

## EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is made at Vallejo, California, dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Vallejo, a municipal corporation ("City"), and KeyW Corporation, a Maryland corporation, hereinafter referred to as "Vendor," who agree as follows:

- 1. Products.** Subject to the terms and conditions set forth in this Agreement, Vendor shall provide the City products as specified in Exhibit A, entitled "Equipment."
- 2. Payment.** City shall pay Vendor for materials rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B, entitled "Price." The payments specified in Exhibit B shall be the only payments to be made to Vendor for materials rendered pursuant to this Agreement.
- 3. Facilities and Equipment.** Vendor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing products pursuant to this Agreement.
- 4. Indemnification.** Vendor shall indemnify, hold harmless, and defend City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Vendor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Vendor's operations, or any subcontractor's operations, to be performed under this agreement for Vendor's tort negligence including active or passive, or strict negligence, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Vendor, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless to any limitation by insurance, with the exception of the sole negligence or willful misconduct of the City.

The provisions of this section shall survive the expiration or termination of this Agreement.

- 5. Insurance Requirements.** Vendor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements." Failure to maintain required insurance at all times shall constitute a default and material breach.
- 6. Accident Reports.** Vendor shall immediately report (as soon as feasible, but not more than 24 hours) to the City Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and

telephone numbers of the persons involved, (b) the names, addresses, and telephone numbers of any known witnesses, (c) the date, time, and description of the accident or other occurrence.

**7. Conflict of Interest.** Vendor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Vendor's family, business, real property or financial interests and the materials to be provided under this Agreement. Vendor shall comply with the City of Vallejo Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Vendor's family, business, real property, or financial interests occurs during the term of this Agreement that creates an actual or potential conflict of interest, then Vendor shall disclose such conflict in writing to City.

**8. Licences, Permits, Etc.** Vendor represents and warrants to City that all Vendor materials shall be provided by a person or persons duly licensed by the State of California to provide the type of materials to be performed under this Agreement.

**9. Business License.** Vendor, and its subcontractors, has obtained or agrees to apply prior to performing any materials under this Agreement to City's Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Vendor until such business license(s) has been obtained.

**10. Standard of Performance.** Vendor shall provide all materials required pursuant to this Agreement in accordance with generally accepted practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by a member of Vendor's profession currently practicing in California.

Vendor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Vendor's responsibilities under this section shall not be delegated. Vendor shall be responsible to City for acts, errors, or omissions of Vendor's subcontractors.

**11. Force Majeure.** Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by causes or circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts.

In the event that the Vendor is unable to meet the completion date or schedule of materials, Vendor shall immediately inform the City Representative of this in writing. If additional time is required to perform the work, the City Representative may adjust the schedule.

**12. Time is of the Essence.** Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

**13. Term.** The term of this Agreement shall commence upon issuance of purchase order and shall continue in full force and effect until June 30, 2020.

If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the City Council of the City of Vallejo. If funds to effect such continued payment are not appropriated, Vendor agrees to terminate any materials supplied to City of Vallejo under this Agreement, and relieve City of any further obligation therefore.

**14. Termination or Abandonment by City.** The City has the right, at any time and in its sole discretion, to immediately terminate this Agreement by giving notice to Vendor. Upon receipt of a notice of termination, Vendor shall provide not materials except as specified in the notice. Before the date of termination, Vendor shall deliver to City all City records and documents, all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Vendor for materials performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all materials or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for materials performed shall be based on an amount mutually agreed to by City and Vendor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Vendor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

**15. Assignment and Subcontracting.** Vendor shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

**16. Successors and Assigns.** All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and

assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

**17. Non-Discrimination/Fair Employment Practices.** Vendor shall not, because of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation of any person, refuse to hire or employ, or to bar or discharge from employment, or to discriminate in compensation, or in terms, conditions or privileges any person, and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment, without regard to his race, religious creed, color, sex, national origin, ancestry, or disability, medical condition, age, marital status or sexual orientation.

Vendor warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, sex, national origin, ancestry, disability, medical condition, age, marital status or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

**18. Notices.** All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City:                      Vallejo Police Department  
                                          ATTN: Chief of Police Shawny Williams  
                                          111 Amador Street  
                                          Vallejo, CA 94590

If to Vendor:                  The KeyW Corporation Legal Department  
                                          ATTN: Corporate Counsel  
                                          7767 Old Telegraph Road, Building 3  
                                          Severn, MD 21144

Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

Routine administrative communications shall be made pursuant to section 1 of Exhibit A.

**24. Integration Clause.** This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

**25. Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

**26. Law Governing.** This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**27. Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

**28. Ambiguity.** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**29. Gender.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

**30. Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**31. Compliance with Laws.** Vendor will comply with all statutes, regulations and ordinances in the performance of all materials under this Agreement.

**32. News and Information Release.** Vendor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through the City Representative.

**33. City Representative.** The City Representative specified in Exhibit A, or the representative's designee, shall administer this Agreement for the City.

**34. Counterparts.** The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

**35. Facsimile Signature; Electronic Signature.** This Agreement shall be binding upon the receipt of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

**36. Authority.** The person signing this Agreement for Vendor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Vendor.

**37. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Equipment," including any attachments Exhibit B, entitled "Compensation," including any attachments Exhibit C, entitled "Insurance Requirements," including attachments

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

The KEYW CORPORATION  
a Maryland corporation

CITY OF VALLEJO,  
a municipal corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Greg Nyhoff  
City Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Vallejo Business License No.

(City Seal)

ATTEST:

By: \_\_\_\_\_  
Dawn Abrahamson  
City Clerk

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Shawny K. Williams  
Chief of Police

APPROVED AS TO FORM:

\_\_\_\_\_  
Randy Risner  
Interim City Attorney

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Erika Leahy  
Risk Manager

**EXHIBIT A**  
**EQUIPMENT**

1. **Representatives.** The City Representative for this Agreement is:

Jerome Bautista  
Sergeant of Police  
111 Amador Street Vallejo, CA  
94590  
jerome.bautista@cityofvallejo.net

The Consultant's Representative for this Agreement is:

David Rosenblatt  
CSS SME  
7767 Old Telegraph Road, Building 3  
Severn, MD 21144  
drosenblatt@keywcorp.com

All routine administrative communications between the parties will be between the above named representatives and may be by personal delivery, mail, facsimile transmission, or electronic mail as agreed between the Consultant Representative and City's Representative.

2. **Equipment to be Provided.** The equipment provided shall be:

Attachment 1: Quote#EIG-102219-001-04  
Attachment 2: Non-Disclosure Agreement



## EXHIBIT B

### Compensation

1. **Vendor's Compensation.** City agrees to pay Vendor for those products set forth in Exhibit A of this Agreement, for a total not to exceed of seven hundred sixty six thousand eighteen dollars (\$766,018.00).

2. **Invoicing.** Invoices must be submitted, itemized as to quantity, part number, and description. In addition, invoices must show the name of the department, division, or section to which the material was delivered, and the City of Vallejo Purchase Order Number.

All delivery tickets must have a description of the commodity delivered. Mail invoices to the accounts payable section of the department and to the address, as noted on individual purchase orders. Delivery tickets and packing slips will contain the same information as the invoice. All pack slips and delivery tickets must include the receiving employee signature and printed name.

All prices shall be F.O.B. destination, address 111 Amador Street, City of Vallejo.

3. **Payment.** Payment is due thirty (30) days after the City has approved the invoice or after the City has accepted the goods, whichever occurs later.

Request for payment shall be sent to:

Vallejo Police Department  
Attn: Financial Management Section  
111 Amador Street Vallejo,  
CA 94590  
vpd.finance@cityofvallejo.net

4. **Accounting Records of Vendor.** Vendor shall maintain for three (3) years after completion of all materials hereunder, all records under this Agreement, including, but not limited to, records of Vendor's direct salary costs for all Materials and Additional Materials performed under this Agreement and records of Vendor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Vendor shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty four (24) hours' notice.

The obligations of Vendor under this section shall survive this Agreement.

5. **Taxes.** Vendor shall pay, when and as due, any and all taxes incurred as a result of Vendor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6. **Taxpayer Identification Number.** Vendor shall provide City with Vendor's complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service, and any other State or local tax identification number requested by City.

## EXHIBIT C INSURANCE

### REQUIREMENTS

Vendor shall procure and maintain for the duration of this Agreement, including any extensions thereto, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of materials hereunder by the Vendor, their agents, representatives, or employees or subcontractors.

**1. Minimum Limits of Insurance.** Vendor shall maintain limits no less than:

A. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**2. Deductible and Self-Insured Retention.** Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City of Vallejo, its officers, officials, employees and volunteers; or the Vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**3. Other Insurance Provisions.**

A. The insurance is to be issued by companies licensed to do business in the State of California.

B. For any claims related to the equipment provided pursuant to this Agreement, the Vendor's insurance coverage shall be primary insurance as respects the City of Vallejo, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City of Vallejo, its officers, officials, employees, agents, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

C. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.

D. The Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**5. Verification of Coverage.** Vendor shall furnish the City with certificates of insurance and original endorsements effecting general and automobile liability insurance coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

**6. Subcontractors.** Vendor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**7. Payment Withhold.** City will withhold payments to Vendor if the certificates of insurance and endorsements required in Paragraph F, above, are canceled or Vendor otherwise ceases to be insured as required herein.



7740 Milestone Parkway, Suite 400 | Hanover, Maryland 21076  
 443.733.1600 Main | 703.639.9193 Fax | [keywcorp.com](http://keywcorp.com)

A WHOLLY OWNED SUBSIDIARY OF JACOBS

21-Feb-20

To: Vallejo Police Department  
 Attention: Detective Jarrett Tonn  
 Subject: FIRM FIXED PRICE Quote  
 Quote #: EIG-102219-001-04

Delivery is 120 Days ARO. Training will be scheduled upon delivery of completed vehicle. This quote does not include sales tax. KeyW will provide a 2020 Chevrolet Suburban. KeyW is currently a wholly owned subsidiary.

ITEM#	PART #	ITEM / DESCRIPTION	QTY	UNIT PRICE	TOTAL PRICE
1	201470-001	BASE STATION - 2-Radio System	1	\$415,000.00	\$415,000.00
2	201321-001	BASE STATION - "Shark Fin" Antenna	2	\$700.00	\$1,400.00
3	201502-001 *	BASE STATION - Optional Training (5-Day ONSITE) <b>NOTE: CLASS SIZE IS LIMITED TO 6 STUDENTS.</b>	1	\$40,000.00	\$40,000.00
4	201460-003 *	BASE STATION - Two year extension of initial Warranty (2nd & 3rd year)	1	\$60,000.00	\$60,000.00
5	201570-002	Standard Vehicle Integration + Vehicle (with lights and sirens)	1	\$120,000.00	\$120,000.00
6	201370-001	TRACHEA2	1	\$32,000.00	\$32,000.00
7	201150-001	JUGULAR4	2	\$7,500.00	\$15,000.00
8	201151-002	JUGULAR4 Field Kit	2	\$8,880.00	\$17,760.00
Product will be delivered to: California				California sales tax:	\$64,857.30
				(US DOLLARS) TOTAL	\$766,017.30

*The KeyW Corporation is required to collect sales tax in the amount quoted above. Any order resulting from this quote shall include the sales tax amount unless the Buyer provides an exemption certificate.*

**\* Warranty Not Applicable**

This proposal is valid for a period of 90 days from the date of this quote and shall remain valid through 5/21/2020.

**The quote number appearing on this document must be referenced on all orders and other related correspondence.**

***Terms and Conditions:***

The KeyW Corporation Government Products Sector Terms & Conditions of Government Products Sale, shall be applicable to any order that results from this quote. All purchase orders must include reference to quote number as acceptance of KeyW/EIG Terms and Conditions, regardless of any other terms that may be incorporated in the PO, which shall not prevail. Terms and Conditions document can be downloaded from: <http://www.eigproducts.com/docs/eig-tc.pdf>.

**Go to <https://eigproducts.com/product-nda.html> to request a copy of the mandatory Non-Disclosure Agreement. Agreement must be completed by contract officer, or appropriate representative, prior to acceptance of PO.**

**Notwithstanding anything to the contrary, unless otherwise agreed to in writing by KeyW, the use of this quote in a third party proposal or any submission to a third party shall constitute acceptance of the KeyW Terms and Conditions by all parties, and the KeyW Terms and Conditions shall thereafter be non-negotiable.**

Technical questions regarding the products may be addressed to Technical Support at (813) 792-6231 or via email at [eigproducts@keywcorp.com](mailto:eigproducts@keywcorp.com). For contractual questions, please contact Contracts at (443) 274-1535 or via email at [eigcontracts@keywcorp.com](mailto:eigcontracts@keywcorp.com). Any other questions or additional information requests, please contact General Information at (443) 274-1863 or via email at [eiginfo@keywcorp.com](mailto:eiginfo@keywcorp.com).

***Delivery Schedule:***

Items in-stock will be shipped within 15 business days ARO. Out-of-stock items are generally shipped within 60-90 days ARO. Buyer should use 90 days for normal planning purposes. Actual delivery expectation will be confirmed at time of order placement.

All products ship on a first come first serve basis from the time they are available in-stock. KeyW will not hold orders for future delivery dates. All standard products are delivered with user manuals, with the exception of accessories.

If item(s) are delayed in delivery due to lags incurred by the receipt of a valid export license or receipt of any necessary certifications or approvals, KeyW shall not be responsible for any damages resulting therefrom. If an unfavorable export license, certification, or approval is received, Buyer's sole remedy and KeyW's sole responsibility shall be a refund of any monies paid by Buyer for the affected products.

***Warranty Statement:***

*A one (1) year warranty is included in the quoted price of the product unless otherwise specified above, as detailed in The KeyW Corporation Government Products Sector Terms & Conditions of Government Products Sale.*

***Intellectual Property (IP) - KEYW:***

Notwithstanding anything to the contrary contained herein (except for the limited license rights expressly provided The KeyW Corporation Government Products Sector Terms & Conditions of Government Products Sale), KeyW and/or its suppliers will retain all rights, title and interest in and to the KeyW software products and the intellectual property rights associated with KeyW hardware products, including, without limitation, all patent rights, copyrights, trademarks, service marks, related goodwill, designs and confidential and proprietary information; and all modifications to, and derivative works based upon, the products and the documentation, whether registered in any part of the Buyer's country or province or not. Buyer (or Customer) shall not claim any right or property therein or register or cause to be registered in any part of the world, any patent, trademark, trade name, copyright or design which is the property of KeyW or its third party suppliers.

KeyW retains for itself all intellectual property and production rights in and to all designs, engineering details, and other data pertaining to the KeyW hardware and KeyW software products and to all discoveries, inventions, patent rights, and developments arising out of work done in connection with this order and to any and all products resulting therefrom, including the sole right to manufacture any and all such products. To the extent Buyer (or Customer) has or obtains any right, title, or interest in any of the foregoing, Buyer (or Customer) hereby irrevocably assigns to KeyW any and all such right, title, and interest. Buyer shall not transfer, or permit any third party to transfer, any such rights in and to the KeyW products to the government, unless otherwise expressly authorized by KeyW in writing. Intellectual property includes, without limitation, patents, copyrights, trade and service marks, trade names, trade secrets, and semiconductor designs.

***Payment Terms:***

Payment Terms are Net 30.

***Proprietary Information:***

Any and all documentation or information KeyW uses or provides in fulfillment of the effort relating to this quote shall be considered KeyW Proprietary Information and shall remain our exclusive property.

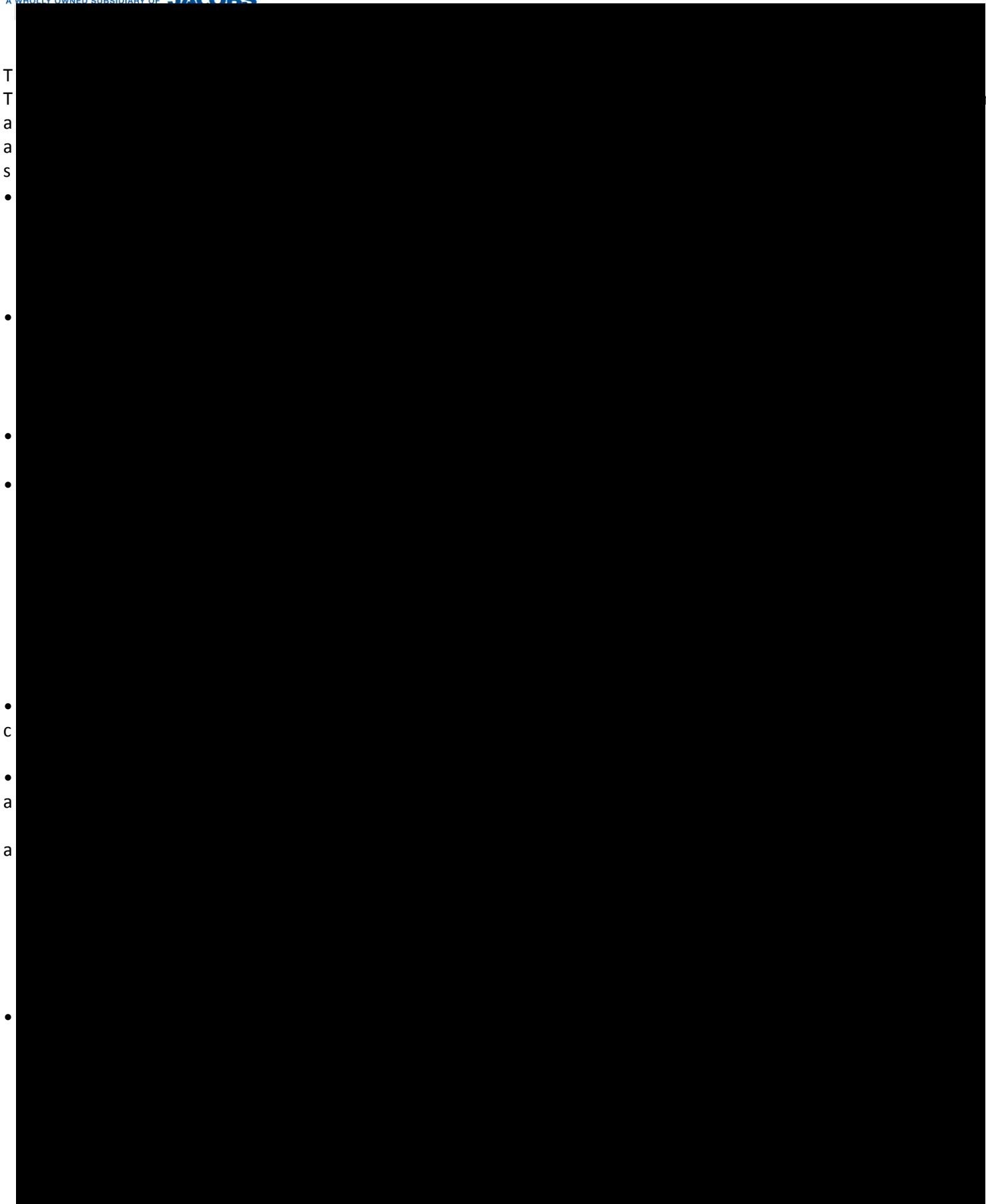
***Return Policy:***

All sales of KeyW products are FINAL. KeyW does not accept returns for refund or credit, including any credit towards upgraded technologies.



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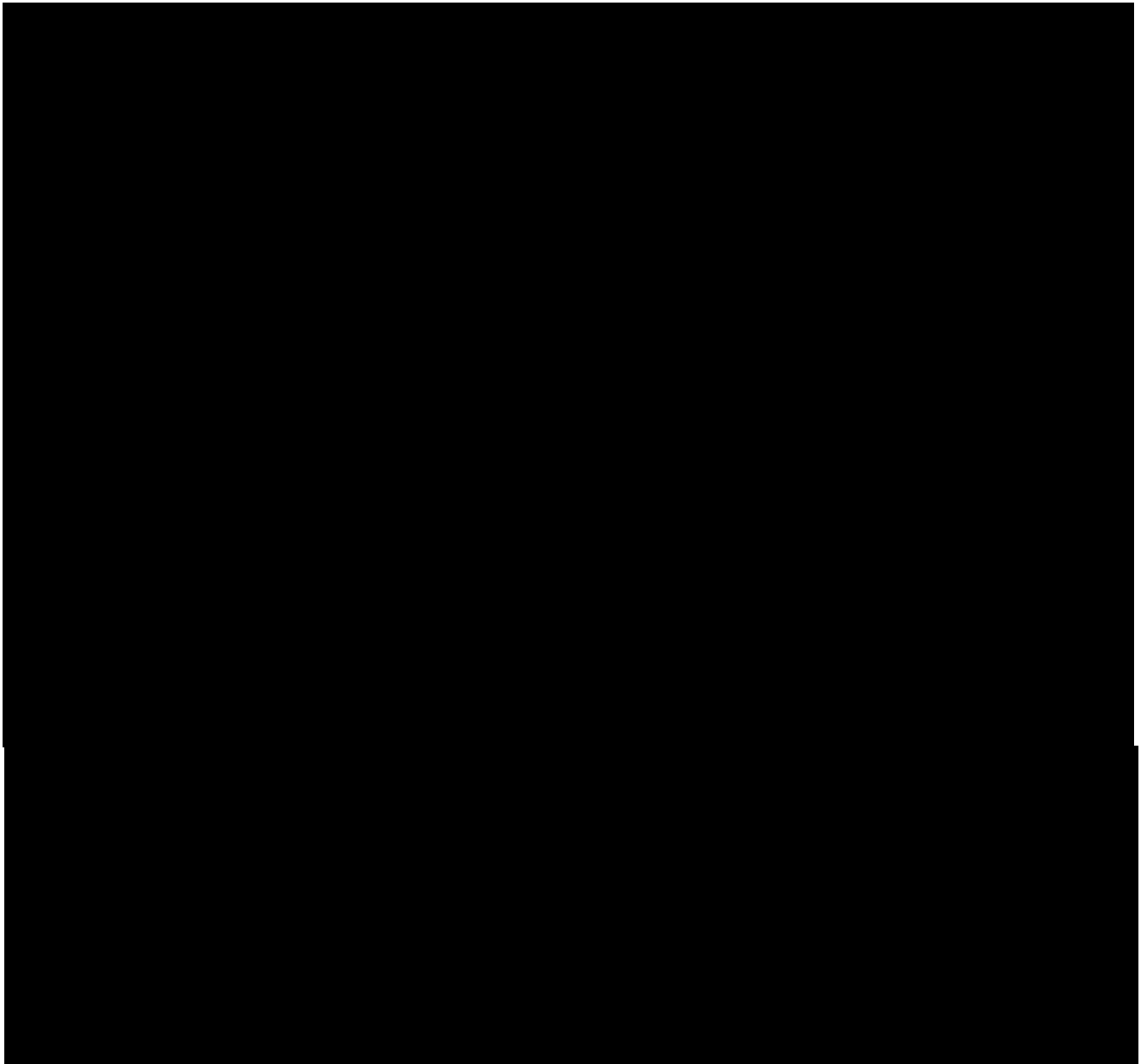
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21-Feb-20

KeyW PRODUCTS - Sole Source Justification Statement

To whom it may concern:

The following products are developed and owned exclusively by the KeyW Corporation with all rights reserved. KeyW maintains sole proprietary ownership of the below listed product lines. These products are available to qualified government customers, including those at the state and local level.



**As our products are only sold to government entities, and subcontractors on their behalf, the government is always given the most favorable pricing. All units are sold at the standard price. We do not provide discounts outside of those documented on our Standard Price List, available to all customers.**

Technical questions regarding the products may be addressed to Technical Support at (443) 274-1851 or via email at [eigproducts@keywcorp.com](mailto:eigproducts@keywcorp.com). For contractual questions, please contact Contracts at (443) 274-1535 or via email at [eigcontracts@keywcorp.com](mailto:eigcontracts@keywcorp.com). Any other questions or additional information requests, please contact General Information at (443) 274-1850 or via email at [eiginfo@keywcorp.com](mailto:eiginfo@keywcorp.com).

**KeyW PROPRIETARY**

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is entered into by and between The KeyW Corporation, a Maryland corporation (“KeyW”), with an office located at 7740 Milestone Parkway, Suite 500, Hanover, MD 21076, and the Vallejo Police Department, (“Receiving Party”), with an office located at 111 Amador Street, Vallejo, CA 94590 on the last date set forth in signature block (the “Effective Date”). In order to protect certain KeyW-developed products (“Products”) and KeyW Confidential Information both KEYW and the Receiving Party mutually agree as follows:

1. The parties intend to engage in negotiations and/or discussions concerning the purchase of CONDOR and all of its accessories (the “Purpose”), and in connection with such discussions or negotiations, KeyW may disclose or deliver to the Receiving Party and the Receiving Party’s directors, officers, employees, agents or advisors (collectively, the “Representatives”) certain of its trade secrets or confidential or proprietary information or KeyW products.
2. The term “Confidential Information,” as used in this Agreement, shall collectively refer to any and all information or material (tangible or intangible) that is disclosed to the Receiving Party by KeyW, whether written, electronic, oral or graphic, or obtained by the Receiving Party from a third party or any other source, including, but not limited to, information concerning KeyW Products and their associated software, operating manuals, and any related documentation (including each Products technical/engineering description(s) and capabilities), financial plans and records, marketing plans, business strategies, relationships with third parties, client lists, present and proposed products, trade secrets, know how, processes, computer software programs, software tools and descriptions of functions and features of software, source code, computer hardware designs, information regarding customers and suppliers, founders, employees and affiliates, methods for systems integration, company systems or software. Confidential Information shall also include any notes, analyses, compilations, studies or other material or documents prepared by the Receiving Party which contain, reflect or are based upon, in whole or in part, the Confidential Information.

Notwithstanding anything to the contrary, the Receiving Party shall not have any obligation with respect to any Confidential Information of KeyW or any portion thereof which the Receiving Party can establish:

- a. is publicly available or becomes publicly available through no action or fault of the Receiving Party;
  - b. was obtained by the Receiving Party from a third party, provided, that the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to KeyW or any other party with respect thereto;
  - c. was previously known by or in the possession of the Receiving Party without any obligation to keep it confidential, subject to the Receiving Party’s ability to document such knowledge; or
  - d. was independently developed by the Receiving Party without reference or access to KeyW’s Confidential Information, subject to the Receiving Party’s ability to document such development.
3. The term “Products,” as used in this Agreement, shall collectively refer to KeyW’s tools, equipment, and capabilities, both hardware and software products that provide users a capability to locate targets of interest. The Products protected under this NDA include, but are not limited to: The CONDOR system. These Products are restricted and otherwise controlled under United States Code, Title 18, and by other governing policies, regulations and laws, and missions utilizing the Products, in whole or in part, shall also be covered in their entirety by this NDA.
  4. Except where prohibited by law, the Receiving Party will use the same degree of care to protect such Confidential Information and Products of KEYW as it uses to protect its own information of like importance, but with no less than a reasonable degree of care. The Receiving Party and its Representatives shall hold in confidence, and shall not disclose, or cause or permit to be disclosed, any Confidential Information of KeyW; provided, however, that (i) the Receiving Party may make any disclosure of such information to which KeyW gives its prior written

consent, (ii) any of the Confidential Information may be disclosed by the Receiving Party to its Representatives who need to know such information in connection with the Purpose and who are informed of the confidential nature of such information and of the terms of this Agreement and who agree in writing to keep such information confidential, and (iii) in connection with a sale of the Product(s) to an end user, any of the Confidential Information may be disclosed by the Receiving Party to end users of the Product who are informed of the confidential nature of such information and of the terms of this Agreement and who agree in writing to keep such information confidential. Further, Receiving Party will ensure the operation of KeyW Products will be restricted to only those personnel permanently assigned to Receiving Party departments or sections tasked with completing electronic surveillance missions. Authorized personnel should be sworn members who possess arrest authority, but may include full-time civilian employees permanently assigned to the same department sections tasked with supporting electronic surveillance missions. The Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives, and agrees, at its sole expense, to take reasonable measures to restrain its Representatives from unauthorized disclosure or use of the Confidential Information or Products. The Receiving Party and its Representatives shall use the Confidential Information only for the Purpose and the Confidential Information shall not be used for any other purpose without the prior written consent of KeyW.

The Receiving Party is subject to this NDA and except for court ordered, or other judicially mandated disclosures, will not disseminate, publish or release any (i) Confidential Information or (ii) information about the operations, missions, equipment, concept of operations, mission, equipment/technology or investigation results, methods or any other information related to or arising out of the use, deployment or application of the Products that would be deemed a release of technical data as is described and agreed to under this NDA. In the event of a court ordered or judicially mandated disclosure, Receiving Party shall use its best efforts to make such disclosure in a manner that provides maximum protection of the information to be disclosed. Receiving Party shall notify KeyW upon receipt of such order or mandate, provide a copy of any such written order or mandate, and provide KeyW with prompt written notice of any such request or requirement prior to the disclosure so KEYW may seek a protective order or other appropriate remedy. If, in the absence of a protective order or other remedy or the receipt of a waiver by KeyW, the Receiving Party is nonetheless, legally compelled to disclose any such information, the Receiving Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information or information relating to the Products which outside counsel advises, in writing, that the Receiving Party is legally required to disclose, provided that the Receiving Party shall use its best efforts to preserve the confidentiality of same, including, without limitation, by cooperating with KeyW to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded to such information.

5. Except where prohibited by law, Receiving Party shall not discuss, publish, release or disclose any information pertaining to the Confidential Information or Products covered under this NDA to any third party individual, corporation, or other entity, including any affiliated or unaffiliated State, County, City, Town or Village, or other governmental agency or entity without the prior written consent of KEYW and shall further limit the circulation and disclosure of information regarding the Confidential Information or Products within its own organization to its employees or agents having a "need to know" about the Confidential Information and Products and shall ensure that they are informed of the sensitive nature thereof and agree to and are required to observe the provisions of confidentiality set forth herein and under Title 18 of the United States Code.
6. Upon termination or expiration of this Agreement, or within fourteen (14) days after receiving a request by KeyW, the Receiving Party shall destroy or return all Confidential Information, and all copies thereof, and, upon request, the Receiving Party shall furnish to KeyW written confirmation that it has complied with this section. Notwithstanding the foregoing, neither the Receiving Party nor its Representatives will be required to erase electronically stored Confidential Information that has been saved to a back-up file or other electronic medium in accordance with its or its Representatives ordinary back-up practices.
7. KeyW is and shall remain the exclusive owner of its Confidential Information and all patent, copyright, trade secret, trademark, domain name and other intellectual property rights therein or in the Products. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.
8. This Agreement does not create any agency or partnership relationship.

9. The Receiving Party shall take precautions to ensure information concerning the Products and Confidential Information are stored and/or destroyed in a manner that precludes unauthorized access. Information about the Products and Confidential Information may not be used in legal proceedings, press releases, court documents, public forums, interviews, direct or indirect statements to the media or public, without first obtaining prior written consent from KeyW.
10. In the event the Receiving Party receives a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) or an equivalent state or local law, the civil or criminal discovery process or other judicial, legislative or administrative process to disclose information concerning the trade secret or pricing information related to the Products, associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities), or any information that mentions information related to KeyW personnel, the Receiving Party will immediately notify KeyW of any such request telephonically and in writing in order to allow sufficient time for KeyW to review the request. Receiving Party will not be required to notify KeyW of requests related solely to usage of the Product or statistics related to the Product.

Notifications shall be directed to the attention of:

The KeyW Corporation  
Attention: General Counsel  
7767 Old Telegraph Road, Building 3  
Severn, MD 21144  
443-875-5324

11. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Purpose.
12. KeyW represents and warrants to the Receiving Party that it has the right to disclose any Confidential Information disclosed under this Agreement, and that such disclosure does not violate the rights of any third parties. **NO OTHER WARRANTIES ARE MADE BY KEYW UNDER THIS AGREEMENT.** The Receiving Party acknowledges and agrees that all Confidential Information is provided as-is, without any representation or warranty, express or implied, as to the accuracy or completeness thereof.
13. This Agreement shall terminate two (2) years from the Effective Date of this Agreement. The Receiving Party's duty to protect Confidential Information and the Products shall survive until such time as all such information disclosed hereunder becomes publicly known and made generally available through no action or inaction of the Receiving Party.
14. The Receiving Party hereby agrees that its failure to perform any obligation or duty which it has agreed to perform under this Agreement will cause irreparable harm to KeyW, which harm cannot be adequately compensated for by money damages. It is further agreed by the Receiving Party that an order of specific performance or for injunctive relief against the Receiving Party in the event of a breach or default under the terms of this Agreement would be equitable and would not work a hardship on the Receiving Party. Accordingly, in the event of a breach or default by the Receiving Party hereunder, KeyW, without any bond or other security being required and in addition to whatever other remedies are or might be available at law or in equity, shall have the right either to compel specific performance by, or to obtain injunctive relief against, the Receiving Party, with respect to any obligation or duty herein or breach thereof.
15. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. The Receiving Party may not assign or otherwise transfer this Agreement or any of its rights and obligations hereunder to any third party without the prior written consent of KeyW, which consent shall not be unreasonably withheld.
16. This Agreement shall be governed by the laws of the State of California, without reference to conflicts of laws principles.
17. If any provision of this Agreement is found to be invalid or unenforceable in whole or in part, the parties agree that such provision shall be reformed and construed to the maximum extent enforceable, and that the remaining provisions shall remain valid and enforceable to the maximum extent compatible with law.

18. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or confidential information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by an amendment in writing signed by both parties hereto.

19. The parties and their Representatives shall abide by all export laws, rules and regulations of the United States Government, or any agency thereof, including, but not limited to, the Export Control Regulations of the US Department of Commerce, the International Traffic in Arms Regulations of the US Department of State, and the National Industrial Security Program Operating Manual (DOD 5220.22-M), in connection with the disclosure, use, export and/or re-export of all information disclosed under this Agreement.

**THE KEYW CORPORATION**

**RECEIVING PARTY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

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Date