misappropriate one or more intellectual property rights of a third party, and KeyInfo is not reasonably able to obtain the right to use the infringing or misappropriating element or modify the Services such that they do not infringe, and any such termination shall be effective on the date set forth in such notice. In such event, KeyInfo shall provide Client with a pro-rata refund of fees prepaid by Client, based on the number of months remaining in the current term of the Statement of Work or other agreement.

3.6   Termination of Other Statements of Work and Order Forms. If KeyInfo terminates a Statement of Work or cancels an Order Form under the provisions of this Agreement,

then KeyInfo may also terminate any or all other Statement of Works and Order Forms between Client and KeyInfo that are in effect at the time of such termination or cancellation by giving notice to Client, and such termination or cancellation shall be effective on the date set forth in such notice.

     3.7   <u>Notice of Termination.</u> If written notice of termination is not delivered to KeyInfo at least 30 days before expiration of the term, then this Agreement shall continue in effect on a month to month basis until terminated by either party upon 30 days advance written notice, and KeyInfo may charge Customer for all services provided at KeyInfo's then prevailing rates for month to month services.

4.   <u>Confidentiality.</u>

     4.1   **<u>General.</u>** The term **"Confidential Information"** means, subject to Section 4.2, any and all nonpublic information, in any form or medium, tangible or intangible and whether communicated in writing, orally, or through visual observation, that a party to this Agreement (each a **"Disclosing Party"**) designates as being confidential to the party that receives such information (each a **"Receiving Party"**) or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. Client agrees that KeyInfo's Confidential Information includes, without limitation, any and all unpublished pricing information, audit and security reports (including, without limitation all content of such reports and the "look and feel" of such reports), product development plans, vendor pricing, terms and agreements, nonpublic information relating to KeyInfo's business activities or financial affairs, data center designs, network and server configuration designs, and tools, methodologies, techniques used to provide the Services, interfaces, control screens, and other information and technology. All data, including personal information, provided to or made available to KeyInfo by Client ("Client Data"), shall be Confidential Information.

     4.2   **<u>Exceptions.</u>** The term "Confidential Information" does not include any information, however designated, that (a) is or subsequently becomes generally known or available by publication, commercial use or otherwise without the Receiving Party's breach of any obligation owed to the Disclosing Party, (b) is known to the Receiving Party prior to the Disclosing Party's disclosure of such information to the Receiving Party without any restriction on the Receiving Party's further use or disclosure, (c) becomes known to the Receiving Party from a source other than the Disclosing Party without any restriction on the Receiving Party's further use or disclosure and other than by the breach of an obligation of confidentiality owed to the Disclosing Party, and/or (d) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information.

     4.3   **<u>Obligations Regarding Confidential Information.</u>** Each Receiving Party agrees that it will (a) refrain from using the Confidential Information of the Disclosing Party except in connection with, as applicable, the performance or use of the Services, otherwise as necessary for the Receiving Party's to perform its obligations under this Agreement, the exercise of a Receiving Party's respective legal rights under the Agreement, or as may be required by law, including the California Public Records Act, and (b) subject to Section 4.2 refrain from disclosing any Confidential Information of the Disclosing Party. The obligations set forth in clauses (a) and (b)

30077 Agoura Court, Agoura Hills, CA 91301
Toll Free: 877.442.3249   P: 818.992.8950   F: 818.992.8970
<u>www.keyinfo.com</u>

above shall continue throughout the term of this Agreement and forever thereafter; provided, however, that, such obligations cease with respect to information that no longer constitutes Confidential Information because it falls within one or more of the applicable exceptions set forth in Section 4.2 above.

4.4 **Permitted Disclosures.** A Receiving Party may disclose the Confidential Information of a Disclosing Party (a) to the Receiving Party's service providers, agents, and representatives as necessary for the Receiving Party to perform or use the Services, provided that such service providers, agents, and/or representatives agree to confidentiality measures that are at least as restrictive as those stated in this Agreement, (b) to law enforcement or government agencies if required by a subpoena or other compulsory legal process, or if the Receiving Party believes, in good faith, that the Disclosing Party's conduct may violate applicable criminal law as required by law, and/or (c) in response to a subpoena or other compulsory legal process other than from law enforcement or government agencies which are dealt with in clause (b) above, and/or (d) in response to a records request pursuant to the California Public Records Act, provided that the Receiving Party agrees to give the Disclosing Party written notice before disclosing such Confidential Information unless giving such notice is prohibited by law.

4.5 **Feedback.** To the extent that Client provides any comments, instructions, suggestions, information, and/or other feedback to KeyInfo regarding any Service and/or otherwise (collectively, "**Feedback**"), and KeyInfo advises Client in writing that it considers such information to be Feedback, Client assigns, and agrees to assign, to KeyInfo all right, title, and interest including, without limitation, all intellectual property rights, in and to such Feedback, to the extent permitted by law.

4.6 **Security of Client Data.** Without limiting KeyInfo's obligations under this Agreement, and unless otherwise agreed upon by Client, KeyInfo shall implement administrative, physical and technical safeguards for cloud-based storage to protect Client Data that are no less rigorous than ISO/IEC 27001, 27002, 27017, and 27018. KeyInfo shall ensure that all such safeguards, including the manner in which personal information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

No less than once per calendar year, KeyInfo will utilize an independent third party to (i) perform a SSAE 16 or equivalent audit that includes KeyInfo's systems for managing Client Data, and (ii) produce a SOC 1 or SOC 2 report. KeyInfo will provide a full, true, and correct copy of such report to Client promptly after receipt thereof, and such report will be considered Confidential Information pursuant to Section 4.1 of this Agreement.

KeyInfo shall promptly notify Client of any actual or potential unauthorized exposure, access to, or misappropriation of Client Data ("Security Breach") of which KeyInfo becomes aware, within twenty-four (24) hours. KeyInfo will cooperate with Client and law enforcement authorities in investigating any such Security Breach, at KeyInfo's expense. KeyInfo will also cooperate with Client and with law enforcement agencies to notify injured or potentially injured parties, and

such cooperation will be at KeyInfo's expense, except to the extent that the Security Breach was caused by Client.

5.   Warranties and Disclaimer.

5.1   Authority. Client and KeyInfo each represent and warrant to the other that this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against each such party in accordance with its terms. Further, each person signing this Agreement represents and warrants that he or she is authorized to execute and delivery this Agreement on behalf of the applicable party.

5.2   Client Information. Client represents and warrants to KeyInfo that, to the best of its knowledge, all information Client provides to KeyInfo for purposes of establishing and maintaining any Service is accurate. Client agrees that Client will timely update such information in order that it is at all times current and accurate.

5.3   Disclaimer of Warranties. All Services and Products are provided on an "**AS IS**", "**WITH ALL FAULTS**", and "**AS AVAILABLE**" basis. KeyInfo makes no representations or warranties relating to any of the Services or any Products including, without limitation, any representation or warranty that (a) any Service or any Product shall meet Client's requirements, (b) the operation of any Service or any Product shall be uninterrupted or error free, (c) any defects in any Service or any Product will be corrected, and/or (d) any Service (or data transmitted through, or maintained on, such Service) shall be secure. EXCEPT EXPRESSLY AS SET FORTH IN **SECTION 5.1** ABOVE, KEYINFO MAKES NO REPRESENTATIONS OR WARRANTIES UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY PRODUCTS OR SERVICES, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, ACCURACY, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT KEYINFO KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), AND KEYINFO HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES. KEYINFO FURTHER DISCLAIMS ANY AND ALL WARRANTIES AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT WITH RESPECT TO ALL SERVICES AND ALL PRODUCTS.

6.   Limitation of Liability.

6.1   Exclusions. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY (A) INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR ECONOMIC OF CONSEQUENTIAL DAMAGES, (B) LOSS, CORRUPTION, ALTERATION OR DAMAGE TO DATA (INCLUDING, WITHOUT LIMITATION, CLIENT DATA), (C) DAMAGES DUE TO A BREACH OF DATA AND/OR OTHER SECURITY, (D) LOST PROFITS, BUSINESS, REVENUE, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, GOODWILL, OR ANTICIPATED SAVINGS, IN EACH OF (A) THROUGH (D) ABOVE EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES AND WHETHER (Y) ARISING UNDER THIS AGREEMENT OR ARISING FROM, OR RELATED TO ANY SERVICE AND/OR ANY PRODUCT, AND (Z) WHETHER FOR BREACH OF CONTRACT, IN TORT OR OTHERWISE. THE PROVISIONS OF THIS SECTION 6.1 SHALL NOT APPLY TO ANY CLAIMS OR LIABILITIES ARISING FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY EITHER PARTY AND IT'S, AGENTS, OR CONTRACTORS WHILE PHYSICALLY PRESENT ON EITHER PARTY'S PROPERTY OR PREMISES IN CONNECTION WITH THIS AGREEMENT.

6.2   Cap on Damages. Except for claims and liabilities for personal injury, death, or property damage caused by Keyinfo employees, agents, or contractors while physically present on Client's property or premises in connection with this Agreement, KeyInfo's entire liability for all claims in the aggregate arising from, or related to, each Service, each Product, and/or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of (a) $1,000, or (b) the charges Client paid for the Service and/or Product that is the subject of the claim during the three (3) month period immediately preceding the incident giving rise to liability. Damages for bodily injury (including death) to persons for which KeyInfo is legally liable shall not be subject to the preceding cap on the amount of damages. Client is also subject to the exception noted above for personal injury, death or property damage.

6.3   Mutual Indemnification. To the maximum extent permitted by law, Client agrees to indemnify and hold harmless KeyInfo, its affiliates and its officers, directors, attorneys, agents, and employees (each a "**KeyInfo Party**") from and against any and all claims, demands, judgments, liabilities, obligations, losses, injuries, damages, penalties, fines, amounts in interest, costs, expenses and disbursements of any kind and nature whatsoever (including, without limitation, any and all attorneys' and expert witness fees and court costs), that any KeyInfo Party may incur or may be subject to under any theory of legal liability arising out of or related to (a) Client's negligence, willful misconduct, violation of law, failure to meet the security obligations required in this Agreement, violation (or alleged violation) of the Acceptable Use Policy, in each instance with respect to the Services, (b) any breach of this Agreement, or any allegation which, if true, would constitute a breach of this Agreement by Client, (c) Client's resale of any Services, (d) the negligence or willful misconduct of Client or its employees, agents, or subcontractors while acting in furtherance of this Agreement, and/or (e) the negligent use or occupancy of any Licensed Space or any Connection Areas by Client or any person claiming by, through or under Client. KeyInfo shall have the sole and exclusive right to choose legal counsel to defend any claim under this Section, and Client agrees to comply with KeyInfo's reasonable requests for assistance and cooperation in the defense of any such claim.

To the maximum extent permitted by law, KeyInfo agrees to indemnify, defend and hold harmless Client, its elected officials, officers, employees, agents, volunteers, and attorneys (each a "**Client Party**") from and against any and all claims, demands, judgments, liabilities, obligations, losses, injuries, damages, penalties, fines, amounts in interest, costs, expenses and disbursements of any kind and nature whatsoever (including, without limitation, any and all attorneys' and expert witness fees and court costs), that any Client Party may incur or may be subject to under any theory of legal liability arising out of or related to (a) KeyInfo's negligence, willful misconduct, violation of law, failure to meet the security obligations required in this

Agreement, (b) any breach of this Agreement, or any allegation which, if true, would constitute a breach of this Agreement by KeyInfo, or (c) the negligence or willful misconduct of KeyInfo or its employees, agents, or subcontractors while acting in furtherance of this Agreement. Client shall have the sole and exclusive right to choose legal counsel to defend any claim under this Section, and KeyInfo agrees to comply with Client's reasonable requests for assistance and cooperation in the defense of any such claim.

KeyInfo's indemnification obligations set forth above, shall also apply to any third party claims asserted against Client alleging infringement of any intellectual property right. In the event Client is prevented, as a result of any such infringement claim, from fully utilizing software or service provided by KeyInfo, then KeyInfo shall, at KeyInfo's sole expense (a) obtain a license to allow Client to continue use of such software or service for the term of this Agreement; or (b) provide Client with alternative software or service that provides substantially the same functionality and benefit as the software or service provided hereunder; or (c) terminate this Agreement and provide Client with a pro-rata refund based on the remaining term of this Agreement.

At any and all times that any KeyInfo Party is physically present on Client's property or premises in connection with this Agreement, KeyInfo shall maintain and upon Client's request shall provide proof of having, workers compensation insurance as required by law, and commercial general and automobile liability insurance in such form and with such limits and required by Client.

7. General.

7.1 Notices. All notices given hereunder including, without limitation, notices of address change shall be given in English and in writing. Notices shall be sent by certified mail, return receipt requested, postage and fees prepaid, to the address set forth on the cover page of this Agreement or to such other address for notices as the parties may hereafter designate in writing. All such notices shall be sent to the attention of "President", or City Clerk, as applicable, and shall be deemed given two days after the date they are sent.

7.2 Observation of Work Rules. When KeyInfo's employees or representatives are performing Services on the premises of Client or Client's designated site (which Client shall at all timed be deemed to represent and warrant that it has the right to cause to be accessed or modified by KeyInfo and its subcontractors in accordance with this Agreement), KeyInfo's employees and/or representatives shall observe the working hours, working rules, and security procedures established by Client provided that Client has provided KeyInfo with a copy of such hours, rules and procedures before the execution of the Statement of Work to which the applicable Services relate.

7.3 Support. Key shall have no obligation to provide any support services for any of the Products or Services other than as expressly set forth in a Statement of Work. In all events, Customer shall be responsible for providing support directly to its end users of any of the Products or Services.

7.4 <u>Use of Client's Name.</u> Client agrees that KeyInfo may, upon receiving the written permission of Client, publicly disclose that KeyInfo is providing services to Client.

7.5 <u>Entire Agreement.</u> Subject to the further provisions of this Section, this Agreement constitutes the complete and final agreement and understanding between Client and KeyInfo with respect to the subject matter hereof, and supersedes and merges all prior and contemporaneous agreements, negotiations, and understandings between Client and KeyInfo with respect to the subject matter hereof. This Agreement does not supersede or merge any Statement of Work or Addendum entered into on the Effective Date or thereafter. This Section shall not be incorporated into any Statement of Work.

7.6 <u>Amendment.</u> This Agreement may not be changed, modified, amended, rescinded, canceled or waived, in whole or in part, except pursuant to a written agreement signed by the parties. Accordingly, no course of conduct shall constitute an amendment hereto. Without limiting the generality of the foregoing, no terms, provisions or conditions of any purchase order, acknowledgement or other business form or document that Client may use in connection with this Agreement, any Service, or any Products shall have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify, this Agreement, regardless of any failure of KeyInfo to object to such terms, provisions or conditions.

7.7 <u>Assignment.</u> Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by Client (whether by operation of law or otherwise) without the prior written consent of KeyInfo. KeyInfo may assign this Agreement without the consent of Client, in whole or in part, following not less than sixty (60) days prior, written notice to Client and such assignee's written agreement to comply with all provisions of this Agreement. Further, for the avoidance of doubt, KeyInfo may, in its sole discretion, subcontract or delegate the performance of all or any part of its obligations hereunder to subcontractors or independent contractors of its choosing provided not less than sixty (60) days prior, written notice has been given to Client, therein identifying any and all such subcontractors. KeyInfo shall remain primarily responsible for performance of its obligations under this Agreement, notwithstanding any such subcontracting. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

7.8 <u>Governing Law.</u> This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of California (without regard to any applicable conflicts of law rules) and the federal laws of the United States. Venue shall be the Superior Court for the County of Los Angeles, or the United States District Court, Central District, State of California.

7.9 <u>Arbitration.</u> In the event of a dispute between the parties, KeyInfo and Client agree to work cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur and a party wishes to escalate to a formal dispute resolution forum, such party will submit the dispute to non-binding arbitration in Los Angeles, California under the then-prevailing rules of the American Arbitration Association. Upon agreement of the parties, judgment upon any award in such

arbitration may be entered and enforced in any court of competent jurisdiction. Nothing herein shall prohibit either party from pursuing any legal action in a court of competent jurisdiction.

7.10 Availability of Equitable Relief. In the event of any dispute or alleged or threatened breach of the provisions of this Agreement concerning (a) non-solicitation, (b) ownership or misuse of Confidential Information or intellectual property, and (c) misuses of any property owned or operated by KeyInfo (including, without limitation, any computer, computer system, and/or network operated by KeyInfo, or any part or element thereof), the parties acknowledge that monetary damages may be an inadequate remedy for such claims and the other party may suffer irreparable harm. Accordingly, those provisions may be enforced by appropriate equitable relief in a court of competent jurisdiction, subject in each instance to the satisfaction of the requirements for equitable relief under applicable law. Once a matter is in a court of competent jurisdiction for such equitable relief, the parties may also pursue any related or appropriate monetary or other legal claims (such provision being intended to avoid the duplication and inefficiencies – and possible inconsistencies – of "trying" claims with the same substantial facts and issues both in court and in arbitration). The parties expressly agree that any lawsuits permitted to be filed between them under this Agreement will be filed and pursued exclusively in the federal courts sitting in Los Angeles, California, unless no federal subject matter jurisdiction exists, in which case such lawsuit shall be brought exclusively in the state courts sitting in the County of Los Angeles, California. Each party irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

7.11 Survival. Each provision of this Agreement that would by its nature or terms survive any termination of this Agreement shall survive the expiration or earlier termination of this Agreement, regardless of the cause. Such provisions include, without limitation, in Sections 4,7,9, 10 and this Section 11. Accordingly, the termination of this Agreement or any Statement of Work shall not relieve Client of any obligation to pay any amounts which are due to KeyInfo under this Agreement or such Statement of Work prior to the effective date of termination.

7.12 Interpretation. All section headings contained in this Agreement are for convenience only. Accordingly, they shall not constitute a part of this Agreement when interpreting or enforcing this Agreement. Each party has substantially participated in the drafting and negotiation of this Agreement, and no provision hereof shall be construed against either party by virtue of the fact that such provision was or may have been drafted by such party. All defined terms used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this Agreement.

7.13 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement will remain in full force and effect.

7.14 **Relationship of the Parties.** The parties are independent contractors. This Agreement is not intended to create, and does not create, any partnership, joint venture, agency, fiduciary, employment, or other relationship between the parties, beyond the relationship of independent parties to a commercial contract. Neither party is, nor will either party hold itself out to be, vested with any authority to bind any other party contractually, or to act on behalf of the any other party as a broker, agent, or otherwise. In no event shall KeyInfo or its employees be considered or act as employees, agents, joint ventures, or partners of Client. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

7.15 **Counterparts.** This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Further, electronically scanned or facsimile signatures on this Agreement and any amendment hereto will have the same effect as original manual signatures.

7.16 **Cumulative Remedies.** Except as expressly provided in this Agreement, no right or remedy conferred by this Agreement is exclusive of any other right or remedy conferred herein or by law or in equity; rather, all of such rights and remedies are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time.

7.17 **No Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

7.18 **Import and Export Compliance.** Client represents and warrants that Client is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons. Client agrees that it shall not use any of the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor shall Client provide administrative access to any of the Services to any person (including any natural person or government or private entity) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

7.19 **U.S. Government Rights.** The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If Client is using the Services on behalf of the U.S. Government and these provisions fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Client will immediately discontinue its use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

7.20   Force Majeure. Neither party shall be responsible or liable for any damages, delays, or other failures to fulfill its obligations hereunder as a result of events or circumstances beyond its reasonable control including, without limitation, damages, delays or other failures due to acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, delays of third party vendors, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within KeyInfo's possession or reasonable control, as applicable, and denial of service attacks.

7.21   Non-Solicitation of Employees. Throughout the term of this Agreement and for a period of one year thereafter, Client agrees that it will not solicit, directly or indirectly, the employment of KeyInfo's personnel performing duties related to this Agreement or with whom Client has direct contact. However, Client may place general advertisements for employment opportunities and may interview, solicit and hire all persons who respond to such advertisements.

7.22   Third-party Beneficiaries. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is KeyInfo responsible for any third party claims against Client.

8. Colocation Services.

8.1 Statements of Work. From time to time during the term of this Agreement, Client may engage KeyInfo to (a) provide Colocation Services, Connectivity Services, Managed Services, Professional Services, and/or other services (**"Professional Services"**), and (b) sell Products to Client along with such Services, and KeyInfo may accept such engagement. Any such engagement shall be made only by a written statement of work executed by authorized representatives of Client and KeyInfo, which statement of work contains, at a minimum, (i) a description of any Services to be provided, (ii) a listing of any Products to be sold, (iii) the identity of the Project Leads as described in **the Statement of Work**, (iv) the allocation of responsibilities with respect to the Services to be provided, (v) the time period in which such Services are to be performed, (vi) a proposed delivery schedule, if applicable, for any Products, and (vii) as applicable, the fees for any Services and the prices of any Products (each such executed statement of work shall be referred to herein as a **"Statement of Work"**).

8.2 Use of Client Space. Client shall use the Client Space only for (a) the installation, operation, use and maintenance of the Client Equipment, subject to the terms and conditions of this Agreement; and (b) the interconnection of the Client Equipment with other users of the Data Center, but only as expressly permitted by KeyInfo, and subject to the Rules and Procedures (as defined below). Client is solely responsible for configuring, providing, placing, installing, upgrading, adding, maintaining, repairing, and operating Client Equipment located within the Client Space, which actions Client may engage in only to the extent permitted by, and subject to, the terms and conditions of the Agreement and this Addendum.

8.3 Alterations. Notwithstanding any provision herein to the contrary, Client shall not make or cause to be made any alterations, additions, improvements or replacements to the Client Space, the KeyInfo Facilities, or any other portion of the Data Center without the prior written consent and approval of KeyInfo in each instance, which consent and approval may be withheld, conditioned or delayed in KeyInfo's sole and absolute discretion; provided, however, that KeyInfo's consent shall not be required for any usual and customary installations, repairs, maintenance, and removals of Client Equipment within the Client Space if and to the extent that such installations, repairs, maintenance, and removals (i) are usual and customary within the industry, (ii) are of a type and extent which are customarily permitted to be made without consent by colocation service providers providing similar space for similar uses to similar users, (iii) are in compliance with the Rules and Procedures, (iv) will not affect the Data Center's structure, the provision of services to other Data Center users, or the Data Center's electrical, plumbing, HVAC, life safety or mechanical systems, (v) will not affect any obligations of KeyInfo pursuant to any applicable Service Level Agreements (as defined below), and (vi) comply with the layouts, plans and specifications for Tenant's installations of Client Equipment approved by KeyInfo in connection with any Statement of Work or otherwise from time to time.

8.4 Condition of Client Space. Client has inspected the Client Space and accepts the Client Space on an **"AS IS"**, **"WITH ALL FAULTS"**, and **"AS AVAILABLE"** basis. The use of the Client Space by Client shall conclusively establish that the Client Space and the Data Center

were at such time in good order and clean condition. Upon the expiration or earlier termination of the Colocation Services, Client shall, at Client's sole cost and expense, promptly remove any and all Client Equipment and shall restore those portions of the Data Center and/or the Client Space damaged by such removal of (or by the initial installation of) such Client Equipment to their condition immediately prior to the installation or placement of such items.

8.5   Maintenance of Client Space and Client Equipment. Client, at Client's sole cost and expense, shall maintain the Client Space and the Client Equipment in a good, clean, slightly, and safe condition and shall ensure that neither Client nor its employees, agents, contractors, or invitees damage any part of the Data Center, the KeyInfo Facilities or the Client Space. Client shall not allow any debris or supplies to be left in the Client Space, and Client agrees to reimburse KeyInfo for any costs incurred for the removal of such items. Neither KeyInfo nor Client shall maintain or permit any nuisances or violations of any regulations or ordinances with respect to the Data Center. KeyInfo and Client shall ensure that their employees, agents, contractors and invitees shall not permit any explosive, combustible, hazardous, or toxic materials, as defined under state, federal, or local laws or regulations, to be located in or about the Data Center or the Client Space, except in compliance with all applicable laws and regulations and upon the other party's prior written consent in each instance.

8.6   No Lease. This Agreement is for services only and is neither intended to, nor does it, constitute a lease or occupancy agreement relating to real property. Client acknowledges and agrees that (i) Client has been granted only a revocable license to use any applicable Client Space and any applicable KeyInfo Facilities in accordance with the Agreement and this Addendum, and (ii) Client has no rights as a tenant or otherwise under any real property or landlord/tenant theory, laws, regulations, or ordinances.

8.7   Client Data.   As between Client and KeyInfo, all Client Data is and at all times shall remain the exclusive property of Client and will remain in the exclusive care, custody, and control of Client

8.8   KeyInfo's Obligations. Subject to the terms and conditions of this Agreement, KeyInfo shall use commercially reasonable efforts to maintain KeyInfo's facilities and equipment required to deliver Colocation Services, subject to the terms of any applicable Service Level Agreements.

8.9   Client Responsibilities. Client agrees that it is solely responsible for all activities that occur within the Client Space, regardless of whether the activities are undertaken by Client, Client's employees or third parties (including Client's contractors and agents), and KeyInfo is not responsible for unauthorized access to the Client Space or the Client Equipment except for unauthorized access by any KeyInfo employee, agent, or contractor. Client agrees to (a) cooperate with KeyInfo's reasonable investigation of outages and security problems with respect to any Colocation Services and any suspected breach of this Agreement, and (b) immediately notify KeyInfo of any unauthorized access to, or use of, the Client Space or the Client Equipment, or any other breach of security.

8.10 <u>Security</u>. Client is solely responsible for the security of the Client Space and the Client Equipment, subject to any access restrictions or other security for the Data Center provided by KeyInfo under the Agreement or a Statement of Work

8.11 <u>Compliance</u>. Client agrees that it will abide by and comply, and cause its employees, agents, contractors and invitees to abide by and comply with (a) all laws, statutes, codes, ordinances, rules and regulations applicable to Client or Client's use of the Client Space; and (b) the rules, policies and procedures established by KeyInfo from time to time ("**Rules and Procedures**"), copies of which shall be made available to Client upon request. Client shall be liable for any losses, damages, claims and expenses arising out of or relating to breach of the foregoing requirements.

8.12 <u>Insurance</u>. Throughout the term of any Colocation Services, Client shall maintain, at Client's sole cost and expense, the policies of insurance described as follows: (a) Comprehensive General Liability Insurance of at least One Million U.S. Dollars ($1,000,000) per occurrence for bodily injury and property damage, (b) Property Damage and Loss Insurance Sufficient to replace any equipment owned, leased, or licensed to Customer; (c) Employer's Liability Insurance of at least Five Hundred Thousand U.S. Dollars ($500,000) per occurrence, and (d) Worker's Compensation in at least the amount required by law. Customer shall cause KeyInfo to be named as an additional insured on the policies described in (a) and (b) above. And Certificate Holder described in (a) and (d). Any insurance policy covering equipment against loss or physical damage shall include a waiver of subrogation rights, and Customer hereby waived Customer's rights against KeyInfo and the landlord of the KeyInfo building and each of their respective owners, managers, directors, officers, employees, contractors and agents, with respect to any and all loss or physical damage to Customer's property that is covered by any insurance policy. Customer shall require all its vendors, consultants, and subcontractors that enter KeyInfo's premise on behalf of customer, or that have access to KeyInfo's equipment or property on behalf of customer, to maintain the same type of insurance that Customer must maintain pursuant to this section. Client hereby waives its rights against any Indemnified Party with respect to any claims or damages or losses (including any claims for bodily injury to persons and/or damage to property) which are caused by or result from (i) risks insured against under any insurance policy carried by Client at the time of such claim, damage, loss or injury, or (ii) risks which would have been covered under any insurance required to be obtained and maintained by Client under the Agreement or this Addendum had such insurance been obtained and maintained as required. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in the Agreement or this Addendum.

8.13 <u>Acceptable Use Policy</u>. Client acknowledges that it has read the Acceptable Use Policy applicable to the Colocation Services. Client agrees to comply with such policy in connection with any Colocation Services and any changes thereto which are made in accordance with the further provisions of this Section ("Acceptable Use Policy"). KeyInfo may change the Acceptable Use Policy from time to time by giving notice of such change to Client by any reasonable means, and KeyInfo shall be deemed to have given Client such notice on the earlier to occur of the date KeyInfo gives Client notice thereof in accordance with the notice provisions of the Agreement. Any such change shall be effective thirty (30) days after the date such notice is

given to Client. Client agrees to cooperate with any investigation by KeyInfo of any suspected violation of the Acceptable Use Policy by Client or any end users.

8.14 **Service Level Agreement(s).** The Colocation Services will conform with (a) the service level agreement(s) described on **Appendix A** attached hereto, and (b) any other applicable service level agreement(s) included within a Statement of Work (each a "**Service Level Agreement**," and collectively, the "**Service Level Agreements**"). Failure to achieve any service level objective set forth in a Service Level Agreement shall not constitute a breach of the applicable Statement of Work by KeyInfo, and shall only entitle Client to receive the credits, if any, applicable to any such service level failure.

8.15 **Service Level Credits.** Credits shall be applied for any outage outside of Scheduled Client Maintenance or Scheduled Maintenance Windows. In the event that KeyInfo fails to provide Power, Cooling & Climate Control or Network Infrastructure in accordance with the terms of this Agreement 99.999% of the time in a given month, KeyInfo will issue a credit in the amount of 5% of the monthly recurring fee per half hour of the outage (up to 50% of Client's monthly recurring fee) for the affected component. In the event such a failure occurs, Client shall not be charged fees for any KeyInfo labor, third-party labor, or any materials necessary to assist in the recovery of the infrastructure affected by such event. These Service Level Credits would only apply to Client Equipment that has dual power supplies and is dual corded to the redundant power infrastructure provided by KeyInfo.

8.16 **Suspension of Service.** KeyInfo may suspend, without liability to Client, the provision of the Colocation Services under a Statement of Work by giving prior, written notice thereof to Client in the event Client breaches any provision of such Statement of Work (which includes the provisions of this Agreement) and fails to cure such breach within ten (10) days after notice thereof is given to Client by KeyInfo (except that such cure period shall be limited to three (3) days in the event of a breach due to the failure to pay any amount due hereunder), and any such suspension shall be effective on the date set forth in such notice. In addition, KeyInfo may immediately suspend, without liability to Client, the provision of the Colocation Services under a Statement of Work (or otherwise disable access to the Colocation Services, the Client Equipment and/or KeyInfo's network) by giving not less than two (2) business days' prior written notice thereof to Client if (a) KeyInfo discovers and provides evidence to Client that any information Client provided to KeyInfo about Client or Client's proposed use of any Colocation Service is materially inaccurate or incomplete, (b) KeyInfo reasonably believes and provides evidence to Client that Client has, or is, infringing the intellectual property rights of others or is aiding or threatening such infringement, (c) KeyInfo discovers and provides evidence to Client that Client is affiliated, in any manner with, a person who has used similar services abusively in the past, (d) Client does not cooperate with KeyInfo's reasonable investigation of any suspected violation of the Agreement, (e) KeyInfo believes and provides evidence to Client that the Colocation Services have been accessed by a third party without Client's consent, (f) there is a denial of service and/or a distributed denial of services attack affecting the Colocation Services, the Client Equipment and/or KeyInfo's network and/or other resource, or there is another event for which KeyInfo believes that suspension of the Colocation Services is necessary to protect the Data Center, the KeyInfo Facilities, KeyInfo's network or KeyInfo's other customers, and/or (g) suspension is

required by applicable law. In the event of any such suspension, KeyInfo may thereafter, in its sole discretion, terminate this Agreement and/or lift the suspension, in each instance by giving notice thereof to Client. KeyInfo shall provide Client with a service credit for any period of unavailability of the Services suspended by KeyInfo pursuant to this Section 8.16, which is reasonably determined to not be due to any act or omission of Client.

Appendix A – Data Center Specifications

1) Data Center Critical Infrastructure

a) Physical Security

i) Access Control and Surveillance. Access to the KeyInfo data center is strictly controlled with two factor biometric security scanners and proximity access cards. All entrances accessible to Clients are monitored via CCTV cameras and all entrance/exit activity is digitally recorded.

ii) Manned Operations. KeyInfo data center personnel support the data center 7/24/365 to respond to critical events, emergences, and to provide support.

iii) Client Access. Upon reasonable notice to KeyInfo or in cases of emergency, Client shall be granted access to the Facility. Client access to the KeyInfo data center is strictly limited to those areas designated for Colocation Floor Space, Server Colocation services, and areas housing any Client Equipment only. Client access to Managed Hosting portions of the data center is not permitted. Authorized KeyInfo data center personnel will accompany Client at all times while inside the data center.

iv) Public Access. Public, non-Client access to the data center is limited to the KeyInfo Business Partner Innovation Center portion of the data center and certain designated viewing areas and will be escorted at all times. Public access to any other portion of the data center, including all areas where Client equipment is located, is strictly forbidden. Authorized KeyInfo data center personnel will accompany visitors at all times while inside the publicly accessible portions of the data center.

v) Fire Protection. The KeyInfo data center is equipped with comprehensive fire detection and suppression systems. The service level objective is to prevent and suppress potential causes of fires using early detection systems

b) Power Availability

i) Power Uptime. The data center power systems are designed to provide uninterrupted power, regardless of the availability of power from the local public utility(s) supplying the data center.

ii) Power Services. AC power to the rack(s) or cabinet(s) housing Client Equipment is guaranteed to be available 99.999% of the time in a calendar month. For Client to properly make use of this benefit, Client Equipment must either be equipped with dual power cords or, if single-corded, attached to an automatic transfer switch ("ATS") within the Client rack(s).

c) <u>Cooling and Climate Control</u>

i) A/C services. KeyInfo guarantees that adequate cooling and humidity control (climate control) will be provided 99.999% of the time in a calendar month. The ambient temperature in the Managed Hosting, Server Colocation and Colocation Floor Space areas of the data center that are four (4) feet above the ground and surrounding the Client Equipment will be 72 degrees Fahrenheit +/- 5 degrees; provided, however, that such temperature guarantee shall not apply if any rack housing Client Equipment consumes more than 5kWs. Relative humidity within these same areas will be 40% +/- 5%.

ii) Key Info may request access for the implementation and/or modification of energy saving and efficiency measures in the data center, with client permission.

d) <u>Network Infrastructure</u>

i) Network Availability. The KeyInfo network infrastructure is guaranteed to be available 99.999% of the time in a calendar month. The applicable portion of the infrastructure is specific to the type of connection provided and includes all relevant switches, routers and cabling. KeyInfo provides Internet bandwidth, and also allows Clients to extend their private networks to the data center. Internet bandwidth is brought directly to the Client rack. Private networks may be extended to the Client rack via carrier circuit extension from the data center demarc or via cross-connect from a carrier point-of-presence ("POP") already residing in the data center ("on-site carrier").

ii) **Carrier-installed circuit extensions or other circuits or connections not installed or owned by KeyInfo are not covered under this SLA.**

iii) For services using KeyInfo provided Internet bandwidth, the network infrastructure is defined as the portion of the network extending from the outbound switch port at the Client rack to the outbound port on the KeyInfo border router.

iv) For services using Client-provided private bandwidth with a cross-connect to an on-site carrier, the network infrastructure is defined as the portion of the network extending from the outbound port at the Client rack to the outbound port of the carrier's POP. Cross-connections installed by KeyInfo are guaranteed to be available 100% of the time a calendar month.

v) Network Availability is defined as the ability to pass TCP/IP traffic with less than 0.5% packet loss and less than 30ms latency across the KeyInfo network infrastructure. Network downtime is defined as the amount of time that Network Availability is below 100%, and is measured from the earlier of the time a support ticket is opened or notification is received from Client.

vi) Internet Availability. KeyInfo obtains Internet bandwidth from multiple providers in order to deliver the highest level of availability. KeyInfo guarantees that Internet connectivity will be available 99.999% of the time in a calendar month.

vii) Internet Availability is defined as the ability to pass TCP/IP traffic from the KeyInfo border router to an upstream Internet provider. Internet downtime is defined as the amount of time that Internet Availability is below 99.999%, and is measured from the earlier of the time a support ticket is opened or notification is received from Client.

viii) Internet Bandwidth. KeyInfo will initially provide Client the amount of bandwidth specified on the Services Agreement. Bandwidth may be increased or decreased at any time upon written request from Client. Bandwidth changes may result in changes to Client's Monthly Recurring Charges and are subject to approval by Client and KeyInfo prior to implementation. Bandwidth decreases will be processed within one (1) business day of approval by both parties. Bandwidth increases will normally be processed within one (1) business day of approval of both parties provided that KeyInfo has the additional bandwidth available, otherwise it will be processed within one (1) business day after KeyInfo obtains additional bandwidth from its upstream providers.

ix) Third Party Penetration Testing and Vulnerable Assessment. In addition to real-time security tools, KeyInfo employs a third-party security company to provide comprehensive penetration testing services and provide full security assessments. A report on all potential vulnerabilities in the KeyInfo network is provided, and along our team, an immediate remediation plan is implemented to address concerns that are identified.

x) IP Addresses. KeyInfo will assign public IP addresses to Client at commencement of the Services.

xi) Firewall Security and IDS/IPS Security. KeyInfo has established a firewall system that restricts access to KeyInfo's infrastructure between the external access points and internal network. DMZ's are in place at the web server layer to further isolate external traffic from the internal network. KeyInfo utilizes advanced firewall technologies from Cisco to ensure security at multiple layers in the OSI stack. Further, we use sophisticated monitoring software for DNS and IP traffic conversations, along with other protocol analysis tools. We use next generation Intrusion Detection and Intrusion Prevention tools to detect and remediate security threats before they happen.

2) IT Equipment

i) **Physical Servers.** Server Hardware Repair. KeyInfo may provide physical servers as part of the Managed Hosting Service, and guarantees the timely repair of all hardware provided by KeyInfo at no cost to Client. Hardware repair will begin when a KeyInfo technician identifies the cause of the problem (which KeyInfo shall use its best efforts to determine), and is guaranteed to be complete within four (4) hours of problem identification by KeyInfo. Server Hardware is defined as power supply(s), processor(s), RAM, hard disk(s), motherboard and NIC card(s). This guarantee excludes the time required to reload and configure the operating system and/or applications, and/or restore from backup (if necessary). KeyInfo may also provide Server Hardware Repair services to Server Colocation and Colocation Floor Space Clients on a "best-effort" basis.

ii) **Virtual Server Infrastructure.** KeyInfo has built a virtualized server environment based on technology from several major manufacturers. Virtual servers may be provided to Clients as part of the Managed Hosting Service. KeyInfo guarantees the availability of its virtualized server infrastructure, and will redeploy virtual servers as necessary should an underlying physical server fail. Upon the failure of a physical server supporting a set of virtual servers, a KeyInfo technician will ensure that all affected Client virtual servers are restored to operational status on another physical server within the virtualized server environment. "Operational status" means that the virtual server has been restarted and responds to an ICMP "ping" on its Client facing network interface. The restoration to operational status is guaranteed to be complete within one (1) hour after failure detection by KeyInfo. This guarantee excludes the time required to restart applications, and/or restore data from backup (if necessary).

iii) **Storage Area Network Availability.** The KeyInfo data center features a Storage Area Network (SAN) built with storage hardware from leading enterprise storage vendors. The SAN is fully redundant across all components and is virtualized to provide high levels of performance and availability. All components have redundant power supplies and redundant fiber connectivity. The switch fabric is built with fully redundant hardware, dual fiber paths and dual host-bus adapters in each connected server. The logical disk arrays are constructed using industry-standard RAID data striping techniques and online hot-spares. In the event of a failure that renders the SAN unavailable, KeyInfo will repair the SAN within one (1) hour of the time that the cause of the problem is identified (which KeyInfo shall use its best efforts to determine). SAN downtime is defined as the amount of time that Client equipment is unable to transmit or receive data on the SAN, and is measured from the earlier of the time a support ticket is opened or notification is received from Client.

3) Monitoring and Response

i) **Monitoring.** Monitoring services are included in the Managed Hosting Service and may be optionally included for the Server Colocation and Colocation Floor Space services on the Services Agreement. Availability Monitoring. KeyInfo will test general sever availability by polling every five (5) minutes using ICMP "ping."

ii) **Response.** When alerted of a potentially critical problem by any of its monitoring systems, KeyInfo will begin troubleshooting and addressing the problem and will contact the Client using the defined Notification and Escalation procedure according to response time matrix shown below. Client-initiated support tickets – Upon entry of a support ticket in the KeyInfo Problem Management System by Client, either by telephone call to the KeyInfo Network Operations Center or via online web portal, KeyInfo will respond according to the response time matrix shown below.

iii) **Response Time Matrix**

Severity/Priority Level	Response Time	Support Coverage	Example
1 Service down	30 Minutes	24/7	A server or application is not accessible to users
2 Improper operation or degraded performance	Within 1 hour	24/7	A server or application is accessible, but not function correctly or responding poorly.
3 Non-critical	Within 4 hours	24/7	Operational or technical assistance is requested for infrastructure services or scheduling of a maintenance outage, or need help with any other non-immediate task.
4 Low priority	One Business Day	8/5	A basic configuration change is requested.

Appendix B- Colocation- Statement of Work

Service Address:

June 23, 2017

City of Agoura Hills
30001 Ladyface Ct.
Agoura Hills, CA 91301
Contact Name: Christy Pinuelas
Phone Number: (818)597-7319

Term: Three Year

Billing Address:

Technical Contact Information:

City of Agoura Hills
30001 Ladyface Ct.
Agoura Hills, CA 91301
Contact Name: Christy Pinuelas
Phone Number: (818)597-7319

Contact Name: Christy Pinuelas
Phone Number: (818)597-7319
Contact Email: cpinuelas@ci.agoura-hills.ca.us

Schedule of Products

Qty.	SKU #	Description	Unit Sale	Ext. Sale
1	CO-1-HALFCAB	Half Cabinet Colocation at AGC		
1	PWR-1-20/120	Power Circuit 20A/120V - Agoura Ct.		
20	CO-1-COMMIT	KeyInfo Bandwidth Commit, Mbps		
1	IP-16IP	16 Static IP Addresses (new)		
1	IP-8IP	8 Static IP Addresses (included)		
	MRC Total:			$ 1,002.00
	NRC Total:			$0.00

Terms:
• Order to renew City of Agoura's Half Cabinet Colocation at Agoura Court
• 16 new IPs will be added with this order
• Bandwidth is 20Mbps burstable to 100Mbps. Bandwidth usage above 20Mbps will be billed at a new rate of $25/Mbps
• Early termination will be 100% of the monthly charge for the remainder of the term

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives.

Key Info: Client:

_____   _____
Name   Name

_____   _____
By   By

_____   _____
Title   Title

_____   _____
Date   Date

Appendix H - Acceptable Use Policy (AUP)

All Clients of Key Information Systems, Inc., ("KeyInfo") agree to abide by the following policies. KeyInfo reserves the right to change and update these policies as it sees necessary. All concerns or complaints about a violation of the AUP should be sent to abuse@keyinfo.com.

1) **Introduction.**

KeyInfo strives to provide its clients with the highest quality service available, while at the same time respecting the standards that have been created both within the Internet community and by legislation. KeyInfo supports the free flow of information and ideas over the Internet. KeyInfo does not actively monitor, nor does KeyInfo exercise editorial control over, the content of any communications, e-mail or any other material created or accessible over the KeyInfo network ("Services").

However, KeyInfo reserves the right to remove any materials that, in KeyInfo's sole discretion, are potentially illegal, may subject KeyInfo to liability, or violate this Acceptable Use Policy ("Policy" or "AUP"). Violation of this Policy may result in the suspension or cancellation of the Services. KeyInfo strives to maintain favorable business relationships in the Internet community and will not allow any practice that threatens these relationships. Further, clients shall not use, nor shall they permit others to use, the Services so as to interfere with the use of the KeyInfo network by other clients or authorized users.

If a client, or a third party acting through client, violates any of the foregoing prohibitions, KeyInfo may immediately suspend the Services and/or terminate the Services Agreement without further liability or obligation to client.

2) **Lawful Purposes.**

The Services may only be used for lawful purposes and in compliance with this AUP. Transmission of any material in violation any U.S. or state law or regulation is prohibited. This includes, but is not limited to: copyrighted material, material legally judged to be threatening or obscene, or material protected by trademark, trade secret or other federal or state laws including, without limitation, the DMCA, CAN-SPAM Act, infringement and unfair competition laws.

By using KeyInfo's Services, you agree to indemnify, defend and hold KeyInfo harmless from any claims, liabilities, actions, expenses, and costs (including payment of reasonable attorney's fees) resulting from your use of the service which violates any provision of this AUP and/or which causes any damages to you or another person or entity. Notwithstanding the above, you agree that should KeyInfo be found liable in a court of law for any action related to the use of KeyInfo Service, that KeyInfo's liability, if any, shall be limited to the unused balance of your monthly payment, pro-rated to reflect your current month, and said unused balance shall be used to offset any such damages.

You will further agree that KeyInfo has the right to terminate further Service to you and/or your organization upon notice that you or any person or entity on your behalf has, or intends to, initiate legal proceedings against KeyInfo of any kind. Each client is responsible for complying with this Policy, and for providing assistance to KeyInfo in investigating and resolving any issue, as KeyInfo may request from time to time. KeyInfo reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Activities which are prohibited as potentially illegal include, but are not limited to:

    i.   Unauthorized copying of copyrighted material including, but not limited to, digitization and distribution of photographs from magazines, books, or other copyrighted sources, and copyrighted software;

    ii.   Exporting software or other information in violation of U.S. export control laws;

    iii.   Any conduct that could damage, disable, overburden, or impair KeyInfo's servers or networks, or interfere with any other party's use of KeyInfo's Service;

    iv.   Threatening bodily harm or property damage to individuals or groups;

    v.   Making fraudulent offers of products or services originating from your Service;

    vi.   Attempting to access the accounts of others, or attempting to penetrate security measures of KeyInfo's or other entities' systems ("hacking"), whether or not the intrusion results in corruption or loss of data;

    vii.   The unauthorized use of a person's name, image or likeness: Falsifying identity or contact information (whether given to Key Info, to the Registrar, or other parties), including but not limited to, impersonating any person or entity and/or forging anyone else's digital or manual signature;

    viii.   Use of an IP address not assigned as part of the Service provided.

3) **IP Addresses.** KeyInfo may provide IP (Internet Protocol) addresses for certain types of service. These addresses are not transferable your Service is transferred to another Internet

Service Provider. KeyInfo reserves the right to renumber its servers or clients at any time, however, will provide advance notice to ensure a smooth transition.

4) <u>Viruses.</u> Distributing viruses on the KeyInfo network is expressly prohibited. If your environment becomes infected with a virus your connection will be immediately suspended until remediation measures have been completed.

5) <u>Key Info Assumes No Liability.</u> KeyInfo has no practical ability to restrict all conduct, communications or content which might violate this Policy prior to its transmission on KeyInfo's systems, nor can KeyInfo ensure prompt removal of any such communications or content after transmission or posting. Accordingly, KeyInfo does not assume liability to clients, subscribers or others for any failure to enforce the terms of this Policy. You are responsible for maintaining the security of any device connected to the Service.

6) <u>Revisions to this Policy.</u> KeyInfo reserves the right to modify this Policy at any time. Notice of modifications to this Policy may be given to clients and subscribers by posting such changes to the KeyInfo homepage (<u>www.keyinfo.com</u>), by electronic mail or by conventional mail. You acknowledge that you have read this Policy and that you accept the terms thereof. YOU AGREE TO READ THIS POLICY CAREFULLY BEFORE USING KEYINFO NETWORKS AND/OR SERVICES. If you do not agree to this Policy, you may not access or otherwise use the KeyInfo networks or services and must immediately contact KeyInfo to cancel service. Your continued use of the Service after changes are posted constitutes your acceptance of this Policy as modified by the posted changes. The updated, online version of this Policy shall supersede any prior version of this Policy that may have been included in any software or related materials provided by KeyInfo. This Policy should be read in conjunction with any supplemental terms, policies, rules and guidelines posted on <u>www.keyinfo.com</u>.

✳ keyinfo

dedicated to our clients

Dark Fiber Renewal

City of Agoura Hills

June 22, 2017

Client Master Agreement

This Master Agreement ("**Agreement**") is made and entered into as of this 22nd day of June 2017 ("**Effective Date**") by and between Key Information Systems, Inc., a California corporation ("**KeyInfo**"), and the Client identified on this page below ("**Client**").

This Agreement governs transactions by which Client may acquire Products and/or Services from KeyInfo. Additional terms applicable to specific Products and Services may be set forth in documents referred to as "**Addendums**". This Agreement includes (1) this cover page, (2) the General Terms and Conditions attached to this cover page, and (3) any Addendums that may be signed by Client and KeyInfo.

For each specific transaction, Client and KeyInfo will also enter into a Statement of Work or Order Form. This Agreement shall be deemed to be incorporated into each Statement of Work and each Order Form. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of a Statement of Work or Order Form, the terms and conditions of, as applicable, the Statement of Work or Order Form shall control.

By signing below, Client and KeyInfo agree to be bound by this Agreement.

CLIENT	**Key Information Systems, Inc.**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Client Name and Address for Notices:

Cindy Pinuelas
City of Agoura Hills
30001 Ladyface Ct.
Agoura Hills, CA 91301

Address for Notices:

Key Information Systems, Inc.
Attention: President
30077 Agoura Court – First Floor
Agoura Hills, CA 91301

1.   **Certain Defined Terms**. As used in this Agreement, the following terms have the meaning ascribed to them below:

"**Bankruptcy Code**" means Title 11, United States Code, as amended from time to time.

"**Change Request**" means a written request to make a substantive change to a Statement of Work in the form attached to the applicable Statement of Work, or if no such form is attached, in the form established by KeyInfo from time to time.

"**Client Data**" means any and all data (including, without limitation, personally identifiable information), records, files, input materials, reports, software, forms and other information that is received, stored, or transmitted using the Managed Hosting Services.

"**Client Equipment**" means the computer hardware, wiring, cabling, software and other IT equipment, tangible or intangible, owned by Client and located, installed or used in connection with the Client Space or the KeyInfo Data Center.

"**Client Space**" means the space assigned to Client for the provision of Colocation Services, as identified in a Statement of Work.

"**Colocation Services**" means colocation services whereby Client's equipment is located at KeyInfo's data center or space subcontracted by KeyInfo as further described in an applicable Statement of Work. Colocation Services are provided only if Client and KeyInfo have executed the KeyInfo Addendum for Colocation Services and an applicable Statement of Work.

"**Connection Areas**" means any property or premises of KeyInfo that Client has the right to access (whether exclusively or non-exclusively) for connections and interconnections to telecommunications carriers, ISPs, content providers and/or enterprises.

"**Connectivity Services**" connectivity services described in an applicable Statement of Work provided, and managed by, KeyInfo through one or more third parties. Connectivity Services are provided only if Client and KeyInfo have executed the KeyInfo Statement of Work for Connectivity Services and an applicable Statement of Work.

"**Data Center**" means the facility (or facilities in the event that Client has selected multiple KeyInfo sites) owned, leased or licensed by KeyInfo in which the Client Space is located.

"**Equipment**" means the computer hardware and related peripheral devices manufactured by one or more third parties that Key agrees to provide, or arrange for the provision, to Customer, as expressly set forth in a Statement of Work or Order Form.

"**GLBA**" means Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 et seq.) as amended from time to time.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the regulations promulgated by the United States Department of Health and Human Services pursuant thereunder.

"**KeyInfo Facilities**" mean the equipment, machinery, facilities, fixtures, hardware, software and other personal property, tangible or intangible, owned, leased or licensed by KeyInfo and used for the operation of the Data Center and/or the provision of Colocation Services to Client.

"**Licensed Space**" means any property or premises of KeyInfo that is licensed or leased to Client (or which Client otherwise has the right to occupy) pursuant to a Statement of Work.

"**Managed Hosting Services**" means managed hosting services whereby KeyInfo maintains and operates the applicable servers and devices and Client controls the operating systems and applications as further described in an applicable Statement of Work

"**Professional Services**" means professional services provided by KeyInfo as may be further described in an applicable Statement of Work, which professional services (a) may include, without limitation, managed service whereby KeyInfo manages certain aspects of the Client's technology operations, and (b) shall not include Managed Hosting Services, Colocation Services, Connectivity Services, or KeyInfo Software as a Service as such Services.

"**Order Form**" means the ordering document for Client's purchase from KeyInfo of Products and which is executed by KeyInfo and Client.

"**Products**" means, as applicable, (a) Equipment, and (b) Third Party Software.

"**Third Party Software**" means third party computer software that KeyInfo agrees to provide, or arrange for the provision of, to Client, in each case as expressly set forth in a Statement of Work or Order Form.

2. Payments.

2.1   Services and Products. Client shall pay to KeyInfo all fees, prices, and other amounts specified in all Statements of Work and Order Forms but subject to Section **2.3** In addition, Client shall reimburse KeyInfo for all travel and other out-of-pocket expenses incurred by KeyInfo and agreed upon in advance by Client, in connection with any Services and/or any Products. With respect to any travel expenses, KeyInfo shall comply with all reasonable travel and expenses policies of Client that are provided to KeyInfo in advance. All fees and expenses are quoted and payable in United States dollars. Amounts for Services are based on Services purchased and not actual usage. Except as otherwise provided herein, payment obligations are non-cancelable and amounts paid are non-refundable.

2.2   Invoicing and Payment. Fees for all Services, Products and expenses will be invoiced by KeyInfo. Unless otherwise stated in the Statement of Work or Order Form, (a) invoiced amounts for Managing Hosting Services, Colocation Services and KeyInfo SaaS shall be paid monthly, in advance, and (b) all other invoiced amounts shall be due thirty (30) days from the invoice date. Client is responsible for maintaining complete and accurate billing and contact information with KeyInfo. Colocation, Connectivity, and cloud Services are subject to an annual escalation of 3% of the rate charged for the previous year

2.3   Interest and Collection. Any payment not received from Client by the due date may accrue, at KeyInfo's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Client agrees to pay KeyInfo's reasonable costs of collection of overdue amounts, including collection agency fees, attorney's fees and court costs. Disputes as to the accuracy of an invoice must be presented in writing to KeyInfo by Client within forty-five (45) days after the date of the invoice, and invoices that are not so disputed within such forty-five (45) day time period shall be conclusively deemed accurate and accepted.

2.4   Taxes. Unless otherwise stated, KeyInfo's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, **"Taxes"**). Client is solely responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on KeyInfo's net income or property. If KeyInfo has the legal obligation to pay or collect Taxes for which Client is responsible under this section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides KeyInfo with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. Term and Termination.

3.1   This Agreement. The term of this Agreement shall commence on the Effective Date and continue until expiration or terminated as provided herein. If all Statement of Works have expired or been terminated and all Products subject to an Order Form have been delivered, then either party may terminate this Agreement by giving prior, written notice thereof to the other party in which event this Agreement shall terminate on the date specified in such notice, or if no

date is specified in such notice, on the date such notice is given. This **Section** shall not be incorporated into any Statement of Work or Order Form.

      3.2   **Term of each Statement of Work.** The term of each Statement of Work shall commence on the effective date of the Statement of Work and shall continue until the date of expiration set forth therein; subject, however, to earlier termination as provided in the Statement of Work (which includes the terms and conditions of this Agreement). If there is no date of expiration set forth in a Statement of Work, such Statement of Work shall be considered expired upon, as applicable, the later to occur of the completion of, as applicable, the performance of the applicable Services and/or the delivery and acceptance of all Products under such Statement of Work.

      3.3   **Mutual Termination.** Either party may terminate a Statement of Work or cancel an Order Form by giving prior, written notice thereof to the other party if the other party breaches any provision of such Statement of Work or Order Form (each of which, for the avoidance of doubt, includes the provisions of this Agreement) and fails to cure such breach within thirty (30) days after notice thereof is given to the allegedly breaching party by the other party (except that such cure period shall be limited to three (3) days in the event of a breach by Client due to the failure to pay any amount due hereunder to KeyInfo), and any such termination or cancellation shall be effective on the date set forth in such notice.

      3.4   **Termination by KeyInfo.** KeyInfo may terminate a Statement of Work or cancel an Order Form immediately by giving notice thereof to Client if (a) Client voluntarily files a petition for relief under the Bankruptcy Code, (b) an involuntary petition under the Bankruptcy Code is filed against Client and the proceeding initiated by such filing is not terminated within sixty (60) days after the day on which such an involuntary petition is filed, (c) any of Client's assets are attached or foreclosed, (d) KeyInfo discovers and provides evidence to Client that any information Client provided to KeyInfo about Client or Client's proposed use of any Service is materially inaccurate or incomplete, (e) KeyInfo believes that Client is violating, or has violated, the Acceptable Use Policy, and/or (f) KeyInfo reasonably believes and provides evidence to Client that Client has, or is, infringing the intellectual property rights of others or is aiding or threatening such infringement.

      3.5   **Termination Due to Infringement Claims.** KeyInfo may also terminate a Statement of Work by giving notice to Client in the event a third party makes a claim that the Services provided by KeyInfo under such Statement of Work (or Client's use of such Services) infringe or misappropriate one or more intellectual property rights of a third party, and KeyInfo is not reasonably able to obtain the right to use the infringing or misappropriating element or modify the Services such that they do not infringe, and any such termination shall be effective on the date set forth in such notice. In such event, KeyInfo shall provide Client with a pro-rata refund of fees prepaid by Client, based on the number of months remaining in the current term of the Statement of Work or other agreement.

      3.6   **Termination of Other Statements of Work and Order Forms.** If KeyInfo terminates a Statement of Work or cancels an Order Form under the provisions of this Agreement,

30077 Agoura Court, Agoura Hills, CA 91301
Toll Free: **877.442.3249**   P: **818.992.8950**   F: **818.992.8970**
www.keyinfo.com

then KeyInfo may also terminate any or all other Statement of Works and Order Forms between Client and KeyInfo that are in effect at the time of such termination or cancellation by giving notice to Client, and such termination or cancellation shall be effective on the date set forth in such notice.

3.7 Notice of Termination. If written notice of termination is not delivered to KeyInfo at least 30 days before expiration of the term, then this Agreement shall continue in effect on a month to month basis until terminated by either party upon 30 days advance written notice, and KeyInfo may charge Customer for all services provided at KeyInfo's then prevailing rates for month to month services.

4.   Confidentiality.

4.1   General. The term **"Confidential Information"** means, subject to Section 4.2, any and all nonpublic information, in any form or medium, tangible or intangible and whether communicated in writing, orally, or through visual observation, that a party to this Agreement (each a **"Disclosing Party"**) designates as being confidential to the party that receives such information (each a **"Receiving Party"**) or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. Client agrees that KeyInfo's Confidential Information includes, without limitation, any and all unpublished pricing information, audit and security reports (including, without limitation all content of such reports and the "look and feel" of such reports), product development plans, vendor pricing, terms and agreements, nonpublic information relating to KeyInfo's business activities or financial affairs, data center designs, network and server configuration designs, and tools, methodologies, techniques used to provide the Services, interfaces, control screens, and other information and technology. All data, including personal information, provided to or made available to KeyInfo by Client ("Client Data"), shall be Confidential Information.

4.2   Exceptions. The term "Confidential Information" does not include any information, however designated, that (a) is or subsequently becomes generally known or available by publication, commercial use or otherwise without the Receiving Party's breach of any obligation owed to the Disclosing Party, (b) is known to the Receiving Party prior to the Disclosing Party's disclosure of such information to the Receiving Party without any restriction on the Receiving Party's further use or disclosure, (c) becomes known to the Receiving Party from a source other than the Disclosing Party without any restriction on the Receiving Party's further use or disclosure and other than by the breach of an obligation of confidentiality owed to the Disclosing Party, and/or (d) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information.

4.3   Obligations Regarding Confidential Information. Each Receiving Party agrees that it will (a) refrain from using the Confidential Information of the Disclosing Party except in connection with, as applicable, the performance or use of the Services, otherwise as necessary for the Receiving Party's to perform its obligations under this Agreement, the exercise of a Receiving Party's respective legal rights under the Agreement, or as may be required by law, including the California Public Records Act, and (b) subject to Section 4.2 refrain from disclosing any Confidential Information of the Disclosing Party. The obligations set forth in clauses (a) and (b)

above shall continue throughout the term of this Agreement and forever thereafter; provided, however, that, such obligations cease with respect to information that no longer constitutes Confidential Information because it falls within one or more of the applicable exceptions set forth in Section 4.2 above.

4.4   Permitted Disclosures.   A Receiving Party may disclose the Confidential Information of a Disclosing Party (a) to the Receiving Party's service providers, agents, and representatives as necessary for the Receiving Party to perform or use the Services, provided that such service providers, agents, and/or representatives agree to confidentiality measures that are at least as restrictive as those stated in this Agreement, (b) to law enforcement or government agencies if required by a subpoena or other compulsory legal process, or if the Receiving Party believes, in good faith, that the Disclosing Party's conduct may violate applicable criminal law as required by law, and/or (c) in response to a subpoena or other compulsory legal process other than from law enforcement or government agencies which are dealt with in clause (b) above, and/or (d) in response to a records request pursuant to the California Public Records Act, provided that the Receiving Party agrees to give the Disclosing Party written notice before disclosing such Confidential Information unless giving such notice is prohibited by law.

4.5   Feedback.   To the extent that Client provides any comments, instructions, suggestions, information, and/or other feedback to KeyInfo regarding any Service and/or otherwise (collectively, "**Feedback**"), and KeyInfo advises Client in writing that it considers such information to be Feedback, Client assigns, and agrees to assign, to KeyInfo all right, title, and interest including, without limitation, all intellectual property rights, in and to such Feedback, to the extent permitted by law.

4.6   Security of Client Data.   Without limiting KeyInfo's obligations under this Agreement, and unless otherwise agreed upon by Client, KeyInfo shall implement administrative, physical and technical safeguards for cloud-based storage to protect Client Data that are no less rigorous than ISO/IEC 27001, 27002, 27017, and 27018. KeyInfo shall ensure that all such safeguards, including the manner in which personal information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

No less than once per calendar year, KeyInfo will utilize an independent third party to (i) perform a SSAE 16 or equivalent audit that includes KeyInfo's systems for managing Client Data, and (ii) produce a SOC 1 or SOC 2 report. KeyInfo will provide a full, true, and correct copy of such report to Client promptly after receipt thereof, and such report will be considered Confidential Information pursuant to Section 4.1 of this Agreement.

KeyInfo shall promptly notify Client of any actual or potential unauthorized exposure, access to, or misappropriation of Client Data ("Security Breach") of which KeyInfo becomes aware, within twenty-four (24) hours. KeyInfo will cooperate with Client and law enforcement authorities in investigating any such Security Breach, at KeyInfo's expense. KeyInfo will also cooperate with Client and with law enforcement agencies to notify injured or potentially injured parties, and

such cooperation will be at KeyInfo's expense, except to the extent that the Security Breach was caused by Client.

5. Warranties and Disclaimer.

5.1 Authority. Client and KeyInfo each represent and warrant to the other that this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against each such party in accordance with its terms. Further, each person signing this Agreement represents and warrants that he or she is authorized to execute and delivery this Agreement on behalf of the applicable party.

5.2 Client Information. Client represents and warrants to KeyInfo that, to the best of its knowledge, all information Client provides to KeyInfo for purposes of establishing and maintaining any Service is accurate. Client agrees that Client will timely update such information in order that it is at all times current and accurate.

5.3 Disclaimer of Warranties. All Services and Products are provided on an "**AS IS**", "**WITH ALL FAULTS**", and "**AS AVAILABLE**" basis. KeyInfo makes no representations or warranties relating to any of the Services or any Products including, without limitation, any representation or warranty that (a) any Service or any Product shall meet Client's requirements, (b) the operation of any Service or any Product shall be uninterrupted or error free, (c) any defects in any Service or any Product will be corrected, and/or (d) any Service (or data transmitted through, or maintained on, such Service) shall be secure. EXCEPT EXPRESSLY AS SET FORTH IN **SECTION 5.1** ABOVE, KEYINFO MAKES NO REPRESENTATIONS OR WARRANTIES UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY PRODUCTS OR SERVICES, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, ACCURACY, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT KEYINFO KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), AND KEYINFO HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES. KEYINFO FURTHER DISCLAIMS ANY AND ALL WARRANTIES AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT WITH RESPECT TO ALL SERVICES AND ALL PRODUCTS.

6. Limitation of Liability.

6.1 Exclusions. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY (A) INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR ECONOMIC OF CONSEQUENTIAL DAMAGES, (B) LOSS, CORRUPTION, ALTERATION OR DAMAGE TO DATA (INCLUDING, WITHOUT LIMITATION, CLIENT DATA), (C) DAMAGES DUE TO A BREACH OF DATA AND/OR OTHER SECURITY, (D) LOST PROFITS, BUSINESS, REVENUE, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, GOODWILL, OR ANTICIPATED SAVINGS, IN EACH OF (A) THROUGH (D) ABOVE EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES AND WHETHER (Y) ARISING UNDER THIS AGREEMENT OR ARISING FROM, OR RELATED TO ANY SERVICE AND/OR ANY PRODUCT, AND (Z) WHETHER FOR BREACH OF CONTRACT, IN TORT OR OTHERWISE. THE PROVISIONS OF THIS SECTION 6.1 SHALL NOT APPLY TO ANY CLAIMS OR LIABILITIES ARISING FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY KEYINFO EMPLOYEES, AGENTS, OR CONTRACTORS WHILE PHYSICALLY PRESENT ON CLIENT'S PROPERTY OR PREMISES IN CONNECTION WITH THIS AGREEMENT.

6.2 **Cap on Damages.** Except for claims and liabilities for personal injury, death, or property caused by Keyinfo employees, agents, or contractors while physically present on Client's property or premises in connection with this Agreement, KeyInfo's entire liability for all claims in the aggregate arising from, or related to, each Service, each Product, and/or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of (a) $1,000, or (b) the charges Client paid for the Service and/or Product that is the subject of the claim during the three (3) month period immediately preceding the incident giving rise to liability. Damages for bodily injury (including death) to persons for which KeyInfo is legally liable shall not be subject to the preceding cap on the amount of damages. Client is also subject to the exception noted above for personal injury, death or property damage.

6.3 **Mutual Indemnification.** To the maximum extent permitted by law, Client agrees to indemnify and hold harmless KeyInfo, its affiliates and its officers, directors, attorneys, agents, and employees (each a "**KeyInfo Party**") from and against any and all claims, demands, judgments, liabilities, obligations, losses, injuries, damages, penalties, fines, amounts in interest, costs, expenses and disbursements of any kind and nature whatsoever (including, without limitation, any and all attorneys' and expert witness fees and court costs), that any KeyInfo may incur or may be subject to under any theory of legal liability arising out of or related to (a) Client's negligence, willful misconduct, violation of law, failure to meet the security obligations required in this Agreement, violation (or alleged violation) of the Acceptable Use Policy, in each instance with respect to the Services, (b) any breach of this Agreement, or any allegation which, if true, would constitute a breach of this Agreement by Client, (c) Client's resale of any Services, (d) the negligence or willful misconduct of Client or its employees, agents, or subcontractors while acting in furtherance of this Agreement, and/or (e) the negligent use or occupancy of any Licensed Space or any Connection Areas by Client or any person claiming by, through or under Client. KeyInfo shall have the sole and exclusive right to choose legal counsel to defend any claim under this Section, and Client agrees to comply with KeyInfo's reasonable requests for assistance and cooperation in the defense of any such claim.

To the maximum extent permitted by law, KeyInfo agrees to indemnify, defend and hold harmless Client, its elected officials, officers, employees, agents, volunteers, and attorneys (each a "**Client Party**") from and against any and all claims, demands, judgments, liabilities, obligations, losses, injuries, damages, penalties, fines, amounts in interest, costs, expenses and disbursements of any kind and nature whatsoever (including, without limitation, any and all attorneys' and expert witness fees and court costs), that any Client Party may incur or may be subject to under any theory of legal liability arising out of or related to (a) KeyInfo's negligence, willful misconduct, violation of law, failure to meet the security obligations required in this

Agreement, (b) any breach of this Agreement, or any allegation which, if true, would constitute a breach of this Agreement by KeyInfo, or (c) the negligence or willful misconduct of KeyInfo or its employees, agents, or subcontractors while acting in furtherance of this Agreement. Client shall have the sole and exclusive right to choose legal counsel to defend any claim under this Section, and KeyInfo agrees to comply with Client's reasonable requests for assistance and cooperation in the defense of any such claim.

KeyInfo's indemnification obligations set forth above, shall also apply to any third party claims asserted against Client alleging infringement of any intellectual property right. In the event Client is prevented, as a result of any such infringement claim, from fully utilizing software or service provided by KeyInfo, then KeyInfo shall, at KeyInfo's sole expense (a) obtain a license to allow Client to continue use of such software or service for the term of this Agreement; or (b) provide Client with alternative software or service that provides substantially the same functionality and benefit as the software or service provided hereunder; or (c) terminate this Agreement and provide Client with a pro-rata refund based on the remaining term of this Agreement.

At any and all times that any KeyInfo Party is physically present on Client's property or premises in connection with this Agreement, KeyInfo shall maintain and upon Client's request shall provide proof of having, workers compensation insurance as required by law, and commercial general and automobile liability insurance in such form and with such limits and required by Client.

7. General.

7.1 Notices. All notices given hereunder including, without limitation, notices of address change shall be given in English and in writing. Notices shall be sent by certified mail, return receipt requested, postage and fees prepaid, to the address set forth on the cover page of this Agreement or to such other address for notices as the parties may hereafter designate in writing. All such notices shall be sent to the attention of "President", or City Clerk, as applicable, and shall be deemed given two days after the date they are sent.

7.2 Observation of Work Rules. When KeyInfo's employees or representatives are performing Services on the premises of Client or Client's designated site (which Client shall at all timed be deemed to represent and warrant that it has the right to cause to be accessed or modified by KeyInfo and its subcontractors in accordance with this Agreement), KeyInfo's employees and/or representatives shall observe the working hours, working rules, and security procedures established by Client provided that Client has provided KeyInfo with a copy of such hours, rules and procedures before the execution of the Statement of Work to which the applicable Services relate.

7.3 Support. Key shall have no obligation to provide any support services for any of the Products or Services other than as expressly set forth in a Statement of Work. In all events, Customer shall be responsible for providing support directly to its end users of any of the Products or Services.

7.4   **Use of Client's Name.** Client agrees that KeyInfo may, upon receiving the written permission of Client, publicly disclose that KeyInfo is providing services to Client.

7.5   **Entire Agreement.**   Subject to the further provisions of this Section, this Agreement constitutes the complete and final agreement and understanding between Client and KeyInfo with respect to the subject matter hereof, and supersedes and merges all prior and contemporaneous agreements, negotiations, and understandings between Client and KeyInfo with respect to the subject matter hereof. This Agreement does not supersede or merge any Statement of Work or Addendum entered into on the Effective Date or thereafter. This Section shall not be incorporated into any Statement of Work.

7.6   **Amendment.** This Agreement may not be changed, modified, amended, rescinded, canceled or waived, in whole or in part, except pursuant to a written agreement signed by the parties. Accordingly, no course of conduct shall constitute an amendment hereto. Without limiting the generality of the foregoing, no terms, provisions or conditions of any purchase order, acknowledgement or other business form or document that Client may use in connection with this Agreement, any Service, or any Products shall have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify, this Agreement, regardless of any failure of KeyInfo to object to such terms, provisions or conditions.

7.7   **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by Client (whether by operation of law or otherwise) without the prior written consent of KeyInfo. KeyInfo may assign this Agreement without the consent of Client, in whole or in part, following not less than sixty (60) days prior, written notice to Client and such assignee's written agreement to comply with all provisions of this Agreement. Further, for the avoidance of doubt, KeyInfo may, in its sole discretion, subcontract or delegate the performance of all or any part of its obligations hereunder to subcontractors or independent contractors of its choosing provided not less than sixty (60) days prior, written notice has been given to Client, therein identifying any and all such subcontractors. KeyInfo shall remain primarily responsible for performance of its obligations under this Agreement, notwithstanding any such subcontracting. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns.

7.8   **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of California (without regard to any applicable conflicts of law rules) and the federal laws of the United States. Venue shall be the Superior Court for the County of Los Angeles, or the United States District Court, Central District, State of California.

7.9   **Arbitration.** In the event of a dispute between the parties, KeyInfo and Client agree to work cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur and a party wishes to escalate to a formal dispute resolution forum, such party will submit the dispute to non-binding arbitration in Los Angeles, California under the then-prevailing rules of the American Arbitration Association.   Upon agreement of the parties, judgment upon any award in such

arbitration may be entered and enforced in any court of competent jurisdiction. Nothing herein shall prohibit either party from pursuing any legal action in a court of competent jurisdiction.

7.10 **Availability of Equitable Relief.** In the event of any dispute or alleged or threatened breach of the provisions of this Agreement concerning (a) non-solicitation, (b) ownership or misuse of Confidential Information or intellectual property, and (c) misuses of any property owned or operated by KeyInfo (including, without limitation, any computer, computer system, and/or network operated by KeyInfo, or any part or element thereof), the parties acknowledge that monetary damages may be an inadequate remedy for such claims and the other party may suffer irreparable harm. Accordingly, those provisions may be enforced by appropriate equitable relief in a court of competent jurisdiction, subject in each instance to the satisfaction of the requirements for equitable relief under applicable law. Once a matter is in a court of competent jurisdiction for such equitable relief, the parties may also pursue any related or appropriate monetary or other legal claims (such provision being intended to avoid the duplication and inefficiencies – and possible inconsistencies – of "trying" claims with the same substantial facts and issues both in court and in arbitration). The parties expressly agree that any lawsuits permitted to be filed between them under this Agreement will be filed and pursued exclusively in the federal courts sitting in Los Angeles, California, unless no federal subject matter jurisdiction exists, in which case such lawsuit shall be brought exclusively in the state courts sitting in the County of Los Angeles, California. Each party irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

7.11 **Survival.** Each provision of this Agreement that would by its nature or terms survive any termination of this Agreement shall survive the expiration or earlier termination of this Agreement, regardless of the cause. Such provisions include, without limitation, in Sections 4,7,9, 10 and this Section 11. Accordingly, the termination of this Agreement or any Statement of Work shall not relieve Client of any obligation to pay any amounts which are due to KeyInfo under this Agreement or such Statement of Work prior to the effective date of termination.

7.12 **Interpretation.** All section headings contained in this Agreement are for convenience only. Accordingly, they shall not constitute a part of this Agreement when interpreting or enforcing this Agreement. Each party has substantially participated in the drafting and negotiation of this Agreement, and no provision hereof shall be construed against either party by virtue of the fact that such provision was or may have been drafted by such party. All defined terms used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this Agreement.

7.13 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement will remain in full force and effect.

7.14   Relationship of the Parties. The parties are independent contractors. This Agreement is not intended to create, and does not create, any partnership, joint venture, agency, fiduciary, employment, or other relationship between the parties, beyond the relationship of independent parties to a commercial contract. Neither party is, nor will either party hold itself out to be, vested with any authority to bind any other party contractually, or to act on behalf of the any other party as a broker, agent, or otherwise. In no event shall KeyInfo or its employees be considered or act as employees, agents, joint ventures, or partners of Client. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

7.15   Counterparts. This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Further, electronically scanned or facsimile signatures on this Agreement and any amendment hereto will have the same effect as original manual signatures.

7.16   Cumulative Remedies. Except as expressly provided in this Agreement, no right or remedy conferred by this Agreement is exclusive of any other right or remedy conferred herein or by law or in equity; rather, all of such rights and remedies are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time.

7.17   No Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

7.18   Import and Export Compliance. Client represents and warrants that Client is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons. Client agrees that it shall not use any of the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor shall Client provide administrative access to any of the Services to any person (including any natural person or government or private entity) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

7.19   U.S. Government Rights. The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If Client is using the Services on behalf of the U.S. Government and these provisions fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Client will immediately discontinue its use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

7.20 <u>**Force Majeure.**</u> Neither party shall be responsible or liable for any damages, delays, or other failures to fulfill its obligations hereunder as a result of events or circumstances beyond its reasonable control including, without limitation, damages, delays or other failures due to acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, delays of third party vendors, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within KeyInfo's possession or reasonable control, as applicable, and denial of service attacks.

7.21 <u>**Non-Solicitation of Employees.**</u> Throughout the term of this Agreement and for a period of one year thereafter, Client agrees that it will not solicit, directly or indirectly, the employment of KeyInfo's personnel performing duties related to this Agreement or with whom Client has direct contact. However, Client may place general advertisements for employment opportunities and may interview, solicit and hire all persons who respond to such advertisements.

7.22 <u>**Third-party Beneficiaries**</u>. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is KeyInfo responsible for any third party claims against Client.

8. Connectivity Services.

8.1 Billing and Payment. Unless otherwise stated, KeyInfo will invoice Client for Connectivity Services one month in advance, due on the first (1st) day of each month and past due on the tenth (10th). Service charges for an initial partial month will be prorated and billed on the first bill. Thereafter, fees for a full month are due if service is provided in any part of a month. All fees are non-refundable except as provided herein. Any order for services is subject to credit approval by KeyInfo in its sole discretion.

8.2 Term. The term of the Connectivity Services shall commence on the date on which any of those services are first functioning (the "Connectivity Start Date"). The Connectivity Services will be deemed to be functioning when a circuit is terminated at Client's premise and is able to pass data traffic end-to-end, regardless of the condition of Client's internal network/computer equipment. The term shall continue for the period referenced in **Appendix C. If written notice of termination is not delivered to KeyInfo at least thirty (30) days before expiration of the term, then the Connectivity Services shall continue in effect on a month-to-month basis until terminated by either party upon thirty (30) days advance written notice, and KeyInfo may charge Client for all services provided at KeyInfo's then prevailing rates for the contracted Connectivity Services.**

8.3 Termination. Either party may terminate this Agreement effective at the end of the term described in the Statement of Work upon thirty (30) days advance written notice. KeyInfo may terminate for default, suspend or reduce service to Client at any time, at KeyInfo's sole discretion and upon prior, written notice, if Client's account becomes past due, if Client breaches this Agreement, if Client or any employee or agent of Client breaches KeyInfo's Acceptable Use Policy published at: www.keyinfo.com, or if Client violates any applicable law. KeyInfo may also terminate this Agreement upon written notice in the event that a Force Majeure Event that prevents KeyInfo from performing its obligations hereunder, in which case, Client shall have no claim against KeyInfo for any relocation expense or loss of business or other loss or damage, provided, however that KeyInfo shall provide a pro-rata refund of fees prepaid by Client based on the remainder of the current term . Client may terminate this Agreement at any time upon thirty (30) days advance written notice.

8.4 Client Responsibilities. Client is responsible for all work and related costs on Client's internal network/computer equipment, which may be required to complete the installation or use of any circuit. Client is responsible to protect all account passwords and for all use of Client's account whether or not authorized. Client shall comply with all rules regarding networks that Client accesses via KeyInfo's services. Client shall not transmit or make available via the Internet any material that is illegal, libelous, tortious, or may result in action against KeyInfo or any KeyInfo Client. Client shall not use any KeyInfo equipment, electronic mail address or KeyInfo service to send or to facilitate anyone sending unsolicited email, commercial or otherwise, including, without limitation, mass email from another service, except in accordance with applicable laws, and provided that all such email shall (a) comply with all

elements of the federal CAN-SPAM Act of 2003, (b) only be sent to recipients that have voluntarily registered to receive emails from Client, (c) contain Client's physical mailing address, and (d) contain a link or instructions that allow recipients to remove themselves from Client's email distribution list. Client shall not use KeyInfo service in any way that is unlawful or violates any right of any person or entity. Client shall not resell the service or any bandwidth to any third party whether or not in Client's building, without KeyInfo's prior written approval. Additionally, Client shall not, without the prior written consent of KeyInfo, make or permit, directly or indirectly, Ethernet connections between Client's computers, patch panels or equipment, or any KeyInfo equipment, and any computers, patch panels or equipment owned or controlled by third parties that are also Clients of KeyInfo. Client acknowledges and agrees that such cross connection networking is subject to customary installation and monthly fees and is strictly prohibited without KeyInfo's prior written approval.

8.5 **Service Level Agreement (SLA).** KeyInfo provides Service Level Agreements (SLAs) with some of its services. Any SLAs provided with this Agreement are subject to the terms herein and may be modified or terminated at any time in KeyInfo's sole discretion upon written notice to Client. In the event of any conflict between an SLA and this Agreement, the terms in this Agreement shall control. Client acknowledges that KeyInfo may schedule system upgrades, repairs and/or maintenance affecting the service by providing Client within 30 days prior notice, provided that KeyInfo shall have no obligation to provide Client with any notice in the event of any emergency upgrades, repairs and/or maintenance. Client shall receive service credits for any failure of service not due to a scheduled period of maintenance. Client further acknowledges that such upgrades, repairs and/or maintenance may interfere with Client's access to the services.

8.6 **Hardware and Software.** If KeyInfo provides equipment or software to Client pursuant to this Agreement or otherwise, the following shall apply: CLIENT ACKNOWLEDGES AND AGREES THAT KEYINFO IS NOT THE MANUFACTURER OF THE EQUIPMENT OR SOFTWARE AND THAT THE ONLY WARRANTIES MADE WITH RESPECT TO THE EQUIPMENT OR SOFTWARE ARE THOSE MADE BY THE MANUFACTURER. KEYINFO SHALL HAVE NO OBLIGATION TO CLIENT IN THE EVENT THAT ANY KEYINFO EQUIPMENT, SOFTWARE OR HARDWARE, OR UPGRADES TO SUCH EQUIPMENT, SOFTWARE OR HARDWARE, WITHOUT FAULT OF KEYINFO, INTERFERES, DISRUPTS OR HARMS CLIENT'S EQUIPMENT, SOFTWARE OR SOURCE CODE, AND CLIENT ASSUMES ALL RISK IN CONNECTION THEREWITH. KEYINFO MAKES NO WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR SOFTWARE. KEYINFO HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES AND AGREES THAT THE MANUFACTURERS OF THE EQUIPMENT AND SOFTWARE MAY, IN THEIR SOLE DISCRETION, PROVIDE WARRANTIES WITH THE EQUIPMENT AND SOFTWARE, AND THAT KEYINFO SHALL HAVE NO OBLIGATION OR DUTY WITH RESPECT TO SUCH WARRANTIES. Except as otherwise agreed in writing, any equipment or software that KeyInfo makes available for use by Client is made available by license from KeyInfo (or its third

party vendors) and is not sold or leased to Client. Client's use of such equipment and software shall be subject to such restrictions that KeyInfo (or the third party vendors) may implement from time to time, following written notice thereof to Client. KeyInfo (or its third party vendors) may revoke such license at any time, in its (or their) sole and absolute discretion. KeyInfo will use commercially reasonable effort to maintain its own equipment and software, and will repair or replace any defective equipment that belongs to KeyInfo. Client is responsible for its software and configuration of such software used in connection with KeyInfo's equipment.

8.7 **Other Fees.** KeyInfo, in its reasonable discretion, may charge Client and Client shall pay for the following when provided by KeyInfo, or when otherwise applicable pursuant to this Agreement: (a) Field Technician Dispatched (1 hour minimum) $125 per hour for normal business hours, $175 per hour for after hours, holidays and weekends, to the extent available and requested by Client, (b) downgrade of Client's speed, $100, (c) connect/early termination: 100% of total of monthly service fees for uncompleted portion of the term (with the exception of our Ethernet over Copper service ordered on a 1 year term, then it is 100% of total of monthly service fees for uncompleted portion of the term), (d) missed appointment, $100, (e) unpaid or dishonored check or rejected credit card payment, $35 (or legal limit), (f) reactivation fee per service, $150, (g) past due amounts: finance charges of 1.5% per month (18% per year), and (h) for all connectivity services, (1) Federal Universal Service Fee Surcharges and other taxes, the amounts of which may change monthly without notice, and (2) fees for extending DMARC in excess of one hour: $25 per 15 minutes. This section does not permit or excuse dishonored checks, rejected credit card payment requests, or late or past due payments. KeyInfo may incur price increases from vendors (electricity, bandwidth, rent, as examples) and KeyInfo may pass on any additional charges with 30 days advance written notice. Additional fees may be established or any of these fees changed on notice to Client and/or at contract renewal.

8.8 **Speeds**. Actual speed delivered in connection with Connectivity Services may be variable based on many factors including, but not limited to, network latency, DDoS attacks, carrier oversubscription and other factors out of KeyInfo's control.

8.9 **DISCLAIMER OF LIABILITY.** CLIENT ACKNOWLEDGES THAT KEYINFO HAS NO CONTROL OVER THE NATURE, CONTENT, OR RELIABILITY OF INFORMATION DELIVERED TO CLIENT VIA THE INTERNET. KEYINFO SHALL NOT BE RESPONSIBLE FOR INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS SUFFERED BY CLIENT, AS A DIRECT OR INDIRECT RESULT OF CLIENT'S USE OF KEYINFO SERVICES INCLUDING, BUT NOT LIMITED TO, ERRORS, DELAY, LOSS OF INFORMATION, DISRUPTION TO CLIENTS OF CLIENT, INTERFERENCE, DISRUPTION OR HARM TO CLIENT'S CODE, EQUIPMENT OR SOFTWARE, OR INTERRUPTION IN SERVICE WHETHER CAUSED BY KEYINFO'S OR THIRD PARTY NEGLIGENCE, FAULT, MISCONDUCT, FAILURE TO PERFORM, OR OTHERWISE. CLIENT ACKNOWLEDGES THAT INTERNET ACCESS SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER REASONS WITHIN OR OUTSIDE KEYINFO'S CONTROL. THESE CIRCUMSTANCES SHALL NOT NULLIFY OR MODIFY THESE DISCLAIMERS,

THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN KEYINFO AND CLIENT. WITHOUT LIMITING THE FOREGOING, THE TOTAL LIABILITY OF KEYINFO FOR DAMAGES TO CLIENT FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, AND WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, SHALL BE LIMITED TO ACTUAL DAMAGES INCURRED BY CLIENT IN AN AMOUNT NOT TO EXCEED THE AGGREGATE MONTHLY FEES PAID BY CLIENT TO KEYINFO HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO CLIENT'S CLAIM. THE LIMITATIONS IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CLIENT ACKNOWLEDGES AND AGREES THAT KEYINFO WOULD NOT ENTER INTO THIS AGREEMENT FOR THE CONSIDERATION GIVEN BY CLIENT BUT FOR THE LIMITATIONS CONTAINED IN THIS SECTION, AND THAT THE RIGHT TO RECEIVE THE SERVICES IN EXCHANGE FOR THE LIMITATIONS IN THIS SECTION AND THE OTHER CONSIDERATION GIVEN BY CLIENT FOR THE SERVICES CONSTITUTE A BARGAIN THAT IS FAIR AND REASONABLE. THE PROVISIONS OF THIS SECTION 8.9 SHALL NOT APPLY TO ANY CLAIMS OR LIABILITIES FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, ARISING OUT OF THE ACTS OR OMISSIONS OF KEYINFO OR THOSE OF ANY OF KEYINFO'S EMPLOYEES, AGENTS, OR CONTRACTORS, WHILE ON THE PROPERTY OR PREMISES OF CLIENT IN CONNECTION WITH THIS AGREEMENT.

Appendix C - Connectivity- Statement of Work

✕ keyinfo

dedicated to our clients

Service Address:

June 22, 2017

City of Agoura
30001 Ladyface Ct.
Agoura Hills, CA 91301
Contact Name: Cindy Pinuelas
Phone Number: (818)597-7319

Term: Three Year

Billing Address:

Technical Contact Information:

City of Agoura
30001 Ladyface Ct.
Agoura Hills, CA 91301
Contact Name: Cindy Pinuelas
Phone Number: (818)597-7319

Contact Name: Cindy Pinuelas
Phone Number: (818)597-7319
Contact Email: cpinuelas@ci.agoura-hills.ca.us

Schedule of Products

Qty.	SKU #	Description	Unit Sale	Ext. Sale
1	1-WIL-FIBER	Dark Fiber Connection	$1,566.00	$1,566.00
	MRC Total:			**$ 1,566.00**
	NRC Total:			**$0.00**

Terms:
• Order to renew City of Agoura's Dark Fiber Connection
• The term of this service is 36 months and will be billed monthly
• Monthly contract will start upon a date agreeable to both parties based upon actual consumption of the services
• Early termination will be 100% of the monthly charge for the remainder of the term

Account Manager – Michelle Evdokimov 818-737-3261 mevdokimov@keyinfo.com

By signing below, Client and KeyInfo agree to be bound by this Agreement.

Key Information Systems, Inc.   **Client**

✕ keyinfo

dedicated to our clients

BY:_____   BY:_____

NAME:_____   NAME:_____

TITLE:_____   TITLE:_____

DATE:_____   DATE:_____

Appendix H - Acceptable Use Policy (AUP)

All Clients of Key Information Systems, Inc., ("KeyInfo") agree to abide by the following policies. KeyInfo reserves the right to change and update these policies as it sees necessary. All concerns or complaints about a violation of the AUP should be sent to abuse@keyinfo.com.

1) **Introduction.**

   KeyInfo strives to provide its clients with the highest quality service available, while at the same time respecting the standards that have been created both within the Internet community and by legislation. KeyInfo supports the free flow of information and ideas over the Internet. KeyInfo does not actively monitor, nor does KeyInfo exercise editorial control over, the content of any communications, e-mail or any other material created or accessible over the KeyInfo network ("Services").

   However, KeyInfo reserves the right to remove any materials that, in KeyInfo's sole discretion, are potentially illegal, may subject KeyInfo to liability, or violate this Acceptable Use Policy ("Policy" or "AUP"). Violation of this Policy may result in the suspension or cancellation of the Services. KeyInfo strives to maintain favorable business relationships in the Internet community and will not allow any practice that threatens these relationships. Further, clients shall not use, nor shall they permit others to use, the Services so as to interfere with the use of the KeyInfo network by other clients or authorized users.

   If a client, or a third party acting through client, violates any of the foregoing prohibitions, KeyInfo may immediately suspend the Services and/or terminate the Services Agreement without further liability or obligation to client.

2) **Lawful Purposes.**

   The Services may only be used for lawful purposes and in compliance with this AUP. Transmission of any material in violation any U.S. or state law or regulation is prohibited. This includes, but is not limited to: copyrighted material, material legally judged to be threatening or obscene, or material protected by trademark, trade secret or other federal or state laws including, without limitation, the DMCA, CAN-SPAM Act, infringement and unfair competition laws.

   By using KeyInfo's Services, you agree to indemnify, defend and hold KeyInfo harmless from any claims, liabilities, actions, expenses, and costs (including payment of reasonable attorney's fees) resulting from your use of the service which violates any provision of this AUP and/or which causes any damages to you or another person or entity. Notwithstanding the above, you agree that, except as otherwise provided in this Agreement, should KeyInfo be found liable in a court of law for any action related to the Client's use of KeyInfo Service, that KeyInfo's liability, if any, shall be limited to the unused balance of your monthly payment, pro-rated to reflect your current month, and said unused balance shall be used to offset any such damages.

   You will further agree that KeyInfo has the right to terminate further Service to you and/or your organization upon notice that you or any person or entity on your behalf has, or intends to, initiate legal proceedings against KeyInfo of any kind. Each client is responsible for

complying with this Policy, and for providing assistance to KeyInfo in investigating and resolving any issue, as KeyInfo may request from time to time. KeyInfo reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Activities which are prohibited as potentially illegal include, but are not limited to:

    i.   Unauthorized copying of copyrighted material including, but not limited to, digitization and distribution of photographs from magazines, books, or other copyrighted sources, and copyrighted software;

    ii.   Exporting software or other information in violation of U.S. export control laws;

    iii.   Any conduct that could damage, disable, overburden, or impair KeyInfo's servers or networks, or interfere with any other party's use of KeyInfo's Service;

    iv.   Threatening bodily harm or property damage to individuals or groups;

    v.   Making fraudulent offers of products or services originating from your Service;

    vi.   Attempting to access the accounts of others, or attempting to penetrate security measures of KeyInfo's or other entities' systems ("hacking"), whether or not the intrusion results in corruption or loss of data;

    vii.   The unauthorized use of a person's name, image or likeness: Falsifying identity or contact information (whether given to Key Info, to the Registrar, or other parties), including but not limited to, impersonating any person or entity and/or forging anyone else's digital or manual signature;

    viii.   Use of an IP address not assigned as part of the Service provided.

3) **IP Addresses.** KeyInfo may provide IP (Internet Protocol) addresses for certain types of service. These addresses are not transferable your Service is transferred to another Internet Service Provider. KeyInfo reserves the right to renumber its servers or clients at any time, however, will provide advance notice to ensure a smooth transition.

4) **Viruses.** Distributing viruses on the KeyInfo network is expressly prohibited. If your environment becomes infected with a virus your connection will be immediately suspended until remediation measures have been completed.

5) **Key Info Assumes No Liability.** KeyInfo has no practical ability to restrict all conduct, communications or content which might violate this Policy prior to its transmission on KeyInfo's systems, nor can KeyInfo ensure prompt removal of any such communications or content after transmission or posting. Accordingly, KeyInfo does not assume liability to clients, subscribers or others for any failure to enforce the terms of this Policy. You are responsible for maintaining the security of any device connected to the Service.

6) **Revisions to this Policy.** KeyInfo reserves the right to modify this Policy at any time. Notice of modifications to this Policy may be given to clients and subscribers by posting such changes to the KeyInfo homepage (www.keyinfo.com), by conventional mail. You acknowledge that you have read this Policy and that you accept the terms thereof. YOU

30077 Agoura Court, Agoura Hills, CA 91301
Toll Free: 877.442.3249   P: 818.992.8950   F: 818.992.8970
www.keyinfo.com

keyinfo

AGREE TO READ THIS POLICY CAREFULLY BEFORE USING KEYINFO NETWORKS AND/OR SERVICES. If you do not agree to this Policy, you may not access or otherwise use the KeyInfo networks or services and must immediately contact KeyInfo to cancel service. Your continued use of the Service after changes are posted constitutes your acceptance of this Policy as modified by the posted changes. The updated, online version of this Policy shall supersede any prior version of this Policy that may have been included in any software or related materials provided by KeyInfo. This Policy should be read in conjunction with any supplemental terms, policies, rules and guidelines posted on www.keyinfo.com.