

MASTER SERVICES AGREEMENT

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Master Services Agreement

This Master Services Agreement (“MSA”) and the Service Order (“SO”) signed by or accepted online by Client are combined together by reference and create one integrated contract (the “Agreement”) between Kinetix Broadband, LLC (“we,” or “us,” including “our,” and “Kinetix”) and Client (“Client”). Each of Kinetix and Client may also be referred to as a Party and collectively as the Parties.

Service Orders and all the applicable documents included in the Service Order (“Included Agreements”) are legally integrated as if fully set forth as one Agreement.

Upon each Service Order renewal, including automatic renewals, this Agreement will be superseded by the terms and conditions set forth in the then currently published version of the MSA and the applicable Included Agreements available online as of the date on which Client’s services are renewed (the “Renewal Terms”). If Client does not agree to the Renewal Terms, Client may decline to renew services.

Definitions

These terms are used in this Agreement, Service Orders, and any Included Agreements and mean as follows:

Agreement means this Master Service Agreement, any Service Order(s), Included Agreements as applicable, and any written modifications thereto executed by the Parties.

Client means the person or company that has signed a Service Order or accepted it online.

Client Data means personally identifiable information and all other data, records, files, information, and content: (a) collected or used by Kinetix in connection with provision of services to Client under this Agreement; (b) provided by Client or its end users to Kinetix; or (c) aggregated de-identified or derived from (a) or (b).

Client Equipment means any technology including Client’s computer systems, networks, software, and other IT equipment furnished by or specifically paid for by Client and made available to Kinetix and its employees in connection with this Agreement.

Covered Device means any server (virtual or physical) or end-user computer that has an active Toolset installed.

Direct Cost means all expenses incurred by Kinetix specifically in connection with performing Services, such as cables, printing, supplies, external hard drives, incidentals, and any other charges incurred by Kinetix on Client’s behalf.

Emergency Replacement Fees mean any fees under \$500 to replace any component of infrastructure that Kinetix deems critical to maintain uptime of Client’s IT environment.

Force Majeure Event means, in relation to either Party, any event or circumstance beyond the reasonable control of that Party, including act of God, fire, explosion, flood, epidemic, power failure, telecommunication or Internet failure, governmental actions, war or threat of war, acts of terrorism, national emergency, riot, civil disturbance, sabotage, labor disputes, strikes, or any other events or circumstances whether similar or dissimilar to any of the foregoing.

“Including,” “include,” “in particular,” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

IT Outsourcing (“ITO”) means the managed IT services provided by Kinetix as described in the IT Outsourcing Scope of Services.

Kinetix means Kinetix Broadband, LLC, dba

Kinetix Data Center means a data center owned by Kinetix or at which we lease colocation space.

Kinetix Service Area means a 40-mile radius from any Kinetix offices listed at www.kbisp.com.

Monthly Recurring Fees are the recurring fees billed each month for Services. Monthly Recurring Fees are determined pursuant to the applicable Service Order executed by Client or approved online by Client.

Non-Covered Device means any electronic device that does not have the Toolset installed.

Offboarding Period means the time between Client’s notice of termination and the termination date.

Offboarding Services means the work provided by Kinetix at or around the Termination of Services. Offboarding Services include (a) deactivating or removing Kinetix-specific credentials, (b) remotely deactivating and uninstalling the associated Toolset, (c) providing an inventory of known credentials which are not Kinetix-specific, (d) arranging for the collection of Kinetix-owned equipment from Client’s facilities, (e) providing recommendations of third-party services and licenses which were associated with the concluding Services that Client may optionally contract to sustain, and (f) confirming update requests from third parties for services Client has requested be transferred.

Out of Scope Service means any additional services provided by Kinetix beyond those Services specifically included in the Service Order. Out of Scope Service will be billed to Client.

Service Order means any document signed by Client or approved online by Client that describes any Services to be provided by Kinetix, (which may be referred to as SO, Proposal, Quote, Sales Order, Statement of Work, or Scope of Work), all of said documents are referred to herein as “Service Order.”

Service Level (“SLA”) means Kinetix’s response, cadence, and resolution time guarantees for service requests as defined in the ITO Scope of Services.

Services means all services Kinetix provides to Client as set forth in an executed Service Order or otherwise accepted by Client.

Terms of Use means terms and conditions contained in any third-party agreement that affects or provides the Services described in Client’s Service Order.

Toolset means any hardware or software used by Kinetix to deliver the services that Kinetix provides. A list of the then current hardware and software will be made available to Client by Kinetix upon written request.

Travel Costs means all costs for travel outside of an Kinetix Service Area such as parking, airfare, rental car, and rideshare services incurred by Kinetix specifically in connection with performing services on Client’s behalf. This includes mileage, other travel costs, or time.

Effective Date and Enforceability

1. This Agreement is effective upon Client's execution of a Service Order with Kinetix ("Effective Date"). Client agrees that the person accepting online or signing a Service Order is the authorized agent of Client identified in such Service Order, and by such execution legally binds Client's company/business and Client's employees and agents to the Agreement.
2. All Service Orders are specifically incorporated herein and made a part of this Agreement. In the event there is a conflict between a specific term and/or condition of this MSA, the applicable Included Agreements, and Service Orders, then the terms and conditions of the applicable Service Order prevail followed by the Included Agreements, then this MSA. The execution or approval of a Service Order is also a representation and warranty that Client has reviewed and approved this MSA. Accordingly, Client is estopped from denying the terms within this MSA once Client has executed or approved a Service Order.

Term

3. This Agreement commences on the Effective Date and will remain in effect through the last day of the last month of any current Service Order Term or until terminated by either Party as set forth below.
4. The minimum number of Monthly Recurring Fee payments Client is obligated to pay under a Service Order equals the number of months stated in the Contract Term ("Term") of the Service Order.
5. In the event that multiple services are contained on a given Service Order, the Service Order Term will be fulfilled at the completion of the Term which will have begun at the start of the last service to be activated.

Confidentiality

6. Client and Kinetix understand and agree that the terms and conditions of this Agreement and all Service Orders are confidential between Client and Kinetix and neither Party will disclose the terms and conditions to any person other than such Party's directors, officers, employees, accountants, representatives, or agents (collectively referred to herein as "Agents") who have a need to know such information for purposes of this Agreement. Neither Party and its Agents will at any time or in any manner, either directly or indirectly, use for their personal benefit or for any reason other than the performance of this Agreement, or divulge, disclose, or communicate in any manner any of the other Party's confidential information. Both Parties will protect such information and treat it as strictly confidential. Further, from time to time, in connection with this Agreement, either Party may disclose or make available to the other Party confidential or proprietary information concerning its business, clients, products, or services (together, "Confidential Information"). Each Party agrees that (a) neither it nor its Agents will use Confidential Information belonging to the disclosing Party for any purpose other than for purpose(s) of this Agreement and (b) both will take all reasonable precautions to ensure that neither it nor its Agents disclose the Confidential Information of the other Party to any person (other than to such Party's Agents who have a need to know such Confidential Information for purposes of this Agreement). Each Party is liable for the breach of the Confidentiality clauses of this Agreement ("Confidentiality Section") by it or any of its respective Agents.
7. Confidential Information does not include any information that (a) was acquired from a source other than Client or Kinetix, as applicable, or their respective Agents, provided such source is not bound by a confidentiality agreement or other type of agreement with disclosing Party or otherwise prohibited from providing such information to the receiving Party; or (b) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public through no fault of the receiving Party or any of its Agents.

8. The Parties obligations under this Confidentiality Section will terminate three years after the termination or expiration of this Agreement; however, any Confidential Information that constitutes a trade secret remains subject to this Confidentiality Section for so long as such information constitutes a trade secret. This provision will survive termination of this agreement.
9. Upon request, the receiving Party shall return, in any form whatsoever, any specific Confidential Information of the disclosing Party (that is not considered Proprietary Information) to the disclosing Party so long as such return does not interfere with or prevent the Services requested in this Agreement. A Party may disclose the other Party's confidential information if it is required to be disclosed by law, judicial order, administrative order, subpoena, interrogatory, discovery request, investigative demand or other legal requirement or legal process, provided, however that such disclosing Party will promptly notify the other Party to the extent it may legally do so of any such requirement or order and will cooperate with the other Party to contest any such requirement or order.
10. The disclosing Party remains the owner of all Confidential Information and all documents of any nature that contain or are derived from Confidential Information provided by such Party, including all rights therein. The receiving Party has no license or rights with respect to the use of such Confidential Information other than as contemplated in this Agreement, nor is the disclosing Party restricted in providing and disclosing its Confidential Information to other sources for the same or different purposes.
11. If there is a breach of this Confidentiality Section, the disclosing Party would be irreparably, continuously, and immediately harmed and could not be made whole by monetary damages. In addition to any other remedy to which it may be entitled at law or in equity, the disclosing Party is entitled to an injunction or injunctions (without the posting of any bond, without proof of actual damages and without requirement to prove irreparable harm) to prevent breaches or threatened breaches of this Confidentiality Section and to compel specific performance of this Confidentiality Section, and neither the receiving Party nor its Agents will oppose the granting of such relief.

Billing and Payment

12. The rates and fees for any Services provided to Client by Kinetix under this Agreement shall be as set forth in the applicable Service Order. Changes in the Service (including changes in the volume of the Services) and changes in the rights or obligations of the Parties under this Agreement may result in adjustments to the fees if such change requires Kinetix to perform additional work.
13. In the first quarter of each calendar year Kinetix may, in our sole discretion, on a per Client basis, increase our fees up to 8% as a cost adjustment.
14. Notwithstanding the foregoing, Kinetix reserves the right (a) to refuse to support any IT related changes Client has made or (b) to propose a change in per unit rates and fees for any specific Service on any Service Order. If Client and Kinetix are not able to reach agreement on the revised rates and fees within 30 days of the proposal, either Client or Kinetix may, at the end of the thirty-day period immediately terminate the specific Service on the applicable Service Order. This termination remedy is only applicable to this paragraph. From thirty days after the proposed change until the termination date, the new proposed fees will apply. Termination of a specific Service as a result of such disagreement does not constitute a breach of this Agreement by either Party.
15. Client must provide Kinetix with valid electronic payment information and authorizes Kinetix to charge Client for all recurring services for the initial Term and any renewal term as set forth in the applicable Service Order. For Services billed on a flat-rate basis, Kinetix will charge Client in advance before Services are rendered. For Services billed on a metered or measured basis, Kinetix will charge Client after the Service is rendered. Kinetix will invoice for, and Client will pay Kinetix one-time fees for Services as described in the applicable Service Order in accordance with this Agreement.

16. The fees for Services within any Service Order include only the items specified in the Service Order. Direct Costs; Travel Costs; Emergency Replacement Fees; applicable country, provincial, state, and local governmental taxes; surcharges; fees; and shipping charges will be billed and may appear on a separate invoice.
17. Travel outside of an Kinetix Service Area and travel not included in the scope of the applicable Service Order will be billed at 50% of the Rates for such travel time.
18. Client will be billed in quarter hour increments for any Out of Scope Services at the then current hourly rate posted online at <http://www.aldridge.com/rates> ("Rates").
19. If the original Monthly Recurring Fee set out in the Service Order is based on a "unit" quantity, Client agrees that the quantity of "units" affects the recurring billing amount. Therefore, the billing amount is variable based upon coverage or unit usage for any given month. An increase of 20% or greater in unit usage or coverage for any given month may establish a new Minimum Monthly Recurring Fee for the duration of the Service Order (and becomes the ongoing contract rate). Such additional quantities will be billed according to the rates specified in the Service Order or this MSA.
20. Payment for all undisputed portions of each invoice must be received by Kinetix within 30 days from date of invoice. Failure to pay all undisputed amounts when due and payable is a Client Default and a breach of this Agreement, and Kinetix may exercise any or all of our remedies under this Agreement.
21. Kinetix may charge late charges of 1.5% per month on all past due amounts. Kinetix may also assess a fee for any payment transaction returned for insufficient funds or not paid when presented for payment.
22. Client will reimburse Kinetix for all costs incurred in collecting any overdue payments and related interest, including without limitation attorneys' fees, legal costs including post-judgment collection legal fees, court costs, and collection agency fees.
23. If Kinetix has applied a credit to Client's account, the credit will be forfeited if not used within one year.
24. If Client disputes any portion of an invoice, Client must provide Kinetix with written notice containing details of the dispute together with all relevant supporting documents within 30 days from the date of the invoice. Failure to raise a dispute within 30 days shall be deemed a waiver by Client of its right to later raise a dispute with regard to such amounts. Each Party agrees it will make reasonable efforts to resolve the dispute.
25. Client's entire account with Kinetix must be current and in good standing to ensure continued delivery of Kinetix Services.
26. Client authorizes Kinetix to obtain Client's credit and financial information as Kinetix deems appropriate and necessary to evaluate Client's credit worthiness.
27. If there are any Guarantors of this Agreement, each such Guarantor shall have the same obligations as Client under this Agreement for any payment to Kinetix required by the Agreement. Guarantor signatures may appear in this Agreement or a separate guarantor agreement, which is incorporated by reference herein. The combination of the signed agreements taken together shall constitute an Agreement among the Parties as if all of them had signed one document.

Remediation Expenses

28. In the event that Kinetix is required to provide services necessitated by vandalism, theft, misuse, neglect, acts of third parties, fire, water, casualty, acts of God, mob violence, labor disputes, malfunction of affiliated equipment, electrical failure, accidents, unauthorized material modification of Client's IT environment or repair of software, failure to allow or cause installation of the Toolset, or from other causes unrelated to the ordinary operation of hardware or software, such services are not subject to the SLA and will be deemed an Out of Scope Service regardless of whether it would otherwise be included.
29. Any work that is requested by Client or becomes necessary due to: (a) Client's use of any third-party hardware, software, information, or materials not approved by Kinetix; (b) Client's use of any Non-Covered Device; (c) hackers or other intentional or accidental damage or destruction of systems or data, including damage by Client's employees or representatives; (d) Client's performance of technical support functions or Client's unauthorized modification or repair of software; (e) Client's failure to follow Kinetix recommendations or to allow or cause installation of the Toolset; and (f) Client's failure to comply with other obligations under the Agreement, including (i) notifying Kinetix of known system malfunctions or (ii) providing the Minimum Notice Required for implementation as defined in the ITO Scope of Services is deemed an Out of Scope Service regardless of whether it would otherwise be included.

Telephone Call Recordings

30. Kinetix may record telephone calls between Kinetix and Client for quality, training, and forensic purposes. By entering into Service Order agreements with Kinetix, Client consents to such recordings and agrees that it is Client's responsibility to notify all members of Client's staff that such recordings are occurring.

Expectations of Kinetix and Kinetix Default

31. Kinetix shall perform or provide for the performance of the specified Service(s) set out in Client's Service Order(s) in accordance with the terms of this Agreement.
32. An "Kinetix Default" is deemed to have occurred upon the occurrence of a material breach of this Agreement by Kinetix if such failure has not been remedied within 30 days after Client has delivered to Kinetix written notice which sets forth with specificity the problems complained of and the specific remedial measures required to solve the identified problems; provided that if such failure is not capable of being cured within such 30 day period with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time in Kinetix's sole discretion (not to exceed ninety days). Kinetix then agrees to exercise reasonable diligence to cure such failure and provide Client reasonable notification of the status of the remedy.

Expectations of Client and Client Default

33. Client must perform the following as related to any contracted Service set out in Client's Service Order(s):
 - a. Return calls or e-mail messages to Kinetix to continue or complete resolutions
 - b. Permit Kinetix to establish remote assistance sessions for resolutions
 - c. Not remove, delete, or fail to allow or cause installation of any Kinetix-provided or installed Toolset
 - d. Be available to demonstrate or clarify reported IT issues, as part of investigation

- e. Inform Kinetix of time constraints or priority changes during interactions
 - f. Participate in verifying issue resolution
 - g. Contact Kinetix to re-open a completed issue if it recurs
 - h. Approve travel scheduling and expenses for Services outside of Kinetix Service Areas
 - i. Maintain IT hardware, software, and services in accordance with the Technology Catalog
 - j. Contact Kinetix immediately if Client believes that products or services managed by Kinetix are not functioning properly.
 - k. Provide Kinetix timely access to Client-controlled platforms and accounts necessary to perform the Services
 - l. Review and approve drafts, concepts, or deliverables within a reasonable timeframe
 - m. Ensure the accuracy and completeness of information provided by Client for use in the Services
34. Client agrees that Client has the sole responsibility for purchasing a sufficient number of licenses for Kinetix's use in providing Services as required by EULAs (End User License Agreements) on all servers, desktops, and laptops and if such software licenses do not exist, Client is solely responsible for timely acquiring any currently needed licenses and any licenses for additional servers, desktops, and laptops that are added. Client agrees to indemnify Kinetix for any installation, configuration, or use of software that is not appropriately licensed and for defense of Kinetix or for remediation necessitated by Client's action or non-action. Client understands and acknowledges that Client is solely responsible and liable for all licensing of software Client purchases or uses.
35. Client understands that some Services provided by Kinetix may rely on a third-party vendor (such as Microsoft, Citrix, VMWare, Datto, Adobe, Cisco products, and the like). Client agrees to use software/hardware in a manner as specified in the instruction manual and to abide by all EULAs, Acceptable Use Policies, and Terms of Use of the third-party vendor for any Third-Party Products provided to Client for the performance of the Services on the applicable Service Order. In setting up or managing Services Kinetix may accept such Terms of Use on Client's behalf. Kinetix will provide Client with applicable Third-Party Product Terms of Use within ten days of a written request.
36. Client must provide in advance in writing, and Kinetix must agree to, any policy or procedure Client expects Kinetix to honor or abide by in the performance of this Agreement.
37. Client is required to maintain appropriate backup services for Client Data. If Client's backup system is or becomes inadequate to properly protect Client Data, Kinetix will provide notice to Client and request that Client approve an adequate Kinetix backup Service Order. Client hereby agrees and releases Kinetix from any liability for any service interruption, data loss, or damages that occur as a result of Client's inadequate backup services during any time in which Client has failed to approve such request and until Client receives notice from Kinetix that said backup Service Order has been implemented.
38. A "Client Default" is deemed to have occurred upon the occurrence of any of the following:
- a. Client's failure to make, when due, any payment required under this Agreement
 - b. Client's failure to provide and keep current its electronic payment information
 - c. Client's failure to perform the expectations specified in the Expectations of Client and Client Default clauses of this Agreement.
39. If Client is in Client Default, in addition and without prejudice to Kinetix's right to terminate as set forth below, Kinetix has the right, upon 48 hours written notice, to suspend the performance of all or part of the Services under this Agreement for so long as such Client Default is continuing. Client accepts full responsibility for any loss, cost, and expense Client may incur due to such suspension and acknowledges that the Limitations of Liability provisions set forth herein specifically apply to this situation.

Termination

40. All terminations are effective the last day of the month and no prorations or refunds will be issued.

For Convenience

41. Kinetix will give Client at least 60 days' notice of intent to terminate any Service Order if Kinetix wishes to terminate Services at the end of any current Term.
42. Client will give Kinetix 60 days' notice, but no more than 90 days' notice, of Client's intent to terminate any Service Order at the end of any current Term.
43. If Client cancels any Services ordered under this Agreement before the expiration of the Term specified on the applicable Service Order for any reason other than Kinetix Default, or if Kinetix terminates this Agreement due to Client's default, Client will within 5 days of notice pay Kinetix, as liquidated damages and not as a penalty, an amount equal to eighty-five percent of the average monthly amounts invoiced in the preceding four months, multiplied by the number of months remaining in the current term. The Parties acknowledge that actual damages would be difficult to calculate with reasonable certainty. These damages will be in addition to all other obligations or amounts owed by Client to Kinetix.

For Cause

44. Either Party may terminate this Agreement immediately in the event either Party becomes bankrupt or becomes insolvent. If either Party merges with or into, or reorganizes, amalgamates, consolidates, or enters into any other transaction in which substantially all of its assets are transferred to another person or entity that fails, upon request, to assume in writing all of the obligations under this Agreement, the non-transferring Party may terminate this Agreement immediately.
45. If a Force Majeure Event prevents performance under this Agreement for a period in excess of 45 days, then the Non-Affected Party (as defined in the Force Majeure clauses of this Agreement), may elect to terminate this Agreement subject to five days prior written notice to the Affected Party. Nothing herein shall terminate Client's obligation to make payment for work performed.

Termination by Client

46. If Kinetix fails to meet the SLA three times in any six-month period and such failure is greater than 20% ("Chronic Failure"), upon 30 days' prior written notice, Client may terminate the ITO service on the applicable Service Order so long Client had delivered written notice to Kinetix no more than five business days after the last day of each month in which Kinetix failed to meet the SLA. Kinetix will not be liable to Client or any third party for any costs or expenses with respect to such termination.
47. Upon Kinetix Default as defined herein, if Kinetix fails to cure within the notice period in accordance with the Expectations of Kinetix and Kinetix Default clauses of this Agreement and Client had provided written notice of its intention, Client may immediately terminate this Agreement or one or more of the Services.

Termination by Kinetix

48. Kinetix may terminate this Agreement upon a Client Default subject to 30 days' prior written notice to Client. Kinetix may, either additionally or in the alternative, elect to terminate one or more of the Services for which a Client Default has occurred.

Effect of Termination

49. Upon termination, Client must promptly pay any amounts due and owing to Kinetix.
50. All Client Data, including but not limited to data backups, maintained by Kinetix, may be deleted.

Offboarding

51. Upon termination of this Agreement due to Client Default or for any other reason, Kinetix will provide and Client agrees to pay for Offboarding Services. Client agrees to pay the Offboarding fee which is calculated by totaling the last three months of Client's Minimum Monthly Recurring Fees and dividing by three. Kinetix has no responsibility or liability for assisting Client in transferring any services or providing any separation services or environment information until Client pays all past due amounts due and owing under this Agreement and pays for Offboarding Services. If Client or another provider changes elements of Client's IT environment during the Offboarding Period, Client assumes responsibility for all administration, associated support, and any interruption of services related to the changes. Kinetix assumes no liability for and does not agree to support changes initiated outside of Kinetix.

Holdover

52. If Client informs Kinetix after Client has submitted a termination notice that Client wishes to retain a service beyond the stated termination date ("Holdover"), Kinetix may delay the termination process. Kinetix has no obligation to re-activate or re-deploy services that may have already been deactivated as part of Client's originally scheduled termination prior to Kinetix's receipt and acknowledgment of Client's intent to retain services beyond the termination date. Client will be required to immediately execute a Holdover Agreement and to remit Holdover fees in an expedited manner specified by Kinetix. The Holdover fees will be equal to Client's total last monthly service fees prior to the date of termination, plus 20%. Services in effect at the time of termination may not be held over individually; Holdover will apply to all still-active services as a single package. If Client fails to execute a Holdover Agreement or remit the Holdover fees when due, the Holdover Agreement will be invalidated, and all services will be terminated by close of business on the next business day following the originally specified termination date.

Equipment

53. In the event Kinetix provides and installs any computer or network equipment ("Equipment") at Client's location that Client did not pay for, such Equipment shall at the termination of the applicable Service Order be the property of Kinetix regardless of where located or attached. Client may not sell, dispose of, rent or loan to third parties, rearrange, move, or disconnect the Equipment and is responsible for any damage to or loss of Equipment that Client, Client's Agents, end users, or invitees cause. At any time, upon one day's prior notice by Kinetix to Client, whether oral, written, or electronic, Client must provide Kinetix physical access to the Equipment for maintenance and other operational issues, and, in the event of termination of this Agreement or a Client Default, Client must grant access to allow Kinetix to remove the Equipment. Client agrees to pay Kinetix the replacement value of any such lost, stolen, misappropriated, seized, damaged, or unreturned Equipment. During the term of this Agreement, Client will be considered the owner of all Equipment. Client must provide insurance and pay property tax on such Equipment.
54. If Client enters into a separate rental or finance agreement (each an "Equipment Rental Agreement") relating to any equipment provided by Kinetix (referred to herein as "Rented Equipment"), Client's obligations with respect to such Rented Equipment (payment or otherwise) shall be solely governed by the Equipment Rental Agreement, and any modification or termination of this Agreement or any Included Agreements shall not operate to modify or relieve Client from any of Client's obligations under the Equipment Rental Agreement. Each Equipment Rental Agreement shall constitute a separate contract between Client and Kinetix, and the terms of any such Equipment Rental Agreements are not integrated into the terms of this Agreement or any Included Agreements. Amounts owed under any Equipment Rental Agreement are not included in the charges for the

Services provided under this Agreement, although such amounts may be invoiced along with the charges for the Services provided under this Agreement for Client's convenience.

55. If there is any Client Equipment located in any area owned or controlled by Kinetix, and if Client fails to remove such Client Equipment from such area within ten days after the expiration of the applicable Service Order or a Client Default, Kinetix may immediately, without notice or demand and in addition to any other right or remedy available at law or equity, declare such Client Equipment abandoned and take possession of such Client Equipment, without being guilty of trespass or misappropriation. Kinetix may use all force necessary to affect entry or to remove any or all of the Client Equipment from such areas and store the same, all at Client's expense. Any removed Client Equipment may be stored in any public warehouse or elsewhere at Client's cost, and Kinetix is not responsible for the care or safekeeping thereof. Client expressly waives any and all claims for loss, destruction, damage, or injury that may be occasioned by any of the aforesaid acts. In such an instance, Client RELEASES AND WAIVES ANY CLAIMS, CAUSES OF ACTION, OR DAMAGES AGAINST KINETIX RELATED IN ANY WAY TO CLIENT DATA THAT IS WITHIN OR ON THE CLIENT EQUIPMENT. Any Equipment so removed will be returned to Client upon Client's payment in full of all storage costs, past due fees, and charges. If within ten days following notice of such Equipment removal, Client has not requested the return of Client Equipment and has not paid any sums owed, then Kinetix may exercise all rights of ownership over such Equipment including the right to sell same and retain possession of any sale proceeds. Kinetix's exercise of any remedies provided for in the Equipment clauses of this Agreement shall be without prejudice to any other remedies provided to Kinetix herein or by applicable law.

Technology Catalog

56. Kinetix publishes a Technology Catalog that facilitates and helps ensure the highest level of service for Client's IT environment. Kinetix, in its discretion, maintains this curated list of IT solutions which represents the best fit for Clients that meet our target profile. Once Kinetix determines that a service or a product is no longer sold, manufactured, improved, repaired, maintained, or supported by the vendor or that another service or a product represents a better fit ("End of Support"), Kinetix may revise the Technology Catalog, and Client agrees that such revision does not represent a change in this Agreement and will not be considered a breach or provide cause for termination.
57. Kinetix commits to giving Client no less than 18 months' notice of its End of Support during Client's scheduled IT update and planning meeting, unless a product is known to cause significant harm to Client's IT environment, in which case a shorter notice will be given. If Client does not schedule or fails to attend the IT update and planning meeting(s), Client assumes responsibility for reviewing any changes posted to the Technology Catalog online. Accordingly, once Client has been notified of the service, software, or hardware's End of Support and the notice period has passed, Kinetix has no further obligation to support such hardware or software under any current Service Order. Should Client desire to have Kinetix continue support of such End of Support services or products, Kinetix may do so in our sole discretion, but such support would be considered Out of Scope and the SLA would not apply to any such support. In such a case, Client hereby releases Kinetix from any loss, cost, or expense arising out of Client's continuing use of End of Support services or products. Kinetix shall not be liable for any damages, direct or indirect, that arise out of or are caused by the End of Support services or products or that arise out of or are caused by Kinetix's continuing service for such products.

Proprietary Information and Work Product Ownership

58. Client agrees that the working information, concepts, strategies, campaign ideas, methodologies, processes, tools, templates, know-how, software, pre-existing materials, reports, and associated raw source data that Kinetix compiles and uses to provide the Services under any Service Order (“Proprietary Information”) belong solely to Kinetix. Proprietary Information includes but is not limited to the login credentials, virtual servers, configurations data, licensing, and service ticket history contained in Kinetix’s professional services automation software; the cloud environment; the software, database, and reports contained in monitoring tools; IT environment documentation; server and network logs; and recordings of calls and remote support sessions.
- a. Subject to Client’s full payment of all amounts due, Kinetix grants Client a non-exclusive, non-transferable, perpetual license to use the final marketing deliverables specifically identified in a Service Order (“Deliverables”) solely for Client’s internal business and marketing purposes. Unless otherwise agreed in a Service Order, Kinetix retains all right, title, and interest (including all intellectual property rights) in and to all drafts, working files, source files, concepts, rejected or unused materials, and derivative works created during the performance of the Services.
 - b. Client Materials. Client represents and warrants that any logos, trademarks, images, videos, copy, data, or other materials provided to Kinetix for use in the Services (“Client Materials”) are owned by Client or that Client has obtained all necessary rights, licenses, and permissions for such use. Client agrees to indemnify and hold harmless Kinetix and its Affiliates from any claims arising from Kinetix’s use of Client Materials in accordance with this Agreement.

Assumption of Risk and Compliance

59. Kinetix has no liability to Client and Client assumes all risk for any loss or damage arising in whole or in part from or relating to: (a) use of any third-party hardware, software, information or materials not approved or recommended by Kinetix; (b) viruses, hackers or other intentional or accidental damage or destruction of systems or data, including damage by Client or Client’s employees or representatives, although Kinetix will make every commercially reasonable effort to proactively minimize exposure to such risks; (c) any event beyond Kinetix’s or Client’s control including, without limitation, power failure, natural disaster, building modifications, or other events of a magnitude or type for which precautions are not generally taken in the IT service provider industry; and (d) Client’s failure to perform one or more of Client’s obligations set forth in this Agreement or any Service Order.
60. Client acknowledges that the disclaimers in this MSA apply to any alleged damages or claims related to data loss, data corruption, or breaches of Client’s network security arising out of or occurring simultaneously with the provision of any Services by Kinetix. Accordingly, Client represents and warrants to Kinetix that Client has obtained at least \$1 million cybersecurity insurance coverage and any additional insurance policies that can adequately reimburse Client for any such data loss occurrences. Client must provide a copy of its cybersecurity insurance policy.
61. Client is responsible for the accuracy of information submitted to its insurance carrier(s) and assumes all risk related to the information submitted.
62. In some cases, Kinetix may be transporting Client Equipment that contains Client Data. Kinetix is unable to obtain insurance to cover loss of data during transit of Client Equipment containing such Client Data. Therefore, if Kinetix moves or has equipment moved on Client’s behalf, Client represents and warrants to Kinetix that Client has obtained all the necessary insurance policies that can fully reimburse Client for any data loss occurrences or that Client will not suffer any unreimbursed financial damages related to the loss of or damage to Client Data.

63. Client has full and exclusive responsibility for understanding and making commercially reasonable efforts to achieve compliance with any regulatory, legal, or contractual obligations related to its business and to its data created, generated, or held by Client (including all such data held or backed up on Client's behalf by Kinetix).

Client Data and Network Security

64. Client accepts ultimate responsibility and liability for the protection and preservation of Client Data and computer network through the creation and supervision of a company-wide network security operational plan. Kinetix is an advisor only. Client acknowledges and understands that Kinetix is neither a bailee nor a fiduciary of Client Data, and that network security is Client's principal and fundamental responsibility and is dependent upon the education, training, and cooperation of every one of Client's employees, agents, and contractors who have access to Client's network.
65. Kinetix is responsible for protection and preservation of Client Data in its possession or control. Kinetix will comply and will cause its employees to comply with the security provisions in the Kinetix Data and Network Security clauses set out at <http://aldridge.com/infosecpolicies>. In addition, Kinetix will implement and maintain appropriate security measures in order to restrict access to and use of Client Data solely to Kinetix employees who may be performing services for Client under the applicable Service Order. Kinetix is responsible for any authorized or unauthorized collection, receipt, processing, storage, maintenance, disclosure, or use of or access to Client Data in its possession or control, and will, in all instances, comply with applicable law.
66. VIRUSES AND MALWARE MAY NOT BE ABLE TO BE REMOVED WITHOUT DELETION OF CERTAIN FILES. DURING THE RENDITION OF SERVICES, KINETIX WILL INFORM CLIENT BEFORE THE DELETION OF DATA, IF POSSIBLE. ONCE ANY DATA HAS BEEN DELETED FROM THE NETWORK SYSTEM, THE DATA MAY BE CONSIDERED COMPLETELY UNRECOVERABLE BY ANY MEANS. BACKUPS SHOULD BE STORED IN A LOCATION OTHER THAN AN ONSITE AREA BEING REPAIRED OR UPGRADED.
67. KINETIX IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE TO CLIENT DATA RESULTING FROM, ARISING OUT OF, OR RELATED IN ANY WAY TO CLIENT PERFORMING THE BACKUP OF ELECTRONIC DATA.
68. Client acknowledges that data backup and continuity services are not the same as data archiving services. Data backups are used to restore data in case it is corrupted or destroyed within the backup retention period. In contrast, data archives store information that is not needed for everyday operations but may occasionally need to be accessed, is still important and necessary for future reference, or must be retained for regulatory compliance. Client assumes complete responsibility and control for archiving Client's data.
69. If Kinetix provides data backup or management of Client's backup systems, Kinetix will make commercially reasonable efforts to complete each backup. Backed up data is like a snapshot of files at a specific point in time and that snapshot is retained for a period of at least seven days unless otherwise specified. A restoration from a backup will replace only the files contained in the then current retention period. For backups performed outside of Kinetix Data Centers, Client agrees to complete all recommended and necessary steps to ensure successful data backup. Certain exceptions, including but not limited to backup exceeding time window, files open, backup client not accessible, backup system failure, or inability to restore from backup, may from time-to-time cause interruption to any backup service. Accordingly, Kinetix does not warrant the validity or availability of the data that is being backed up.

Monetary Remedies for Failure to Meet SLA

70. For the purpose of determining monetary remedies for failure to meet SLA, achievement of the SLA is measured as a percentage, calculated as the number of service tickets created in a given month which met the response and resolution time guarantees divided by the total number of service tickets created in the same period ("SLA Achievement Percentage"). Response time begins when Kinetix receives a service request via an approved method, or when Kinetix generates an automated confirmation that the new service ticket has been created, whichever occurs first. Resolution time is the amount of time from when the request was received until it is successfully resolved.
71. If during any calendar month, Kinetix fails to meet an SLA Achievement Percentage of at least 95% ("SLA Target"), then Client becomes entitled to a credit equal to one day of the Monthly Recurring Fee per SLA Target percentage point missed. Such credit is Client's sole monetary remedy. Credits will be applied to Client's account upon Client's written request to Kinetix made within five business days of the last day of the month in which the SLA failure occurred. Client will only receive a credit for any failure to meet the SLA so long as Client's entire undisputed account is current and in good standing at the time of the request. In no event will the total credits for any occurrence exceed Client's then current Monthly Recurring Fee for ITO.
72. Notwithstanding the foregoing, Kinetix will not be deemed responsible for a failure to meet the SLA if any of these are present: (a) a Force Majeure; (b) Client's breach of this Agreement; (c) intentional acts or omissions of Client or Client's employees or agents causing damage or harm to Client's IT environment; (d) the malfunction of facilities, electrical power, or equipment Client provided; or (e) the failure of any software to perform in accordance with its specifications and such failure is not caused by Kinetix's negligence or willful misconduct; (f) any scheduled maintenance (including upgrades, repairs, replacements, or scheduled backups) or other mutually agreed-to downtime; (g) any downtime caused by: (i) changes Client made to applications or data; (ii) Client's use of ROOT or ADMIN privileges to any device; (iii) Client's requiring Kinetix to maintain, or continue to run, unsupported software or hardware; (iv) or failures resulting from repair or replacement recommended by Kinetix but rejected or delayed by Client for any reason.

WARRANTIES, DISCLAIMERS, AND LIMITATIONS OF LIABILITY

73. WARRANTIES

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, OR ARISING BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, INCLUDING ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE SUITABILITY OR PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES, OR ANY REPRESENTATIONS CLIENT OBTAINED FROM KINETIX CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR FROM ANY ADVICE, RECOMMENDATION, OR INFORMATION, WHETHER ORAL OR WRITTEN.

74. Third-Party Products and Warranties

CLIENT ACKNOWLEDGES THAT KINETIX DOES NOT MANUFACTURE HARDWARE OR SOFTWARE OR PROVIDE POWER OR INTERNET SERVICES. ALL HARDWARE AND SOFTWARE IS PROVIDED ON AN "AS IS" BASIS EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. "Third-Party Products" means any third-party hardware, services, or software. Some manufacturers' warranties or service contract terms and conditions for Third-Party Products may become void if Kinetix or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). KINETIX DOES NOT TAKE RESPONSIBILITY FOR THIRD

PARTY WARRANTIES OR FOR ANY EFFECT THAT KINETIX SERVICES OR RECOMMENDATIONS MAY HAVE ON THOSE WARRANTIES. Except as agreed to in writing between Client and Kinetix, Third-Party Products are exclusively subject to terms and conditions between the Third-Party and Client. Kinetix has no liability for Third-Party Products and Client must look exclusively to the Third-Party for any damages or liability with respect to the provision of such Third-Party Products. Except as otherwise specifically agreed to in a Service Order, Client authorizes Kinetix (or otherwise obtains the rights for Kinetix) to copy, install and modify, when necessary and as required by the Service Order, all Third-Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. For any Third-Party products or services acquired by Client, Client warrants to Kinetix that Client has obtained any licenses, consents, regulatory certifications, or approvals required to give Kinetix and our subcontractors or employees such rights or licenses to access, copy, distribute, use, modify (including creating derivative works) or install any Third-Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

75. DISCLAIMERS

KINETIX DOES NOT WARRANT OR REPRESENT THAT THE SERVICES PROVIDED WILL CAUSE CLIENT'S NETWORK AND COMPUTER SYSTEMS (INCLUDING COMPUTER HARDWARE, COMPUTER SOFTWARE, CONNECTED AND INTEGRATED DEVICES) TO FUNCTION WITHOUT ERROR OR INTERRUPTION. CLIENT ACKNOWLEDGES THAT THERE ARE INHERENT RISKS IN OPERATING A NETWORK CONNECTED TO THE INTERNET THAT COULD RESULT IN LOSS OF CLIENT'S PRIVACY, CONFIDENTIAL INFORMATION, AND CLIENT DATA. CLIENT FURTHER ACKNOWLEDGES THE RISK THAT ANY TOOLSET INSTALLED BY KINETIX MAY NOT DETECT, UNTIL AFTER IT OCCURS, ANY SYSTEM FAILURE OR FAILURE OF ANY DEVICE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, KINETIX DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN THIS AGREEMENT INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CLIENT HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE CLIENT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE. CLIENT IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN.

76. LIMITATION OF DAMAGES

THE LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM IS ASSERTED FOR BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER A CLAIM IS ASSERTED IN CONTRACT, TORT, OR STRICT PRODUCT LIABILITY, IRRESPECTIVE OF WHETHER KINETIX HAS ADVISED OR BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. CLIENT'S SOLE REMEDY FOR ANY KINETIX BREACH IS AS SET FORTH IN THIS AGREEMENT. KINETIX IS NOT LIABLE FOR ANY OTHER ALLEGED BREACH THAT KINETIX COULD NOT HAVE REASONABLY FORESEEN ON THE EFFECTIVE DATE. FURTHERMORE, KINETIX IS NOT LIABLE TO CLIENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, EXPECTANCY, RELIANCE, OR RESTITUTIONARY DAMAGES NOR IS KINETIX LIABLE TO CLIENT FOR LOST BUSINESS, LOST PROFITS, OR ANY OTHER SPECIAL DAMAGES INCLUDING BUT NOT LIMITED TO COST OF REMEDIATION OR REPAIR, REPLACEMENT OF LOST DATA, LOST DATA DAMAGES, BUSINESS INTERRUPTION DAMAGES, SUBSTITUTE VENDORS, ATTORNEYS' FEES, OR ANY OTHER OUT OF POCKET COSTS AND EXPENSES CLAIMED TO ARISE OUT OF AN ALLEGED KINETIX BREACH, ACTION, OR INACTION. NO CLAIM MAY BE ASSERTED BY CLIENT AGAINST KINETIX WITH RESPECT TO ANY EVENT, ACT, OR OMISSION THAT OCCURRED MORE THAN ONE YEAR PRIOR TO SUCH CLAIM BEING ASSERTED.

77. WAIVER OF CONSUMER RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES ACT

CLIENT WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, CLIENT VOLUNTARILY CONSENTS TO THIS WAIVER. CLIENT AGREES THAT CLIENT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN ENTERING INTO THIS AGREEMENT. CLIENT AGREES THAT THIS WAIVER IS CONSPICUOUS.

78. AGGREGATE LIABILITY

NOTWITHSTANDING THE FOREGOING, KINETIX'S AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICE PROVIDED UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS CLIENT PAID FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE SIX-MONTH PERIOD PRIOR TO KINETIX'S RECEIPT OF WRITTEN NOTICE OF THE CLAIM. CLIENT ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE, THAT THEY REFLECT THE ALLOCATION OF RISK SET FORTH IN THE AGREEMENT, AND THAT KINETIX WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY OR THE FEE FOR THE SERVICES PROVIDED BEING SUBSTANTIALLY HIGHER.

Force Majeure

79. The time for performance by Kinetix or Client of any term, provision or covenant of this Agreement, except for the payment of money, shall be deemed extended by time lost due to delays resulting from acts of God, epidemics, strikes, unavailability of building materials, civil riots, floods, material or labor restrictions by governmental authority, enforcement of governmental regulations or requirements, and any other cause not within the control of Kinetix or Client, as the case may be. Delays or failures to perform resulting from lack of funds or which can be cured by the payment of money shall not be Force Majeure Events. A Party affected by the Force Majeure Event (the "Affected Party") shall notify the other Party ("Non-Affected Party") in writing as soon as practicable of the event, giving sufficient details thereof and the likely duration of the delay. The Affected Party shall use all commercially reasonable efforts to recommence performance of its obligations under this Agreement as soon as reasonably possible. Delivery and performance dates will be extended in Kinetix's sole discretion as reasonably necessary to adequately restore services interrupted by the Force Majeure Event. Such nonperformance shall not be a default or a ground to terminate this Agreement except as set out in the Termination clauses of this Agreement.

Indemnification

80. Each Party shall indemnify, defend and hold the other Party, its directors, officers, agents, employees, and/or representatives, harmless from all liabilities, damages, loss, and expenses (including, without limitation, reasonable attorneys' fees and court costs) that such Party may suffer, sustain or become subject to as a result of any misrepresentation or breach of warranty, covenant, or agreement of the indemnifying Party contained herein or the indemnifying Party's gross negligence or willful misconduct in performance of its obligations under this Agreement except to the extent such cause of action, loss, expense, or liability is caused solely by the negligence or willful misconduct of the indemnified Party. If a cause of action arises from the negligence of both Parties, the relative burden of the cause of action will be attributed between the Parties under the principles of comparative negligence.

Representations and Warranties

81. Client represents and warrants that all approvals and consents for purchasing products or performing the Services that Client authorizes have been obtained or will be obtained at Client's expense. Both Parties represent and warrant that: (a) each is financially solvent and has the ability to perform its obligations hereunder; (b) each has the right to use any intellectual property that it provides to fulfill this Agreement and related Service Orders; (c) each is in compliance with laws and regulations applicable to its business; and (d) each will perform all its obligations under this Agreement on time. Each Party warrants that it has full power and authority to enter into this Agreement, and all necessary legal action has been taken to authorize the individual signing this Agreement on its behalf. Further, each Party agrees that an electronically signed or a signed electronically submitted copy of this Agreement has full force and effect.

Assignment

82. This Agreement may not be assigned, sublicensed, or otherwise transferred, in whole or in part, by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement to any affiliate of or a successor-in-interest in the event of a merger, reorganization, consolidation, or sale of all or substantially all of its assets or capital stock, change of control, or operation of law. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the Parties.

Non-Solicitation

83. For the duration of this Agreement and for a period of one year following the last date of service from Kinetix, neither Party (and its agents, employees, or affiliates) will, directly or indirectly, recruit, or attempt to recruit, discuss employment with, or otherwise utilize the services in any capacity of any person who is or was Client's employee or an employee or independent contractor of Kinetix (each a "Party Employee") during the Term. Neither Party shall be restricted in any general solicitation for employees (including through the use of employment agencies) not specifically directed at any Party Employee and provided further however that both Parties shall be restricted in hiring any Party Employee who responds to any such general solicitation. If either Party hires or contracts with a Party Employee in any capacity, the breaching Party agrees that it shall pay to the non-breaching Party, as liquidated damages, an amount equal to two times the total compensation earned in the previous 12 months for such Party Employee as reasonable and fair compensation for such breach. It is understood and agreed by the Parties that (a) a Party shall be damaged if the other hires a Party Employee in violation of this provision, (b) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (c) any sums payable as described in this provision are in the nature of liquidated damages and not a penalty, and are fair and reasonable, and (d) these payments each represent a reasonable estimate by the Parties of the fair compensation for the losses that may reasonably be anticipated from such loss of a Party Employee, and be the sole and exclusive measure of damages with respect to any such action. Once the payment of these liquidated damages has been made, the breaching Party shall be relieved of any and all further liability or any damages of any kind resulting from its conduct in violating this covenant relating to the hiring of the other's Party Employee.

Notices

84. Each Party shall give any notice or other communication under this agreement in writing. Notices are effective upon receipt by the Party to which the notice is given. Client agrees to receive notices related to security incidents via email rather than requiring them to be sent via the US Postal Service. All other notices must be given by (a) personal delivery, (b) courier service, (c) first-class certified mail, or (d) email as follows:

To Client:

Primary Contact (“POC”) from the information specified in Client’s Information Form or to the current information Client has furnished by sending email to help@aldridge.com.

To Kinetix

Kinetix Broadband, LLC
Attn: Legal Department
2950 N Loop W, Suite 800
Houston, TX 77092
Phone: 713-403-9150
legal@aldridge.com

85. Client must update all Client’s contact information if any of it changes, including but not limited to company name, the Primary Contact’s full name and title, Client’s billing contact information, current street address, phone number, and email address(es) by sending such updated information by email to help@aldridge.com. Kinetix is not responsible for non-delivery of any notice when it has been sent to the Primary Contact on file.

Severability

86. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

Governing Law

87. This Agreement will be construed and enforced under the laws of the State of Texas. Any action or proceeding arising out of or related in any way to this Agreement may be brought only in Harris County, Texas. The Parties waive any and all objections to the exercise of jurisdiction over them by such courts and to venue in such courts.

Negotiated Terms

88. The language, terms, conditions, and provisions of this Agreement are the result of negotiations between the Parties and this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement or based on a Party’s undertaking of an obligation under this Agreement.

Survival

89. The Parties' respective representations, warranties, and covenants, together with obligations of payment, non-solicitation, indemnification, confidentiality, and limitations on liability in this Agreement will survive the expiration, termination, or rescission of this Agreement and continue in full force and effect.

Headings

90. The headings of sections of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement in any way.

Entire Agreement

91. The Agreement together with all integrated documents as defined herein constitutes the entire agreement between the Parties with respect to such subject matter. The Parties acknowledge and represent that they have not relied on any written or oral previous or concurrent proposal, representation, assertion, guarantee, warranty, collateral contract, or other assurance, made by or on behalf of any other Party or any other person or entity, except for those specifically set out in this Agreement.

Miscellaneous Provisions

92. This Agreement cannot be amended, waived, or modified in whole or in part, except by written agreement of the Parties, or their respective successors or assigns.
93. The Parties to this Agreement are independent contractors and nothing in this Agreement will be construed to create a partnership, agency, or joint venture, agency, master-servant, employment, trust, fiduciary relationship, or any other relationship between the Parties or any of their employees.
94. Neither Party will use the name, logo, trademark, trade name, nor other marks of the other Party without such Party's prior written consent, except that Kinetix may use Client's name or website as a reference in our brochures, advertisements, and other promotional material unless Client specifically objects.
95. A Party's failure or delay in enforcing any provision of this Agreement will not be deemed a waiver of that Party's rights with respect to that provision or any other provision of the Agreement. A Party's waiver of any of its rights under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous, or future occurrence, whether similar in nature or not.

Attorneys' Fees

96. If any litigation is necessary, the prevailing Party is entitled to recover any costs or expenses incurred, including without limitation, attorneys' fees, legal costs including legal fees for post-judgment collection, court costs, and collection agency fees.