

**ADDENDUM
TO
CITY OF HOLLYWOOD FLORIDA'S
TERMS AND CONDITIONS**

This Addendum (this "Addendum") to the City of Hollywood Florida's Terms and Conditions (the "Agreement"), is entered into by and between Aclara Technologies LLC ("Vendor"), and the City of Hollywood, Florida ("Buyer"), and is made effective the 14th day of October, 2020 (the "Effective Date"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. Vendor and Buyer may be referred to herein individually as "Party" or collectively as "Parties."

WHEREAS, Vendor and Buyer wish to modify the Agreement.

NOW THEREFORE, In consideration of the covenants and conditions contained herein, the Parties agrees as follows:

1. Relation to Agreement. This Addendum constitutes a part of and, by this reference, is incorporated into the Agreement. The terms of this Addendum will control in the event of any conflicting or ambiguous language that may appear in the Agreement.

2. Modifications to the Agreement. As of the Effective Date (defined above), the Agreement is hereby modified as follows:

- a. The Section titled F.O.B. is replaced as follows:

F.O.B.

Seller shall deliver Equipment to Buyer FCA Seller's facility or warehouse (Incoterms 2010). Risk of loss and title shall pass to Buyer upon delivery.

- b. The Section titled ACCEPTANCE is replaced as follows

ACCEPTANCE

Seller's acceptance of this order will be presumed unless Seller acknowledges exception, in writing, to Buyer within ten (10) calendar days after the date of the order is received by Seller.

- c. The Section titled INSPECTION is replaced as follows

INSPECTION

All Commodities delivered on this order are subject to inspection within ten (10) days upon receipt by a representative of the Buyer. Subject to the preceding, Seller may return all rejected commodities shall remain the property of the Seller and will be returned at the Seller's expense.

- d. The Section titled LIABILITY - COPYRIGHT/PATENT/TRADEMARK is replaced as follows

LIABILITY - COPYRIGHT/PATENT/TRADEMARK

Seller shall save and hold harmless Buyer, its officers, employees and agents from liability third party claims for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order. Seller's obligations under this section shall be contingent upon: (i) Buyer promptly notifying Seller in writing within ten (10) days of becoming aware of a claim; (ii) Buyer fully cooperating with Seller in defending or settling the claim; and (iii) Seller having the sole right to defend or settle such claim. Notwithstanding the foregoing, Seller shall not be liable for any claims based upon: (a) the combination or use of the product furnished or software licensed with any other product or software not supplied or authorized by Seller; (b) Buyer's possession or use of any altered version of the product furnished or software licensed unless such alteration has been performed or expressly authorized by Seller; (c) failure of Buyer to implement any update provided by Seller that would have prevented the claim; (d) product or services was made or performed under the Agreement to Buyer's specifications; or (e) in the case of licensed software, it is the latest released version of the software licensed.

- e. The Section titled INDEMNIFICATION is replaced as follows:

INDEMNIFICATION

Seller shall indemnify, hold harmless and defend Buyer, its officers, employees and agents (each individually, an "Indemnitee" and collectively, "Indemnities") from and against any and all claims, damages, liability, judgments or causes of action, including documented costs and expenses, brought against Buyer by a third party, which result in injuries or damages to persons or property arising from the negligent act or omission by the Seller, its officers, employees, agents, subcontractors or assignees arising out of this order. Seller's indemnification obligations under this section shall be contingent upon: (i) Buyer promptly notifying Seller in writing within ten (10) days of becoming aware of a claim; (ii) Buyer fully cooperating with Seller in defending or settling the claim; and (iii) Seller having the sole right to defend or settle such claim at Seller's expense with counsel of Seller'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 Indemnities from all liability in respect of the Claim. Seller's obligations under this paragraph will be reduced to the extent of the negligence or willful misconduct of Buyer.

- f. The Section titled LIMITATION OF LIABILITY is replaced as follows:

LIMITATION OF LIABILITY.

Except for Seller's Indemnification obligations for: (i) infringement of intellectual property (COPYRIGHT/PATENT/TRADEMARK); (ii) third party claims for injuries or damages to persons or property, or Seller's obligations pursuant to standard product warranties in Exhibit 1, the total aggregate liability of Seller 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 Seller under this order. IN NO CASE SHALL SELLER 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."

- g. The following Section titled WARRANTY is added as a new Section.

WARRANTY

Notwithstanding any other provision contained herein, any order issued pursuant to these terms and conditions shall be warranted solely in accordance with Vendor's standard product warranties attached hereto as Exhibit 1.:

3. Continuing Effect; No Other Changes. Except as expressly amended hereby, all of the terms and provisions of the Agreement are and shall remain in full force and effect. All of the terms and provisions of the Agreement without giving effect to this Addendum shall continue to apply to the period of time prior to the date hereof. The Parties shall preserve all rights, remedies, powers and privileges under the Agreement.
4. Counterparts. This Addendum 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 Addendum (which may be by electronic transmission) shall be effective as delivery of a manually executed counterpart hereof.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers as of the Effective Date.

Aclara Technologies LLC

DocuSigned by:

By: Robert Enyard
F98927B2951D40E...

Name: Robert Enyard, Jr.

Title: Vice President

Date: November 3, 2020

The City of Hollywood, Florida

By: George A. Keller Jr. for CM

Name: GEORGE KELLER

Title: Deputy City Manager

Date: 10-10-21