

## MASTER SERVICES AGREEMENT

This MASTER AGREEMENT ("Agreement") made effective the 30<sup>th</sup> of November, 2017 ("Effective Date"), is by and between **Applications Software Technology LLC**, a Delaware limited liability company, with offices at 1755 Park Street, Suite 100, Naperville, Illinois 60563 ("Contractor") and **City of Hollywood, Florida**, a political subdivision of the State of Florida, with offices at 2600 Hollywood Blvd, Hollywood, Florida 33020 ("Customer"), and both of whom shall be referred to as the "Parties", as appropriate. In consideration of the covenants and obligations set forth in this Agreement, the Parties therefore agree as follows:

### 1. GENERAL

- 1.1 *Definitions and Usage.* Capitalized terms used herein shall have the meanings ascribed to them in the body of this Agreement and in any other Amendment, Exhibit or Attachment to this Agreement.

### 2. CONTRACTOR SERVICES

- 2.1 *Services.* The Customer retains the Contractor, and the Contractor shall provide, under the provisions of this Agreement the labor, materials and other items required to perform the services related thereto, in accordance with the terms of this Agreement ("Services").

The Contractor shall furnish all labor, materials, and other items required to perform the work and Services that are necessary for the completion of this Agreement.

The Contractor shall supply Services to accomplish the requirements as set forth in the Statement of Work and the Contractor's response to the Request for Proposal provided herein as Exhibit A and Exhibit C, respectively ("Contract Documents"). Parties agree that where there is a conflict between terms of this Agreement and the information presented in the Contract Documents, any Amendments to this Agreement, this Agreement and then the Statement of Work shall take precedence in that order.

- 2.2 *Licenses or Subscriptions to Third Party Software.* Contractor may, upon request by the Customer, resell to the Customer subscription services and licenses to use software created or developed and owned by third parties ("Third Party Software"). The Customer acknowledges that the Contractor does not own or hold any proprietary or other rights to such Third Party Software and makes no representations or warranties in respect of such Third Party Software including without limitation suitability for a particular purpose or functionality. The Customer is solely responsible for assessing and determining whether such Third Party Software is suitable for the Customer's purposes. Licenses to use Third Party Software shall be sold to the Customer under a separate Statement of Work and shall be subject to the provisions of any terms and conditions, user agreement or license agreement that may be prescribed by such third party. Once purchased, the Customer shall not have any right to withhold payment for the subscription services and licenses, rescind the contract of purchase or cancel such licenses or subscription services for the specified order period within each ordering document(s), notwithstanding the termination of any related Statement of Work issued and accepted by the Contractor hereunder or the expiry or termination of this Agreement.

- 2.3 *Additional Services.* The Customer may elect to have Contractor perform Services that are not specifically described in the Statement of Work ("Additional Services"). Contractor shall

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perform such Additional Services either on a time-and-materials basis or on a fixed-fee basis, as approved by the Customer and accepted by Contractor pursuant to a Change Order Request as set out in Section 3.3.1.

- 2.4 *Independent Contractor Status.* The Contractor is and shall remain an independent contractor and is not an agent, employee, partner, nor joint venture of the Customer.
- 2.5 *Subcontractors.* Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain written prior approval, which shall not unreasonably withheld or delayed, from the Customer for activities or duties to take place at the Customer site. In using subcontractors, the Contractor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Contractor.
- 2.6 e.

### 3. STATEMENT OF WORK

- 3.1 *Statements of Work.* Statements of Work (also referred to as "Work Orders") may include a complete description of services to be performed, deliverables or other materials to be produced, the schedule for completion of each of the foregoing, the applicable charges, and any additional terms the Parties mutually agree to include. Statements of Work may contain both time and materials and fixed fee based payment entries. Each Statement of Work and this Master Agreement, when fully executed by both Parties, shall constitute a separate binding contract between the Parties. Each Statement of Work may include additional terms and conditions applicable to the provision of Services, work product or deliverables, or a resale of Third Party Software thereunder. The Statements of Work and other Exhibits as described in this Agreement are incorporated herein by reference.
- 3.2 *Customer's project manager.* Contractor hereby acknowledges that the Customer's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement. The Contractor must in the final instance, seek to resolve difference concerning the Agreement with the Project Manager. In the event that the Project Manager and the Contractor are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in the Section 13 *Dispute resolution*.
- 3.3 *Contractor Representative.* The Contractor understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the Contractor shall designate a single representative to act as an ex-officio member of the Contractor's project management team ("Project Executive") and who shall have the authority to act on behalf of the Contractor on all matters pertaining to this Agreement.
- 3.4 *Designated Staff.* The Customer shall have the right to approve the Contractor's designated Project Manager, and key Personnel assigned to Customer by Contractor ("Designated Staff"). In the event that a Designated Staff of the Contractor is, in the reasonable opinion of the Customer, uncooperative, inept, incompetent, or otherwise unacceptable, the Contractor agrees to remove such person from the project. In the event of such a removal, the Contractor shall (i) within ten (10) business days, temporarily replace such person with another person properly



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qualified to perform the functions of such replaced person, and (ii) within thirty (30) days, permanently replace such replaced person with another person qualified to perform the functions of such replaced person. Regardless of whom the Contractor has designated to fill this representative vacancy, the Contractor organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

- 3.5 *Changes to the scope of work.* Either Party may, upon written notice to the other Party, propose changes to the scope of the Services to be performed pursuant to any Statement of Work ("Change Order Request"). All such changes shall be made in accordance with the procedures set forth in Section 3.3.1 and the other terms of this Agreement.

3.5.1 *Change Order Request by Customer.* When the Change Order Request is proposed by the Customer, Contractor shall, upon receiving a Change Order Request, review the proposed change and submit to the Customer a change in scope proposal (the "Change in Scope Proposal") which shall outline in sufficient detail the tasks to be performed to accomplish such proposed changes in the scope of the Services, and any applicable fees. The Contractor agrees to implement all mutually agreed upon changes in an expeditious and fiscally sound manner and provide the Customer with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes. Such Change Order Request(s) and Change in Scope Proposal shall only be effective when fully executed by both Parties. Unless otherwise specified in writing, the Change Order Request for a specific Statement of Work shall only apply to that Statement of Work. If the Change Order Request and Change in Scope Proposal are not fully executed by both Parties, neither party shall have an obligation to the other under the Change Order Request and Change in Scope Proposal.

*Change Order Request by Contractor.* The Contractor may also propose changes to the scope of Services to be performed under any Statement of Work in order to (i) improve the quality or functionality of Services, work product or deliverables being provided; (ii) accommodate any unforeseen technical difficulties encountered in the provision of Services, work product or deliverables; or (iii) correct any inadvertent errors in the Services, work product or deliverables already provided but not accepted by the Customer. Such Change Order Request and Change in Scope Proposal shall be effective only if accepted in writing by the Customer. Upon acceptance and execution by both Parties, the Contractor shall be obligated to perform the agreed upon services and the Customer shall be liable to pay the Contractor the additional fees as included in the Change Order Request and the Change in Scope Proposal.

## 4. COMPENSATION

- 4.1 *Pricing and Payment.* The Contractor shall invoice and the Customer shall pay in full the fees to the Contractor as set forth the Agreement, Statement of Work, Exhibits, Amendments, Change Order Requests, Change in Scope Proposals or any other related document regarding fee for Services. The Customer shall pay invoiced amounts within thirty (30) calendar days of receipt of the invoice. Any invoices not paid within thirty (30) days of receipt shall bear compound interest at the rate of one and half percent (1 ½) per month, or such other lower rate as may be the maximum rate permitted under applicable law.

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- 4.2 *Expenses.* If a specific Statement of Work and/or Change Order or other related document agreed upon by both Parties, includes reimbursement of expenses, the Customer shall reimburse the Contractor for out-of-pocket, actual travel expenses, per diem, mileage, and lodging expenses incurred by Contractor personnel in the performance of the Services as agreed upon in each of the Statement of Work, Change Order Request, Change in Scope Proposal or any other related document disclosing fee for Services. All such expense reimbursements shall follow City's travel policies as per Exhibit D.
- 4.3 *Taxes.* The Customer shall pay all taxes levied against or upon the Services provided hereunder or arising out of this Agreement, exclusive, however, of taxes based on Contractor's income, employment related or payroll taxes, including but not limited to FICA and FUTA, applicable state employment related taxes or other employment related expenses, which shall be paid by Contractor.
- 4.4 *Late Payments by Contractor to subcontractor and material supplier.* When Contractor receives payment from Customer for contractual services, commodities, materials, supplies, or construction contracts, the Contractor shall pay such moneys received to each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier at the time of receipt. If the Contractor receives less than full payment, then the Contractor shall be required to disburse only the funds received on a pro rata basis to the subcontractor and materials suppliers, each receiving a prorated portion based on the amount due on the payment. If the Contractor without reasonable cause fails to make payments required by this section to subcontractor and material suppliers within fifteen (15) working days after the receipt by the Contractor of full or partial payment, the Contractor shall pay to the subcontractor and material suppliers a penalty in the amount of one percent (1%) of the amount due, per month, from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed. Retainage is also subject to the prompt payment requirement.

## 5. TERM AND TERMINATION

- 5.1 *Term.* This Agreement shall commence as of the Effective Date and shall continue in full force and effect until terminated in accordance with the terms hereof (the "Term").
- 5.2 *Termination for Convenience.* Either party may terminate this Agreement for convenience upon thirty (30) consecutive calendar days' written notice to the other party. The Customer agrees to pay Contractor for any services performed up to the effective date of termination. Notice of termination of any Statement of Work shall not be considered notice of termination of this Agreement unless specifically stated in the notice. Notwithstanding the foregoing, termination of this Agreement shall not result in a termination of any agreement to resell Third Party Software to the Customer.
- 5.3 *Contractor Default Provisions.*
- 5.3.1 *Events of Default by Contractor.* The following shall be considered "Contractor Event of Default": Contractor's fraud, misrepresentation; failure to perform or observe any of the material provisions of this Agreement; Contractor had failed to make undisputed payment to subcontractor or suppliers for devices; or Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any

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insolvency statute of debtor/creditor law if the Contractor's affairs have been put in the hands of a receiver; Contractor has failed in the representation of warranties stated herein. The foregoing notwithstanding, if Contractor attempts to meet its contractual obligations with the Customer through fraud, misrepresentation or material misstatement, Contractor may be debarred from Customer contracting in accordance with the Customer's debarment procedures.

- 5.3.2 *Provisions for Remedies of Customer.* Upon the occurrence of a Contractor Event of Default as set out in Section 5.3.1, the Customer shall provide written notice of such Contractor Event of Default to the Contractor ("Notice to Cure"), and the Contractor shall have thirty (30) calendar days after receipt of a Notice to Cure to commence reasonable steps to correct, cure, and/or remedy the Contractor Event of Default described in the written notice. If it is not possible to cure the default within this thirty (30) day time period, the Contractor will provide to the Customer within thirty (30) calendar days after receipt of Notice to Cure a written plan, including a timeline, to correct, cure, and/or remedy the Contractor Event of default. The Contractor shall proceed to cure the default in accordance with the approved plan.
- 5.4 *Customer Default Provisions.*
- 5.4.1 *Events of Default by Customer.* Any of the following shall constitute a "Customer Event of Default" hereunder: (i) the Customer fails to make timely payments as described in this Agreement; or (ii) the Customer fails to perform or observe any of the material provisions of this Agreement.
- 5.4.2 *Provisions for Remedies of Contractor.* Upon the occurrence of a Customer Event of Default as set out in Section 5.4.1 the Contractor shall provide written notice of such Customer Event of Default to the Customer ("Notice to Cure"), and the Customer shall have thirty (30) calendar days after receipt of a Notice to Cure to correct, cure, and/or remedy the Customer Event of Default described in the written notice.
- 5.5 *Termination for Cause.*
- 5.5.1 *Termination for Cause by the Customer.* In the event a Contractor Event of Default is not cured as authorized herein, the Customer may terminate this Agreement in whole or in part effective on receipt by the Contractor of written notice of termination pursuant to this provision.
- 5.5.2 *Termination for Cause by the Contractor.* In the event a Customer Event of Default is not cured as authorized herein, the Contractor may terminate this Agreement in whole or in part effective on receipt by the Customer of written notice of termination pursuant to this provision.
- 5.6 *Obligations on Termination.*
- 5.6.1 Upon termination of this Agreement for Cause or for Convenience, Contractor shall have no further obligation to provide any Services.
- 5.6.2 Contractor shall take such action as may be necessary to protect and preserve the Customer's materials and property until returned to the Customer.
- 5.6.3 The Contractor shall terminate all subcontracts to the extent they relate to the Agreement and settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.



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- 5.6.4 Contractor shall be entitled to compensation for fees and Services rendered up to and including the effective termination date and for and for all non-cancelable deliverables that are not capable of use except in the performance of this Agreement and which have been specifically developed for the purpose of this Agreement but not incorporated in the Services. Compensation pursuant to this section may be subject to audit. The Services shall be paid on a time and materials basis, at hourly rates as set forth in the Statement of Work.
- 5.6.5 The Customer shall cause payments to be made to Contractor within thirty (30) calendar days after receipt of Contractor's invoice.
- 5.6.6 The Contractor shall deliver to the Customer, as directed by the Customer, any: (i) completed deliverables; (ii) partially completed deliverables; related to the terminated portion of this Agreement; and (iii) any plans, working papers, forms and documentation for which the Customer has paid the fees to the Contractor.
- 5.6.7 The Contractor shall take no action which will increase the amounts payable by the Customer under this Agreement.
- 5.6.8 In the event of termination, any software license fees and hosting services fee paid prior to the termination date shall be forfeited by the Customer.
- 5.7 *Excusing Events.* Notwithstanding anything to the contrary contained herein, the failure (or prospective failure) of either party to perform its obligations under this Agreement shall be excused if, and to the extent that, such failure is caused by one of the following (an "**Excusing Event**"):
- i. A Force Majeure Event as defined in Section 12.1; or
  - ii. A breach by the other party under this Agreement;
- If an Excusing Event occurs, completion dates for deliverables in the project plan and fees will be adjusted accordingly on an equitable basis through a Change Order Request outlined in Section 3.2.1 herein.
- 5.8 *Termination for non-appropriation of funds.* All payment obligations under this Agreement are subject to the availability of funds appropriated in the then current fiscal period for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the Services under this Agreement, Customer may terminate this Agreement, for those goods or Services for which funds have not been appropriated. Sixty (60) days written notice will be provided to the Contractor after the determination of the non-appropriation of funds is known.
- 5.9 *Termination for Bankruptcy.* Customer reserves the right to terminate this Agreement if, during the term of this Agreement, Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law

## 6. CONFIDENTIAL INFORMATION

- 6.1 *Customer Confidential Information.* Contractor shall not disclose to any third-party Customer Confidential Information that Contractor, through its Contractor personnel, has access to or has received from the Customer pursuant to its performance of Services pursuant to this Agreement,

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unless approved in writing by the Customer. For any material to be considered Confidential, it has to be expressly marked as "Confidential". All such Customer Confidential Information will be held in confidence from the date of disclosure by the Customer, and discussions involving such Customer Confidential Information shall be limited to the Contractor's personnel.

- 6.2 *Contractor Confidential Information.* All Contractor Confidential Information received by the Customer from the Contractor will be held in confidence from the date of disclosure by the Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the Customer's staff who require such information in the performance of this Agreement. For any material to be considered Confidential, it has to be expressly marked as "Confidential". Contractor hereby notifies the Customer, and the Customer acknowledges receipt of said notification, that the Contractor Confidential Information may constitute a trade secret as defined by applicable state law.

The Customer acknowledges that disclosure of source codes, methodology and other confidential information to any third parties will result in irreparable harm to Contractor for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first notifying and receiving written consent of Contractor, except as otherwise provided by law.

The Customer further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor and Contractor's subcontractors during and after the term of this Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the Customer.

Customer may disclose Confidential Information, however, in accordance with judicial or other governmental orders and as otherwise required by applicable law, provided the Customer shall exert reasonable efforts to give the Contractor notice prior to such disclosure and shall comply with any applicable protective orders or equivalent restrictions.

- 6.3 *Survival.* The obligations hereunder with respect to each item of Customer Confidential Information and Contractor Confidential Information shall survive the termination of this Agreement.
- 6.4 Notwithstanding Section 6.1, 6.2 or 6.3 hereof, neither Customer Confidential Information nor Contractor Confidential Information shall include information which the recipient can demonstrate by competent written proof:
- a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain;
  - b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records;
  - c) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure;
  - d) is the subject of a written permission by the disclosing party to disclose; or
  - e) is independently developed by recipient without reference to the disclosing party's Confidential Information.
- 6.5 Notwithstanding Section 6.1, 6.2 or 6.3 hereof, disclosure of Customer Confidential Information or Contractor Confidential Information shall not be precluded if:



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- a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient of such Confidential Information shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;
- b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose; or
- c) the recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent.

### 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 *The Customer's Existing Intellectual Property Rights.* Contractor acknowledges that ownership of and title in and to all the Customer intellectual property that exists as of the Effective Date or that may be created by the Customer thereafter, including but not limited to patent, trademark, service mark, copyright, trade dress, logo and trade secret rights (hereinafter the "Customer IP"), will remain with the Customer. Ownership of and title in and to all the Customer IP, and all derivative works based on the Customer IP, will remain with the Customer. Contractor shall not use the Customer IP for any purpose other than as explicitly set forth in this Agreement.
- 7.2 *Contractor's Existing Intellectual Property.* The Customer acknowledges that ownership of and title in and to all Contractor intellectual property that exists as of the Effective Date or that may be created after the Effective Date (other than intellectual property created expressly and exclusively for the Customer as a work for hire) in the course of provision of Services under any Statement of Work issued hereunder, including but not limited to patent, trademark, service mark, copyright, trade secret rights, computer software, program, database, website, source code or object code owned by or developed by the Contractor, (and any design, architecture and techniques of software developments or enhancements related thereto), documentation, and methodology and tools related to any of the foregoing (hereinafter "Contractor IP"), will remain with Contractor.
- 7.3 *Limited License to use Contractor Intellectual Property ("IP").* To the extent any deliverable provided by Contractor to the Customer in course of provision of Services under any Statement of Work issued hereunder contain any Contractor IP, the Contractor hereby grants the Customer for the sole purpose of the Customer's internal use of such deliverable and Services a royalty free non-exclusive right to use any Contractor IP used by the Contractor non-exclusively in connection with the provision of the Services to the Customer, the Contractor's Work Product (as defined herein below), Utilities and Generic Enhancements thereto (as defined herein below) and methodology and tools related to any of the foregoing. The Customer may not, without the prior written permission of the Contractor and subject to such conditions as may be imposed by Contractor including without limitation any royalty payable therefore, sub-license any right to use the foregoing to any third party whatsoever. Under no circumstances whatsoever shall the Customer acquire any proprietary rights to such Contractor IP, Contractor's Work Product or Utilities and Generic Enhancements thereto by virtue of this Agreement.
- 7.4 *Contractor's Work Product.* All derivative works created by the Customer, or any of its permitted sub-licensees, from Contractors' IP, Contractor's IP documentation, other



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documentation created or owned by the Contractor, or Contractor's Confidential Information (collectively referred to as the "Contractor's Work Product") shall be considered "works made for hire" and shall be owned solely and exclusively by the Contractor and the Contractor shall be deemed to be the author of such Contractor's Work Product. If any Contractor's Work Product may not be considered a "work made for hire" under applicable law, the Customer hereby absolutely and irrevocably assigns to the Contractor, without further consideration, all of the Customer's right, title, and interest in and to such Contractor's Work Product, including all Intellectual Property Rights therein or thereon, and waives any moral rights therein. The Customer acknowledges that the Contractor, its successors-in-interest and assigns shall have the right to obtain and hold in their own name any Intellectual Property Rights and other proprietary rights in and to all Contractor's Work Product. The Customer agrees to, and shall cause any permitted sub-licensees to, execute any document and take any action that may be reasonably requested by the Contractor, at the Contractor's expense, to give effect to the intention of this Section.

7.5 *Utilities/ Productivity Tools / Accelerators /Generic Enhancements.* The Customer acknowledges that the Contractor has developed, whether independently or in collaboration with third parties, certain computer software and techniques, including but not limited to such tools as are intended to improve the productivity of the operational software writing processes, information and documentation (herein after referred to collectively as "Utilities"), that are Contractor's proprietary information and intellectual property, which may be used by the Contractor for the purposes of providing the Services. The Utilities and any generic enhancements made to the Utilities ("Generic Enhancements") may be incorporated into the work product and deliverables provided to the Customer as part of the Services. Subject to the limited license granted to the Customer in terms of this Section, the Contractor retains all rights to the Utilities and the Generic Enhancements for any future use.

7.6 *Residual Rights.* Notwithstanding anything to the contrary above, Contractor shall be free to utilize any concepts, know how, techniques, improvements or methods which it may discover or adapt in the performance of the Services for the Customer subject to any Contractor's obligations with respect to the care and use of the Customer Confidential Information (as defined in Section 6 above). For the avoidance of doubt, Contractor's residual rights under this Section 7.6 include Contractor's right to use the concepts, know how, techniques, improvements or methods which Contractor may discover or adapt in the performance of Services but such residual rights shall not include the use of any any Customer Confidential Information. Notwithstanding anything to the contrary contained in this Agreement or in any Statement of Work issued hereunder, the Contractor reserves the right to provide Services similar to the Services provided to the Customer hereunder to any third party, including without limitation any competitor of the Customer and providing work product and deliverables similar in form and function to those provided to the Customer hereunder, provided that any such Services, work product or deliverables provided to any third party do not infringe the Customer's rights to Customer IP or the Customer's Confidential Information.

## 8. INSURANCE

Upon the Customer's notification, the Contractor shall furnish to the Procurement Services Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

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- A. Workers' Compensation Insurance for all employees of the Contractor as required by Florida Statute Chapter 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the Customer harmless from any injury incurred during performance of the Contract. The exempt Contractor shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this contract or (ii) a copy of a Certificate of Exemption.
- B. General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 each Occurrence for bodily injury and property damage. The City of Hollywood must be shown as an additional insured with respect to this coverage. The mailing address of City of Hollywood, Florida, 2600 Hollywood Boulevard, Hollywood, Florida 33021, as the certificate holder, must appear on the certificate of insurance.
- C. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 Combined Single Limit.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-VII, as assigned by the A.M. Best Company.

Compliance with the foregoing requirements shall not relieve the Contractor of any liability or obligation under this section or under any other section in this Agreement.

The execution of this Agreement is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after Customer notification to Contractor to comply before the award becomes final. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional fifteen (15) calendar days to submit a corrected certificate to the Customer. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within thirty (30) calendar days after Customer notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of this Agreement will be rescinded, unless such time frame for submission has been extended by the Customer.

The Certificate shall contain a provision that coverage afforded under the policy will not be cancelled until at least thirty (30) days' prior written notice has been given to the Customer. The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to Customer prior to such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Customer shall suspend the Contract until such time as the new or renewed certificates are received by the Customer in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.



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### 9. INDEMNIFICATION

9.1 The Contractor shall indemnify and hold harmless the City of Hollywood and its officers, employees, agents and from any and all third party liability, losses or damages. In addition, the City shall be entitled to attorney's fees and costs of defense, which the City of Hollywood, or its officers, employees, agents may incur as a result of third party claims, demands, suits, causes of actions or proceedings arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. Furthermore, the Contractor shall be responsible to pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions in the name of the City of Hollywood, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by the Contractor shall cover the City of Hollywood, its officers, employees, agents and shall include claims for damages resulting from and/or caused by the gross negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed by or utilized by the Contractor in the performance of the Agreement.

9.2 The Customer shall defend, at its own expense, and indemnify and hold Contractor, and Contractor's affiliates harmless from and against any claims, actions, liabilities, losses, expenses (including reasonable attorney's fees), suits, damages, costs, or demands, arising out of or relating to any claim by a third party to the extent based on any negligent act or omission of Customer.

### 9.3 PATENT AND COPYRIGHT INDEMNIFICATION

Contractor warrants that all deliverables furnished hereunder, including but not limited to: services, equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

Contractor shall be liable and responsible for any and all claims made against the Customer for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the work, or the Customer's continued use of the deliverables furnished hereunder. Accordingly, the Proposer, at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the Customer and defend any action brought against the Customer with respect to any claim, demand, and cause of action, debt, or liability.

In the event any deliverable or anything provided to the Customer hereunder, or a portion thereof, is held to constitute an infringement and its use is or may be enjoined, Contractor shall have the obligation, to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at the Contractor's expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the Customer, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The Customer may reasonably reject any deliverable that it believes to be the subject of any such litigation or injunction, or if the use thereof would delay the work or be unlawful.

Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the work.



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### 10. WARRANTIES

- 10.1 The warranties in this Agreement are the exclusive warranties of Contractor. CONTRACTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS. To be eligible for Warranty Remedies, as defined below, the Customer must provide a written request describing the issue within the warranty period specified in each Statement of Work.
- 10.2 The Customer's sole and exclusive remedy with respect to a violation of the warranties described in this Agreement and any Exhibits and Attachments ("Warranty Remedy") shall be as follows:
- 10.3 *Warranty Remedy.* Customer shall provide Contractor with written notification of the error with any available system audit log and/or screen prints to help identify the source of the error. The error shall be jointly assigned an appropriate priority as defined below:

Severity Level	Description of Severity
Critical (Level 1)	Defined as an incident that renders the production system inoperable. Users are unable to connect to or use the system to support business functions
Standard (Level 2)	Defined as a production system/application problem affecting majority of the users. May also be defined as a system/application that is operating but with severe restriction. Some circumvention may be required to reestablish normal service
Minor (Level 3)	Defined as a production system/application problem isolated to a few people, performing non-critical tasks and an alternative workaround exists. The majority of the functions for most users are still usable.

- 10.4 Contractor shall take prompt action to resolve the issue which action shall include but not be limited to the following:
- a) Report or help report the problem to the software vendor, if the issue relates to software component provided by the software vendor;
  - b) Help apply the software fix provided by the software vendor;
  - c) Provide a system fix or update for programs or documentation delivered by Contractor;
  - d) Provide a correction to the system setup, if applicable;
  - e) Provide a workaround for the error that allows the system to support the Customer's business operations;
  - f) Provide instructions, directions and documentation for manual processing to accomplish the desired business function.
- 10.5 Customer shall provide access to their staff and systems/network to facilitate the Contractor in replicating, isolating and resolving the error.
- 10.6 If the error or deficiency is determined to be not under warranty, the Customer shall initiate a Change Order Request, pursuant to the Change Order Request provisions described in Section

## **MASTER SERVICES AGREEMENT**

3.2.1, to reimburse the Contractor for the actual costs incurred in analyzing the error or deficiency.

### **11. LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary herein, neither party shall be liable for any indirect, incidental, special or consequential damages, or for any loss or damages related to the operation, delay or failure of software or equipment or for any inaccuracy of data incurred by either party or any third party, however arising, whether in contract or tort, even if it has been advised of the possibility of such damages.

Each SOW (Statement of Work) constitutes a separate binding contract between the City of Hollywood, Florida and the Contractor. This Agreement shall be incorporated by reference in each such SOW. Contractor's liability for damages to Customer shall be limited to the fees and expenses actually paid by the City of Hollywood, Florida to the Contractor for services and products that directly gave rise to such liability under each SOW.

### **12. SOVERIGN IMMUNITY**

Nothing in this agreement shall be interpreted or construed to mean that the city waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statute.

### **13. DISPUTE RESOLUTION**

Contractor may in the final instance, seek to resolve difference concerning the Agreement with the Project Manager. In the event that the Project Manager and the Contractor are unable to resolve their difference within ten (10) business days, the Contractor may initiate a dispute in accordance with the procedures set forth in below. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

13.1 In the event of such dispute, the parties to this Agreement authorize the City Manager or designee, who shall not be the Project Manager or anyone associated with this Project, acting personally, to decide questions arising out of, under, or in connection with, or related to the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the City Manager's purview as set forth above shall be the final decision of the City. Any such dispute shall be brought, if at all, before the City Manager within thirty (30) days of the occurrence, event or act out of which the dispute arises or after seeking resolution with the Project Manager.

13.2 The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether the Contractor's performance or any deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the City Manager for a decision, together with all pertinent information in regard to such questions, in order that a fair and impartial decision may be made. The City Manager shall render a decision in writing and deliver a copy of the same to the Contractor within 10 business days. Notwithstanding anything to the contrary Contractor

## MASTER SERVICES AGREEMENT

reserves the right to pursue any and all remedies available to it in law or equity.

### 14. MISCELLANEOUS PROVISIONS

- 14.1 *Force Majeure.* Notwithstanding anything herein to the contrary, the Parties hereto shall not be deemed in default with respect to the performance of, or compliance with, the terms, covenants, agreements, conditions, or provisions of this Agreement, if the failure to perform or comply shall be due to any strike, lockout, civil commotion, invasion, rebellion, hostilities, sabotage, acts of God or causes otherwise beyond the control of the Parties. If the condition of force majeure exceeds a period of thirty (30) days Customer shall have the right to cancel or renegotiate this Agreement.
- 14.2 *Waiver.* No waiver by either party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.
- 14.3 *Assignment.* Contractor and Customer each binds themselves, their partners, successors, and other legal representatives to all covenants, agreements, and obligations contained in this Agreement. This Agreement or any part thereof shall not be assigned by Contractor without the prior written permission of the Customer, which permission shall not be unreasonably withheld or delayed.
- 14.4 In the event that the Contractor is merged or acquired, the acquiring entity shall honor the terms of the existing Agreement for five (5) years or until the end of the present Agreement term, whichever is longer.
- 14.5 *Governing Law and Venue.* This Agreement, including appendices, and all matters relating to this Agreement (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. This shall apply notwithstanding such factors which include, but are not limited to, the place where the contract is entered into, the place where the accident occurs and notwithstanding application of conflicts of law principles. The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District of Florida.
- TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AND CUSTOMER WAIVE TRIAL BY JURY.
- 14.6 *Notice.* All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by prepaid courier service (e.g., Fedex, UPS, etc.) or (iii) sent via email, and are addressed as set forth below the signatures of this Agreement, which designated person(s) may be amended by either party by giving written notice to the other party:



## MASTER SERVICES AGREEMENT

AST:

Customer:

Attn: Contracts Manager  
Applications Software Technology, LLC  
1755 Park Street, Suite 100  
Naperville, IL 60563

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14.7 *E-Verify.* Contractor acknowledges that the Customer may be utilizing the Contractor's Services for a project that is funded in whole or in part by State funds pursuant to a contract between the Customer and a State agency. The Contractor shall be responsible for complying with the E-Verify requirements in the contract and using the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the Agreement term. The Contractor is also responsible to request all its sub-contractors to e-verify its employees assigned to this agreement, if any, pursuant to any agreement between the Customer and a State Agency, and reporting to the Customer any required information. The Contractor acknowledges that the terms of this paragraph are material terms, the breach of any of which shall constitute a default under this Agreement.

14.8 *Modifications.* No modification, waiver or amendment of any term or condition of this Agreement shall be effective unless and until it shall be in writing and executed by both of the Parties hereto or their legal representatives.

14.9 *Purchase of Additional Services and Third Party Products.* Throughout the term of this Agreement, the Contractor will make available to the Customer such Services and Third party products that (i) relate to or enhance the ERP System or offered by the third-party provider of ERP SaaS solution, and (ii) are within Contractor's authority and capacity to resell on behalf of the third party. The price offered to Customer for such products and services shall include available discounts. Customer acknowledges that (i) its purchase of such products and services may be subject to specific terms and conditions required by Contractor and the Third party providers, and (ii) unless specifically incorporated into the order form for such products and services, the terms and conditions of this Agreement shall not apply to the purchase of such products and services. The agreement to purchase such Third Party products and services may have a term that is shorter or longer than the term of this Agreement.

Contractor does not have an exclusive right to make any sales to Customer of such products and services. Customer may elect to purchase any of these products or services from other Contractors at Customer sole discretion.

The initial purchase of third party products and services under this Agreement is set forth on the Oracle Software Ordering Document (Exhibit E). The parties may by mutual consent add additional products and services to those listed on Exhibit E.

Contractor may provide Customer with Services to implement or support such additional Third party products or services. The Parties may by mutual agreement add those Contractor-provided Services to the SOW set forth on Exhibit A.

14.10 *Rider Clause:* The contract may be extended, with the authorization of the Contractor, to other public bodies, public agencies, or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the contract. The Contractor shall deal directly with public bodies utilizing the contract concerning issuance of purchase orders, contractual disputes, invoicing and payment. The City of Hollywood acts only as the "Contracting Agent" for these public bodies.

## MASTER SERVICES AGREEMENT

It is the Contractor's responsibility to notify public bodies of the availability of the contract. Other public bodies desiring to use the contract shall make their own legal determination as to whether the use of the contract is consistent with their laws, regulations, and other policies. Other public bodies if mutually agreed may add terms and conditions required by their statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions.

The City of Hollywood shall not be held liable for any costs or damages incurred by other public bodies as a result of any contract extended to other public bodies by the Contractor.

- 14.11 *Severability.* In the event that any provision, clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.
- 14.12 *Statutory Override.* Should any local, state, or national regulatory authority having jurisdiction over the Customer enter a valid and enforceable order upon the Customer which has the effect of changing or superseding any term or condition of this Agreement, with appropriate notice to the Contractor, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the Customer of a material part of its Agreement with the Contractor.

If the compliance to the new order has a material impact on the Contractor Services and/or terms of this Agreement, the Contractor shall have the right to seek equitable compensation for it. In the event this order results in depriving the Customer of material parts, the Customer shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to the Customer. Should the Agreement be rescinded/terminated under such circumstances, the Customer shall pay for all Contractor Services provided up to the effective date of termination, but shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

- 14.13 *Survival.* The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and Customer under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.
- 14.14 *Sovereign Immunity.* Nothing in this Agreement shall be interpreted or construed to mean that the Customer waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statute.
- 14.15 *Entirety.* This Agreement, together with the Statements of Work and other attachments hereto, contains Agreement incorporates and includes all negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in the Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of the Agreement that are not contained in the Agreement, and that the Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or



## MASTER SERVICES AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Master Agreement as of the date set forth above, and represent that each signatory has authority to execute the Agreement on behalf of Customer and the Contractor, respectively.

### City of Hollywood, Florida

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Applications Software Technology LLC

By: Shay Zechariah

Name: SHAY ZECHARIAH

Title: President

Date: 12/15/17

### CITY

CITY OF HOLLYWOOD

By: JOSH LEVY, MAYOR

By: Cintya Ramos

CINTYA RAMOS  
FINANCIAL SERVICES DIRECTOR

ATTEST:

Michelle Ambrose, Deputy City Clerk (SEAL)  
for PATRICIA A. CERNY, MMC, CITY CLERK 12/14/17

APPROVED AS TO FORM AND LEGALITY  
For the use and reliance of the  
City of Hollywood, Florida, only.

DR. GONZALES  
DOUGLAS R. GONZALES  
CITY ATTORNEY at

12/14/17  
DATE



## MASTER SERVICES AGREEMENT

effect, and that the Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

*[End of page – Signature page to follow]*

## MASTER SERVICES AGREEMENT

**ORACLE PUBLIC SECTOR CLOUD SERVICES AGREEMENT TERMS FOR THE ORDER BETWEEN APPLICATIONS SOFTWARE TECHNOLOGY, LLC ("AST LLC") AND CITY OF HOLLYWOOD, FLORIDA, DATED 11/30/2017**

**THESE ORACLE CLOUD SERVICES AGREEMENT TERMS APPLY TO THE ORACLE CLOUD SERVICES THAT YOU ORDER.**

**1. USE OF THE SERVICES**

1.1 Oracle will make the Oracle services listed in Your order (the "Services") available to You pursuant to this Agreement and Your order. Except as otherwise stated in this Agreement or Your order, You have the non-exclusive, worldwide, limited right to use the Services during the period defined in Your order, unless earlier terminated in accordance with this Agreement or the order (the "Services Period"), solely for Your internal business operations. You may allow Your Users to use the Services for this purpose, and You are responsible for their compliance with this Agreement and Your order.

1.2 The Service Specifications describe and govern the Services. During the Services Period, Oracle may update the Services and Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Content. Oracle updates to the Services or Service Specifications will not materially reduce the level of performance, functionality, security or availability of the Services during the Services Period of Your order.

1.3 You may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration tests of the Services (the "Acceptable Use Policy"). In addition to other rights that Oracle has in this Agreement and Your order, Oracle has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

**2. OWNERSHIP RIGHTS AND RESTRICTIONS**

2.1 You or Your licensors retain all ownership and intellectual property rights in and to Your Content. Oracle or its licensors retain all ownership and intellectual property rights in and to the Services, derivative works thereof, and anything developed or delivered by or on behalf of us under this Agreement.

2.2 You may have access to Third Party Content through use of the Services. Unless otherwise stated in Your order, all ownership and intellectual property rights in and to Third Party Content and the use of such content is governed by separate third party terms between You and the third party.

2.3 You grant us the right to host, use, process, display and transmit Your Content to provide the Services pursuant to and in accordance with this Agreement and Your order. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content, and for obtaining all rights related to Your Content required by Oracle to perform the Services.

2.4 You may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Your order.



### 3. NONDISCLOSURE

3.1 By virtue of this Agreement, the parties may disclose information that is confidential ("Confidential Information"). To the extent permitted by law, Confidential Information shall be limited to Your Content residing in the Services, and all information clearly identified as confidential at the time of disclosure.

3.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

3.3 Subject to applicable law, each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will protect the confidentiality of Your Content residing in the Services for as long as such information resides in the Services. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Oracle will protect the confidentiality of Your Content residing in the Services in accordance with the Oracle security practices defined as part of the Service Specifications applicable to Your order.

The parties acknowledge and agree that You and this Agreement are subject to applicable freedom of information or open records law. Should you receive a request under such law for Oracle's Confidential Information, You agree to give Oracle prior notice of the request and before releasing Oracle's Confidential Information to a third party, in order to allow Oracle sufficient time to seek injunctive relief or other relief against such disclosure.

### 4. PROTECTION OF YOUR CONTENT

4.1 In performing the Services, Oracle will comply with the Oracle privacy policy applicable to the Services ordered. Oracle privacy policies are available at <http://www.oracle.com/us/legal/privacy/overview/index.html>.

4.2 Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement> and incorporated herein by reference, describes how Oracle will process Personal Data that You provide to us as part of Oracle's provision of the Services, unless stated otherwise in Your order. You agree to provide any notices and obtain any consents related to Your use of, and Oracle's provision of, the Services.

4.3 Oracle will protect Your Content as described in the Service Specifications, which define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services and describe other aspects of system management applicable to the Services. Oracle and its affiliates may perform certain aspects of the Services (e.g., administration, maintenance, support, disaster recovery, data processing, etc.) from locations and/or through use of subcontractors, worldwide.

4.4 You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Your Content, or from Your use of the Services in a manner that is inconsistent with the terms of this Agreement. You may disclose or transfer, or instruct us to disclose or transfer in writing, Your Content to a third party, and upon such disclosure or transfer Oracle is no longer responsible for the security or confidentiality of such content and applications outside of Oracle.

4.5 Unless otherwise specified in Your order (including in the Service Specifications), You may not provide us access to health, payment card or similarly sensitive personal information that imposes specific data security

obligations on the processing of such data greater than those specified in the Service Specifications. If available, You may purchase services from us (e.g., Oracle Payment Card Industry Compliance Services) designed to address particular data protection requirements applicable to Your business or Your Content.

## 5. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

5.1 Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Oracle warrants that during the Services Period, Oracle will perform the Services using commercially reasonable care and skill in all material respects as described in the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide us with a written notice that describes the deficiency in the Services (including, as applicable, the service request number notifying us of the deficiency in the Services).

5.2 ORACLE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

5.3 FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO **AST LLC**, AND **AST LLC** WILL IN TURN REFUND TO YOU THE FEES PAID FOR THE DEFICIENT SERVICES FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT.

5.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 6. LIMITATION OF LIABILITY

6.1 IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES NOR ORACLE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, SALES, GOODWILL, OR REPUTATION.

6.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ORACLE'S AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED UNDER SUCH ORDER.

## 7. INDEMNIFICATION

7.1 Subject to the terms of this Section 7 (Indemnification), if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will to the extent not prohibited by law, defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by



## EXHIBIT A

the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations, to the extent not prohibited by law; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

7.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow Oracle to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund to **AST LLC** and **AST LLC** will in turn refund to You any unused, prepaid fees for such Services.

7.3 The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible or made available to You within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

7.4 This Section 7 provides the parties' exclusive remedy for any infringement claims or damages.

## 8. TERM AND TERMINATION

8.1 Services provided under this Agreement shall be provided for the Services Period defined in Your order. If You order Cloud Services that are designated in the Service Specifications or Your order as Services that will be automatically extended, such Services will not automatically be extended for an additional Services Period of the same duration. In order to extend the Services, You must provide **AST LLC** with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intent to renew such Cloud Services and You execute a contract modification (or a new contract) evidencing such extension. The preceding sentence shall not apply if **AST LLC** provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew or extend such Cloud Services.

8.2 Oracle may suspend Your or Your Users' access to, or use of, the Services if Oracle believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) You or Your Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, Oracle will provide You with advance notice of any such suspension. Oracle will use reasonable efforts to re-establish the Services promptly after Oracle determines that the issue causing the suspension has been resolved. During any suspension period, Oracle will make Your Content (as it existed on the suspension date) available to You. Any suspension under this paragraph shall not excuse You from Your obligation to make payments under this Agreement.



8.3 If either of us breaches a material term of this Agreement or the order and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred. If **AST LLC** terminates the order as specified in the preceding sentence, You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Services ordered.

8.4 You may terminate this Agreement at any time without cause by giving us 30 days prior written notice of such termination. Termination of the Agreement will not affect orders that are outstanding at the time of termination. Those orders will be performed according to their terms as if this Agreement were still in full force and effect. However, those orders may not be renewed or extended subsequent to termination of this Agreement.

8.5 For a period of no less than 60 days after the end of the Services Period of an order, Oracle will make Your Content (as it existed at the end of the Services Period) available for retrieval by You. At the end of such 60 day period, and except as may be required by law, Oracle will delete or otherwise render inaccessible any of Your Content that remains in the Services.

8.6 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

## **9. THIRD-PARTY CONTENT, SERVICES AND WEB SITES**

9.1 The Services may enable You to link to, transmit Your Content to, or otherwise access third parties' websites, platforms, content, products, services, and information. Oracle does not control and are not responsible for such third parties' websites, platforms, content, products, services, and information.

9.2 Any Third Party Content Oracle makes accessible is provided on an "as-is" and "as available" basis without any warranty of any kind. You acknowledge and agree that Oracle is not responsible for, and have no obligation to control, monitor, or correct, Third Party Content. Oracle disclaims all liabilities arising from or related to Third Party Content.

9.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a "Third Party Service"), depend on the continuing availability of such third parties' respective application programming interfaces (APIs). Oracle may need to update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their unavailability, during the Services Period does not affect Your obligations under this Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes.

## **10. SERVICE MONITORING, ANALYSES AND ORACLE SOFTWARE**

10.1 Oracle continuously monitors the Services to facilitate Oracle's operation of the Services; to help resolve Your service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any of Your Content residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by You or any of Your Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Your Content) may also be used to

assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

10.2 Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Oracle retains all intellectual property rights in Service Analyses.

10.3 Oracle may provide You with online access to download certain Oracle Software for use with the Services. If Oracle licenses Oracle Software to You and do not specify separate terms for such software, then such Oracle Software is provided as part of the Services and You have the non-exclusive, worldwide, limited right to use such Oracle Software, subject to the terms of this Agreement and Your order, solely to facilitate Your use of the Services. You may allow Your Users to use the Oracle Software for this purpose, and You are responsible for their compliance with the license terms. Your right to use Oracle Software will terminate upon the earlier of Oracle's notice (by web posting or otherwise) or the end of the Services associated with the Oracle Software. If Oracle Software is licensed to You under separate third party terms, then Your use of such software is governed by the separate third party terms.

## 11. EXPORT

11.1 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and You and Oracle each agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

11.2 You acknowledge that the Services are designed with capabilities for You and Your Users to access the Services without regard to geographic location and to transfer or otherwise move Your Content between the Services and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Your Content.

## 12. FORCE MAJEURE

Neither of us, nor Oracle, shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

## 13. NOTICE

13.1 Any notice required under this Agreement shall be provided to the other party, and Oracle, in writing. If You have a legal dispute with Oracle or if You wish to provide a notice under the Indemnification Section of this



## EXHIBIT A

Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway Redwood Shores, CA 94065, Attention: General Counsel, Legal Department.

13.2 Oracle may give notices applicable to Oracle's Cloud Services customer base by means of a general notice on the Oracle portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Oracle's account information or by written communication sent by first class mail or pre-paid post to Your address on record in Oracle's account information.

### 14. ASSIGNMENT

You may not assign this Agreement or give or transfer the Services, or any interest in the Services, to another individual or entity.

### 15. OTHER

15.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between Oracle, **AST LLC**, and You. We are each responsible for paying our own employees, including employment related taxes and insurance. You understand that Oracle's business partners and other third parties, including any third parties with which Oracle has an integration agreement or that are retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for, bound by, or responsible for any problems with the Services, Your Content or Your Applications arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Oracle subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for Oracle resources under this Agreement. This Agreement is entered exclusively between You and **AST LLC**. While Oracle has no contractual relationship with You, Oracle is a third party beneficiary of this Agreement.

15.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

15.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than five years after the cause of action has accrued.

15.4 Prior to entering into an order governed by this Agreement, You are solely responsible for determining whether the Services meet Your technical, business or regulatory requirements. Oracle will cooperate with Your efforts to determine whether use of the standard Services are consistent with those requirements. Additional fees may apply to any additional work performed by Oracle or changes to the Services. You remain solely responsible for Your regulatory compliance in connection with Your use of the Services.

15.5 Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may audit Your compliance with the terms of this Agreement and Your order. You agree to cooperate with Oracle's audit and to provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations.

15.6 This Agreement is governed by the substantive and procedural laws of the State of Florida, excluding its conflicts of law rules.

### 16. ENTIRE AGREEMENT

16.1 You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the



applicable order, is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

16.2 It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Oracle document and no terms included in any such purchase order, portal, or other non-Oracle document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and the

Agreement, the order shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an order. This Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of You and of Oracle; however, Oracle may update the Service Specifications, including by posting updated documents on Oracle's websites. Except as set forth in Section 15.1, no third party beneficiary relationships are created by this Agreement.

## 17. AGREEMENT DEFINITIONS

- 17.1. **"Oracle Software"** means any software agent, application or tool that Oracle makes available to You for download specifically for purposes of facilitating Your access to, operation of, and/or use with, the Services.
- 17.2. **"Program Documentation"** refers to the user manuals, help windows, readme files for the Services and any Oracle Software. You may access the documentation online at <http://oracle.com/contracts> or such other address specified by Oracle.
- 17.3. **"Service Specifications"** means the following documents, as applicable to the Services under Your order: (a) the Cloud Hosting and Delivery Policies, the Program Documentation, the Oracle service descriptions, and the Data Processing Agreement, available at [www.oracle.com/contracts](http://www.oracle.com/contracts); (b) Oracle's privacy policy, available at <http://www.oracle.com/us/legal/privacy/overview/index.html>; and (c) any other Oracle documents that are referenced in or incorporated into Your order. The following do not apply to any non-Cloud Oracle service offerings acquired in Your order, such as professional services: the Cloud Hosting and Delivery Policies, Program Documentation, and the Data Processing Agreement. The following do not apply to any Oracle Software that is provided by Oracle as part of the Services and governed by the terms of this Agreement: the Cloud Hosting and Delivery Policies, Oracle service descriptions, and the Data Processing Agreement.
- 17.4. **"Third Party Content"** means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle that You may access through, within, or in conjunction with Your use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, Oracle data marketplaces and libraries, dictionaries, and marketing data.
- 17.5. **"Users"** means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Services in accordance with this Agreement and Your order. For Services that are specifically designed to allow Your clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered "Users" subject to the terms of this Agreement and Your order.
- 17.6. **"Your Content"** means all software, data (including Personal Data as that term is defined in the Data Processing Agreement for Oracle Cloud Services described in this Agreement), text, images, audio, video, photographs, non-Oracle or third party applications, and other content and material, in any format, provided by You or any of Your Users that is stored in, or run on or through, the Services. Services under this Agreement, Oracle Software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Content"

## 18. CLOUD SERVICES EFFECTIVE DATE

The Effective Date of this Cloud Services Agreement is 11/30/2017 12/19/17 PAB. (DATE TO BE COMPLETED BY AST LLC)

City of Hollywood, FL

APPLICATIONS SOFTWARE TECHNOLOGY, LLC

Authorized Signature: Paul A. BassarName: Paul A. BassarTitle: Director of Procurement & ComplianceSignature Date: 11/30/2017Authorized Signature: Shaji ZechariahName: SHAJI ZECHARIAHTitle: PresidentSignature Date: 12/18/17

Agreement No.: \_\_\_\_\_ [to be completed by Oracle]

CITY

CITY OF HOLLYWOOD

By: JOSH LEVY, MAYORBy: Cintya Ramos  
CINTYA RAMOS  
FINANCIAL SERVICES DIRECTOR

## ATTEST:

for Michelle Anderson, Deputy City Clerk (SEAL)  
PATRICIA A. CERNY, MMC, clerk  
CITY CLERK 12/19/17

APPROVED AS TO FORM AND LEGALITY  
For the use and reliance of the  
City of Hollywood, Florida, only.

Douglas R. Gonzales  
DOUGLAS R. GONZALES  
CITY ATTORNEY

12/14/17  
DATE