TECHNOLOGY SOFTWARE-AS-A-SERVICE (SaaS) AGREEMENT

AGREEMENT BETWEEN THE CITY OF CUPERTINO AND
ACUITY BRANDS TECHNOLOGY SERVICES, INC., FOR SOFTWARE-AS-A-SERVICE

THIS AGREEMENT ("Agreement"), by and between the CITY OF CUPERTINO, a California municipal corporation ("City"), and Acuity Brands Technology Services, Inc., a corporation whose address is 55 Harrison St, #200, Oakland, CA. 94607 ("Software Provider") (collectively referred to as the "Parties").

RECITALS:

The following Recitals are a substantive portion of this Agreement:

      A.   City is a municipal corporation duly organized and validly existing under the laws of the State of California.

      B.   Software Provider is specially trained, experienced and competent to perform the special services which will be required by this Agreement.

      C.   City and Software Provider desire to enter into an agreement for Software Provider's provision of software-as-a-service (SaaS) pertaining to City's online systems. Through this Agreement, Software Provider shall provide to City a ***building energy management and analytics platform*** relating to the City's network. The full scope of services covered by this agreement is described in the attached Exhibit A: Service Level Agreement (the "SLA").

      NOW, THEREFORE, the Parties mutually agree as follows:

1.   **TERM**
The term of this Agreement shall commence on ***December 10, 2019.*** The term of this Agreement is **1 year**, unless the Agreement is terminated prior thereto under the provisions of Section 16, below. The City has the option, at its sole discretion, to renew this Agreement for two additional consecutive 1-year terms.

2.   **SCOPE OF SERVICES AND CONDITIONS THEREOF**
Subject to the terms and conditions set forth in this Agreement, Software Provider shall perform each and every service to the schedule of performance set forth in the SLA (collectively "Services"), as described below.

    A. **Responsibilities of Software Provider**. Software Provider shall provide the software services as further described in the SLA. The Services provided under this Agreement shall include (a) any software, plug-ins or extensions related to the Services or upon which the Services are based including any and all updates, upgrades, bug fixes, dot releases, version upgrades or any similar changes that may be made available to the Software Provider from time to time (the "Software"), (b) any and all technical documentation necessary or use of the Services, in hard copy

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form or online (the "Documentation"), (c) regular maintenance of Software Provider's system, and (d) other technology, user interfaces, know-how and other trade secrets, techniques, designs, inventions, data, images, text, content, APIs, and tools provided in conjunction with the Services.

B. **Equipment.** If necessary to enable Software Provider to fulfill its obligations under the SLA, Software Provider shall, at its sole cost and expense, furnish all facilities, personnel and equipment to City necessary to provide the Services (the "Equipment").

C. **Registration.** Prior to using the Services, City shall identify the administrative users for its account ("**Administrators**"). Each Administrator will be provided an administrator ID and password.

D. **License Grant.** Software Provider hereby grants City a license to use the Software and the Documentation for the permitted purpose of accessing the Services.

E. **Reservation of Rights and Data Ownership.** City shall own all right, title and interest in its data that is related to the services provided by this contract. Software Provider shall not access City user accounts or City data, except (1) as essential to fulfillment of the objectives of this Agreement, (2) in response to service or technical issues, or (3) at City's written request.

F. **Data Protection.** In carrying out the Services, Software Provider shall endeavor to protect the confidentiality of all confidential, non-public City data ("City Data") as follows:

    1. Implement and maintain appropriate security measures to safeguard against unauthorized access, disclosure or theft of City Data in accordance with recognized industry practice.

    2. City Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, Software Provider is responsible for encryption of the City Data.

    3. Software Provider shall not use any City Data collected by it in connection with the Service for any purpose other than fulfilling the obligations under this Agreement.

G. **Software Ownership.** Software Provider owns the Services, Software, Documentation, and any underlying infrastructure provided by Service Provider in connection with this Agreement. City acknowledges and agrees that (a) the Services, any Software and Documentation are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (b) Software Provider retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Services, the Software, any Documentation, any other deliverables, any and all related and underlying technology and any derivative works or modifications of any of the foregoing, including, without limitation, (c) the Software and access to the Services are licensed on a subscription basis, not sold, and City acquires no ownership or other interest in or to the Services, the Software or the Documentation other than the license rights expressly stated herein, and (d) the Services are offered as an on-line, hosted solution, and that City has no right to obtain a copy of the Services.

H. **Restrictions.** City agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works based on the Service or any element of the Software, (ii)

interfere with or disrupt the integrity or performance of the Services or the data contained therein or block or disrupt any use or enjoyment of the Services by any third party, (iii) attempt to gain unauthorized access to the Services or their related systems or networks or (iv) remove or obscure any proprietary or other notice contained in the Services, including on any reports or data printed from the Services.

I. **Security Incident.** In the event a data breach occurs with respect to City Data, Software Provider will provide notice within a reasonable time following a reasonable suspicion that there has been unauthorized access/modification/destruction to the information of the City. Software Provider shall (1) cooperate with City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

J. **Notification of Legal Requests.** Software Provider shall contact City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to City Data. Software Provider shall not respond to subpoenas, service of process and other legal requests related to City without first notifying City, unless prohibited by law from providing such notice.

K. **Access to Security Logs and Reports.** Software Provider shall provide reports to City in a format as specified in the SLA agreed to by both Software Provider and City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this Agreement.

L. **Responsibilities and Uptime Guarantee.** Software Provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided, to the extent the hardware, software and network support are maintained by Software Provider. The technical and professional activities required for establishing, managing and maintaining these environments are the responsibilities of Software Provider. The system shall be available for City's use on a 24/7/365 basis (with agreed-upon maintenance downtime).

M. **Intentionally Omitted.**

N. **Business Continuity and Disaster Recovery.** Software Provider shall provide to City a written business continuity and disaster recovery plan prior to or at the time of execution of this agreement and shall ensure that it meets City's recovery time objective (RTO) of four (4) hours or less.

O. **Compliance with Accessibility Standards.** Software Provider shall comply with and adhere to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101).

P. **Web Services.** Software Provider shall use Web services exclusively to interface with City Data in near real time when possible.

Q. **Encryption of Data at Rest.** Software Provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless City approves the storage of personal data on Software Provider's portable device in order to accomplish work as defined in the statement of work.

3. **COMPENSATION TO SOFTWARE PROVIDER**

Software Provider shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Two Hundred Twenty Two Thousand and five hundred dollars ($222,500.00). The payments specified in this section shall be the only payments to be made to Software Provider for services rendered pursuant to this Agreement. Software Provider shall invoice City according to the following schedule of milestones/ deliverables:

Upon execution of this Agreement	Year 1 (Initial Period) *December 10, 2019 through December 9, 2020*	*$45,500.00*
• Year 2 (Renewal 1)	*December 10, 2020 through December 9, 2021*	*$45,500.00*
• Year 3 (Renewal 2)	*December 10, 2021 through December 9, 2022*	*$45,500.00*

City shall pay Contractor within thirty (30) days after receipt of Service Provider's invoice. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) days after receipt, and shall explain in writing the reasons why the payment request is not proper.

4. **TIME IS OF THE ESSENCE**

Software Provider and City agree that time is of the essence regarding the performance of this Agreement.

5. **LICENSES; PERMITS; ETC.**

Software Provider represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required to carry out the purposes of this Agreement.

6. **ASSIGNMENTS.** Software Provider may assign, sublease, or transfer this Agreement, or any interest therein, to a third party without providing notice to City. Such notice shall be provided within ten (10) days after the action to assign, sublease, or transfer this Agreement, or any interest therein occurs. City may elect to terminate this Agreement within thirty (30) days of such notice. If City elects to terminate this Agreement due to assignment, sublease, or transfer of the Agreement, Software Provider shall refund to City any unused amount of the yearly payment to Software Provider, on a pro-rated basis.

7. **INDEPENDENT PARTIES**

City and Software Provider intend that the relationship between them created by this Agreement is that of independent contractor. No civil service status or other right of employment will be acquired by virtue of Software Provider's services. None of the benefits provided by City to its employees, including but not limited

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None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Software Provider, its employees or agents. Software Provider is not a "public official" for purposes of Government Code §§ 87200 et seq.

8. **IMMIGRATION REFORM AND CONTROL ACT (IRCA)**
Software Provider assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Software Provider shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Software Provider.

9. **NON-DISCRIMINATION**
Consistent with City's policy prohibiting harassment and discrimination, Software Provider agrees that neither it nor its employee or subcontractors shall harass or discriminate against a job applicant, a City employee, or a citizen on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class status. Software Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

10. **INTELLECTUAL PROPERTY INDEMNIFICATION**
Software Provider agrees to, at its expense, defend and/or settle any claim made by a third party against City alleging that the City's use of the Services infringes such third party's United States patent, copyright, trademark or trade secret (an "IP Claim"), and pay those amounts finally awarded by a court of competent jurisdiction against City with respect to such IP Claim.

11. **DUTY TO INDEMNIFY AND HOLD HARMLESS**
Software Provider shall indemnify, defend, and hold harmless City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including for any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out, pertaining to, or related to the negligent or willful misconduct of Software Provider or Software Provider's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. The provisions of this Section survive the completion of the Services or termination of this Contract.

12. **INSURANCE**:
A. _General Requirements_. On or before the commencement of the term of this Agreement, Software Provider shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of

insurance coverage in compliance with the requirements listed in Exhibit "B". Software Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement.

B.   Subrogation Waiver. Software Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Software Provider shall look solely to its insurance for recovery. Software Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Software Provider or City with respect to the services of Software Provider herein, a waiver of any right to subrogation which any such insurer of said Software Provider may acquire against City by virtue of the payment of any loss under such insurance.

13.   **RECORDS**

Software Provider shall maintain internal records reflecting that the Services were performed by Software Provider hereunder in accordance with customary recordkeeping practices in the software development industry. Software Provider shall provide free access to such records to the representatives of City or its designee's at all reasonable and proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary. No such examination and audit shall give City the right to access records relating to other Software Provider customers. Such records shall be maintained for a period of three (3) years after Software Provider receives final payment from City for all services required under this agreement.

14.   **NONAPPROPRIATION**

This Agreement is subject to the fiscal provisions of the Cupertino Municipal Code and Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

15.   **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after deposit in the U.S. Mail, postage prepaid, addressed as hereinafter provided. All notices, demands, requests, or approvals shall be addressed as follows:

TO CITY:
City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
Attention: Bill Mitchell

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Copy to:
Heather M. Minner, Esq.
City Attorney, City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3255

TO SOFTWARE PROVIDER:
Acuity Brands Technology Services, Inc.
55 Harrison St, #200
Oakland, CA. 94607
Attention: John Catoline

16. **TERMINATION**

   A.   **Basis for Termination.** In the event either Party fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, that Party shall be deemed in default in the performance of this Agreement. If that Party fails to cure the default within the time specified and according to the requirements set forth in a written notice of default, and in addition to any other remedy available by law, the other Party may terminate the Agreement by giving the defaulting Party written notice thereof, which shall be effective immediately.

   Either Party shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving thirty (30) calendar days' prior written notice to the other Party as provided herein. If such notice is received by Software Provider, it shall immediately discontinue performance.

   B.   *Pro Rata* **Payments.** City shall pay Software Provider for services satisfactorily performed up to the effective date of termination. In such event, a calculation of the amounts due shall be deemed correct as computed on a *pro rata* basis with compensation provided for the period of service paid as a percentage of the total contract amount. If City had already paid Software Provider for services in advance, upon termination, Software Provider shall refund to City any unused amount of the yearly payment to Software Provider, on a pro-rated basis.

   C.   **Handling of City Data.** In the event of a termination of this Agreement, Software Provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data. During any period of service suspension, Software Provider shall not take any action to intentionally erase any City data for a period of 30 days after the effective date of termination, unless authorized by City. Software Provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to City.

17. **WARRANTY AND WARRANTY DISCLAIMER**
Software Provider warrants that, (i) the services shall be provided in a diligent, professional, and workmanlike manner in accordance with industry standards, (ii) the services provided under this agreement do not infringe or misappropriate any intellectual property rights of any third party, and (iii) the services shall substantially perform in all material respects as described in the SLA in the event of any breach of section (iii), above, Software Provider shall, as its sole liability and your sole remedy, repair or replace the services that are subject to the warranty claim at no cost to City or if Software Provider is unable to repair or replace, then it will refund any pre-paid fees for services not rendered. Except for the warranty described in this section, the services are provided without warranty of any kind, express or implied including, but not limited to, the implied warranties or conditions of design, merchantability, fitness for a particular purpose, and any warranties of title and non-infringement.

18. **COMPLIANCE**
Software Provider shall comply with all state or federal laws and all ordinances, rules, policies and regulations enacted or issued by City.

19. **CONFLICT OF LAW**
This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any suits brought pursuant to this Agreement shall be filed with the Superior Court for the County of Santa Clara, State of California.

20. **ADVERTISEMENT**
Software Provider shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

21. **INTEGRATED CONTRACT**
This Agreement, including all appendices, represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Software Provider. In the event that any Service Level Agreement, Exhibit, associated instrument or agreement executed by the Parties in conjunction with this Agreement or prior thereto contains a term that conflicts with the terms of this Agreement, the terms of this Agreement shall govern and supersede any other document or Exhibit.

22. **AUTHORITY**
The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

SOFTWARE PROVIDER
Acuity Brands Technology, Inc.

By ___Sarah Hargrave___
    464166E6C0A544E...

Title ___VP, Customer Success and Operations___

Date ___12/12/2019 | 3:52 PM PST___

APPROVED AS TO FORM:

_____

City Attorney

Heather M. Minner

CITY OF CUPERTINO
A Municipal Corporation

By _____

Title Chief Technology Officer

Date _12 / 12 / 19_

☐ Over $175,000- Council Approval Required
☒ Over $45,000- Department Head Approval Required
☐ Up to $45,000- Designated Supervisor Approval Required

RECOMMENDED FOR APPROVAL

_____

Nidhi Mathur, App. Manager

ATTEST:

For Bill Mitchell _Grace Schmidt 12-17-19_

City Clerk

Exhibits:

Exhibit A: Service Level Agreement

Exhibit B: Insurance Requirements and Proof of Insurance

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Contract No. _____

<u>Exhibit A: Service Level Agreement ("SLA")</u>

Account Name	City of Cupertino	Order Form #	1909-2254	
Company Address	55 Harrison Street, #200	Contract Date	9/12/2019	
	Oakland, CA 94607	Expiration Date	9/30/2019	
	US	Subscription Start Date	10/1/2019	
Phone: (510) 907-0400				
E-mail: sales@luciddg.com		Subscription End Date	9/30/2020	

Prepared By	John Catoline	Buildings	17
Phone	(510) 845-2740	Square Footage	185,186
Email	jcatoline@luciddg.com	Cloud Points	18
		Automated Utility Bills	350

Product	Line Item Description	Sales Price	Quantity	Total Price
BuildingOS Core Platform	BuildingOS Subscription (Scope: Base License, Buildings, Utility & Interval Points, Public Sector & Legacy Discounts) - $33,500; CSM: $12,000, Year1	$45,500.00	1.00	$45,500.00
Contracted Subscription (Non-Prepay)	BuildingOS Subscription (Scope: Base License, Buildings, Points) - $33,500; CSM: $12,000, Years 2 & 3 - 2 years option to renew	$45,500.00	2.00	$91,000.00

All amounts are in USD. All orders may be subject to tax.

Implementation Services will commence upon receipt of payment.

Annual Subscription	$45,500.00
Implementation	$0.00
Hardware	$0.00
Credits	$0.00
Tax	$0.00
Shipping and Handling	$0.00
Grand Total	$136,500.00

NOTES

Note to Customer
- Per customer: The term of this Agreement is 1 year, unless the Agreement is terminated prior thereto under the provisions of Section 16 of the SaaS contract. The City has the option, at its sole discretion, to renew this Agreement for two additional consecutive 1-year terms.
- Subscription Contract Year 1 at $45,500 set annual price: $33,500 for BuildingOS Subscription (including Buildings, data points, and applications) & $12,000 for Customer Success/Support Subscription

BILLING INFORMATION

lucid ™

BILLING INFORMATION (to be filled out by the customer)

Payment Terms: Total amount due within 30 days of receipt of invoice (net 30)

PO Required   Yes /   No   (if yes) PO Number

Billing Contact:

Billing Email:

Billing Phone:

Billing Address:

IN WITNESS WHEREOF, the parties duly authorized officer(s) or representative(s) have executed this Agreement as of the Effective Date.

Customer		**Lucid**	
Signature		Signature	*Sarah Diegnan* DocuSigned by: 464166E6C0A544E...
Name		Name	Sarah Diegnan
Title		Title	VP, Customer Success and Operations
Date		Date	12/4/2019 | 10:22 AM PST

This Order Form constitutes a non-cancellable purchase commitment and is effective as of the date on this Order Form signed by the duly authorized officer(s) or representative(s) of the parties. The subscription term shall be the Term and any Renewal Term as such terms are defined in the Application Services Agreement v011019 between the parties executed and delivered concurrently with this Order (the "ASA") which is available at https://lucidconnects.com/terms and is incorporated by reference in this order.

Exhibit B: Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

1.   MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

Additional Insureds:
City, its City Council, boards and commissions, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

Workers' Compensation:
Statutory coverage as required by the State of California and Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

General Liability:
Commercial general liability coverage in the following minimum limits:
> Bodily Injury:
> $1,000,000 each occurrence
> $1,000,000 aggregate - all other
> Property Damage:
> $500,000 each occurrence
> $1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of $2,000,000
> will be considered equivalent to the required minimum limits shown above.

Cyber Liability:
Insurance, with limits not less than:
> $2,000,000 each occurrence
> $2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and /or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider . Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Software Provider to immediately cease all activities with respect to this Agreement if it determines that Software Provider fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Software Provider.

3. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Software Provider's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this Agreement, and annually thereafter for the term of this Agreement.   All of the insurance companies providing insurance for Software Provider shall be licensed to do insurance business in the State of California and shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

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Contract No. _____

Exhibit B: Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES**

Additional Insureds:
City, its City Council, boards and commissions, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

Workers' Compensation:
Statutory coverage as required by the State of California and Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

General Liability:
Commercial general liability coverage in the following minimum limits:
> Bodily Injury:
> $1,000,000 each occurrence
> $1,000,000 aggregate - all other
> Property Damage:
> $500,000 each occurrence
> $1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of $2,000,000
> will be considered equivalent to the required minimum limits shown above.

Cyber Liability:
Insurance, with limits not less than:
> $2,000,000 each occurrence
> $2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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3.   **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION**.

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City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

ACORD®   CERTIFICATE OF LIABILITY INSURANCE

	DATE (MM/DD/YYYY)
	09/06/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Willis Insurance Services of Georgia, Inc.	PHONE (A/C, No, Ext): 1-877-945-7378	FAX (A/C, No): 1-888-467-2378
c/o 26 Century Blvd	E-MAIL ADDRESS: certificates@willis.com	
P.O. Box 305191		
Nashville, TN 372305191 USA	INSURER(S) AFFORDING COVERAGE	NAIC #

INSURED	INSURER A: National Union Fire Insurance Company of P	19445
Acuity Brands, Inc.	INSURER B: New Hampshire Insurance Company	23841
Attn: Lara Pearson	INSURER C:	
One Lithonia Way	INSURER D:	
Conyers, GA 30012	INSURER E:	
	INSURER F:	

COVERAGES   CERTIFICATE NUMBER: W12502136   REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 3,000,000
	☐ CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
		Y		GL 6862386	09/01/2019	09/01/2020	PERSONAL & ADV INJURY	$ 3,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$ 12,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N No	N/A	WC 017515716	09/01/2019	09/01/2020	X PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	$ 3,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 3,000,000
							E.L. DISEASE - POLICY LIMIT	$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: BuildingOS Subscription Renewal.

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are included as Additional Insured as required by contract.

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
City of Cupertino Attn: City Clerk 10300 Torre Avenue Cupertino, CA 95014-3202	AUTHORIZED REPRESENTATIVE *Britt Pyle*

ACORD 25 (2016/03)   The ACORD name and logo are registered marks of ACORD

SR ID: 18479793   BATCH: 1356205

SUPPLEMENT TO CERTIFICATE OF INSURANCE

Named Insured: Acuity Brands, Inc. and its subsidiaries

<u>BRAND NAMES:</u>

AccuLite®
Acuity Controls™
Aculux™
American Electric Lighting®
Antique Street Lamps™
Atrius™
Carandini®
DanaLite
Distech Controls®
eldoLED®
Gotham®
Healthcare Lighting®
Holophane®
Hydrel®
Indy™
IOTA®
Juno®
Lithonia Lighting®
lucid ®
Mark Architectural Lighting™
NaviLite®
Peerless®
Power Sentry
RELOC®
Sunoptics®
Winona® Lighting
Wiring Solutions

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Acuity Brands, Inc. -- 9/1/2019 – 9/1/2020 Insurance Program
Certificates of Insurance Attachment

Insured : Acuity Brands, Inc., including all Subsidiaries

Subsidiaries: Acuity Brands Lighting, Inc.

A to Z Manufacturing LLC	C&G Carandini S.A.
AB BMS C.V.	Castlight de Mexico SA de CV
AB Netherlands Holdings C.V.	Distech Controls Facility Solutions, Inc.
AB Netherlands Holdings LLC	Distech Controls Energy Services, Inc.
ABL IP Holding LLC	Distech Controls Energy Services, Inc. (Texas)
Acuity Aviation LLC	Distech Controls Energy Services (Canada) Inc.
Acuity Brands BMS B.V. (Netherlands)	Distech Controls LLC
Acuity Brands BMS, LLC	Distech Controls SAS France
Acuity Brands Insurance (Bermuda) Ltd.	Distech Controls USA, Inc.
Acuity Brands Lighting Canada, Inc.	Distech Controls, Inc.
Acuity Brands Lighting (Hong Kong) Limited	Distech France Holding SAS
Acuity Brands Lighting de Mexico, S de RL de CV	eldoLAB Holding B.V.
Acuity Brands Mexico Holdings II LLC	EldoLED B.V.
Acuity Brands Netherlands B.V.	Holophane Alumbrado Iberica SL
Acuity Brands Services, Inc.	Holophane Lichttechnik GmbH
Acuity Brands Technology Services, Inc.	Holophane Europe Ltd.
Acuity Mexico Holdings, LLC	Holophane Lighting Ltd.
Acuity Trading (Shanghai) Co. Ltd.	Holophane SA de CV
Arizona (Tianjin) Electronics Trade Co. Ltd.	HSA Acquisition, LLC (Ohio)
Arizona Trading Company Ltd.	ID Limited
	Luxfab Limited (UK)

Workers' Compensation Policy Information:

Effective Date: 9/1/2019 – 9/1/2020
Carrier: New Hampshire Insurance Company

Policy Numbers by State:
WC 017515716 (AL, AR, CO, CT, DE, GA, IA, ID, IN, KS, LA, MD, ME, MI, MN, MO, MS, MT, NE, NM, NV, OK, OR, RI, SC, SD, TN, TX, VT, WV)
WC 017515713 (FL)
WC 017515714 (CA)
WC 017515715 (MA, ND, WA, WI, WY)
WC 017515717 (AZ, IL, KY, NC, NH, NJ, PA, UT, VA)
WC 017515718 (NY)

CERTIFICATE OF LIABILITY INSURANCE

ACORD®

	DATE(MM/DD/YYYY)
	09/24/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
Aon Risk Services South, Inc. Atlanta GA Office 3550 Lenox Road NE Suite 1700 Atlanta GA 30326 USA	PHONE (A/C. No. Ext): (866) 283-7122	FAX (A/C. No.): (800) 363-0105	
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Acuity Brands, Inc. Attn: Lara Pearson One Lithonia Way Conyers GA 30012-3957 USA	INSURER A: Lloyd's Syndicate No. 2623		AA1128623
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES   CERTIFICATE NUMBER: 570078438243   REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.   Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR						EACH OCCURRENCE	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	
	GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						GENERAL AGGREGATE	
							PRODUCTS - COMP/OP AGG	
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION						EACH OCCURRENCE	
							AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						☐ PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	
							E.L. DISEASE-EA EMPLOYEE	
							E.L. DISEASE-POLICY LIMIT	
A	E&O-MPL-Primary			W1F9A2190301 E&O - Claims Made SIR applies per policy terms & conditions	09/01/2019	09/01/2020	Aggregate	$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
City of Cupertino 55 Harrison Street, #200 Oakland CA 94607 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE *Aon Risk Services South, Inc.*

ACORD 25 (2016/03)

Holder Identifier :

570078438243

Certificate No :

ACORD®

ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services South, Inc.	**NAMED INSURED** Acuity Brands, Inc.
POLICY NUMBER See Certificate Number: 570078438243	
CARRIER See Certificate Number: 570078438243 **NAIC CODE**	**EFFECTIVE DATE:**

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25   FORM TITLE: Certificate of Liability Insurance

Insurance Company Participation

Lloyd's Syndicate 2623: 82%
Lloyd's Syndicate 623: 18%