AMENDMENT TO
SOFTWARE AS A SERVICE AGREEMENT FOR
DHS UTILITY SERVICE APPLICATION

STATE OF TEXAS   §
                         §
COUNTY OF BEXAR   §

This Amendment is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as "City"), and Kinetech Cloud, LLC (hereinafter referred to as "Kinetech"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WHEREAS, the City entered into a Software as a Service Agreement with Kinetech for a DHS Utility Service Application that commenced on November 21, 2018, and terminates on November 20, 2019 (hereinafter referred to as "the Agreement"); and

WHEREAS, the Agreement provides for renewal and extension under the same terms and conditions for one additional, three year period with City Council approval ("Renewal Period One") and includes subsequent renewal options for the City; and

WHEREAS, the Parties agree that the Agreement should be renewed and extended, and revised to increase the City's usage capacity to 30,000 annual applications and to provide for up to $20,000.00 for enhancements as requested by the City; and

WHEREAS, it is in the best interest of the City that an amendment of the Agreement now be executed; **NOW THEREFORE:**

City and Kinetech agree to amend the Agreement as follows:

1.0 AMENDMENTS

1.1 <u>Term</u>. City hereby elects to renew and extend the Agreement for Renewal Period One. Section 2.1 is hereby revised to read as follows:

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 21, 2018 ("Effective Date") and terminate on November 20, 2022.

1.2 <u>Infrastructure</u>. Section 3.5, Infrastructure, is hereby revised to increase the City's usage capacity from 15,000 to 30,000 annual applications. In conjunction with the licensed Application Software, Kinetech shall provide sufficient Infrastructure to support the anticipated requirements of the System for 30,000 annual applications.

1.3 <u>Enhancements</u>. Section 3.6.3, Enhancements, is revised to read as follows:

3.6.3   <u>Enhancements</u>. Kinetech shall provide Enhancements as requested by the City in an amount not to exceed $20,000.00 for the fees specified in Article IV. Compensation to Kinetech.

1.4 <u>License and Service Fees</u>. Section 4.1 is revised to read as follows:

4.1.1   <u>Original License Term</u>. City shall pay Kinetech a fee in the amount of $48,500.00 for the Original License Term.

4.1.2   <u>Renewal Period One</u>. City shall pay Kinetech a fee in the amount of $36,250.00 for each year during Renewal Period One.

4.1.3   <u>Renewal Period Two</u>. If City elects to renew this Agreement for Renewal Period Two, City shall pay Kinetech a fee in the amount of $39,250.00 for Renewal Period Two.

4.1.4   <u>Renewal Period Three</u>. If City elects to renew this Agreement for Renewal Period Three, City shall pay Kinetech a fee in the amount of $39,250.00 for Renewal Period Three.

1.5 <u>Invoicing</u>. Section 4.3.3 is revised to read as follows:

4.3.3   <u>Invoices for Enhancements</u>. Invoices for Enhancements shall be submitted monthly for the hours incurred during said month. City shall have 30 days after receipt of any invoice hereunder to contest the invoice and may, without engaging in an act of default, withhold payment of fees that City disputes in good faith. The parties agree to work in good faith to promptly resolve all disputed amounts within 30 days after notice of dispute. City will pay the disputed amounts, if owed, immediately upon dispute resolution.

1.6 <u>Final Acceptance</u>. Section 4.5 is revised to read as follows:

4.5   Final acceptance of work products and services require written approval by Director. Payment will be made to Kinetech following demonstrable proof the products, services, or enhancements are completed to Director's satisfaction. City shall not be obligated or liable under this Agreement to any party, other than Kinetech, for the payment of any monies or the provision of any goods or services.

2.0 PROHIBITION ON CONTRACTS
WITH COMPANIES BOYCOTTING ISRAEL

2.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

(1) does not boycott Israel; and

(2) will not boycott Israel during the term of the contract.

2.2 This section only applies to a contract that:
  (1) is between a governmental entity and a company with 10 or more full-time employees; and
  (2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

2.3 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

2.4 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

2.5 By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

3.0 PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Kinetech hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Kinetech's certification. If found to be false, or if Kinetech is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

4.0   PROVISIONS REMAIN IN EFFECT

All other terms, conditions, covenants and provisions of the above referenced Agreement, as previously amended, not specifically mentioned herein and revised by this document, are retained in their entirety, unchanged, and remain in full force in effect for the duration of said contract, and any renewals thereof.

5.0   ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same are in writing, dated subsequent to the date hereto, and duly executed by the parties.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO   **KINETECH CLOUD, LLC**

DocuSigned by:

Michael Guido

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_____   _____
(Signature)   *(Signature)*

Printed   Printed
Name: _____   Name: Michael Guido

Title: _____   Title: Chief Executive Officer

Date: _____   Date: 9/23/2019

Approved as to Form:

_____
Assistant City Attorney