

C2016-221



Application Date	Xceligent Rep	Metro/ Service Area	Territory	Term (12 mo. Minimum)
12/10/2015	Greg Hoard	Phoenix		12

BILLING START DATE Unless otherwise stated in a supplemental addendum, billing start date will be based on Xceligent's acceptance/execution of this agreement.

SUBSCRIBER CONTACT INFORMATION		BILLING CONTACT INFORMATION	
Company Name:	Town of Fountain Hills	Company Name:	
Contact Person:	Scott Cooper	Contact Person:	
Email Address:	scooper@fh.az.gov	Email Address:	
Web Address:	fh.az.gov	Web Address:	
Street Address:	16705 E. Avenue of the Fountains	Street Address:	
City, State, Zip:	Fountain Hills, AZ 85268	City, State, Zip:	
Phone:	(480) 816-5104	Phone:	
Fax:	(480) 837-3145	Fax:	

PRODUCTS	SERVICE ACTIVATION FEE
<input checked="" type="checkbox"/> CDX Pro	CDX Pro:
<input checked="" type="checkbox"/> Xceligent Direct (<input checked="" type="checkbox"/> Market / <input type="checkbox"/> Company)	Xceligent Direct: \$200.00

PRICING					
Seat #	Monthly Price	Extended Rate	Subscriber Type	Number	Monthly Amount
			Brokers/Agents/Users		
			Admin	1	0
			Xceligent Direct	1	\$300.00
			License	1	0
Total Monthly Rate>>					\$300.00

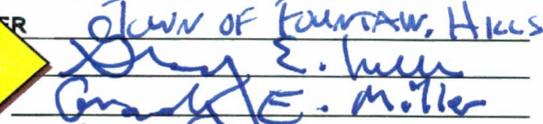
An addendum has been made part of this agreement.

SUBSCRIBER PAYMENT METHOD					
Credit Card		ACH (Bank Draft)		Invoice:	
<input type="checkbox"/> Monthly	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Monthly	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Semi-Annual	If a member opts to pay for service via invoice, only semi-annual and annual options are available. Note that payment must be received before system access will be provided.
<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> Annual	<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Annual	
Credit Card/Bank info on separate page.					

IDENTIFICATION INFORMATION: At least one form of ID info required prior to service activation

Federal Tax ID: _____ Drivers License #: _____ State: _____

Other terms and conditions of the CDX Service are set forth on the following pages of this Agreement. If the Subscriber is an entity, the undersigned represents that he or she is a duly authorized representative of the entity.

SUBSCRIBER	Town of Fountain Hills	XCELIGENT, Inc. , 103 SE Magellan Dr, Blue Springs, MO 64014
Signature: 	Signature: _____	Signature: _____
Name (Print): <u>Scott Cooper</u>	Name (Print): _____	Name (Print): _____
Title: <u>Town Manager</u>	Title: _____	Title: _____
Date: <u>2/1/2016</u>	Date: _____	Date: _____

If signing on behalf of an entity, I represent that I am a duly authorized representative of the entity shown under "Company Name." If I am representing a corporation, I acknowledge that the execution of this Agreement has been authorized by all necessary corporate actions.

1. **TERMS AND CONDITIONS** -The Terms and Conditions are incorporated herein, and Subscriber acknowledges that Subscriber has been given the opportunity to read, understand and agree to the Terms and Conditions and agree to be bound by such Terms and Conditions.

2. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic delivery will be effective as delivery of a manually executed counterpart of this Agreement.

2. **DEFINITIONS**

2.1 **Access Code:** The log in code and password combination assigned to each User allowing access to the CDX Service.

2.2 **CDX (Commercial Data Exchange):** The CDX Application and the Database Content that is available as part of the CDX Service.
2.3 **CDX Application:** Xceligent's proprietary software application used to provide the CDX Service.
2.4 **CDX Service:** Xceligent's standard web-based commercial real estate service offered by Xceligent that provides subscribers a means to profile commercial real estate property, listing and transaction information and exchange such information with other subscribers.
2.5 **Database Content:** Any commercial real estate property listings, including but not limited to, transaction information, attachments, and images entered into the CDX by Subscriber, Subscriber's Users and/or Xceligent.
2.6 **Derivative Works:** Reports or any other products produced utilizing or derived from Database Content.
2.7 **Users:** Those designees of Subscriber with Access Codes registered to access the CDX.

3. FEES AND PAYMENT

3.1 To the extent that the Subscription Fees for the CDX Service are quoted as a monthly rate, Subscriber will be invoiced in advance for such Subscription Fees. All fees are non-refundable.
3.2 If Xceligent terminates this Agreement pursuant to Section 4.2 or 4.3 of this Agreement, all fees due by Subscriber through the end of the current term are accelerated and immediately due and payable.
3.3 The Monthly Subscription Rate for any Renewal Term may be changed by Xceligent by providing Subscriber with written notice of such change at least ninety (90) days prior to the end of the then current Term. Xceligent will directly bill Subscriber for all of its Users.
3.4 The following personnel associated with Subscriber are required to be Users: (i) All licensed real estate professionals that derive the majority of their annual income from the sale or lease of commercial real estate, as well as administrative personnel; (ii) if Subscriber's primary focus is commercial real estate development, all real estate professionals engaged in the sale or lease of real estate, regardless of whether they hold real estate licenses are required to be Users, as well as administrative personnel, and (iii) if Subscriber is not a real estate brokerage firm (considered an "Affiliate Subscriber"), all personnel associated with an Affiliate Subscriber who are issued an Access Code by Xceligent.
3.5 Subscriber shall, in addition to paying its Subscription Fees, pay all sales taxes, use fees, excise fees, tariffs and any other charges by governments related to its use of the CDX Service, excluding those based upon Xceligent's net income.
3.6 Late payments will accrue interest at 1½% per month (or, if lesser, the maximum rate permissible by law) measured from the date the amount was due until the date such amount is paid by Subscriber. If Xceligent commences collection proceedings to recover past due amounts, Subscriber shall pay all reasonable collection costs incurred, including reasonable attorney's fees.
3.7 Subscriber may request Users to have access to the CDX Service in addition to the number of Users set forth on page 1 of this Agreement, on the terms described herein. Upon enabling the additional Users requested by Subscriber, no further documentation will be required between Subscriber and Xceligent. Xceligent will automatically incrementally bill Subscriber at the then applicable monthly rate per User per additional User on the next applicable invoice. It is understood and agreed that the number of Users may be increased during the term of this Agreement, but may not be decreased without the prior written consent of Xceligent. Upon any renewal of the term of this Agreement, with respect to each additional User who was added during the immediately preceding term, Subscriber will continue to be billed by Xceligent for such additional User at the then applicable monthly rate per User.
3.8 If Subscriber's account is thirty (30) days or more overdue then, in addition to any of its other rights or remedies, Xceligent reserves the right to suspend Subscriber's access to the CDX Service, without liability to Subscriber, until such amounts are paid in full.

4. TERM AND TERMINATION

4.1 The Term of this Agreement shall commence on the execution date by Xceligent and shall remain in effect for a period no less than stated on page 1 of this Agreement (the "Initial Term"). **IF NOT OTHERWISE TERMINATED AS HEREIN PROVIDED, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE-YEAR PERIODS FOLLOWING THE END OF THE INITIAL TERM (EACH, A "RENEWAL TERM, AND TOGETHER WITH THE INITIAL TERM, THE "TERM"). EITHER PARTY MAY TERMINATE THIS AGREEMENT WITH WRITTEN NOTICE SIXTY (60) DAYS PRIOR TO THE END OF THE CURRENT TERM.**
4.2 Either party may provide notice of termination of this Agreement and exercise its rights and remedies provided in this Agreement and by law in the event of a material breach by the other party which remains uncured after 30 days written notice of such breach. The cure period will not apply to any breach by Subscriber of Sections 5.1, 5.2 or 7.1 of this Agreement. Additionally, Subscriber shall not have more than two (2) notice and cure opportunities in any twelve month period.
4.3 Either party may terminate this Agreement if any of the following occurs: (a) the other party becomes insolvent, (b) voluntary or involuntary proceedings by or against the other party are instituted in bankruptcy or under any insolvency law, (c) a receiver or custodian or similar agent is appointed for the other party, (d) proceedings are instituted by or against the other party for corporate reorganization or the dissolution of such party, which proceedings, if involuntary, shall not have been dismissed within 30 days after the date of filing, (e) the other party makes an assignment for the benefit of creditors, (f) all or substantially all of the assets of the other party are seized or attached and not released within 30 days thereafter, or (g) the other party has ceased its on-going business operations.
4.4 Except as specifically provided herein, termination of this Agreement shall be without prejudice to any right of the party seeking termination to also sue for damages resulting from any breach of this Agreement.
4.5 Upon the expiration or termination of this Agreement: (a) all rights granted to Subscriber under this Agreement will cease, except the following Sections of this Agreement will survive: 2, 3.1, 3.2, 3.6, 4.5, 7, 8, 9, 10 and 11, (b) Subscriber shall immediately pay all amounts owed under this Agreement, and (c) Subscriber shall and shall cause all of its User's to cease using the CDX Service and no longer utilize and promptly destroy all Database Content not entered into by Subscriber or Subscriber's Users received hereunder.

Initials: 

5. CDX SERVICE

5.1 Xceligent will give an Access Code to each User. It is understood and agreed that in order to receive an Access Code, a User must accept Xceligent's terms and conditions on the CDX web site.
5.2 Subscriber and/or Subscriber's User's shall comply with all Xceligent's security procedures to maximize the security of the CDX Service, including prevention of sharing Access Codes and unauthorized access to the CDX Service. Each Access Code is personal to the User and such User is obligated to keep the Access Code confidential and may not share the Access Code with any other employee of Subscriber or any third party. Subscriber shall be responsible for any breach of such obligations by any of its Users. Subscriber shall immediately notify Xceligent if any third party gains or has the potential to gain access to any of Subscriber's User's Access Codes, and shall be fully responsible for any and all activities that occur under any Access Code, whether conducted by a User or a third party.
5.3 Xceligent may from time to time change, update or enhance the CDX Service, by posting a notice of the change on the CDX web site.
5.4 Subscriber is solely responsible for acquiring and installing all equipment, hardware, software (including web browser software), telecommunications lines, Internet access connections and other items (the "Access Systems") necessary to use the CDX Service.

6. NON-COMPETE AND COMMITMENTS

6.1 During the Term, Subscriber agrees not to compete with Xceligent in the development and marketing of a software or database application that will offer a computerized data service for commercial real estate.
6.2 Xceligent represents and warrants that the up-time for User's access to the CDX Service will be 99.7% measured on a monthly basis for all Users accessing the CDX Service in the preceding calendar month. The up-time computation under this Section 6.2 shall exclude: (i) down-time resulting from factors beyond the reasonable control of Xceligent, including but not limited to actions or inactions of any User or any third parties not affiliated with Xceligent or failures that resulted from any User's equipment and/or third party equipment; and (ii) down-time resulting from scheduled maintenance or upgrades. Subscriber's sole remedy for service outages for the CDX Service will be a prorated credit on the next invoice. Any unused credits at the end of the Term shall extend the Term until such unused credits are reduced to zero (by applying such credits against the then applicable monthly rate).
6.3 No more than twice in any 12 month consecutive period, Xceligent may audit Subscriber during normal business hours for the purpose of ensuring Subscriber's compliance with the terms and conditions of this Agreement, upon at least ten days prior written notice; provided, however, that the limit on the number of audits per year shall not apply if an audit indicates any Subscriber non-compliance under this Agreement. If the audit indicates there is a breach in Subscriber's compliance with this Agreement: (i) Xceligent may, if the breach is not curable, immediately terminate this Agreement and pursue its legal remedies or if the breach is curable, terminate this Agreement and pursue its legal remedies if such breach is not cured within 15 days or such additional time as mutually agreed upon by the parties if such breach is not curable in fifteen (15) days.

7. CONTENT AND PROPRIETARY RIGHTS

7.1 Subscriber may not submit any image to the CDX if Subscriber has granted exclusive rights to the image to a third party, nor may Subscriber submit any image to the CDX and thereafter grant exclusive rights to the image to a third party. Subscriber may not submit any image obtained from the CDX to a third party if a requirement of submitting the image is the granting of exclusive rights to the image. Xceligent may reject or refuse to use, distribute or display any Database Content that it considers to be defective, libelous, inaccurate, incomplete or that violates, misappropriates or infringes any rights of any third party. Neither Subscriber nor any User may submit any property descriptions, photographs, images, financial, transactional, tenant, contact or other information to the CDX unless Subscriber has legal rights to publish, advertise and distribute that information.
7.2 Subscriber hereby grants to Xceligent a non-exclusive license to develop, use, display, distribute, exploit and sell Derivative Works utilizing Database Content entered into the CDX by or on behalf of Subscriber and Subscriber's Users.



Application Date	Xceligent Rep	Metro/Service Area	Territory	Term (12 mo. Minimum)
12/10/2015	Greg Hoard	Phoenix		12

BILLING START DATE Unless otherwise stated in a supplemental addendum, billing start date will be based on Xceligent's acceptance/execution of this agreement.

SUBSCRIBER CONTACT INFORMATION		BILLING CONTACT INFORMATION	
Company Name:	Town of Fountain Hills	Company Name:	
Contact Person:	Scott Cooper	Contact Person:	
Email Address:	scooper@fh.az.gov	Email Address:	
Web Address:	fh.az.gov	Web Address:	
Street Address:	16705 E. Avenue of the Fountains	Street Address:	
City, State, Zip:	Fountain Hills, AZ 85268	City, State, Zip:	
Phone:	(480) 816-5104	Phone:	
Fax:	(480) 837-3145	Fax:	

PRODUCTS	SERVICE ACTIVATION FEE
<input checked="" type="checkbox"/> CDX Pro	CDX Pro:
<input checked="" type="checkbox"/> Xceligent Direct (<input checked="" type="checkbox"/> Market / <input type="checkbox"/> Company)	Xceligent Direct: \$200.00

PRICING					
Seat #	Monthly Price	Extended Rate	Subscriber Type	Number	Monthly Amount
			Brokers/Agents/Users		
			Admin	1	0
			Xceligent Direct	1	\$300.00
			License	1	0
Total Monthly Rate>>					\$300.00

An addendum has been made part of this agreement.

SUBSCRIBER PAYMENT METHOD				
Credit Card		ACH (Bank Draft)		Invoice:
<input type="checkbox"/> Monthly	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Monthly	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Semi-Annual
<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> Annual	<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Annual
Credit Card/Bank info on separate page.				If a member opts to pay for service via invoice, only semi-annual and annual options are available. Note that payment must be received before system access will be provided.
IDENTIFICATION INFORMATION: At least one form of ID info required prior to service activation				
Federal Tax ID:		Drivers License #:		State:

Other terms and conditions of the CDX Service are set forth on the following pages of this Agreement. If the Subscriber is an entity, the undersigned represents that he or she is a duly authorized representative of the entity.

SUBSCRIBER

Signature: _____
 Name (Print): _____
 Title: _____
 Date: _____

XCELIGENT, Inc., 103 SE Magellan Dr, Blue Springs, MO 64014

Signature: Stem Soenderker
 Name (Print): STEM SOENDERKER
 Title: CAO (ASST. SECRETARY)
 Date: 1-29-2016

If signing on behalf of an entity, I represent that I am a duly authorized representative of the entity shown under "Company Name." If I am representing a corporation, I acknowledge that the execution of this Agreement has been authorized by all necessary corporate actions.

- 1.1 **TERMS AND CONDITIONS** -The Terms and Conditions are incorporated herein, and Subscriber acknowledges that Subscriber has been given the opportunity to read, understand and agree to the Terms and Conditions and agree to be bound by such Terms and Conditions.
- 1.2 This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic delivery will be effective as delivery of a manually executed counterpart of this Agreement.

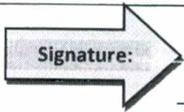
2. DEFINITIONS

- 2.1 **Access Code:** The log in code and password combination assigned to each User allowing access to the CDX Service.

60280

Company Name:	Fountain Hills EDC		
Contact:	Scott Cooper		
Metro:	Phoenix		
SUBSCRIBER PAYMENT METHOD			
Credit Card		ACH (Bank Draft)	
<input type="checkbox"/> Monthly	<input type="checkbox"/> Semi-Annual	<input type="checkbox"/> VISA	<input type="checkbox"/> Monthly
<input type="checkbox"/> Quarterly	<input type="checkbox"/> Annual	<input type="checkbox"/> Master Card	<input type="checkbox"/> Quarterly
		<input type="checkbox"/> AMEX	<input type="checkbox"/> Semi-Annual
Cardholder's Name:		Name of Financial Institution:	
Card Billing Address:		FI – Account Number:	
Card Billing City/ST/Zip:		FI – ABA / Routing Number:	
Account #:		(Voided check required.)	
Exp Date:	CCV:		

I authorize Xceligent, Inc. to process payment for services based on the information I have provided above.

 Signature:

Name (Print):

Date:

**ADDENDUM TO
SUBSCRIPTION AGREEMENT
BETWEEN
XCELIGENT, INC.
AND
THE TOWN OF FOUNTAIN HILLS**

This ADDENDUM (“Addendum”) modifies the Subscription Agreement (the “Original Agreement”), executed contemporaneously with this Addendum and entered into between Xceligent, Inc., a Delaware corporation (“Xceligent”) and the Town of Fountain Hills, an Arizona municipal corporation (“Subscriber”). All of the capitalized terms not otherwise defined in this Addendum have the same meanings as contained in the Original Agreement. The following provisions modify or replace sections of the Original Agreement and add additional sections to the Original Agreement. The sections of the Original Agreement that are not expressly modified or replaced by this Addendum shall remain in effect pursuant to their terms. The Original Agreement and this Addendum are collectively referred to herein as the “Agreement.”

AGREEMENT

- 1. Subsection 3.2 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 3.2 to read as follows:**

3.2 If Xceligent terminates this Agreement pursuant to Section 4.2 or 4.3 of this Agreement, all fees due by Subscriber through the end of the current term are accelerated and immediately due and payable. In the event Subscriber terminates this Agreement pursuant to Section 4.2 or 4.3 of this Agreement and has paid all fees for the current term in advance, Xceligent shall refund to Subscriber all remaining fees from the date of termination.

- 2. Subsection 4.1 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 4.1 to read as follows:**

4.1 This Agreement shall be effective as of the date of execution by Xceligent and shall remain in full force and effect for 12 months (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of this Agreement, Xceligent requests, in writing, to extend this Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. Xceligent’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of Xceligent, elect to

waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

3. Subsection 7.6 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 7.6 to read as follows:

7.6 Without limiting any other provision in this Agreement, Xceligent grants Subscriber a limited, non-exclusive, non-transferable, non-assignable, revocable license to use the CDX Service (and the Database Content not entered into by Subscriber or Subscriber's Users) solely for internal use by providing information on the availability and related terms of real estate property listings inside the Subscriber's municipal area to outside third parties, in accordance with the terms restrictions and limitations set forth herein (including without limitation, the prohibitions set forth in Section 7.7).

4. Subsection 7.7 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 7.7 to read as follows:

7.7 Subscriber acknowledges that the following are strictly prohibited: (i) the license, grant, transfer, sale, assignment and distribution of the CDX Service, (ii) the license, grant, sale or assignment of any Database Content not entered into by Subscriber or Subscriber's Users, (iii) otherwise making or redistributing the CDX Service (and the Database Content outside the Subscriber's municipal area) available any third party, or (iv) developing a competitive product or service or build a product using the same features and functions of the CDX Service or similar ideas, functions or graphics for a period of no less than 10 years from the effective initial billing date of this Agreement.

5. Subsection 10.1 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 10.1 to read as follows:

10.1 XCELIGENT'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER PURSUANT TO THIS AGREEMENT FOR THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE ACTION OR OMISSION GIVING RISE TO SUBSCRIBER'S CLAIM, PROVIDED THAT THE FOREGOING SHALL NOT BE APPLICABLE TO XCELIGENT'S INDEMNIFICATION LIABILITIES DESCRIBED IN SECTION 9.2.

6. A new Section 12, Conflict of Interest, is hereby added to the Original Agreement to read as follows:

12. CONFLICT OF INTEREST. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. Subscriber may cancel this Agreement without penalty or further obligations by the Subscriber or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Subscriber or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee

or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

7. A new Section 13, E-Verify Requirements, is hereby added to the Original Agreement to read as follows:

13. E-VERIFY REQUIREMENTS. To the extent applicable under ARIZ. REV. STAT. § 41-4401, Xceligent and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Xceligent's or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Subscriber. The Subscriber retains the legal right to randomly inspect the papers and records of Xceligent and its subcontractors who work on this Agreement to ensure that Xceligent and its subcontractors are complying with the above-mentioned warranty.

8. A new Section 14, Agreement Subject to Appropriation, is hereby added to the Original Agreement to read as follows:

14. AGREEMENT SUBJECT TO APPROPRIATION. The Subscriber is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Subscriber's then current fiscal year. The Subscriber's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Subscriber concerning budgeted purposes and appropriation of funds. Should the Subscriber elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Subscriber shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Subscriber has no obligation or duty of good faith to budget or appropriate the payment of the Subscriber's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Subscriber shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Subscriber shall keep Xceligent informed as to the availability of funds for this Agreement. The obligation of the Subscriber to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Subscriber. Xceligent hereby waives any and all rights to bring any claim against the Subscriber from or relating in any way to the Subscriber's termination of this Agreement pursuant to this section.

9. A new Section 15, Conflicting Terms, is hereby added to the Original Agreement to read as follows:

15. CONFLICTING TERMS. In the event of any inconsistency, conflict or ambiguity between this Addendum and the Original Agreement, the Addendum shall govern.

- 10. A new Section 16, Counterparts, is hereby added to the Original Agreement to read as follows:**

16. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

- 11. A new Section 17, Confidentiality, is hereby added to the Original Agreement to read as follows:**

17. CONFIDENTIALITY. Any and all Special Conditions agreed to between Xceligent and Subscriber are to be held in the strictest of confidence. In the event that Subscriber and/or an agent of Subscriber were to disclose information regarding the agreement between Xceligent and Subscriber, any and all discounts shall be null and void and Subscriber shall pay the regular rate licensed agents.

[SIGNATURES ON FOLLOWING PAGES]

"Subscriber"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation


Grady E. Miller, Town Manager

ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On January 28th, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.




Notary Public

(Affix notary seal here)