



MASTER PURCHASE & SERVICE AGREEMENT

This **MASTER PURCHASE AND SERVICE AGREEMENT** (“MPSA” or “Agreement”) is made by and between **KEY CODE MEDIA, INC.**, a Delaware corporation with offices located at 270 S. Flower St, Burbank, CA 91502 (“Company”), and the undersigned (“Customer”) (collectively, the “Parties”).

The purpose of this Agreement is to establish the general terms and conditions applicable to Customer’s purchase and Company’s provision of the “Products and Services” subject to this Agreement. The terms and conditions of this Agreement are hereby incorporated by reference into each statement of work (“SOW”) which shall be maintained as an exhibit to this MPSA. If this Agreement is terminated or expires prior to the termination or expiration of the term of an exhibit, the terms and conditions of this Agreement shall continue to apply to said exhibit for as long as the SOW is in effect.

In the event of any conflict or inconsistency between this Agreement and any given SOW, the conflict or inconsistency shall be resolved by giving precedence to the following documents in the order hereby listed: (1) the terms of the main body of this Agreement; (2) purchase Orders; (3) all other SOWs; (4) Company’s response to Customer’s request for RFI, RFP, RFQ; and (5) Customer’s RFI, RFP, RFQ.

I. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified below:

“**Active Subscription**” means a valid, current, and paid right to use and access Products and Services for a definite period or for as long as Customer pays a recurring fee as evidenced by appropriate documentation and records in the Company’s files. Company and its suppliers retain all ownership rights related to the subject Products and Services. Active subscriptions can pertain to Hardware, Software, Software updates, and Services.

“**Agreement Term**” means the duration of the Initial Term plus any Extension Terms for each Order or SOW under this Agreement.

“**Applicable Laws**” means all federal, state, county and municipal laws, ordinances, regulations, and orders, as they exist now and as they may be amended from time to time, pertaining to the performance and provision of the Services, or any other deliverables under this Agreement.

“**Customer Data**” means all data and information, in whatever format it may be maintained, pertaining to the Customer, collected and stored by Company and/or provided by Customer.

“**Deliverable**” means the final version or completed form of any Product or Service to be provided to the Customer under this Agreement, including, but not limited to, software, Software-as-a-Service, and reports.

“**Documentation**” means any manuals, implementation plans, notes, instructions, or guidelines related to the Hardware, Software, and/or Services, as provided or made available to the Customer by the Company, and as may be updated by the Company from time to time.

“**Extension Term**” means any additional period by which the duration of the Initial Term of this Agreement, or the Order Term of any Order or Statement of Work (SOW), is extended.



“Hardware” means any physical product or component specified in an Order or SOW, excluding any Software installed on it. As used herein, “Hardware” may also be referred to as a “Product.”

“Initial Term” means, for each Product and/or Service, the initial duration of performance as set forth in the first Order or SOW for that Product or Service under this Agreement, or if not stated, for a minimum term of 24 months.

“Lease” or “Rental” means an agreement, between Customer and Company as specified in an Order or SOW, by which Company or its suppliers, subject to various conditions, allow Customer to utilize Company’s Hardware for a set period of time in exchange for a set fee, but for which Company or its suppliers retain ownership rights.

“License” means a limited, non-exclusive, non-transferable, and revocable authorization granted by Company to Customer to access, use, or interface with the Company’s Products, Services, and/or Deliverables solely for Customer’s internal purposes, in accordance with this Agreement and the applicable Order or SOW. Any rights, access and/or permitted use(s) not expressly granted under the License are reserved for the exclusive use of Company. Customer hereby agrees not to sublicense, distribute, resell, or grant extensions of the Licensed Software to third parties, and understands that a violation of these terms constitutes a material breach of this Agreement.

“Licensed Software” means the Software subject to a License pursuant to an Order, SOW, and/or an Active Subscription or agreement related to the same. Software does not include SaaS, although Licensed Software may interface with SaaS.

“Marks” mean all logos, nicknames, slogans, emblems, logotypes, insignia, designs, devices, colors, artwork, coats of arms, trophies, uniforms, uniform designs, helmet designs, trademarks, trade names, service marks, trade dress and copyrights in each of the above, mascots (including all names and designs), and the commercial goodwill associated therewith, that at any given time are or were previously owned, or of which a registration with the USPTO (irrespective of class of goods or services) is pending, or which is controlled or managed by, cleared for use by, or on behalf of, or licensed by Company.

“Network” means an aggregation of interconnected devices that permit the transmission of machine-readable information, including the Internet and publicly accessible communication systems. Network includes, without limitation, systems capable of data and/or voice communications, which may be referred to as the “Internet,” the “World Wide Web,” or by any other designation.

“Order” means a written order/request, purchase, proposal, sales order, or any other purchase document signed by the Parties in which Company agrees to provide and Customer agrees to purchase the Products and Services stated therein.

“Order Term” means the then-current agreed-upon duration of performance, including the Initial Term, for the Products, Services, and Deliverables as specified in each applicable Order or SOW.

“Products and Services” means the Deliverable(s) contracted for pursuant to this Agreement and as specified in each Order or SOW.

“SaaS” means “software-as-a-service” that Company provides to Customer as a platform designed to perform a group of coordinated functions, tasks, or activities for the benefit of the Customer pursuant to a SOW.



“**Services**” means the tasks, duties, or obligations to be performed by Company as specified in the Customer’s Order or SOW.

“**Software**” means the Company’s or its suppliers’ products, components and modules, including, but not limited to, the SaaS system with the exclusion of any Hardware, as identified in Customer’s Order or SOW. The term “Software” also includes any error corrections, patches, workarounds, updates, upgrades, and releases provided by Company or its suppliers to the Customer as part of maintenance or as specified in the applicable Order or SOW. Error corrections, patches, workarounds, updates, upgrades, and releases will be provided based on availability.

“**Software License**” means the Order, SOW, and/or Software License Active Subscription granting Customer a Licensed Software.

“**Specifications**” refers to such technical and functional requisites for Licensed Software, SaaS, Hardware and/or Deliverables as identified in Customer’s Order or SOW.

“**Statement of Work**” or “**SOW**” means a written Order, proposal, or purchase document signed by both Parties that describes the Products and Services to be provided or performed by Company in exchange for consideration from Customer. Each SOW shall expressly identify the Parties’ respective performance obligations, duties, and any contingencies, including those relating to the implementation of the Products and Services. An SOW may be submitted on a purchase order or a similar document in the form attached as Exhibit A. No SOW shall be binding or enforceable unless signed by both Parties.

“**Support**” means the ongoing assistance and maintenance services provided by Company to or in relation to the Products and Services as specified in the Customer’s Order and/or SOW.

“**System**” means a Hardware and its embedded Software interacting with each other to create a functioning Deliverable as described in Customer’s Order or SOW.

“**Trade-in Product**” means the Hardware that a Customer may return, subject to Company’s authorization and conditions, to Company in exchange for credit to be applied against the price/cost for a Deliverable. Customer must be the original owner of the proposed trade-in-hardware or software or have a valid system transfer approved by the manufacturer.

“**Work Site**” means the premises, property, facilities or location at which Company is to furnish the Deliverables subject to this Agreement. “Work Site” includes the surrounding areas, ingress/egress routes, staging areas, parking, loading, and/or any other physical location necessary for Company’s performance hereunder. A Work Site may be further defined in the relevant SOW or Order.

II. WORK SITE

- a. **Work Site Safety.** Unless otherwise agreed to in writing by the Parties, Customer agrees to always have at least one representative present at the Work Site. Company may, in its sole discretion, request that Customer, remove any person under Customer’s control from the Work Site if Company believes such person poses a safety or health threat to the Parties’ employees present at the Work site. If Company makes such a request, Customer shall remove such person from the Work Site immediately and not allow the person to return to the Work Site until written



approval is given by Company. Company may condition the return of the person upon Customer providing proof satisfactory to Company that such person (i) has tested negative for drugs and alcohol, and/or (ii) has met any other conditions Company may impose.

- b. **Dust-Free Environment.** High voltage power and power distribution is not the responsibility of Company unless specifically defined within this Scope of Work Agreement. Upon request, Company may provide a certificate of power voltage. Customer is responsible for ensuring that the environmental conditions at the installation site (as approved by Company and/or other relevant authorities prior to installation) are maintained at all times. Company's engineers shall have timely access to the System and Customer shall provide adequate working and storage space, and such other facilities as the Engineers may reasonably require and shall observe any law or statutory requirements relating to a healthy and safe place of work.
- c. **Relationship of Parties.** Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee-employer relationship between the Parties for any purpose, including but not limited to taxes or employee benefits. Each party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- d. **Subcontracting.** Company reserves the right to engage qualified subcontractors, affiliates, or third-party service providers to perform any portion of the work, services, or deliverables under this Agreement, provided that Company shall remain solely responsible for the performance of its obligations hereunder. Company shall ensure that all subcontractors are bound by written agreements that require them to comply with applicable provisions of this Agreement.

III. **ORDERING, DELIVERY, RETURNS, & CANCELLATION**

- a. **Deliverable's Future Functionality.** Customer acknowledges that Company's provision of Products, Services, and Deliverables is not contingent on the delivery of any future functionality or features of the same and that all future functionality or features may be subject to separate fees and charges.
- b. **Acceptance of Deliverable.** Customer shall have three (3) business days from the date of delivery (the "Acceptance Period") to inspect and test the Deliverables. Deliverables shall be deemed accepted upon the earlier of (i) Customer's written notice of acceptance, in which event the acceptance date shall be the date of such notice, (ii) the expiration of the Acceptance Period without Customer having provided written notice of rejection to Company identifying all material nonconformities, or (iii) Customer's use of the Deliverable for purposes other than testing during the Acceptance Period.
- c. **Changes to Deliverable.** Changes to any Order, SOW or Customer-issued purchase order must be notified to the other party in writing prior to the shipment of any Product or to the performance of any Service. Customer understands and agrees to be solely responsible for all costs and fees associated with any order change.
- d. **Delivery and Risk of Loss.** All Products shall be delivered F.O.B. Shipping Point unless otherwise agreed to in writing by Company. Risk of loss and damages shall pass to the Customer when the Deliverables are delivered to the shipping carrier. Except for leased Product, title to Hardware will



pass to Customer upon receipt and clearance of the final payment to Company.

Customer hereby understands and agrees that all delivery dates are tentative and subject to delay due to events beyond Company's reasonable control. Company's delay in performance arising from or related to reasons beyond Company's reasonable control shall not constitute a breach and shall not entitle Customer to stop its performance under this Agreement.

At Customer's request and expense and Company's approval, Company shall prepay Product insurance and freight. Unless Customer requests and Company agrees to prepay insurance and freight, freight costs and fees included in any Order or SOW are estimates only and Customer shall be solely responsible for any difference between the estimate and the actual cost and fees charged by the shipping company. Partial payment is due on partial shipments for all Orders not subject to a payment plan.

Client has the right to reschedule installation if substantially all of the Deliverable Products necessary to commence installation are not available on the first day of the installation period.

- e. **Return of Deliverables Upon Expiration of Order Term.** Return of Deliverables shall not be deemed complete until all Deliverables to be returned have been (1) delivered to the location specified by Company in its Order or SOW, or if none is therein specified to 270 S. Flower Street Burbank, CA 91502, and (2) inspected and approved by Company as being in acceptable condition. Unless otherwise agreed to in writing, Customer shall be responsible for all return shipping costs and fees. Customer shall bear all risk of loss or damage to the Deliverables until the return is complete. Any Deliverables damaged or destroyed while in the possession of Customer, Customer's agent, or any third-party carrier shall not be deemed returned unless and until they have been fully repaired and restored to a condition satisfactory to Company. Company strongly recommends Customer insure the return of expensive and/or fragile equipment.

If the Deliverable has not been returned to Company within 90 days of the expiration of the Order Term subject to any Extension Terms if applicable, Customer shall be responsible for the full replacement value of the Deliverable. Failure to return the Deliverable as specified herein shall automatically extend the Deliverable Order Term until the date in which the outstanding balance is paid in full. Additionally, Customer shall be liable for the amount equal to the corresponding rental charges of the subject Deliverable for the resulting Extension Term. Company reserves the right to invoice Customer's insurance to collect said amount. All returns must be authorized in advance by Company. Use of a specific carrier is optional unless it involves expensive or fragile equipment. Please see the SOW for more specific information.

- f. **Returns.** No Deliverable may be returned without Company's prior written approval. Subject to inspection and Company's approval, all returns shall be for credit. The return credit amount depends on the condition of the returned Deliverable. All requests for returns must be submitted to Company in writing within thirty (30) days of delivery. Unless otherwise agreed to in writing, Customer is responsible for all return shipping costs and fees.

Custom made Deliverables, used Deliverables, B stock items, contracts for Service and contracts for Software are final sale and cannot be returned.



- g. Cancellations.** No orders may be cancelled without Company’s prior written consent. Upon Company’s cancellation approval, Customer shall be solely responsible for all fees, charges, actual costs, and expenses incurred by Company and arising from the Agreement in preparation of Customer’s Order fulfillment, including those imposed on Company by third-party vendors/suppliers (i.e. restocking fees), from the Order date up to and including the date of Company’s approval of the cancellation. Cancellation of specially ordered Products may be subject to the full cost of the Deliverables.

Cancellations of Service contracts that require and include the traveling of Company’s employees require written notice and request of cancellation at least 48-hours prior to the scheduled traveling date. Cancellation requests made less than 48 hours ahead of the scheduled traveling arrangements shall not be refunded. Customer may cancel within 48 hours of order confirmation for standard items, provided no procurement or planning has begun.

- h. Special Terms & Conditions.** Company’s invoice and/or sales quote related to Customer’s Order for Products and Services may be subject to additional terms and conditions with respect to the sale and purchase of certain Deliverables. No modification of the product terms and conditions set forth in the invoice and/or sales quote form shall be enforceable unless such modification is memorialized in writing and signed by the party to be bound thereby.
- i. Post-Installation Support.** Basic support related to Company Products and Services, if any, and as described in the relevant SOW or Order, is included in the fees hereby agreed upon and paid during the Order Term. Company reserves the right to amend its basic support obligations from time to time, provided the functionality of the purchased Deliverable is not materially affected. Post-installation, Company will provide a 30-day window of phone/remote support covering installation-related issues, including assistance with manufacturer-related defects of a Product under warranty. Basic support does not include training, diagnosis or repairs of issues arising from or related to Product upgrades purchased or applied after the installation of the original Deliverable.

IV. PERMITTED USE OF COMPANY’S PRODUCTS & COMPANY’S PROPRIETARY RIGHTS

- a. Product Permitted Use.** Subject to this Agreement, and any restrictions or obligations set forth in an applicable Active Subscription, Software License Agreement, Order, or SOW, Company grants to Customer, and Customer accepts, a worldwide, limited, revocable, non-exclusive, and non-transferable right to use the Deliverables solely for Customer’s internal use (the “Permitted Use”), during the applicable Order Term and any Extension Term, if applicable. The Permitted Use includes the right to use the Deliverables up to the levels specified in the applicable Order or SOW.

For each Product Deliverable that includes embedded Company software, Customer’s right to use such embedded software shall terminate upon expiration of the applicable Order Term, subject to any Extension Term. Notwithstanding the foregoing, Customer’s right to use the physical Product Deliverable itself shall continue for so long as Customer retains ownership of that Product.

Company is and shall remain the sole owner of all Products and Deliverables, including without limitation all intellectual property rights in its Software, source code, algorithms, processes, data, know-how, guides, instructions, improvements, plans, arrangements, developments, and related



materials. Nothing in this Agreement shall be construed as granting Customer any ownership or exploitation rights in any Product, Deliverable, or Service beyond the limited rights expressly provided herein.

For clarity, no title, ownership interest, or proprietary rights in any Product, Deliverable, pre-loaded software, documentation, or copies are transferred to Customer under this Agreement.

- b. **Software Permitted Use.** Unless otherwise stated in writing, Company and its suppliers grant Customer a non-exclusive, non-transferable license to use the Software in object code form as delivered under the accepted Order (the “Permitted Use”). Unless otherwise specified in a Software License Agreement, Active Subscription, Order, or SOW, “Use” means to install, store, load, execute, and display one copy of the Software or third-party software on one device at a time for Customer’s internal business purposes.

Customer’s use of the Software and any third-party software is subject to this Agreement, applicable restrictions, and any relevant Software License Agreement. All Software licenses confer only a limited right of use and do not transfer title, ownership, or any proprietary rights. Software licenses do not constitute a sale of rights. Company makes no representations or warranties regarding third-party software.

- c. **No Unauthorized Modification of Deliverables.** Unless otherwise agreed to in writing by Company, the Deliverables/Systems must not, under any circumstances, be altered, adjusted, or interfered with, except by Company’s authorized technicians.
- d. **Access and Customer Data.** All data uploaded or input into Products, Services, and Deliverables, whether for storage, processing, or sharing, must originate from Customer's own sources and systems. Company-issued passwords enabling access to Products, Services and/or Deliverables are for Customer's use alone and may not be shared with or transferred to any unauthorized third party. Only upon Customer’s request will Company assist Customer’s IT department to establish, or issue, personalized/non-factory passwords on Deliverables. Customer hereby agrees to maintain all Company-issued passwords confidential and to only access Products and Services and/or Deliverables utilizing the assigned passwords. Products and Services and Deliverables may not be used on behalf of third parties not subject to this Agreement.
- e. **Reservation of Rights.** There are no implied Licenses under this Agreement. Subject to the limited rights expressly granted hereunder, Company and/or its licensors reserve all rights, title, and interest in the Products and Services and Deliverables, including but not limited to all related intellectual property rights, and documentation. The Company’s name and logo and all names associated with the Products and Services and/or Deliverables are trademarks of Company or its suppliers, and no right or License pertaining to the same is hereby granted.
- f. **Use of Marks & Perception of Relationship.** Nothing in this Agreement shall be interpreted to grant Customer any right or license to use any of Company’s Marks without prior written consent. Customer shall not use Company’s Marks in any way that implies endorsement, certification, or affiliation, nor refer to Company or its affiliates—whether directly or indirectly, in any form or medium now known or hereafter developed—as a “partner” or in any similar capacity.



- g. **Use of Customer's Name & Logo.** Unless Customer provides written notice to the contrary, Customer grants Company a limited, non-exclusive right to use Customer's name and logo solely in Company's customer lists, marketing materials, and website, including pre-approved video clips demonstrating use of the Products and Services. Company may also issue a press release disclosing Customer's name, order value, and/or Products and Services purchased, subject to Customer's prior review and approval where commercially reasonable.

V. **INVOICING, PAYMENTS, & FEES**

- a. **Deposit.** A 50% deposit of the total cost of the applicable SOW is due with all Orders.
- b. **Invoicing.** Company hereby agrees to provide detailed invoices and to make available any supporting documentation upon Customer's request. Customer agrees to pay all fees, costs, charges, and other amounts due as specified in each invoice, Order or SOW.
- c. **Reimbursement of Expenses for Professional Services.** Unless otherwise agreed by the Parties and memorialized in writing in the applicable Order or SOW, all travel, meal, lodging and other such expenses incurred by Company while executing a Service agreement, including but not limited to providing training or other professional services, outside Company's location shall be the sole responsibility of the Customer. Customer hereby agrees and promises to reimburse Company for said expenses within fifteen (15) business days of the date of the invoice.
- d. **Payments.** Unless otherwise stated in writing by Company in the applicable Order or SOW Company's payment schedule is on a Net 30 term. Company reserves the right to modify the payment term at any given time if Company believes Customer's payment history or financial condition so warrant.

All payments must include the estimated transportation service costs shown in the subject Order, SOW, or quotation. Customer hereby agrees to promptly pay any difference in the actual cost of transportation and the estimated cost stated in the Order, SOW, or quotation. Overpayments of transportation charges will be refunded to Customer in its original form of payment.

Customer understands and agrees that if Customer secured a loan or a lease from a financing institution to cover the costs under this Agreement, Customer must provide Company with a copy of the applicable financing documents which are hereby incorporated herein by reference. All payments including deposits and cash advances must be paid in the currency quoted.

- e. **Disputed Invoiced Amounts.** Customer shall provide Company with detailed written notice of any amount Customer reasonably disputes within fifteen (15) days of the date of invoice. Company will not immediately treat a lack of payment as a material breach so long as Customer has timely and in good faith disputed the invoiced amount and is diligently trying to resolve the dispute. Customer's failure to timely notify Company, as hereby specified, of any disputed invoiced amount shall be deemed an acceptance of the same and a waiver of all objections and rights arising therefrom.
- f. **Outstanding Balances.** Upon the expiration or termination of this Agreement, Customer shall immediately pay Company all outstanding balances.



- g. **Taxes.** All fees and prices stated in an Order or SOW are exclusive of any sales, use, consumption, value-added, gross receipts, service, excise, duty or similar taxes or surcharges that may be applicable to Customer's order. Customer shall be solely responsible for and shall promptly pay all applicable fees, tariffs, customs duties, excise taxes, value-added taxes, sales and use taxes, and any other taxes, levies, or charges imposed by any governmental authority in connection with the purchase, delivery, or use of any products or services provided under this Agreement. If Company is required to pay any such charges on behalf of Customer, Customer agrees to reimburse Company in full upon demand. Company shall not be responsible for any delays or additional costs resulting from Customer's failure to comply with applicable import, export, or tax regulations. If Customer provides Company a properly completed and executed exemption certificate, Company shall neither invoice nor collect such taxes or surcharges as may be covered by the certificate. This certificate must be in effect upon invoice, if not upon placing the order.
- h. **Late Payment Fee.** Late payments are subject to a late payment fee equal to the higher of 1.5% or the highest interest rate allowed by law on all outstanding balances. The interest rate charge shall be applied monthly and calculated daily. All outstanding balances not paid by the due date are subject to collection, and Customer shall be liable for all associated collection costs or legal fees.
- i. **Cancellation Fee.** In addition to all fees, charges, costs, and expenses, including without limitation transport costs, imposed on Company and payable by Customer in full by vendors for the return of cancelled Products, a cancellation fee of 20% of the total Order amount will be charged on all cancelled Orders. Untimely notice and request of cancellation of Service Orders requiring the traveling of Company's employees is subject to a cancellation fee equal to the full travel amount, costs, and expenses incurred by and non-refundable to Company by third party vendors in addition to a 20% of the total Order amount cancellation fee.
- j. **Rescheduling/Storage Fee.** A rescheduling fee will be charged to Customer if at any point in time Customer requests a postponement of Company's performance forcing Company to store materials, products, or Deliverables that would have otherwise been delivered to Customer or the Work Site or which causes a disruption to Company's general work schedule.
- k. **Upgrade Fee.** If during a postponement period, a new version of the contracted Products and Services becomes available and Customer requests the new version of the Products and Services at the time that performance is resumed, Customer will be subject to an upgrade fee equal to the difference in price between the new version of the Product and Services and the version originally contracted for plus all costs and fees incurred by Company in securing the original Products and Services, plus a ten (10%) percent upgrade fee of the new contract amount.
- l. **Credit Card Use Fee.** All credit card payments are subject to a 3% service charge.
- m. **Reinstatement Fee.** Upon Company's suspension of Service because of Customer's failure to make timely payments, each Order or SOW subject to the suspension will incur a reinstatement fee equal to fifteen (15) percent of the outstanding balance.
- n. **Failure to Return Trade-In Product Fee.** At Customer's expense, all Trade-In Products must be returned to Company within 60 days of shipment of the new Deliverable to Customer. Customer's



failure to timely return the Trade-In Product in good working condition will entitle Company to invoice Customer the full amount of the value assigned to the Trade-in Product which Customer hereby agrees to timely pay in full.

- o. **Unused Services Fee.** Support and maintenance services under this Agreement are invoiced in advance on an annual basis. Customer is responsible for scheduling or utilizing any included services—such as onsite visits, remote support hours, or preventive maintenance—within the contract term. If such services remain unused after sixty (60) days from the applicable Service Order or milestone, and no written rescheduling has been mutually agreed upon, those services will be deemed delivered. The contract will expire on its stated expiration date, and no refund or credit will be issued for any unused portion.
- p. **Excessive Wear and Tear Fee.** Customer shall be responsible for any damage beyond normal wear and tear of returned products. Any such damage may result in a repair charge assessed based on the cost of labor and materials required to restore the Products to its original condition.

VI. COMPLIANCE WITH U.S. LAWS

- a. **Export Control.** The Deliverables and technical information (including but not limited to services and training) provided under this Agreement, as per any Order or SOW, are subject to U.S. export laws and regulations and any use or transfer of such Deliverables must be authorized under those laws and regulations. Customer hereby promises not to use, distribute, transfer, or transmit the Deliverables in violation of U.S. export regulations. Upon request by Company, Customer hereby promises to sign written assurances and other export-related documents as may be required for Company to show compliance with U.S. export regulations.
- b. **Ethical Business Practices.** Customer acknowledges and promises that it and its owners, directors, officers, employees, or agents, have not and will not make or promise payments of money or anything of value, directly or indirectly, to any government or public foreign officials, political parties, or candidates for political office, for the purpose of obtaining or retaining business or securing any improper advantage. In addition, Customer agrees that it will accurately document all transactions related to this Agreement in its financial books and records, and in any reports provided to Company. Customer understands and agrees that any violation of this section constitutes a material breach of this Agreement subject to immediate termination by Company of the same without any liability to Company. Customer hereby promises and agrees to indemnify and hold Company, its subsidiaries, affiliates, subcontractors, licensors, vendors, and suppliers harmless from any claim, loss and/or liability (including government fines and penalties) resulting from any breach of this section. The obligations and duties under this section shall survive the termination or expiration of this Agreement.
- c. **Government Contracts.** To the extent that any Order or SOW under this Agreement references a U.S. Government contract or is subject to the Defense Priorities and Allocations System (DPAS), codified at 15 C.F.R. Part 700, the applicable provisions of the Federal Acquisition Regulation (FAR), DFARS, and DPAS are incorporated by reference and shall apply to such Order or SOW as required by law.

VII. REPRESENTATIONS, WARRANTIES, & DISCLAIMERS



- a. **Representation of Authority.** Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations hereunder, and that the person executing this Agreement on its behalf is duly authorized to do so.
- b. **Representation of Solvency.** Customer represents and warrants that, as of the Effective Date and throughout the term of this Agreement, it is **solvent**, meaning that (i) the fair value of its assets exceeds its debts and liabilities, (ii) it is able to pay its debts as they come due in the ordinary course of business, and (iii) it has not made, and is not contemplating, any assignment for the benefit of creditors, bankruptcy filing, or other insolvency-related proceedings.

Customer further acknowledges that its solvency is a material inducement for Company's entry into this Agreement. In the event Company reasonably believes that Customer has become insolvent or is unable to meet its payment obligations, Company may, without waiving any other rights or remedies, suspend further performance or require adequate assurances of performance under California Commercial Code § 2609.

- c. **Deliverables' Limited Warranty.** Company, its suppliers, and vendors warrant that each Product or Deliverable they manufacture will be free from material defects under normal use and service. Software is warranted to operate in accordance with its programmed instructions when used with the appropriate Hardware provided by Company or its suppliers. However, no warranty is made that the Software will be error-free. Company shall not be liable for any defect or damage of any Product manufactured by third party vendors including without limitation Software.

The warranty period of a Product can be found in the warranty document furnished with each Deliverable. If no warranty documentation is provided with the Deliverable, it is Customer's responsibility to request a copy of the same from Company.

Company, its suppliers or vendors' obligations and liabilities, and Customer's exclusive remedy under this warranty are limited to the repair or replacement of the Deliverable so long as it is determined by Company, vendor, or supplier that the Deliverable's defect occurred at no fault of Customer. For this warranty to be honored, Customer must timely, and shipping prepaid return the Deliverable to Company, its supplier, or vendor's authorized service center as directed by Company.

If Company, vendor, or its supplier determines that the Deliverable's failure was caused by misuse, neglect, accidental or abnormal use or operation of the Deliverable, the costs of repairs or replacement and transport shall be the Customer's sole responsibility.

Upon discovery of a Deliverable's failure, Customer must promptly notify and request a return authorization from Company's customer service department and return the Deliverable, transport cost prepaid, to the location identified by Company. The return package must clearly identify the return authorization number given by Company to Customer on the outside of the package. After repairs are made or a replacement is secured, the Deliverable will be returned to Customer shipping prepaid unless the failure is deemed to be Customer's fault. Company shall not assume or incur any risk or liability for in-transit damage to the repaired or replaced Deliverable. Company shall not assume or incur any liability for damage or injury resulting from use of products supplied by



Company.

- d. **Workmanship & Fitness Warranty.** Company warrants, for a period of eighteen (18) months from the date of substantial performance, that all Products, Services, and Deliverables subject to this Agreement and any applicable Order or SOW will conform to the agreed upon specifications, if any, and that the Products or Deliverables will be merchantable, of good workmanship and material, and fit for the intended use. Company also warrants that all Products, Services, and Deliverables will be in accordance with generally accepted professional standards and in strict compliance with all applicable laws, rules, and regulations.

Regarding Products delivered but not manufactured by Company, Customer hereby agrees and promises to assign all manufacturers' warranties to Company necessary to claim all benefits under the warranty. If such third-party manufacturers' warranties are not assignable, Customer agrees and promises to provide reasonable assistance to Company to enforce the warranties if needed.

- e. **Work Site Restoration.** After the work is completed, Company agrees to leave the Work Site and surrounding areas in the same condition they existed at the commencement of the work. Promptly following the expiration or termination of the Order Term or Agreement, Company shall: (i) remove from the Work Site all structures, equipment and other materials placed thereon by Company; and (ii) repair all damage caused to the Work Site and surrounding areas arising from Company's work.
- f. **Disclaimers.** EXCEPT AS ELSEWHERE PROVIDED HEREIN, COMPANY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT COMPANY PRODUCTS AND SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED, IMPENETRABLE OR ERROR FREE.
- g. **"As Is" Deliverables.** Company warrants that it takes all precautions that are standard in the industry to increase the likelihood of success of its Products and Services and Deliverables; however, except as expressly provided elsewhere in this Agreement, all Products, Services and Deliverables are provided "AS IS" and subject to availability.

VIII. **BREACHES & REMEDIES**

- a. **Customer's Material Breach/Payment Default.** Unless an invoiced amount has been timely disputed, Customer's failure to post payments when due constitutes a material breach of this Agreement subject to Company's suspension of performance on any or all Orders or SOWs or the immediate termination of this Agreement. At Company's sole discretion, Company may grant Customer a thirty (30) day grace period to cure the breach via a written notice of default to Customer. If after thirty (30) days of receipt of a written notice of default, Customer fails to cure the breach, Company may immediately terminate this Agreement without any further notice to Customer.



Customer hereby understands and agrees that failure to make timely payments on any amount due constitutes a material breach thus entitling Company to seek all available recourse at law or in equity. Customer hereby understands and acknowledges that the issuance of a grace period to cure said breach/default is not mandatory but rather subject to Company's sole discretion.

- b. **Mechanics Lien.** In accordance with California law, Company hereby notifies Customer that persons or companies furnishing labor, materials, equipment, or services for the improvement of real property may be entitled to record a mechanic's lien against the property if not paid in full. Company reserves all rights and remedies available under California Civil Code §§ 8000–9566, including but not limited to the right to file and enforce a mechanic's lien or stop payment notice in the event of nonpayment for work performed or materials furnished. Customer agrees to timely pay all undisputed amounts due and to take reasonable steps to prevent any disruption or delay in Company's right to seek such remedies.
- c. **Security Interest.** Customer hereby grants Company a security interest in all purchased Products and Deliverables and related materials under this Agreement until Customer pays them in full. Title to any goods or equipment sold by Company shall not transfer to Customer until full payment has been received and cleared. Customer acknowledges, understands, and agrees that Company may, at any time, record a copy of this Agreement as a financing statement to perfect its security interest and consents to Company recording a UCC-1 financing statement with the secretary of state where the Customer is located and any state where Company has delivered goods or services on behalf of Customer. Customer further agrees to execute any documents or take any actions reasonably necessary to assist Company in perfecting and maintaining its security interest.

Until all amounts due are paid in full, Customer shall not sell, transfer, lease, assign, or otherwise dispose of the Products and Deliverables without Company's prior written consent. Upon default or failure to pay, Company shall have all rights and remedies of a secured party under the Commercial Code, including without limitation the right to repossess or dispose of the Products and Deliverables.

- d. **Non-Excusable Suspension of Performance by Customer.** Customer understands and agrees that any punch list items, manufacturer defects covered by warranty, Customer's internal usage issues of Deliverables including but not limited to those related to operations, functionality, or training shall not excuse Customer's performance under this Agreement.
- e. **Customer Furnished Equipment (CFE).** CFE refers to any Product, Hardware, Software, tool, equipment etc., not provided by Company and secured by Customer through third parties. Company shall not be liable for any delay in, or failure of performance, damage or loss related to any Deliverable under this Agreement arising from or related to CFE. If CFE interferes with the Company's ability to timely or properly fulfill its obligations, duties, and responsibilities under this Agreement, a supplemental quote for the necessary additional labor will be issued to Customer. CFE shall not prohibit the sign off on any project.
- f. **Company's Legal Remedies.** Nothing in this Agreement shall be construed to limit Company's right to pursue all available legal or equitable remedies, including, without limitation, monetary damages, declaratory relief, injunctive relief, or restitution, in the event of Customer's breach of this Agreement.



- g. **No Waiver of Breach.** The waiver by either party of a breach or violation of any provision in this Agreement shall not operate as or be deemed a waiver of any subsequent breach of the same or other provision herein.

IX. **CONFIDENTIAL INFORMATION**

- a. **Confidential Information.** The parties acknowledge that in connection with this Agreement, the Products, Services, and the Deliverables Customer may acquire, or use may contain or require the exchange of Company's confidential information or trade secrets (the "Confidential Information"). In order to protect the Confidential Information, Customer hereby agrees and promises, throughout the duration of this Agreement, or for so long as any such Confidential Information may remain confidential, secret, not readily available to the general public or otherwise wholly or partially protectable, not to use or divulge said information to any third party except as it relates to this Agreement, unless: (i) the Company consents to such use or divulgence in writing; (ii) Customer is ordered or directed by a court or administrative body having jurisdiction over the Customer to make such use of or disclose the Confidential Information provided however, that Customer gives sufficient advance written notice to Company to permit it to seek a protective order; or (iii) the Confidential Information requested to be disclosed is disclosable per law and Customer informs the Company of such requirement and disclosure.

Customer hereby promises and agrees to disclose Confidential Information only on a strict need-to-know basis to those who have been previously advised of the confidential nature of the information and upon whom the confidentiality obligations and duties shall attached.

Notwithstanding anything to the contrary in this section, Customer is permitted to disclose Confidential Information to Customer's attorney or accountant in connection with the provision of their professional services to Customer if such disclosure is required to permit such person to render competent professional services to Customer so long as that person agrees to be bound by the terms of this section. The terms and obligations of this section shall survive the termination or expiration of this Agreement. Any limitation of liability found elsewhere in this Agreement shall not apply to this section.

- b. **Data Stored in Deliverables.** If Deliverables or Systems are to be used to store and/or send Confidential Information (including Customer Data), Company must be notified in writing prior to Customer storing or sending such information in any Deliverable or System. Customer is solely responsible for ensuring that any Confidential Information provided by Company is stored securely and used in accordance with the purposes stated in the applicable SOW or documentation. Customer hereby understands and agrees to ensure that any Confidential Information stored in any Deliverable or System is only accessed upon proper authentication via a secure interface managed by Customer. Customer understands and agrees that Customer is ultimately accountable and liable for the security and privacy of all Confidential Information stored in any Deliverable and thereby held by Company on Customer's behalf.

Except as otherwise provided elsewhere in this Agreement, Company does not own Customer's Data. Customer understands and agrees that Customer is solely responsible for the accuracy,



quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of all user's Data and Confidential Information. Company shall not be responsible or liable for the deletion, correction, destruction, damage, loss, failure, or misuse of any Customer Data except as set forth below.

Upon written notification by Customer that Data will be stored in a System or Deliverable, Customer is hereby notified, understands, and agrees that Company will implement and maintain reasonable administrative, physical, and technical safeguards to bolster the protection, security, confidentiality, and integrity of Customer Data. Those safeguards shall include, but are not limited to, the application of measures to prevent unauthorized access, use, modification, or disclosure of Customer Data by Company's personnel except: (a) to provide Service Deliverables and prevent or address service or technical problems, (b) as compelled by law, or (c) if Customer expressly permits access or use to Company in writing. COMPANY DOES NOT GUARANTEE THAT THE SYSTEM WILL NOT BE SUBJECT TO A SECURITY BREACH AND MAKES NO WARRANTY OR REPRESENTATION THAT INFORMATION STORED IN ANY SYSTEM OR DELIVERABLE WILL BE COMPLETELY SECURE. Except as set forth above, Customer acknowledges and agrees that information used and stored within the System or Deliverable is not and shall not be the responsibility or liability of the Company.

- c. **Data Stored in Trade-in-Products.** Customer understands and agrees that it is Customer's sole responsibility to erase all proprietary or confidential information from all Trade-In Products before returning it to Company.
- d. **Return or Deletion of Confidential Information.** Upon written request from a disclosing party, the receiving party shall immediately return or destroy all Confidential Information received intentionally or inadvertently from the disclosing party; provided, however, that the receiving party may retain one copy of the Confidential Information only to comply with applicable laws (if any) and the terms of this Agreement. Customer understands and acknowledges that it may not always be possible to completely remove or delete all data from Company's databases without some residual data existing due to backups amongst other reasons.

X. EFFECTIVE DATE AND TERMINATION

- a. **Effective Date.** This Agreement shall be deemed effective as of the date it is signed by the last Party to execute it, unless a different date is expressly stated herein.
- b. **Automatic Renewal of Agreements.** Agreements subject to automatic renewals will renew at the end of each term for an "Extension Term" of one (1) year, unless a party has given written notice of termination to the other party at least ninety (90) days prior to the end of the then-current Order Term.
- c. **Early Termination.** If the Parties agree to terminate this Agreement early and an Order or SOW is still in effect at the time of termination, then this Agreement shall continue to govern the outstanding Order or SOW until the termination or expiration thereof. Unless otherwise stated in this Agreement, in no event shall Customer be entitled to a refund of any prepaid fees upon early termination.



- d. **Termination for Cause.** Subject to Company's sole discretion, Company may terminate this Agreement for cause under the following circumstances: (1) after giving written notice of material breach to Customer if Customer fails to cure said breach within thirty (30) days of receipt of the written notice; (2) immediately after giving notice of termination to Customer if Customer: (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors; and/or (c) indefinitely ceases to conduct business for any reason leaving no successor in interest; and/or (3) without incurring any liability, upon Customer's failure to make timely payments of any fees due and owed under this Agreement.

If the Agreement is terminated for cause, unless otherwise agreed to in writing, all outstanding Orders and SOWs shall immediately terminate as of the date that Company terminates this Agreement.

- e. **Rights & Access at Termination.** Unless extended or terminated early, Customer's right to access or use the Products and Services or Deliverables will terminate at the end of the Order Term identified in each Order or SOW.
- f. **Provisions Surviving Termination.** The provisions of this Agreement respecting warranties, liability, indemnification, remedies, choice of law, jurisdiction, and confidentiality shall survive the termination or expiration of this Agreement and shall continue in full force and effect unless stated otherwise therein.

XI. LIMITATIONS OF LIABILITY

- a. **ALL CLAIMS BARRED TWO (2) YEARS AFTER THE ACTION ARISES.** THE PARTIES HEREBY AGREE AND PROMISE NOT TO INSTITUTE AN ACTION IN ANY FORUM ARISING FROM OR RELATED TO THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION AROSE. THIS LIMITATION SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER.
- b. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY (EXCEPT FOR GROSS NEGLIGENCE, INTENTIONAL ACTS OR FRAUD), IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM, RELATED TO, OR RESULTING IN: (A) ERROR OR INTERRUPTION OF USE, LOSS, INACCURACY OR CORRUPTION OF CUSTOMER DATA; (B) PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS, PROFIT, OR GOODWILL; (D) ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, DELIVERABLES, CONTENT, OR RELATED TECHNICAL SUPPORT; AND/OR (E) FOR ANY MATTERS BEYOND COMPANY'S REASONABLE CONTROL OR UNFORESEEN DAMAGES, EVEN IF COMPANY WAS PREVIOUSLY ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.
- c. **LIMITATION ON DAMAGES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY FOR ANY CLAIM OR MATTER, ARISING FROM AND/OR RELATED TO THIS AGREEMENT, WHETHER IN



TORT OR CONTRACT, EXCEED THE LOWER OF (A) THE TOTAL FEES PAID BY CUSTOMER UNDER THE ORDER OR SOW FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE SUBJECT ORDER OR SOW OR (B) \$100,000. THESE LIMITATIONS ARE INCLUSIVE OF ALL ATTORNEYS FEES AND COSTS.

- d. **Assumption of the Risk/Release of Claims.** Customer assumes all the risks, known or unknown, associated with the Products, Services and Deliverables including, but not limited to: improper equipment use by customer staff, misconfiguration by customer post-install, power or environmental issues at customer site, use of non-recommended third-party accessories or software, and hazardous work sites, and accepts full responsibility for any claims that Customer or Customer's subcontractor, employees, or anyone under Customer's control, or Customer's property, may suffer arising from or related to the Deliverables. Furthermore, Customer hereby releases and forever discharges Company, including Company's partners, parent or affiliated and subsidiary companies, and its directors, officers, employees, and agents of and from all such claims.

XII. INSURANCE AND INDEMNIFICATIONS

- a. **Insurance.** This Agreement is contingent upon Customer, at its sole cost and expense, complying with the insurance requirements found on Exhibit B attached hereto and incorporated herein by reference. Customer understands and agrees that failure to comply with this requirement constitutes a material breach.
- b. **Insurance During Installation.** Customer is responsible for maintaining appropriate insurance for equipment during transit and installation, Customer shall be responsible for maintaining adequate insurance coverage for products from the time they are shipped and throughout the installation process, including but not limited to any floating or inland marine coverage necessary to protect against damage, loss, casualty, and theft at minimum during the installation period, and shall name Company as a loss payee until full payment is received. This includes periods where installation has commenced but is not yet complete, or if installation is delayed for any reason outside Company's control. Company may request proof of such coverage before commencing installation.
- c. **Indemnification by Customer.** Customer hereby agrees and promises to forever indemnify, hold harmless, and defend Company, its parent company, general or limited partners, affiliated and subsidiary entities, agents, employees, contractors, subcontractors, vendors, affiliates, suppliers, invitees, and licensees (collectively "Indemnitees") from and against third parties for any and all claims and liability arising from or related to this Agreement including, without limitation, those for breach of contract or warranty, misrepresentation, personal injury, property damage, and/or the misappropriation, misuse or illegal use of Products and Services and/or Deliverables such as hacking, illegal betting/gambling, creating or downloading illegal content, resulting from Customer, or Customer's end-users, subcontractor, employees, or work personnel's negligent or intentional acts. Customer also hereby understands and agrees to indemnify and hold Company, its subsidiaries and affiliates, its subcontractors, licensors, and suppliers harmless from any claims, losses, and liabilities (including government fines and penalties) resulting from any third parties' breach of the obligations under this Agreement. The obligations arising under this section shall survive the termination or expiration of this Agreement



Customer hereby agrees and promises to reimburse Company and its Indemnitees for all damages and litigation costs and expenses, including but not limited to attorney's fees.

Any limitation of liability to the benefit of Customer stated elsewhere in this Agreement shall not apply to Customer's indemnification obligations hereunder.

- d. **Indemnification by Company.** Company hereby agrees and promises to defend Customer from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party arising from or related to any Claim that Products and Services or Deliverables infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW. Company hereby agrees and promises to reimburse Customer for all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable litigation costs and expenses including reasonable attorneys' fees so long as the claim or suit did not arise from: (i) unauthorized modification to any solution, Product and Services or Deliverables completed by Customer or by anyone under Customer's direction or control or by using the logins or passwords assigned to Customer; (ii) modifications made by Company at the instruction and direction of Customer or in reliance of information or materials provided by Customer; or (iii) Customer's, or anyone under Customer's direction or control or by utilizing Customer's logins or passwords, of any Products and Services or Deliverables not in conformity with the terms of this Agreement.

This section sets forth Customer's sole and exclusive remedy, and Company's entire liability, for any claim or action alleging that the Products and Services or Deliverables or any other materials provided by Company violate or infringe upon the rights of a third party.

If Company determines that an affected Order or SOW is likely to, or if a ruling against Company is final and non-appealable, infringe a valid U.S. copyright or patent as of the date of the applicable Order or SOW, Company will, in its discretion: (a) replace the affected Products and Services and/or Deliverables; (b) modify the affected Products and Services and/or Deliverables so as to render them non-infringing; or (c) terminate this Agreement or the applicable Order or SOW and refund Customer any prepaid fees for the then-remaining or unexpired portion of the Order or SOW Term.

- e. **Independent Defense.** Upon discovery or notification of a claim or action entitling a party to indemnification, the indemnified party must promptly notify the indemnifying party in writing of the action or claim, and the indemnifying party shall promptly assume sole defense and control of the claim or action. The indemnified party hereby agrees and promises to reasonably cooperate with the indemnifying party in the defense.

At its sole discretion and expense, the indemnified party may reasonably participate in its defense, with counsel of its choice, but shall not settle the subject claim or action without the prior written consent of the indemnifying party. Similarly, the indemnifying party shall not settle or compromise the claim or action in any manner that imposes an obligation on the indemnified party without his/her/its prior written consent.

XIII. GENERAL

- a. **Notices.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, request, consents, or approvals hereunder shall be



made in writing and shall be deemed received on the date of: (a) personal delivery; (b) the day of receipt, as shown in the applicable carrier's systems, if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; or (c) the third business day after sending it by U.S. Postal Service, First Class, postage prepaid, return receipt requested. All notices shall be addressed as follows:

To Company:

Attention: Legal Department
Key Code Media, Inc.
270 S. Flower Street
Burbank, CA 91502

To Customer:

Attention: _____

- b. **Amendments and Further Assurances.** This Agreement may only be amended, in whole or in part, by a written instrument, such as a SOW or an Order, signed by all Parties hereto. Each party hereby promises to acknowledge, execute, deliver, file, and record such further certificates, amendments, instruments, or documents, and do all things necessary to carry out the intent and purposes of the Parties hereto.

Notwithstanding the foregoing, Company reserves the right to revise the policies referenced herein at any time, so long as the revisions are reasonable and consistent with industry practices, legal requirements, and the requirements of any third-party suppliers.

- c. **Non-Solicitation.** Throughout the duration of this Agreement and for one (1) year thereafter, Customer shall not directly or indirectly encourage or solicit any employee, independent contractor, vendor, sub-contractor, customer, or client of Company to leave or terminate his/her/its relationship with Company for any reason. Customer hereby acknowledges and understands that Company will suffer irreparable harm if Customer breaches this non-solicitation clause; therefore, Customer hereby understands and agrees to pay Company 100% of the resulting damages, including but not limited to the cost, expense, and difference in yearly salary of the solicited individual's replacement, and Company's loss of profits.
- d. **No Third-Party Beneficiaries.** This Agreement is binding upon and inures solely to the benefit of the Parties hereto and their respective permitted successors or assignees. There are no third-party beneficiaries to this Agreement.
- e. **Choice of Law & Venue.** The validity, construction, and enforceability of this Agreement shall be governed by the laws of the state of California. Each party irrevocably acknowledges, agrees, and consents to the exclusive jurisdiction and venue of the United States District Court for the Central



District of California and the Superior Court of California for any dispute arising from or related to this Agreement.

If a party commences an action against the other party in another jurisdiction or venue that arises from or is related to this Agreement, the defending party shall be entitled, at its option, to have the action transferred to one of the jurisdictions or venues stated herein. However, if such transfer cannot be accomplished under applicable law, the filing party hereby agrees and promises to dismiss the action without prejudice and re-file it in the appropriate jurisdiction and venue per the terms of this clause. The defending party shall be entitled to recover from the filing party all costs and damages, including but not limited to attorney's fees, incurred while enforcing compliance with this section.

- f. **Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE ARISING FROM OR RELATED TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLEX ISSUES, THEREFORE THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY.

EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (i) IT UNDERSTANDS AND HAS CAREFULLY CONSIDERED THE IMPLICATIONS OF SUCH WAIVER; (ii) IT MAKES SUCH WAIVER VOLUNTARILY; AND (iii) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUALITY OF THIS CLAUSE.

- g. **Entirety of Agreement.** This Agreement, all Exhibits attached hereto, and all Orders or SOWs herein incorporated by reference set forth the entire understanding of the Parties and supersede all prior written or oral representations, negotiations, proposals, understandings, quotations, communications, and agreements whether formal or informal between the Parties.
- h. **Force Majeure.** The Company shall not be liable to the Customer for any delay or failure to perform under the terms of this Agreement as a result of: (i) any act of God; (ii) disease; (iii) epidemic; (iv) pandemic; (v) public health emergency; (vi) quarantine; (vii) hostility (whether war is declared or not); (viii) civil war; (ix) rebellion; (x) revolution; (xi) insurrection; (xii) military or usurped power or confiscation; (xiii) nationalization; (xiv) national, state or local government sanction, regulation, restriction or emergency (declared or undeclared); (xv) riot; (xvi) crime; (xvii) act of terrorism; (xviii) enemy action; (xix) civil commotion; (xx) unavoidable casualty; (xxi) fire; (xxii) earthquake; (xxiii) interruption or failure of electricity or utilities; (xxiv) electrical, utilities or mechanical difficulty; (xxv) inability to obtain labor; (xxvi) lack of materials; (xxvii) strike (regardless of the cause); (xxviii) lockout; (xxix) work stoppage or other labor disturbance; (xxx) Adverse Weather Condition; or (xxxi) any other cause or condition, whether similar or dissimilar to any of the foregoing, beyond the reasonable control of the Company (each a "Force Majeure Event"). As used herein, "Adverse Weather Condition" means rain, freezing rain, snow, sleet, hail, fog, tornado, flood, hurricane, tsunami, lightning or any other adverse atmospheric condition with respect to temperature, pressure, humidity, wind or any combination thereof.

Customer understands and agrees that any delay in Company's performance due to a Force Majeure Event and contrary to this Agreement shall not constitute a breach of the same nor shall it be a ground for cancellation, suspension or termination of the Agreement.



- i. **Attorney's Fees.** In the event of any litigation arising from or related to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its litigation costs, including but not limited to reasonable attorney's fees, from the non-prevailing party, subject to the limitations contained in section XI(c).
- j. **Severability.** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- k. **Counterparts.** This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute an original and all such counterparts together constituting one and the same instrument.
- l. **Outdated Deliverables.** If after five (5) years from the date on which a System is placed in operation, Company reasonably forms the opinion that the System, or specific Product can no longer be economically maintained to the necessary high standards, Company will notify Customer in writing of the estimated cost of rebuilding or replacing all or part of the System.

Should Customer fail to make the System available for rebuilding or replacement, or should the Parties fail to agree on the appropriate changes and charges needed to maintain said System, then Company may, at its sole discretion and without incurring any liability, withdraw any maintenance Service on said System or Product. Company shall give Customer two (2) weeks' notice of its intent to withdraw any maintenance Service on a System or Product subject to this clause.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

KEY CODE MEDIA, INC.

By: _____
Mike Cavanagh, President
Date: _____

By: _____
Name: _____
Title: _____
Date: _____



EXHIBIT A

STATEMENT OF WORK



EXHIBIT B

CUSTOMER'S INSURANCE REQUIREMENTS

A. Customer must secure and maintain throughout the entire duration of this Agreement, at its sole cost and expense, the following types of insurance with limits of coverage at no less than those set forth below.

1. Workers' Compensation Insurance Policy (or its equivalent in the country in which it operates), including Employers' Liability Insurance, in compliance with the statutes or provincial laws where the project is set to take place. The policy must cover employees, volunteers, temporary workers and leased workers. The minimum coverage limits for this policy shall be:

\$1,000,000 Per Accident
\$1,000,000 Per Employee - Disease
\$1,000,000 Policy Limit - Disease

2. Commercial General Liability Insurance Policy providing coverage for bodily injury, property damage, and personal and advertising injury including contractual liability and products/completed operations liability coverage with minimum limits of:

\$1,000,000 Per Occurrence - Bodily Injury/Property Damage
\$1,000,000 Per Occurrence - Personal & Advertising Injury
\$2,000,000 General Aggregate
\$4,000,000 Products/Completed Operations Aggregate.

3. Personal Property Replacement Coverage equal to the replacement cost of all Deliverables shown in the SOW.

The policy language must define or utilize similar language to allow an interpretation of the term "Occurrence" in conformity with the following: any circumstance where a defect or deficiency in "Your Work" results in property, bodily, personal and/or advertising damage so long as the damage was not intended by you, when "Your Work" was performed pursuant to this Agreement.

Products completed/operations insurance shall be maintained for a minimum period of six (6) years after final payment or for the period of time dictated by the applicable statute of repose, whichever is longer. Customer hereby agrees and promises to provide annual evidence of coverage to Company during the aforementioned period.

4. Commercial Automobile Liability Insurance Policy covering owned, non-owned, leased or hired autos with a minimum combined single limit of:

\$1,000,000 Per Accident

5. Umbrella Liability Insurance Policy with a minimum limit of:

\$3,000,000 Per Occurrence



All umbrella or excess liability insurance policies must be issued on a “follow form” coverage. These must also provide that the coverage afforded to the Additional Insureds defined below is primary and non-contributory to any other insurance, regardless of kind, afforded to or maintained by the Additional Insureds and shall be subject to use to meet the requirements. These policies shall have the following or similar language necessary to convey or allow for an interpretation of the policies in conformity with the language below:

Endorsement - Excess Liability Policy, Priority of Coverage – THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. Any entity qualifying as an additional insured on the insurance stated in the schedule of the underlying insurance shall be an additional insured on this policy. As respects the coverage afforded to any additional insured this insurance shall apply immediately upon exhaustion of the insurance stated in the schedule of the underlying insurance. This insurance shall apply before any other insurance available to the additional insured, on which the additional insured is a named insured, whether such other insurance is primary, excess, contingent, or on any other basis, and the policy holder (herein Customer) shall not under any circumstance seek contribution from such other insurance(s) of the additional insured. Customer shall, by specific endorsement to its umbrella/excess liability policy, ensure that vertical exhaustion is enforced as it is the specific intent of the Parties that Customer procures the umbrella/excess carrier’s policy to waive and forego any viable “horizontal exhaustion” right it may claim in regard to any insurance any Additional Insured might carry for its own benefit or on the behalf of other Indemnitees.

If the inclusion of this language or a similar one is not possible in the subject policy, Customer hereby agrees to be bound by this endorsement as it pertains to these policies.

6. Technology Errors and Omissions or equivalent Professional Liability Insurance Policy providing coverage for claims arising out of the professional services to be provided under this Agreement, including but not limited to privacy and data breach coverage, as well as network security liability coverage. The policy shall include coverage for all costs, fees, and expenses, including but not limited to damages, settlements, judgements, fines, or penalties, incurred by the Company resulting from an actual, alleged, or suspected theft, loss, disclosure, or access to Company data. The policy shall have no limitations on claims arising from a privacy or security event, regulatory investigations (including but not limited to any resulting settlements, fines, or penalties), an interruption in Customer services, the loss of personally identifiable or confidential data, infringement or disclosure of intellectual property, and/or any other event which could reasonably be expected to give rise to a claim against the Customer under this Agreement. The minimum coverage limit of this policy shall be:

\$3,000,000 Per Claim

7. Customer shall maintain All-Risk Property Insurance on a full replacement cost basis covering: (i) all Deliverables listed in the Statement of Work (SOW); and (ii) any tools, equipment, or materials (whether owned, leased, rented, or borrowed) used or anticipated to be used, including but not limited to the time during transit, storage at Company’s facility or warehouse, or installation, in connection with the performance under this Agreement. Coverage shall include inland marine or equivalent insurance where applicable. The policy shall include a waiver of subrogation in favor of Company and all Additional Insureds. For any Deliverables where Company retains title until full payment is made, Company shall



be named as a Loss Payee. Proof of such insurance shall be provided to Company upon request.

All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A-, VIII, or better.

Company and all Additional Insureds as identified herein must be named as additional insureds in Customer's Commercial General Liability, Commercial Automobile Liability and Umbrella Liability policies. The additional insured endorsements shall be made on a form at least as broad as ISO Form CG 20 10 07 04 (for ongoing operations work) together with ISO Form CG 20 37 07 04 (for completed operations work), or the equivalent ISO Forms. The coverage provided to the Additional Insureds shall be at least as broad as the coverage provided to the first named insured. The additional insured status must be provided regardless of the nature of the relationship between the parties.

All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). Additional insured coverage shall be extended to include products' completed operations coverage. Further, coverage for the Additional Insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, whether collectible or not. The Commercial General Liability policy shall not include any exclusions or limitations for: (1) third party-over actions; (2) communicable disease, including but not limited to COVID-19, coronavirus or other related or similar illnesses or conditions; or (3) claims by employees of any of Customer's contractors, subcontractors or independent contractors. No policy shall contain a self-insured retention. No policy shall contain a deductible of more than \$25,000. All deductibles shall be the sole responsibility of the Customer and shall not apply to the Company.

All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, Company shall receive at least thirty (30) days written notice thereof from the insurer. Prior to commencing performance, Customer shall submit to Company an endorsement to the policy confirming that such notice will be given and memorializing the insurers' agreement to provide said notice. Customer shall also deliver to Company all certificates of insurance evidencing full compliance with this exhibit prior to the commencement of performance and annually at least ten (10) days prior to the expiration date of each such required policy.

Certificates of insurance shall be delivered electronically, when possible, and identifying the Certificate Holder as follows:

Key Code Media, Inc.
270 S. Flower Street
Burbank, CA 91502

Customer shall promptly provide Company with copies of its insurance policies and endorsements upon request. If any of the required policies are written on a claim made basis, Customer shall maintain such coverage for a period of six (6) years after final acceptance by Company of Customer's performance and Customer shall provide evidence of such coverage on an annual basis throughout the six (6) year period. The insurance requirements set forth herein shall in no way modify, reduce, or limit the indemnification hereby agreed to by Customer. Any actions, errors or omissions that may invalidate coverage for Customer shall not invalidate or prohibit coverage available to the Additional Insureds. Receipt by the Company of a certificate of insurance, endorsement or insurance policy which is more restrictive than the requirements



herein stated shall not be construed as a waiver, modification, or implied or verbal agreement to modify the insurance requirements delineated above.

Company reserves the right to amend all requirements or policy limits stated herein and to require Customer's procurement of additional policies at any given time throughout the duration of this Agreement.

- B. Customer shall monitor each subcontractor's insurance and require them to secure and maintain commercially appropriate types and limits of insurance based on the scope and nature of the contracted work. Customer shall also require its subcontractors to name the Additional Insureds herein as additional insureds on the subcontractors' Commercial General Liability, Commercial Automobile and Umbrella Liability policies. Moreover, Customer shall require that its subcontractor's Umbrella Liability policies apply on a primary and non-contributory basis as to any insurance available to the Additional Insureds. Lastly Customer shall require that the subcontractors' umbrella/excess policies include the endorsement required in section A of this Exhibit or an equivalent endorsement that requires the subcontractors' umbrella/excess carriers to waive and forego any viable "horizontal exhaustion" rights as against the Additional Insureds.

If at any time throughout this Agreement Customer fails to maintain any required insurance, Company may, but is not obligated to, procure the missing insurance. Upon this occurrence, Customer must immediately reimburse Company for such expense. In the alternative, Company may treat such failure as a material breach by Customer and terminate the Agreement.

- C. Customer hereby agrees and promises not to keep any articles or goods that are prohibited or that would void Company or Customer's fire or extended coverage policy at the Work Site. If Customer is in violation of this clause, Customer will be given reasonable time to rectify the situation and cure the breach. If as a result of Customer's failure to cure such a breach Company's insurance premium is increased, Customer shall pay to Company the insurance premium increase amount.
- D. Customer hereby agrees and promises to cooperate with Company in all respects necessary, including but not limited to executing and delivering to insurers proofs of loss and/or any other document as may be requested, to submit and process any claim and collect the insurance proceeds.
- E. Customer shall give prompt notice to the Company in case of a fire, an accident or any other emergency occurring at the Work Site.