

**AMENDMENT NO. 1  
TO THE LEASE BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
ETA LAMBDA FACILITIES CORPORATION OF KAPPA ALPHA THETA  
A CALIFORNIA CORPORATION**

This Amendment No. 1 to that certain Lease dated as of February 1, 2014 for the Premises located at 981 Fremont St, Santa Clara, California (Original Lease), originally entered into by Morse-Fremont-08, LLC as Original Lessor, is by and between the City of Santa Clara, California, a chartered California municipal corporation (Lessor), and Eta Lambda Facilities Corporation of Kappa Alpha Theta, a California corporation (Lessee). Lessor and Lessee are collectively referred to herein as the Parties.

**RECITALS**

- A. Original Lessor and Lessee entered into the Lease as of February 1, 2014.
- B. Original Lessor sold the Premises to Lessor and assigned Original Lessor's interest in the Lease to Lessor in an Assignment and Assumption of Lease dated October 7, 2016.
- C. Lessor has determined that the maximum number of occupants at the Premises should be limited to 16, and Lessor and Lessee have agreed that Lessee will reduce the maximum occupancy to 16 (but no less), and that the Rent should be reduced accordingly and other terms of the Original Lease should be amended, as described in further detail herein.

**AGREEMENT PROVISIONS**

In consideration of the foregoing and of the promises and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

**1. AMENDMENT PROVISIONS**

The Parties agree as follows:

- A. That Section 3 of the Original Lease, entitled Term, is hereby amended to read as follows:

Term. The term of this Lease (the "Term") shall commence on February 1, 2014 (the "Commencement Date") and terminate on June 30, 2024, unless this Lease is terminated earlier pursuant to the provisions hereof. Provided Lessee is not then in default beyond any applicable notice and cure period, Lessee shall have the ongoing right, to be exercised in Lessee's sole and absolute discretion, to terminate this Lease, exercisable by delivering written notice of termination (the "Termination Notice") to Lessor at any time during the Term. The Lease shall

terminate on the sixtieth (60th) day following delivery of the Termination Notice, and upon such termination Lessee shall surrender the Premises to Lessor in the condition required by Section 36 of the Lease.

- B. That Section 4.1 of the Original Lease, entitled Rent, is hereby amended to read as follows:

Rent. Commencing on the Commencement Date and on the first day of each and every month thereafter during the Term, Lessee shall pay to Lessor monthly rent in accordance with the following:

<b>Lease Years</b>	<b>Monthly Rent</b>
February 1, 2014 – January 31, 2015	\$20,000.00
February 1, 2015 – January 31, 2016	\$20,400.00
February 1, 2016 – January 31, 2017	\$20,808.00
February 1, 2017 – January 31, 2018	\$21,224.16
February 1, 2018 – June 30, 2018	\$21,648.64
July 1, 2018 – June 30, 2019	\$15,416.67
July 1, 2019 – June 30, 2020	\$15,725.00
July 1, 2020 – June 30, 2021	\$16,039.50
July 1, 2021 – June 30, 2022	\$16,360.29
July 1, 2022 – June 30, 2023	\$16,687.50
July 1, 2023 – June 30, 2024	\$17,021.25

Monthly rent for any partial calendar month at the beginning or the end of the Term shall be prorated based on the number of days in such month. All monthly rent, and all other charges or amounts that may become due from Lessee and paid to Lessor pursuant to this Lease shall hereinafter be referred to as "Rent" and shall be paid to Lessor at the address of Lessor specified in Section 24 hereof, or at such other place as Lessor may from time to time designate in writing. If Lessee holds over after termination, Lessee shall pay holdover rent in an amount equal to 150% of the monthly rent payable for the last month of the term.

- C. That Section 6 of the Original Lease, entitled Use; Laws, is hereby amended to read as follows:

Use; Laws. Lessee shall have the exclusive right to use and occupy the Premises with an occupancy limit of 16 persons for the purpose of providing housing to the members of the Eta Lambda Chapter ("Members") and such other activities as may be related to the operations of a residence for the Members of the Eta Lambda Chapter. Lessee shall not use the Premises for any unlawful purpose. Lessee shall not allow the occupancy of the basement for any purpose other than storage; but Lessee may use the yard area of the Premises to hold meetings of its Members under a tent or similar temporary enclosure, subject to the City of Santa Clara's rules and regulations governing such structures. Lessee shall in connection with its use and occupancy of the Premises comply with, and Lessee shall not violate all applicable governmental laws, codes, ordinances, rules or regulations now in force or hereafter. Unless otherwise provided in California Civil Code Section 54.2, no animal or pet shall be kept on the Premises without Lessor's prior written consent.

- D. That Sections 15.1 through 15.4 of the Lease, entitled Insurance, are amended and replaced in their entirety to read as follows:

15.1 Lessee's responsibility for the Premises begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to Lessor, shall provide and maintain in full force and effect during the entire term of this Lease insurance coverage in an amount(s) and in a form acceptable to Lessor as set forth in Exhibit E attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated by Lessee on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit E. Lessee also agrees to obtain renter's liability insurance.

15.2 Intentionally Omitted

15.3 Intentionally Omitted

15.4 Intentionally Omitted

- E. That Section 24 of the Original Lease, entitled Notice, is hereby amended to read as follows:

Notices. Any notice required to be given under this Lease shall be sent by U.S. certified mail, return receipt requested, postage prepaid or with a recognized overnight courier, and shall be deemed delivered on the earlier to occur of (a) two business days after proper deposit in the U.S. mail, postage paid or deposit with the overnight courier, or (b) actual receipt, with all such notices if sent to the following addresses:

If to Lessee:

Kappa Alpha Theta  
8740 Founders Road  
Indianapolis, IN 46268  
Attn: Teresa Smith, FHC Executive Director

With a copy to:

SSL Law Firm LLP  
575 Market Street, Suite 2700  
San Francisco, CA 94105  
Attn: Chris Wade and Ivo Keller

If to Lessor:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager

With a copy to:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney

## **2. TERMS**

All other terms of the Original Lease which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged, in full force and effect. In case of a conflict in the terms of the Original Lease and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

## **3. COUNTERPART/FACSIMILE SIGNATURE**

This Amendment No. 1 may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile or email, shall be sufficient to bind each of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes this Amendment No. 1. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

"LESSOR"

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

ATTEST:

\_\_\_\_\_  
JENNIFER YAMAGUMA  
Acting City Clerk

**ETA LAMBDA FACILITIES CORPORATION OF KAPPA ALPHA THETA**  
a California corporation

"LESSEE"

Dated: 6/18/10

By: [Signature]

Name: Teresa Smith

Title: FHC Executive Director

Local

Address: 8740 Founders Rd. Indpls IN 46208

Email

Address: tsmith@kappaalphatheta.org

Telephone: (317) 876-1870

Fax: (317) 876-1925

**EXHIBIT E**  
**INSURANCE REQUIREMENTS - REAL PROPERTY LEASES**

Without limiting the mutual indemnities set forth in this Lease, and for the entire Term of this Lease, Lessee shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the identified coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. A Commercial General Liability Insurance policy, which provides coverage at least as broad as Insurance Services Office ("ISO") "occurrence" form CG 00 01. (ed. 10/93) covering commercial general liability or its equivalent. Policy limits are subject to review, but shall in no event be less than the following:
  - a. \$1,000,000 combined single limit per occurrence for bodily injury, personal and property damage;
  - b. \$1,000,000 minimum general aggregate which shall apply separately to the Premises which is the subject of this Lease; and
2. Exact structure and layering of this coverage shall be left to the discretion of Lessee; however, any excess or umbrella policies used to meet the required limits shall provide coverage at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella or excess liability policy maintained by the Lessee to comply with the insurance requirements of this Lease:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits.
  - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another.
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.
  - d. The policy must include a Waiver of Subrogation in favor of the Lessor, as well as its City Council, Commissions, officers, employees, volunteers and agents.
  - e. The policy shall include broad form contractual liability and indemnity coverage, which shall insure performance by Lessee of the indemnity and defense provisions set forth in this Lease. The limits of said insurance shall not, however, be construed to limit the liability of Lessee under this Lease.

B. INTENTIONALLY OMITTED.

C. WORKERS' COMPENSATION

1. A Workers' Compensation Insurance Policy, as required by statute, and Employer's Liability, which provides the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Lessee included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Lessee or any subtenant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. The policy must include a Waiver of Subrogation in favor of the Lessor, as well as its City Council, commissions, officers, employees, volunteers and agents.
4. The workers' compensation insurance and the employer's liability coverage shall cover any person or entity employed directly or indirectly by Lessee, anyone whose acts Lessee may be liable for and/or any agent acting on behalf of Lessee.

D. INTENTIONALLY OMITTED.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, are required to be part of the required commercial general liability policy, and any umbrella or excess policy(ies) which are intended to cover those risks:

1. Additional Insureds. The City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Lessee's maintenance and/or use of the Premises using Insurance Services Office (ISO) Endorsement CG 20 26 11 85, CG 20 11 01 96 or an equivalent endorsement acceptable to the Lessor.
2. Primary and non-contributing. Each insurance policy provided by Lessee in compliance with the requirements included in this Exhibit, shall either contain specific primary and non contributing language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess

insurance only and shall not be called upon to contribute with Lessee's insurance.

F. CANCELLATION.

Each insurance policy required under this Lease shall contain language or be endorsed to reflect that no cancellation, non renewal or modification of the coverage provided shall be effective until written notice has been given to the Lessor's insurance compliance representative by Lessee or its insurer at least thirty (30) days prior to the effective date of such non-renewal, modification or cancellation. Lessee shall, within thirty (30) days prior to the expiration of any policy, furnish Lessor with renewals or binders for such policy. Lessee's failure to do so will give the Lessor the right to secure such insurance policy and charge the cost to Lessee, which amount shall be payable by Lessee upon demand.

G. POLICY APPLICATION.

As applicable, the insurance required pursuant to this Lease shall provide that the interests and protections of the additional insureds shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. All insurance proceeds payable to the additional insureds from any policy of insurance (other than commercial general liability insurance) required by this Lease shall be paid to the Lessor.

H. LESSOR'S RIGHT IN THE EVENT LESSEE FAILS TO COMPLY WITH THESE INSURANCE REQUIREMENTS.

The provision and maintenance of the required insurance policies and endorsements described in this Lease are of critical importance to the Lessor as security for the protection of its assets. Therefore, if at any time during the term of this Lease, Lessee fails to provide or maintain in good standing, all of the required insurance policies, provides a policy from an insurance company which fails to maintain the required A.M. Best rating, or if Lessee fails to provide any of the required policy endorsements set forth in this Lease, Lessee shall be deemed to be in breach of this Lease and Lessor shall have the right to immediately pursue all of its available rights and remedies under the law, including but not limited to, the right to either secure the required insurance policies itself at Lessee's expense.

In the event Lessee fails to comply with the insurance requirements of this Lease, Lessor shall provide notice to Lessee describing the material noncompliance with the insurance requirements set forth in this Lease. Lessee shall then have fifteen (15) business days after the date of such notice to cure the identified non-compliance by providing Lessor with adequate assurance that the insurance requirements have been fully met. If Lessee fails to provide Lessor with such assurance within the specified cure period, Lessor will have the immediate the right to pursue any of the above referenced remedies.



I. ADDITIONAL INSURANCE RELATED PROVISIONS

1. Lessee warrants that any subtenants, contractors, or any other party involved with the Lease who is brought onto the Premises by Lessee, or who is otherwise involved in the Lease by Lessee, shall provide the same minimum commercial general liability insurance coverage and the related endorsements which are required of Lessee. For avoidance of doubt, the foregoing obligations shall not apply to any Members or employees of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Lease. Lessee agrees that it shall provide Lessor with written copies of all agreements with, and insurance compliance documents provided by, such subtenants, contractors and others involved in this Lease upon Lessor's request.
2. Lessee agrees to be responsible for ensuring that no contract used by any subtenant, contractor or party involved in any way with this Lease reserves the right to charge Lessor for the cost of additional insurance coverage required by this Lease. Any such provisions are to be deleted with reference to Lessor. It is not the intent of Lessor to reimburse any third party for the cost of complying with these insurance requirements. There shall be no recourse against Lessor for payment of premiums or other amounts with respect thereto.

J. EVIDENCE OF COVERAGE

Prior to July 1, 2018, Lessee, and each and every subtenant and/or contractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum commercial general liability insurance coverage with the endorsements and deductibles indicated in this Lease and shall provide proof of such coverage as set forth in Section K, below. The amount of any deductibles shall be a business decision by Lessee. However, under no circumstances shall Lessor be required to reimburse Lessee for the amount of any deductible incurred by Lessee in connection with any insured event, even if the event resulting in the claim was caused or contributed to by Lessor or its agents, contractors, or employees, except as part of Lessor's indemnification obligations set forth in this Lease.

Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Lessor and its insurance compliance representatives. Lessee shall file all insurance certificates and policy endorsements for the required insurance policies with Lessor for approval as to adequacy of the insurance protection. Lessee shall be fully responsible for similar compliance by each and every subtenant and contractor of every tier.

K. EVIDENCE OF COMPLIANCE

Prior to July 1, 2018, Lessee, or its insurance broker, shall provide to Lessor the required proof of insurance compliance, consisting of Insurance Services Office

## L. NOTICE REQUIREMENTS

EBIX Inc.  
City of Santa Clara [\*insert City department name here]  
P.O. Box 100085 – S2 or 1 Ebix Way  
Duluth, GA 30096 John's Creek, GA 30097

## M. QUALIFYING INSURERS

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