RESOLUTION NO. *R-2022-042*

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN AGREEMENT WITH ACLARA TECHNOLOGIES, LLC. TO UPGRADE TO ACLARAONE, CLOUD-BASED METER DATA MANAGEMENT SYSTEM SOFTWARE, AND PROVIDE CLOUD-BASED SOFTWARE AND PROFESSIONAL SERVICES IN AN ESTIMATED AMOUNT OF $400,000.00 FOR FIVE YEARS, WHICH INCLUDES A ONE TIME SOFTWARE SET-UP FEE IN AN AMOUNT OF $54,000.00, PURSUANT TO SECTION 38.41(C)(2) OF THE PROCUREMENT CODE (SOLE SOURCE).

WHEREAS, the Department of Public Utilities ("Department") owns, operates, and maintains an advanced metering infrastructure ("AMI System") that records, collects, and transmits water consumption data to the Department's billing system; and

WHEREAS, the Department's AMI System consists of a water meter with a register to record water consumption at each service location and the water consumption data recorded by each register is collected and transmitted by a meter transmission unit ("MTU") to a network of data collection units ("DCU"); and

WHEREAS, the Department's AMI System was installed between 2009 and 2012 and consists of approximately 41,500 MTUs and 10 DCUs; and

WHEREAS, the DCUs transmit consumption data to the Aclara Technologies LLC's ("Aclara") Meter Data Management System called "STAR", which interfaces with the City's billing system MUNIS that generates monthly billing data; and

WHEREAS, the Aclara STAR Software is being discontinued and will not be supported after June 30, 2022, thus requiring an upgrade to AclaraOne cloud-based software, which is sold exclusively by Aclara; and

WHEREAS, on July 28, 2021, Aclara provided a proposal for installation of cloud-based AclaraOne software that includes professional services consisting of project management, coordination, the AclaraOne software solution, product training and software acceptance and SaaS services for five years in an estimated amount of $400,000.00, which includes a one-time software set-up fee in an amount of $54,000.00; and

1

WHEREAS, on December 20, 2021, the Procurement Services Division posted a Notice to Sole Source Number NTSS-017-22 electronically on BidSync with an expiration date of December 27, 2021, and the Procurement Services Division did not receive any inquiries or comments relating to the Notice; and

WHEREAS, Section 38.41(C)(2) of the City's Procurement Code exempts sole-source goods, supplies, materials, equipment and services, such as unique, patented, or franchised goods, supplies, materials, equipment or services, from the competitive bid requirements if the Chief Procurement Officer determines after conducting a good faith review of available sources, that the particular supply or service is available from one source, and that such purchases in excess of $100,000 require approval of the City Commission; and

WHEREAS, funding has been appropriated and exists in account number 442.400201.53600.552260.000000.000.000 and will be requested in subsequent fiscal years.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves and authorizes the execution, by the appropriate City officials, of the attached agreement with Aclara Technologies LLC., together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.
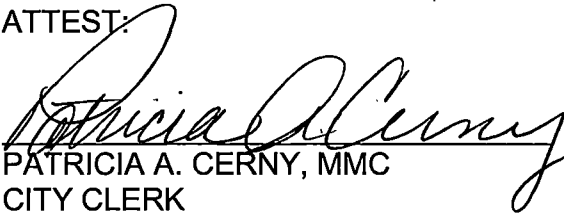
Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN AGREEMENT WITH ACLARA TECHNOLOGIES, LLC. TO UPGRADE TO ACLARAONE, CLOUD-BASED METER DATA MANAGEMENT SYSTEM SOFTWARE, AND PROVIDE CLOUD-BASED SOFTWARE AND PROFESSIONAL SERVICES IN AN ESTIMATED AMOUNT OF $400,000.00 FOR FIVE YEARS, WHICH INCLUDES A ONE TIME SOFTWARE SET-UP FEE IN AN AMOUNT OF $54,000.00, PURSUANT TO SECTION 38.41(C)(2) OF THE PROCUREMENT CODE (SOLE SOURCE).

PASSED AND ADOPTED this ___16___ day of ___February___, 2022.

_____
JOSH LEVY, MAYOR

ATTEST:

_____
PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY for the use and reliance
of the City of Hollywood, Florida, only.

_____
DOUGLAS R. GONZALES
CITY ATTORNEY

3

AGREEMENT FOR SOFTWARE DELIVERABLES AND SERVICES

This Agreement for Software Deliverables and Services ("Agreement") is made this _____ day of _____, 20____, ("**Effective Date**") by and between Aclara Technologies LLC, **a limited liability company** of the State of Ohio with offices at 77 Westport Plaza, Suite 500, St. Louis, Missouri 63146 ("Provider"), and City of Hollywood, a municipal corporation of the State of Florida ("**Customer**"). Provider and Customer each a "Party" and collectively, the "Parties".

RECITALS:

WHEREAS, Provider provides certain software-as-a-service offerings, professional services and deliverables to its customers; and

WHEREAS, Customer desires to access certain software-as-a-service offerings, professional services and/or deliverables described herein, and Provider desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF the following terms and conditions, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider agrees to perform the Services and provide the Deliverables for Customer pursuant to the terms of this Agreement.

ARTICLE 1. DEFINITIONS

Certain terms used in this Agreement are defined in this Article 1. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the IT services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context. The word "and" shall mean "and" as well as "or," unless otherwise specified.

1.1 **"Acceptance Criteria"** shall mean, with respect to a Deliverable, a mutually agreed upon statement defining the criteria for acceptance of that Deliverable. With respect to Services, Acceptance Criteria shall mean a statement defining the criteria for acceptance of that Service.

1.2 **"Access Credentials"** means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

1.3 **"Aclara Materials"** means the Services, Specifications, Documentation, and Aclara Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Aclara or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Aclara Systems. For the avoidance of doubt, Aclara Materials include Resultant Data and any information, data, algorithms or other content derived from Aclara's monitoring of Customer's access to or use of the Services.

1.4 **"Aclara Systems"** means the information technology infrastructure used by or on behalf of Aclara in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Aclara or through the use of third-party services

1.5 **"Affiliate(s)"** means, with respect to any entity, any other entity that owns, directly (or indirectly through one or more intermediaries) controls or is controlled by, or is under common control with, such entity.

1.6 **"Agreement"** shall consist of this document (including attachments, schedules and addendums to the Agreement) and any SOW and Purchase Order issued under the Agreement.

1.7 **"Authorized User"** means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

1.8 **"Claims"** means any claim, action, cause of action, demand, lawsuit, whether at law, in equity, or otherwise brought by a third party.

1.9 **"Cloud Services"** shall mean software services comprised of a software licensing model in which access to the software and its updates/maintenance are provided on a subscription basis.

1.10 **"Confidential Information"** includes, without limitation, (a) non-public information and/or private business information developed, collected or created by Party (b) a Party's Proprietary Information and (c) trade secret information including technical or non-technical data, formulae, patterns, compilations, client lists, business plans, programs, devices, methods, techniques, drawings, diagrams or processes, data, databases, software, specifications, in any form or format that (i) are not generally known in the trade or business of a Party, (ii) have direct or indirect, tangible or intangible, actual or potential value, (iii) are not readily ascertainable from publicly available information, and (iv) are the subject of reasonable protection measures taken by Party.

1.11"Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer by or through the Services.

1.12 **"Customer Systems"** means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services, other than Aclara provided services.

1.13 **"Deliverable"** shall mean the Software Deliverable, hardware, products, and other tangible goods and materials, including data, delivered to Customer under this Agreement or any SOW.

1.14 **"Designated Equipment"** shall mean the computer equipment of Customer in which Aclara loads the Software or the Customer's back-up computer equipment and such additional equipment as Customer may from time to time designate in writing, which such back-up equipment and such additional equipment shall meet Aclara's applicable specifications .

1.15 **"Disaster Recovery Plan"** means the establishment of the processes necessary to enable the recovery of vital data, software, systems, and networks following a natural or human-induced disaster or equipment failure.

1.16 "Documentation" means the user manuals and supporting documentation in electronic form containing copyrighted material and other Proprietary Information of Aclara provided with the Deliverable or Services under this Agreement.

1.17 "Fix" shall mean changes intended to correct feature/function deficiencies and/or system vulnerabilities.

1.18 "Harmful Code" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Software Services or Aclara Systems as intended by this Agreement. Harmful Code does not include any Aclara disabling device.

1.19 "Hosting Services" shall mean any Software Services (whether performed by Aclara or through a third party) that involve hosting data, software, or services external to Customer.

1.20 "Intellectual Property Right" shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights, moral rights and mask-works; (b) trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or re-issues thereof, now or hereafter in force (including any rights in any of the foregoing.

1.21 "Issue" means a problem with the Software Services, identified by the Customer, which requires a response by Aclara to resolve.

1.22 "Licensing Parameters" means Central Processing Units (CPUs), Processors (including Sockets and/or Cores), Seats, Interfaces and End Points connected to the system (Meters, LCTs, CSTs, DSIs, etc.) and Utilities as set forth on Attachment A

1.23 "Losses" shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

1.24 "Object Code" means the instructions or statements comprising the Software expressed in machine-readable language, being the machine level representations that actually cause the computer to execute instructions and operations.

1.25 "Patch" shall mean a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.

1.26 "Personal Identifying Information" or "PII" shall mean Customer Data which contains any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any (1) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) unique biometric data, such as fingerprint, voice print, retina, iris image, or other unique physical representation; (3) unique electronic identification number, address, or routing code;

1.27 "Private Label Site" the private label versions of the Software the Provider hosts and maintains.

1.28 "Project" shall mean the Services and/or Deliverables as set forth in an individual SOW.

1.29 "Proprietary Information" shall mean any data, documentation, methods, processes, materials, and all other information that is owned by either Party or an Affiliate.

1.30 "Purchase Order" shall mean the document issued on behalf of Customer authorizing the commencement of Services or the delivery of Deliverables.

1.31 "Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

1.32"Resultant Data" means data and information related to Customer's use of the Services that is used by Aclara in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

1.33 "Security Incident" means one or more unwanted or unexpected information security events that could possibly compromise the security of information and weaken or impair business operations.

1.34 "Severity Level" means a designation of the effect of an Issue on the Customer's use of the System as set forth in Exhibit C, Maintenance and Support Services.

1.35 "Services" shall mean any software implementation and testing, software maintenance and support, Cloud Services or Hosting Services, and other information technology services provided to Customer under this Agreement, and any SOW or Purchase Order referencing this Agreement.

1.36 "Software" means the software described on Attachment A as "Aclara Software".

1.37 "Software Deliverable" shall mean Software loaded on the Designated Equipment and delivered to Customer under this Agreement or any SOW.

1.38 "Software Services" shall mean either Hosting Services or Cloud Services.

1.39 "Statement of Work ("SOW")" shall mean an attachment to this Agreement, substantially in the form of Exhibit A that states, with respect to each Project: A detailed description of the Services and Deliverables; work schedule (including the due dates related to the applicable Deliverables and Services, and any milestone dates); specifications, performance standards and functional requirements; documentation, and; fees and payment schedule. In the event of a conflict between an SOW and the provisions of this Agreement, the Agreement shall take precedence.

1.40 "Supplemental Services" shall mean the services set forth on Exhibit C-3 , and offered at the prices set forth on Exhibit C-3.

1.41 "System Incident" a Security Incident with the potential of causing irreparable or significant damage, corruption or loss (compromise) of Confidential Information.

1.42 "Third Party Deliverable" means the Deliverable described on the Attachment A as "Third Party Software—Included in this Agreement.

1.43 "Third-Party Materials" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Aclara

1.44 "Vulnerability" shall mean a weakness in a product that could allow an attacker to compromise the integrity, availability, or confidentiality of that product.

ARTICLE 2. THE SERVICES AND DELIVERABLES

2.1   Services and Deliverables Description.
The Services and Deliverables to be provided under this Agreement shall be set forth in individual SOWs which shall incorporate the terms and conditions of this Agreement. Each such SOW shall detail the nature of the Services and Deliverables, which may be further defined by attachments. Aclara will provide the Services and Deliverables which are designated in the SOW, within the timeframe set forth in the applicable SOW .

2.2   Software Deliverables.
For Software Deliverables furnished by Aclara to Customer, the following provisions shall apply:

(a)   Grant of License
(i)   Aclara grants to the Customer a non-exclusive, royalty-free, worldwide, non-transferable license and perpetual (subject to termination as set forth in this Agreement) Object Code license to use the Software Deliverable on the Designated Equipment solely in connection with Customer's use of the System and only for the purposes set forth in Section 2.2 (a)(ii) copy the Software.

(ii)   Notwithstanding any other provision in this Agreement to the contrary, and for no additional or incremental license fees and only for internal business purposes, the Customer may: (a) make a reasonable number of copies of the software Deliverable for back-up or archival purposes; or (b) operate the Software Deliverable on the Designated Equipment for testing the Software Deliverable.

(iii)   Third Party Deliverables are sublicensed by Aclara to Customer pursuant to sublicensing agreements with the respective third parties identified on Attachment A.

(b)   Restrictions on Use
(i)   Parameters. Customer use of the Software Deliverable is restricted to the Licensing Parameters. Use of the Software Deliverable outside the Licensing Parameters is subject to the express written consent of Aclara and the payment of all required additional Fees.

(ii)   Alterations. Customer's use of the Software Deliverable is limited in that Customer is prohibited from altering, attempting to reverse engineer, attempting to decompile, or creating or attempting to create a derivative work from the Software Deliverable.

(iii)   Compliance with Laws. Customer's use of the Software Deliverable is limited in that it must use the Software Deliverable and the Documentation in accordance with all applicable laws and regulations of the United States and the States, Country and localities in which the Software Deliverable and Documentation is used.

(iv)   Use on Designated Equipment. Customer's use of the Software Deliverable is restricted to use on the Designated Equipment. Should Customer desire to transfer the operation of the Software Deliverable to a computer other than the Designated Equipment, Customer shall notify Aclara upon such transfer. Such computer must meet the specifications of the Designated Equipment. Upon such notification, such

computer shall become the Designated Equipment. Under no circumstances may the Licensed Software be used for production purposes on other than the Designated Equipment.

(v) _Temporary Use_. Without notice to Aclara, Customer may temporarily transfer the operation of the Software Deliverable to a backup computer if the Designated Equipment is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model until the Designated Equipment is restored to operative status and processing of the data already entered into the back-up computer is completed.

2.3   Software Services.

(a)   Access and Use.

(i)   Hosting Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara grants Customer a non-exclusive, non-transferable right to access and use the Hosting Services during the Term, solely for its own internal business purposes in accordance with the terms and conditions set forth in this Agreement . Aclara shall provide to Customer the Access Credentials within a reasonable time following the Effective Date.

(ii)   Cloud Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara will provide functionality on Aclara Systems to enable Customer to access the Cloud Services and triggers that provide access to the Software used to collect Customer Data. Aclara grants Customer a non-exclusive, non-transferable right to access and use the Cloud Services during the Term, solely for its own internal business purposes in accordance with the terms and conditions herein. Aclara shall provide to Customer the Access Credentials within a reasonable time following the Effective Date.

(b)   Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(i)   Aclara has and will retain sole control over the operation, provision, maintenance, and management of the Aclara Materials; and

(ii)   Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Aclara Materials by any Person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to the Services or Aclara; (ii) results obtained from any use of the Services or Aclara Materials; and (iii) conclusions, decisions, or actions based on such use.

(c)   Use Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or Aclara Materials except as expressly permitted by this Agreement and, in the case of Third-Party Deliverables, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

(i)   copy, modify, or create derivative works or improvements of the Software Services or Aclara Materials;

(ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Software Services or Aclara Materials to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software Services or Aclara Materials, in whole or in part;

(iv) bypass or breach any security device or protection used by the Software Services or Aclara Materials or access or use the Software Services or Aclara Materials other than by valid Access Credentials;

(v) input, upload, transmit, or otherwise provide to or through the Software Services or Aclara Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software Services, Aclara Systems, or Aclara's provision of services to any third party, in whole or in part;

(vii) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, EULA, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Software Services or Aclara Materials, including any copy;

(viii) access or use the Software Services or Aclara Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Aclara customer), or that violates any applicable Law;

(ix) access or use the Software Services or Aclara Materials for purposes of competitive analysis of the Software Services or Aclara Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Aclara's detriment or commercial disadvantage; or

(x) otherwise access or use the Software Services or Aclara Materials beyond the scope of the authorization granted under this Section 2.3.

(d) Customer Obligations.

(i) Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Software Services are accessed or used; (b) provide Aclara Personnel with such access to Customer's premises and Customer Systems as is necessary for Aclara to perform the Software Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Aclara may reasonably request to enable Aclara to exercise its rights and perform its obligations under and in connection with this Agreement.

(ii) Effect of Customer Failure or Delay. Aclara is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing,

or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

    (iii) <u>Corrective Action and Notice</u>. If Customer becomes aware of any actual or threatened activity prohibited by Section 2.3(c) Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software Services and Aclara Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Aclara of any such actual or threatened activity.

    (iv) (**Applicable for Profield® Software Solution**) Prior to commissioning the Software Services, Customer shall supply a list of the names of all users who are authorized to use the Software Services. Customer shall keep the list current at all times and promptly inform Aclara of any change in Customer End Users. Customer will strictly enforce each Customer End User's user identification and password controls, to ensure that Customer End User's identity is not used to access the Software Services by any other person.

2.4 <u>Documentation</u>.

Subject to the terms and conditions set forth in this Agreement, Aclara grants to Customer, and Customer accepts, a fully paid, non-exclusive, non-transferable, license to use the Documentation during the Term of this Agreement and solely in connection with its use of the Software Deliverable or Software Services.

2.5 <u>Maintenance and Support Services</u>.

For Hosting and Cloud Services furnished by Aclara to Customer, Aclara shall provide service level standards, as set forth in Exhibit C-1, Software Services Schedule. For Software Deliverable furnished by Aclara to Customer, Aclara shall provide maintenance and support services as set forth in Exhibit C-2. For Supplemental Services furnished by Aclara to Customer, Aclara shall provide such services in accordance with Exhibit C-3.

2.6 <u>Changes</u>.

    (a)   Aclara reserves the right, in its sole discretion, to make any changes to the Services and Aclara Materials that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Aclara's services to its customers; the competitive strength of or market for Aclara's services; or) the Services' cost efficiency or performance; or (ii) to comply with applicable Law.

    (b)   Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in the SOW. In the event of a change, the Parties will use commercially reasonable efforts to negotiate and execute an amendment to this Agreement and the applicable Statement of Work setting forth all necessary updates. Each Amendment shall include, as applicable, changes to the Services, Deliverables, Work Schedule, fees or other material terms of the Statement of Work, and, upon execution , Aclara waives any claim resulting from the Change for additional compensation or change to the Work Schedule except as set forth in the Amendment , including, without limitation, claims related to lost productivity and lost efficiency, unless such lost productivity and lost efficiency is not associated with the amendment to the Statement of Work. No claim for additional compensation or an adjustment to the Work Schedule shall be allowed unless the same was authorized by a written Amendment executed by an authorized representative of both parties in advance of the performance of the applicable Services or Deliverables.

2.7 <u>Reservation of Rights</u>.

Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Aclara Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Aclara Materials, and the Third-Party Materials are and will remain with Aclara and the respective rights holders in the Third-Party Materials.

ARTICLE 3. TERM

3.1   Initial Term.
The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for a period of five (5) years from such date (the "Initial Term").

3.2   Renewal Term.
This Agreement will automatically renew for successive twelve 12 month periods unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 60 days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

ARTICLE 4. PAYMENT

4.1   Billing Rate.
4.1.1. The Fees for the Deliverables and Services provided shall be set forth in Exhibit B, Fees. Aclara will invoice Customer for the Deliverables and Services as follows: (a) for Software Deliverables, Aclara will invoice Customer upon contract execution; (b) for implementation Services, Aclara will invoice Customer as set forth in the SOW; and (c) for Cloud Services/Hosting Services, Aclara will invoice Customer the Annual Service Provider (ASP) Fees annually in advanced and shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Term, upon receipt of a 30 day notice, the ASP Fee shall be subject to adjustment not to exceed five percent at the commencement of each Renewal Term.

4.1.2. Support Fees for Software Deliverables. The charge for the service level selected by the Customer shall be at the annual Fee as identified in Exhibit C-2 during the Initial Term of this Agreement. The annual Fee shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Term, upon receipt of a 30 day notice, the Fee shall be subject to adjustment not to exceed five percent at the commencement of each Renewal Term.

4.1.3.   Partial Services. Aclara reserves the right to invoice the Customer for any partial month services which may result from the Effective Date or date of termination of this Agreement, at a prorated charge.

4.1.4. Reinstatement Fee. In the event that Customer terminates or elects not to renew this Agreement and subsequently wishes to reinstate it, in addition to paying Aclara's then current fees and charges, Customer shall also pay Aclara, a reinstatement charge. The reinstatement charge shall include a lump sum equal to the total fees and charges which would have been paid for the period of lapse had the lapse not occurred: provided, however that if the lapse period is three (3) years or longer, Aclara shall have the option at its sole discretion to refuse to reinstate said Agreement.

4.2   Due Dates for Payment.
Payments for all invoices shall be due and payable forty-five (45) days from the date of receipt. Any amounts not paid when due shall bear interest at the lesser of one and one half percent (1 ½%) per month or the highest permitted by law until paid. In the event that annually Fees remain unpaid for more than 30

days after becoming due for payment, Aclara shall be entitled to withdraw the Maintenance or Software Services.

4.3 Taxes.

Aclara shall be responsible for all corporate taxes measured by net income due to performance of, provision of or payment for Services or Deliverables under this Agreement ("Aclara Taxes"). Customer is tax exempt and shall provide Aclara with its tax exemption certificate..

ARTICLE 5. TIME FOR PERFORMANCE

5.1 Delivery.

(a) Aclara shall use commercially reasonable efforts to deliver the Deliverables and provide the Services within the times set forth on Exhibit "A". Purchaser understands and agrees that the ability of Aclara to make such deliveries and provide such Service within such times is dependent upon the timely issuance of Purchase Orders (if required) and timely performance of Customer's Obligations. Customer agrees that it will use commercially reasonable efforts to cause Customer's personnel to perform their respective obligations in a timely fashion and to cooperate with Aclara in scheduling their respective Services.

(b) Except as specified in an SOW or Purchase Order, Deliverables shall be FCA Aclara's facility, and pursuant to the delivery schedule, if any, set out in said SOW or Purchase Order.

5.2 Project Schedule.

The schedule for the Deliverables and Services (the "Project Schedule") shall be determined on a project by project basis as more particularly described in the applicable SOWs. The Project Schedule shall begin and end as specified on such SOWs, which shall list the Deliverables and Services involved, the schedule for delivery and performance, any milestone dates, and the deadline for the completion of all such activities.

5.3 Acceptance.

Acceptance of the Deliverables and Services shall be in accordance with Acceptance Criteria set forth in the SOW.

ARTICLE 6. SECURITY

6.1 Secure Environment.

For hosting services and cloud services Aclara will implement and maintain secure systems and environment according to the following terms: (a) utilize only datacenters that are certified as SSAE 18 SOC 2 compliant, with actively-managed multi-layered security and redundant power systems; (b) maintain firewall protection; (c) maintain antivirus software with automated monitoring; (d) encrypt all PII data at rest and in transit; (e) perform monthly vulnerability scanning; and (f) perform annual security penetration testing.

6.2. Disaster Recovery.

Aclara shall maintain appropriate backups of all Customer data. Aclara shall maintain Disaster Recovery plans and exercise Disaster Recovery plans on an annual basis for the cloud services provided. For hosting services, Aclara shall, at Customer's request and expense, offer Disaster Recovery services and exercise Disaster Recovery plans on an annual basis for Customer.

6.3. Incident Response.

In the event of an Aclara, or subcontractor, System Incident, Aclara shall: (a) promptly, but in no event more than 48 hours of becoming aware of the incident, notify Customer; (b) then provide Customer with

a written report within the subsequent 48 hours detailing the scope of the incident and the measures taken to by Aclara to respond to the incident; and (c) use best efforts to remedy the incident and prevent any further or recurrent incidents at Aclara's expense in accordance with applicable privacy laws, regulations, and standards.

6.4. **Vulnerability Remediation**.
Aclara shall take full responsibility for the comprehensive remediation of security vulnerabilities found in Aclara's hosting services and cloud services that could reasonably result in a System Incident.

6.5 **Customer Control and Responsibility**.
Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Aclara Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.6 **Access and Security**.
Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

6.7 **Harmful Code.**
Aclara represents, warrants and covenants that: (a) Aclara will use its best efforts to ensure that no Harmful Code is introduced into the software, Customer Data or other Deliverables, or any systems used to perform the Services, and Aclara will not insert into any software any code which would have the effect of disabling or otherwise shutting down all or a portion of such software or damaging any Customer Data, systems or functionality.

ARTICLE 7. TERMINATION

7.1 **Termination**.
      (a)   Aclara may terminate this Agreement at any time upon delivery thirty (30) days prior written notice to Customer.

      (b)   either party may terminate this Agreement, effective upon delivery of at least ten (10) days prior written notice to the other party, (i) if the other party materially breaches this Agreement, and (ii) further fails within thirty (30) days (or within such longer period as may be otherwise mutually agreed) after the non-breaching party provides the breaching party with written notice of such breach; and

      (c)   either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by

order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c)   Customer may terminate this agreement due to non-appropriation of funds by the City Commission during any annual term or renewal period of this Agreement in accordance with Section 30.05 of Hollywood Code of Ordinances.

7.2   Effects of Termination

Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a)   all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b)   Aclara shall cease all use of any Customer Data or Customer's Confidential Information and at the request of the Customer within a commercially reasonable time (i) return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Aclara directly or indirectly controls, provided however, Aclara that may retain copies of such information that is stored in Aclara's archive or back-up systems or as required by applicable law.

(c)   Customer shall immediately cease all use of any Services or Aclara Materials and (i) promptly return to Aclara, or at Aclara's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Aclara Materials or Aclara's Confidential Information to the extent permitted by law; and (ii) to the extent permitted by law permanently erase all Aclara Materials and Aclara's Confidential Information from all systems Customer directly or indirectly controls; provided that Customer may retain copies of such information that is stored in Customer's archive or back-up systems or as required by applicable law or Customer's document retention policy ; and (iii) certify to Aclara in a signed written instrument that it has complied with the requirements of this Section 8.2(c);

(d)   Aclara may disable all Customer and Authorized User access to the Aclara Materials;

(e)   if either Party terminates this Agreement pursuant to Section 8.1(a), Aclara shall be paid all Fees related to Deliverables provided and Services performed prior to the effective date of termination.

ARTICLE 8. CONFIDENTIALITY

8.1   Confidentiality.

From time to time during the Term of this Agreement and to the extent permitted by law, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), Confidential Information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within thirty (30) days thereafter, is summarized in writing and confirmed as Confidential Information. To the extent permitted by law, the Parties shall hold all Confidential Information of the other Party confidential, and shall not use or disclose it to others (except as is necessary to perform its obligations under the Contract and with the prior written consent of the disclosing Party). The Receiving Party shall maintain security measures designed to: (i) protect the security and confidentiality of the Confidential Information of the Disclosing Party; (ii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information; and (iii) protect against unauthorized access to or use of such Confidential Information; provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 8.

8.2   Exclusions.

Any exclusions related to Confidential Information shall be pursuant to Chapter 119, Florida Statutes and any other applicable law not in conflict with Chapter 119, Florida Statutes.

8.3   Compelled Disclosure.

If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.1; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

8.4. In the event of a breach of this Section 8, the breaching party shall indemnify the non-breaching party for any Losses associated with the breach of this Section 8.

ARTICLE 9. INDEMNITY

For the purpose of this **Section 9** only, "Customer Parties" shall mean Customer, its directors, officers, agents and employees, contractors and subcontractors (other than Seller), assignees, subsidiaries and affiliates, and each of them; "Aclara Parties" shall mean Aclara, its directors, officers, agents and employees, contractors and subcontractors at any tier, and the subcontractor's directors, officers, agents and employees, and each of them. The Parties obligations under this **Section 9** shall not be limited to their respective insurance coverage.

9.1   General Indemnity for Deliverables and Services.

(a)   Aclara shall indemnify Customer Parties for Losses arising from Claims, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought against one or more Customer Parties involving injuries or damages to persons or property arising from: (a) the negligent acts or omissions of Aclara Parties in connection with the delivery of Deliverables or performance of Services; or (b) Losses resulting from any incident involving the supply, access or maintenance of data or the networks and systems that store, process or transmit such data under this Agreement provided that: (i) Customer promptly notifies Aclara in writing of such Claims; (ii) Customer fully cooperates with Aclara in assisting in the defense or settlement of such Claims; and (iii) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims. Aclara shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Customer, any suit or action brought against Customer Parties based upon such Claims.   Further, provided that Customer promptly notifies Aclara in writing of any alleged violations described below, Aclara shall also indemnify Customer Parties for any and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Aclara Parties. Aclara's obligations under this **Section 9.1 (a)** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Customer Parties. Nothing in this Agreement shall be construed to affect in any way the

Customer's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes.

9.2 **Intellectual Property Indemnity**

(a) Aclara shall defend and indemnify Customer against any Claims alleging that Deliverables or Services furnished under this Agreement infringe a patent in effect in the U.S., an EU member state or the country of the site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of in which the premises where Deliverables are used or Services are performed, not including Aclara's premises from which it performs Services provided that (i) in the case of software Deliverables, it is the latest released version of the software; (ii) Customer promptly, and in any event, within ten (10) days of becoming aware of the Claims, notifies Aclara in writing of such Claims; (iii) Customer makes no admission of liability and does not take any position adverse to Aclara; (iv) Customer provides Aclara with full disclosure and fully cooperates with Aclara in assisting in the defense or settlement of such Claims and (v) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims .

(b) Notwithstanding the foregoing, if any software or other Deliverable provided by Aclara under the terms of this Agreement becomes, or in Aclara's reasonable opinion is likely to become, the subject of any infringement or misappropriation claim or proceeding, then Aclara shall, at its sole option and expense shall either: (i) obtain for Customer the right and license to continue to use the software or other Deliverable in the manner permitted under this Agreement; or (ii) replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the product it is replacing; or (iii) failing (i) or (ii), take back infringing Deliverable or Services and refund the price received by Aclara attributable to the infringing Deliverable or Services. Notwithstanding the foregoing, Aclara shall not be liable for any Claims based upon (1) the combination or use of Deliverables or Services with any other equipment or software not supplied or authorized by Aclara, or (2) Customer's possession or use of any altered version of the Deliverable or Services unless such alteration has been performed or expressly authorized by Aclara, or (3) failure of Customer to implement any update provided by Aclara that would have prevented the Claims, or (4) Deliverables or Services made or performed to Customer's specifications.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2 **Additional Aclara Representations, Warranties, and Covenants**. Aclara represents, warrants, and covenants to Customer that Aclara will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally

recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

10.3.   THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 11. INSURANCE

11.1   Minimum Insurance Coverages.
In the event that Aclara's obligations hereunder require or contemplate performance of Services by Aclara's employees, or persons under contract to Aclara, to be done on Customer's property, or property of the Customer's customers, Aclara agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Customer. Further, in such event, Aclara shall maintain:

    (a) General Liability insurance on a one million dollar ($1,000,000), per occurrence basis; and

    (b) Statutory workers compensation insurance.

    (c) Cyber Risk Liability and Technology Errors and Omissions Insurance. Aclara shall maintain cyber risk liability and technology errors and omissions insurance with a combined single limit of not less than $5,000,000.00 in the aggregate. Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of Services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress. No exclusions shall be listed within the policy for unencrypted or portable devices.

    (d)Customer shall be provided for as an additional insured or loss payee as its interest may appear on the policy referred to in **Section 11.1(a)** above.

ARTICLE 12. LIMITATION OF LIABILITY

12.1   IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA OF THE OTHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 Each Party's total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the aggregate sum of payments made by Customer to Aclara under an applicable SOW or Purchase Order.

ARTICLE 13. FORCE MAJEURE
It is understood that, at times, unavoidable delays result from causes which may reasonably be presumed to be beyond the control of Aclara, or Customer such as: Acts of providence, floods, fortuitous events, unavoidable accidents, riots, strikes, and lock outs. Should the progress of the Services or Deliverables be or seem to be delayed at any time for such causes, the party claiming force majeure shall notify the

counterparty in writing of the occurrence, in order that a record of same may be made. For force majeure events declared by Aclara, a corresponding extension of time for the completion of the Services or Deliverables shall be allowed by Customer. Aclara and Customer shall in good faith use such effort as is reasonable under all the circumstances known to it at the time to remove or remedy the cause(s) and mitigate the damage associated with a force majeure event.

ARTICLE 14. AUDIT RIGHTS

14.1   Audit Rights General.
Customer and its representatives shall have the right to audit activities which are performed under this Agreement on a time and material basis. Aclara will provide access to Aclara personnel, and to data and records, for the purpose of performing audits and inspections to verify the accuracy of Aclara's charges and invoices for Services provided on a time and material basis. Aclara will provide to such auditors and representatives such assistance, as they reasonably require. Aclara will cooperate fully with Customer or Customer's designees in connection with audit functions. If Customer performs such audits via an independent audit firm, Customer will take reasonable steps to ensure that the audit firm will protect the confidentiality of Aclara's Proprietary Information.

(a)   If an audit uncovers any overcharge, Aclara shall immediately refund such overcharge (net of any undercharges uncovered by the audit).

(b)   Aclara shall maintain and provide access upon request to records, documents and other information required to meet Customer's audit rights under this Agreement until the later of: (i) 3 years after expiration or termination of this Agreement; or (ii) all pending matters relating to this Agreement (e.g., disputes) are closed.

(c)   In addition, Aclara shall use commercially reasonably efforts to assist Customer with respect to ensuring that all subcontractors and vendors adhere to and comply with the same requirements herein.

14.2.   Aclara shall provide within thirty (30) days of receipt and at no additional cost to Customer, a copy of a SSAE 18 SOC 2 – Type II report of Aclara's measures with respect to electronic data for Hosting and Cloud Services which has been audited by an independent CPA or similarly qualified third party.

ARTICLE 15. GENERAL CLAUSES

15.1   Relationship of the Parties.
Aclara is performing under the Agreement as an independent contractor. Aclara has the sole right and obligation to supervise, control, manage, and direct all work associated with the Deliverables and Services to be performed by all individuals and entities it assigns to perform work under this Agreement, which includes, but is not limited to, its employees, its contractors, and its subcontractors' employees, and Aclara agrees that none of these persons or entities are employees or should be considered employees of Customer. As to these persons or entities Aclara assigns to perform work under this Agreement, Aclara will be solely responsible for: (a) the acts and omissions of all such persons and entities, (b) payment of compensation to such persons and entities, and (c) any injury to such persons in the course of their employment.

15.2   Publicity.
To the extent permitted by law, neither Party may announce or release any information regarding this Agreement or its relationship with the other Party without the other Party's express prior written approval (which may be withheld in the other party's sole discretion). Neither Party shall use any trade name, trademark, service mark or any other information which identifies the other Party or any of the other Party's Affiliates in such Party's sales, marketing and publicity activities, including postings to the Internet,

interviews with representatives of any written publication, television station or network, or radio station or network without the other Party's express prior written approval. Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from making such public disclosures as it, in its sole judgment, may deem appropriate to satisfy such Party's (or such Party's Parent's) disclosure obligations under any applicable law or requirement of any stock exchange.

15.3   Non-Solicitation/No-Hire.
Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's employees involved in this SOW during the term of this SOW and for a period of six (6) months from the expiration/termination hereof, without the express written consent of the other party; provided, however, that nothing shall prevent general solicitations by either party not specifically directed at the other party's employees and any hiring as result of such general solicitations.

15.4   Assignment.
Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. However, Customer has right to terminate agreement if it does not want to proceed with doing business with Affiliate. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.

ARTICLE 16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1   Governing Law.
This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

16.2   Dispute Resolution.
All disputes arising in connection with this Agreement, including any question regarding its existence or validity shall be resolved in accordance with this **Section 16**. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings. In the event that the parties choose arbitration, the decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

16.3   Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in **Article 8**.

ARTICLE 17. NOTICES

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this **Article 17**), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days

after the day of mailing, when mailed by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Aclara:

>Aclara Technologies LLC
>Attn: Legal
>77 Westport Plaza Drive
>Suite 500
>St. Louis, MO 63146

>With a copy (which shall not constitute Notice) to:

>Hubbell Incorporated
>Attn: General Counsel
>40 Waterview Drive
>Shelton, CT 06484

In the case of Customer:

>City of Hollywood Public Utilities - Director
>1621 N. 14th Avenue, Bldg A
>Hollywood, FL 33022

>With a copy to:
>City Attorney
>2600 Hollywood Blvd., Rm. 407
>Hollywood, Florida 33020

Either Party may from time to time change the individual(s) to receive notices under this paragraph and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.

ARTICLE 18. COMPLIANCE WITH LAWS, CODES, AND STANDARDS

18.1   Aclara shall comply with laws applicable to the manufacture of Deliverable and its performance of Services. Customer shall comply with laws applicable to the application, operation, use and disposal of the Deliverables and Services.

18.2   Aclara's obligations are conditioned upon Customer's compliance with all U.S. and other applicable trade control laws and regulations. Customer shall not trans-ship, re-export, divert or direct products other than in and to the ultimate country of destination declared by Customer and specified as the country of ultimate destination on Aclara's invoice.

18.3   Notwithstanding any other provision, Customer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Customer's site or fulfillment of Customer's obligations, except that Aclara shall obtain any license or registration necessary for Aclara to generally conduct business and visas or work permits, if any, necessary for Aclara's personnel. Customer shall provide reasonable assistance to Aclara in obtaining such visas and work permits.

ARTICLE 19. HEADINGS

The headings used in this Agreement are intended for convenience only. They are not a part of the written understanding between the Parties, and they shall not affect the construction and interpretation of this Agreement.

ARTICLE 20. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be considered an original hereof but all of which together shall constitute one agreement.

ARTICLE 21. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

ARTICLE 22. RESERVATION OF RIGHTS

A delay or failure in enforcing any right or remedy afforded hereunder shall not prejudice or operate to waive that right or remedy or any other right or remedy, whether of a similar or different character.

ARTICLE 23. AMENDMENT AND MODIFICATION;WAIVER

No amendment to or modification of this Agreement is effective unless it is in writing identified as an amendment to this Agreement and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

ARTICLE 24. SURVIVAL

The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2.2(b) Section 2.3(c), Section 7.2, Article 8, Article 9, Article 10, Article 12, Article 15 and Article 24.

ARTICLE 25. ENTIRE AGREEMENT

The Agreement contains the entire agreement and all representations between the parties relating to the subject matter hereof, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Aclara Technologies LLC

City of Hollywood, a municipal corporation of the State of Florida

Signed: _____
Name: _____
Title: _____

Attest:

By: _____
    Josh Levy, Mayor

Approved by: _____

_____
Patricia A. Cerny, MMC
City Clerk

    David Keller, Interim Finance Director

Approved As To Form And Legal Sufficiency
for the use and reliance of the City of Hollywood,
Florida, only.

_____
Douglas R. Gonzales
City Attorney