

## **SUPPLEMENTAL SERVICES AGREEMENT**

This Agreement is made and entered into as of the date last signed (the “Effective Date”) by and between Aclara Technologies LLC, 77 Westport Plaza, St. Louis, Missouri 63146, an Ohio limited liability company (“Aclara” or “Seller”) authorized to do business in the State of Florida, and City of Hollywood, a municipal corporation of the State of Florida, (“Buyer”). Collectively, Aclara and **Buyer** may be referred to as “Parties or individually as “Party”.

This Agreement, consisting of this document and the following Attachments and Exhibits attached , as each or collectively may be amended, sets forth the terms and conditions under which the Parties agree that Aclara will perform certain services in connection with Buyer’s **Advanced Metering Infrastructure System**.

- 1) Exhibit A, Statement of Work
- 2) Exhibit B, Service Pricing Sheet

1. Engagement. Buyer engages Aclara to perform and/or Aclara’s subcontractor to perform the services described in the Statement of Work attached as Exhibit A, and Aclara accepts such engagement with Aclara, upon the terms and conditions set forth in this Agreement.

2. Statements of Work Applicability.

- A. The terms and conditions set forth in this Supplemental Services Agreement shall apply to services provided by Aclara pursuant to Exhibit A. All such services and other items furnished or required, together with all other obligations performed or required to be performed by Aclara and its subcontractor under this Agreement are collectively referred to in this Agreement as “Services”. The Statement of Work (“SOW No. 1”) is attached to, and made part of, this Agreement as “Exhibit A”.
- B. Any and all subsequent SOWs will be sequentially numbered (e.g., “SOW No. 2, etc.”) and will also be incorporated into “Exhibit A” and also made part of this Agreement. Any and all subsequent SOWs shall require an amendment to this Agreement. Each Statement of Work will become effective only upon the execution thereof by an authorized representative of Aclara and Buyer and will, at a minimum, include the following:
  - 1) Reference to this Agreement;
  - 2) Term of the SOW;
  - 3) The Scope of Work applicable to Aclara’s provision of Services to Buyer;
  - 4) Identification and details of Deliverables (if any) and Services;
  - 5) Contemplated Schedule for presentation of Deliverables (if any) and/or for completion of Services, including any applicable milestones;
  - 6) Quality and Acceptance terms and timeframes applicable to Deliverables (if any) and Services;
  - 7) Fees for the Deliverables (if any) and for Services;
  - 8) Expenses (if any); and
  - 9) No Statement of Work will become effective, and no Services will be commenced, unless and until an Amendment to this Agreement is executed by an authorized representative of each Party.

3. Order of Precedence.

- A. Any inconsistency between agreements executed by the Parties on or after the Effective Date shall be resolved according to the following order of precedence:

- 1) This Agreement; and

## 2) Any Statement of Work under this Agreement.

- B. Notwithstanding the foregoing, the Parties may agree that a particular term or condition set forth in a Statement of Work will supersede a conflicting provision in the Agreement by (i) expressly so stating in the SOW; and (ii) identifying the conflicting provision in the Agreement that is to be superseded. Any such express agreement to override a specified provision of the Agreement shall be applicable only to that SOW in which it is stated, and shall not be deemed to be applicable to any other Statement of Work.
4. Term of the Agreement. This Agreement shall become effective on the date last set forth below and will have term of one (1) year unless earlier terminated in accordance with the provisions of this Agreement or unless extended by an amendment to this Agreement signed by both parties in accordance with this Agreement.
5. Confidentiality. Certain information which Aclara may deliver or disclose to Buyer in connection with Aclara's performance hereunder is proprietary to Aclara and will be clearly marked as proprietary by Aclara (hereinafter, "Aclara Proprietary Information"). To the extent permitted by law, including but not limited to Chapter 119, Florida Statutes entitled "Public Records Act", Buyer agrees to keep such Aclara Proprietary Information confidential, to use it only in connection with Buyer's use or operation of the Equipment and not to sell, transfer, disclose, or otherwise make available any of such data to others. Aclara acknowledges that Aclara Proprietary Information may be subject to mandatory disclosure under the Florida Law. However, in the event Buyer receives a request for the disclosure of Aclara Proprietary Information, Aclara shall be promptly notified of such request.
6. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the remaining portions of this Agreement shall continue to be binding and enforceable.
7. Independent Contractors. Seller agrees to perform the work in connection with this Agreement as an Independent Contractor and not as a subcontractor, agent or employee of Buyer, its parent, subsidiaries or affiliates, or their respective officers, directors, agents or employees.
8. Notices. Any notices required under this Agreement shall be in writing and shall for all purposes be deemed to be fully given and received if sent by registered or certified mail, postage prepaid, to the respective parties at the addresses set forth on the purchase order form. Such addresses are subject to change by the respective parties upon written notice as herein provided.
9. Assignment. Any assignment of this order or the performance of work hereunder, in whole or in part, is prohibited.
10. Excusable Delays. The Buyer may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interests of the Buyer and is due to causes beyond the control of the Aclara. Such grant must be in writing and made part of the order. Aclara shall not be liable for delays in shipment or delivery of any Equipment sold hereunder, or loss or damage thereto, when due to acts or causes beyond Aclara's reasonable control or if such delay is caused by an act or omission of the Buyer or Buyer's Personnel.
11. Compensation. During the term of this Agreement, Buyer will pay Service Provider for satisfactorily rendered services in accordance with the specific terms set forth in the Statement of Work (Exhibit A) and the Service Pricing as set forth in Exhibit B.
12. Invoicing and Payment. Aclara must render original invoice to the City of Hollywood, Department of Financial Services, P.O. Box 229045, Hollywood, Florida 33022-9045. Unless otherwise mutually agreed, Buyer agrees that payment terms shall be Net 30 from date of invoice. Any

amounts not paid when due shall bear interest at the lesser of 1 1/2% per month or the highest amount permitted by law until paid.

13. Tax. The City of Hollywood is exempt from Federal and State taxes for tangible personal property. Aclara shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the City, nor shall Aclara be authorized to use the City Tax Exemption Number in securing such materials. Any such taxes are not included in the fees for Aclara services.
14. Publicity. No endorsement shall be used by either party in anyway, manner or form in product literature or advertising unless first obtaining the express written consent of the other party.
15. Insurance. Aclara and/or Aclara's subcontractor shall maintained the required amount of \$1,000,000 general and \$500,000 automobile liability limits and must provide for the City as an additional insured of this coverage. Aclara and or Aclara's subcontractor must have worker's compensation coverage as required by law. Any exception to the above stated limits or other requirements must be endorsed and approved by the City of Hollywood Risk Manager.
16. Service Warranty.
  - A. Aclara warrants that all workmanship provides in connection with the Services provided under this Agreement shall conform to submittals and specifications as to kind, quality, function, and characteristic of workmanship specified in the Statement of Work and shall be free from any fault or defect for a period of ninety (90) days after the Service is performed (the "**Warranty Period**"). For the avoidance of doubt, the warranty provided under this Section 11 is strictly limited to the Services provided pursuant to the Agreement.
  - B. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11A ABOVE, ACLARA MAKES NO REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND ACLARA SGS SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED.
17. Inspection and Acceptance
  - A. Acceptance. The Parties agree that specific acceptance criteria, including details of the process and applicable timeframes for acceptance, rejection and remediation will be set forth in the Statement of Work.
  - B. Inspection. All Services delivered on this order are subject to inspection within 10 days completion. Unless Buyer issues a written rejection notice, such Services will be deemed to have been accepted by Buyer. Any rejection notice shall include proper documentation of the grounds for rejection under the acceptance criteria set forth in the Statement of Work.
18. Indemnification. Aclara shall indemnify, hold harmless and defend Buyer, its officials, appointed officers, employees and agents (each individually, an "Indemnitee" and collectively, "Indemnites") from and against any and all claims, damages, liability, judgments or causes of action, including documented costs and expenses, including but not limited to attorneys' fees, brought against Buyer by a third party which result in injuries or damages to persons or property arising from and caused by the negligence, recklessness or intentional wrongful conduct by Aclara, its officers, employees, agents, subcontractors arising out of the performance of the services in any SOW and this Agreement. Aclara's indemnification obligations under this section shall be contingent upon: (i) Buyer promptly notifying Aclara in writing within 10 days of becoming aware of a claim; (ii) Buyer fully cooperating with Aclara in defending or settling the claim; and (iii) Aclara having the sole right to defend or settle such claim at Aclara's expense with counsel of Aclara's choosing, provided that no settlement assigning liability to or requiring any payment by an Indemnitee shall be permitted

without the Indemnitee's prior written consent and (ii) the settlement includes the claimant's or plaintiff's release of all Indemnitees from all liability in respect of the Claim. Aclara's obligations under this paragraph will be reduced to the extent of the negligence or willful misconduct of Buyer. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect, in any way, the Buyer's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes.

19. Limitation of Liability. Except for Aclara's indemnification obligations as set forth in Paragraph 18, f Aclara's obligations pursuant warranty for services, the total aggregate liability of Aclara to Buyer for any and all liability arising out of or connection with this order shall be limited to the aggregate sum of payments made by Buyer to Aclara under this order. IN NO CASE SHALL ACLARA BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE OR DATA, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
20. Compliance with Laws. Aclara shall comply with all applicable federal, state, and local laws, and ordinances ("Laws") in the performance of its duties under this Agreement.
21. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument. Delivery of an executed signature page of this Agreement (which may be by electronic transmission) shall be effective as delivery of a manually executed counterpart hereof.
22. Entire Agreement. This Agreement including Exhibits A and B, and any Attachments, constitute the entire agreement between the Parties with respect to the subject matter hereof. There are no oral agreements or representations or additional written materials that revise or supplement the terms of the Master Agreement. No modification, amendment, revisions, or supplements to this Supplemental Services Agreement shall be enforceable unless in writing, signed by both Buyer and Aclara.
23. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Broward County, Florida.

**SIGNATURE PAGE TO FOLLOW.**

**SUPPLEMENTAL SERVICES AGREEMENT BETWEEN ACLARA  
TECHNOLOGIES, LLC AND THE CITY OF HOLLYWOOD**

CITY OF HOLLYWOOD, a municipal  
corporation of the State of Florida

ATTEST:

By: \_\_\_\_\_  
Josh Levy, Mayor

\_\_\_\_\_  
Patricia A. Cerny, MMC  
City Clerk

Approved by: \_\_\_\_\_  
David Keller, Interim  
Director of Financial  
Services

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

\_\_\_\_\_  
Douglas R. Gonzales,  
City Attorney

ACLARA TECHNOLOGIES, LLC

ATTEST:

By: \_\_\_\_\_  
Signature  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Corporate Secretary