

ACLARA NETWORK FREEDOM AGREEMENT

This Aclara Network Freedom Agreement ("Agreement") is dated this _____ day of _____, 20____, by and between Aclara Technologies LLC, a limited liability company of the State of Ohio with offices at 77 Westport Plaza, Suite 500, St. Louis, Missouri 63146 ("Aclara"), and Town of Prosper, a Texas corporation with offices located at 250 W. First Street, P.O. Box 307, Prosper, TX 75078 ("Customer").

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

WHEREAS, Customer desires to move their Aclara RF network to a network-as-a-service offering, professional services and/or deliverables described herein, and Aclara desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

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

ARTICLE 1. DEFINITIONS

Certain terms used in this Agreement are defined in this Article 1. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. The word "and" shall mean "and" as well as "or," unless otherwise specified.

- 1.1 **“Aclara Network Freedom or Aclara Network”** means the network as a service offering comprised of the Aclara System Data Collector Units, as well as the licensed radio frequencies from the Federal Communications Commission and backhaul services from third party communications providers which together establish and maintain secure local area networks connecting the Aclara RF Water MTUs to the Aclara RF Water Data Collector Units, and a secure, long-range wide area wireless network connecting the Aclara System Data Collector Units to the Hosted AclaraONE® System for Customer’s use for the Aclara System.
- 1.2 **“Service Levels”** means a designation of the effect of an Issue on the Customer’s use of the Aclara Network. The Severity of an Issue is initially defined by the Customer or Aclara and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara’s analysis of impact to business. The four Severity Levels are:

Severity Level	Description
1	<p>Requires immediate attention– Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.</p> <p>Aclara’s Network is disrupted in such a way that interval data from 5% or more of all Installed MTUs are not or might not be received in the Hosted AclaraONE® System within 12 hours. No workaround available.</p> <p>Examples include non-receipt of data transmissions at the Hosted AclaraONE® System, missing data transmissions from large, geographically regionalized grouping of MTUs.</p> <p>Severity level 1 shall be assigned for any disruption which impacts safety or legal liability (e.g. DCU not attached properly).</p>
2	<p>Requires priority attention - Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.</p> <p>Aclara network is degraded or disrupted in such a way that interval data from 3% or more of all Installed MTUs are not or might not be received in the Hosted AclaraONE® System within 12 hours. Workaround within the System is reasonably acceptable to Customer and is in place.</p> <p>Examples include service disruption at DCUs, localized Network degradation, loss of redundancy.</p>
3	<p>Requires attention – Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</p> <p>Aclara Network outage or malfunction with regard to functionality or receipt of transmitted data but does not result in a Network degradation or disruption.</p> <p>Examples include a DCU outage where redundancy is still in place.</p>
4	<p>There is a problem or issue with no loss of service and no business impact. Operational incident which does not involve an equipment outage but may cause an inconvenience and does not impact business operations or functionality of the Aclara Network. Should be resolved after more serious Incidents have been resolved.</p> <p>Examples include annoying non-stop tamper messages, or a problem with Documentation.</p>

- 1.3 **“Aclara Personnel”** means all employees of Aclara, Aclara’s subcontractors and their employees, or any other personnel assigned by Aclara to provide work pursuant to this Agreement. Aclara Personnel shall not include any Customer Personnel.
- 1.4 **“Aclara Wireless Network”** (AWN) means an Aclara-managed private, backhaul network over public cellular infrastructure.
- 1.5 **“Hosted AclaraONE® System”** means the information technology infrastructure used by or on behalf of Aclara in performing the services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Aclara or through the use of third-party services.
- 1.6 **“Confidential Information”** means includes, without limitation, (a) non-public information and/or private business information developed, collected or created by Party (b) a Party’s Proprietary Information and (c) trade secret information including technical or non-technical data, formulae, patterns, compilations, client lists, business plans, programs, devices, methods, techniques, drawings, diagrams or processes, data, databases, software, specifications, in any form or format that (i) are not generally known in the trade or business of a Party, (ii) have direct or indirect, tangible or intangible, actual or potential value, (iii) are not readily ascertainable from publicly available information, and (iv) are the subject of reasonable protection measures taken by Party.
- 1.7 **“Contracted Read Success Rate”** means at least one read during the time period established in Schedule 1, Performance Metrics.
- 1.8 **“Contracted Coverage”** means the Customer’s meter population that will be accessible by the DCUs in the Aclara Network, assuming that an MTU is functioning and is properly installed. Contracted coverage will include all of the meter locations Customer Meter List with GPS Coordinates provided to Aclara to perform its Propagation Study, unless specifically excluded by mutual written agreement.
- 1.9 **“Customer Meter List with GPS Coordinates”** means a list of all the Customer’s meter locations (with GPS Coordinates) to be covered by the Aclara Network. An initial list will be provided at the time of contract signing in order for Aclara Personnel to complete an updated Propagation Study.
- 1.10 **“Customer Personnel”** means all employees of Customer, Customer’s subcontractors and their employees, or any other persons or entities assigned by Customer to provide materials, services or labor in furtherance of Customer’s installation, deployment and use of the Aclara Network. Customer Personnel shall not include any Aclara Personnel.
- 1.11 **“Data Collection Unit or DCU”** means the data collection units installed as part of the Aclara System, including all their hardware, firmware, software, and licenses.
- 1.12 **“Effective Date”** means the date of Aclara’s Solution Performance and Network Design team signing off that the Network is performing satisfactorily.
- 1.13 **“Field Installation Plan”** means a plan prepared for any new or relocated DCU site location that is comprised of approach for DCU installation; engineering drawings, specifications and site plan

(including exact mounting location, required pole height, if applicable; height of antenna, solar panel, and other DCU equipment.

- 1.14 **“Issue”** means a problem with the Aclara Network, identified by the Customer, which requires a response by Aclara to resolve.
- 1.15 **“Local Area Network”** means the network connecting the Aclara RF Water MTUs to the Aclara RF Water Data Collector Units.
- 1.16 **“Preliminary Network Audit”** refers to a physical and performance audit of the network conducted by the Aclara Solution Performance and Network Design team to confirm proper operations of the network, or determine updates and/or repairs needed, before the network is accepted into the Network Freedom program.
- 1.17 **“Propagation Study”** means the Aclara managed analysis of all the Customer’s meter locations (utilizing GPS coordinates) in order to estimate the number of DCUs required to achieve the Contracted Read Success Rate and Contracted Coverage of DCU coverage of all plotted endpoints. The Propagation Study is used to confirm current DCU sites and develop Field Installation Plans for any new or relocated DCU sites.
- 1.18 **“Read Success Rate”** means the number of reads received in the Hosted AclaraONE® System divided by the expected number of reads as calculated in Schedule 1, Performance Metrics.
- 1.19 **“Renewal Period”** means each of one or more consecutive twelve (12) month periods following the first twelve (12) month term of this Agreement.
- 1.20 **“Solution Performance and Network Design team”** is the internal Aclara team responsible for Network Design (including Propagation studies), installation and repair of network infrastructure, and network analysis and troubleshooting of an Aclara RF AMI network.
- 1.21 **“Suspect MTU”** shall mean those MTUs that have not successfully transmitted data since installation or subsequent to installation have been damaged, had Radio Frequency transmission physically blocked, or have failed to successfully transmit for five (5) days. A Suspect MTU does not include a functioning MTU that has been properly installed and field verified by the Customer, but has not successfully connected to the Aclara Network since installation or subsequent to installation, has failed to successfully transmit for five (5) days due to lack of connectivity to a DCU. Specific details on determination of a Suspect MTU is shown in Schedule 1, Performance Metrics.
- 1.22 **“Water MTUs” or “Water Meter Transmission Units”** means the AMI communication devices that connect to the water meter.
- 1.23 **“Work”** means all obligations, duties and responsibilities of the Parties necessary to be performed by them in order to accomplish all of their respective obligations under this Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.1. Initial Term.

The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for ten (10) years from the Effective Date, (see article 3.1).

2.2. Renewal Term. RESERVED

ARTICLE 3. NETWORK DELIVERABLES

Aclara shall procure, establish, implement, manage, and maintain the Aclara Network leased to Customer hereunder, including but not limited to responsibility for the following activities:

3.1 **Preliminary Network Audit.** Aclara will conduct a preliminary audit of the Network before this Agreement takes effect to determine the current operational status of the Network. This audit will include investigation through AclaraONE's network performance monitoring capabilities as well as a physical visit to each DCU site to determine the status of the hardware and make recommendations for repair, replacement, or updates to bring the Network to full operational status. Recommended repairs or replacements will be shared with the Customer and mutually agreed upon before the Work is undertaken. Such repairs or replacements are not priced into the Aclara Network Freedom Fee and will be performed on a time and materials basis charged to the customer outside of this Agreement. Aclara's Solution Performance and Network Design team must sign off that the Network is performing satisfactorily before this Agreement commences and Aclara takes over network as a service responsibility. If such Work is not agreed to or the Network cannot be corrected this Agreement is void.

3.2 **Licensed Radio Frequencies and Local Area Network**. Aclara shall manage and maintain licenses previously obtained from the Federal Communications Commission in Customer's name and on Customer's behalf for frequencies suitable for secure, reliable and flexible data-intensive two-way radio transmissions between the MTUs and DCUs to establish Local Area Networks connecting the MTUs to the DCUs.

3.3 **Backhaul Network Facilities.** Aclara shall manage and maintain data communications transport facilities to provide secure, reliable and flexible data-intensive two-way connectivity between the Local Area Networks and the Hosted AclaraONE® System to establish a backhaul. This will include moving any cellular backhaul services to the Aclara Wireless Network system.

3.4 **DCU Site Identification, Propagation Study, and Field Installation Plans.** Aclara will conduct an updated Propagation Study and will confirm current DCU sites appropriate for continued use. The updated Propagation Study may identify any necessary new or relocated DCU sites that can be located on Customer property, public rights of way, or other property where site acquisition costs can be minimized, and the likelihood of site acquisition can be achieved. The Propagation Study will identify DCU sites that will provide coverage to all of the Customer's meter locations provided in the list of meters for the Propagation Study. (See Contracted Coverage definition.) Aclara will provide the Customer with a Field Installation Plan for each new or relocated DCU site that will include the necessary engineering drawings and specifications required for the Customer/Aclara to secure acquisition and

permitting of the DCU sites. In preparing the Field Installation Plans for any new site, Aclara cannot assume that mounts onto Customer property (such as tanks and ladders) will be acceptable without written approval of the Customer.

3.5 **DCU Installation.** Aclara will confirm current DCU sites and install or relocate DCUs as needed to provide a sufficient number of DCUs that will provide the Contracted Read Success Rate and Contracted Coverage over the term of the Agreement.

3.6 **Network Performance Manager (NPM).** Aclara will supply a dedicated Network Performance Manager during the early stages of the Network Freedom transition to help Customer get the most out of their Aclara Network Freedom investment. The NPM will provide post contract and base installation support, additional expertise to help identify performance issues, and provide ongoing support until the Network is operating at optimal performance. The NPM will remain engaged until Aclara and the Customer mutually agree the Network is performing as expected.

3.7 **AMI Hardware Maintenance.** The hardware maintained under this Agreement shall include all DCUs continuing in service after transition to the Aclara Network Freedom services and any additional DCUs subsequently installed to maintain the Contracted Read Success Rate and Contracted Coverage. In the event of an Issue identified by Aclara or the Customer, response times are governed by the Service Levels defined as Severity Levels. The Issue shall remain open until network performance returns to the Contracted Read Success Rate, and/or Contracted Coverage has been achieved.

Aclara is responsible for maintaining the ongoing operability of the DCUs and the Aclara Network and the ability to achieve the Contracted Read Success Rate and Contracted Coverage throughout the Term of this Agreement. Damage to DCU hardware caused by natural circumstances and “acts of God” such as weather, fire, etc. will be the responsibility of Aclara. While still subject to these Service Levels, the cost of AMI Hardware Maintenance caused by third party damage is not included in this Agreement.

Aclara will update software, firmware and associated DCU components to ensure continued ongoing operations of the Customer’s network, particularly given upgrades to other aspects of Aclara’s infrastructure that could indirectly impact the Customer’s network.

3.8 **Aclara Network Freedom Performance Monitoring.** Aclara will monitor the performance of the Aclara Network to ensure that the Contracted Read Success Rate is met in accordance with Schedule 1, Performance Metrics.

ARTICLE 4. CUSTOMER OBLIGATIONS

4.1 **Approval of the Use of Aclara Recommended DCU Sites.** Customer will be the final approver for use of any new or relocated DCU sites, whether the site is Customer owned or third party owned. Third party sites should not be considered “approved” until Customer provides written notice to Aclara to enter into an agreement with the property owner and obtain the applicable permits. Approval by Customer of Aclara Recommended DCU Sites shall not absolve Aclara of its responsibilities of the Contracted Read Success Rate.

4.2 **DCU Site Access.** Customer shall provide Aclara Personnel with such access during normal business hours to Customer's real and personal property, provided that Aclara provides one business day notice prior to access. Aclara Personnel are to be accompanied by Customer's staff when accessing the Customer's property. Customer will make every effort to arrange for access to property that is leased or licensed by Customer and as may be necessary for Aclara to perform its Work, during any new DCU installation and as required to perform services in accordance with this Agreement.

Customer determines what is sufficient time and resources, including qualified personnel, to perform its Work in accordance with the Contract.

Customer Personnel will reasonably cooperate with Aclara in the timely and efficient performance of Aclara's and Customer's respective obligations under the Agreement.

Customer will provide access to all data in the care, custody, and control of Customer reasonably necessary to complete all Work under the Agreement. Customer data, including meter readings and utility billing data, are considered to be Confidential Information and may not be disclosed by Aclara, or Aclara's agents, without the Customer's written permission. Aclara has no ownership rights of Customer data. At the termination or expiration of the Agreement, Aclara will cooperate with Customer to destroy or transfer any Customer data in the possession of Aclara within thirty (30) days following the expiration or termination of this Agreement.

4.3 **Technical Staff.** Customer shall be responsible for maintaining sufficient suitably trained technical staff to use the Hosted AclaraONE® on a day-to-day basis, including report handling. Aclara training for designated contacts shall be made available to Customer during implementation as specified in Exhibit A, Statement of Work.

4.4 **Support for Issue Investigation.** Customer shall support all reasonable requests by Aclara as may be required in Issue investigation and resolution. Aclara may access Customer's Aclara Network as part of this investigation.

4.5 **DCU Site Maintenance.** Customer is responsible for maintaining DCU Site Agreements and Leases.

4.6 **Additional Requirements.** Customer is responsible for procuring, installing and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to access the Customer Portal and obtain Maintenance Services from Aclara, all in accordance with specifications supplied and or approved in advance by Aclara. For the Customer Portal access, Aclara maintains responsibility from its servers to its firewall all in accordance with Aclara's specifications.

4.7 **Designation of Point of Contact.** Customer shall assign an individual or individuals to serve as the designated contact(s) for all communication with Aclara during Issue investigation and resolution.

4.8 **Proactive Monitoring.** Customer shall regularly monitor MTU performance and health, and perform maintenance required to resolve communication issues with Suspect MTUs to the extent those communication issues are not due to Issues with the Aclara Network.

ARTICLE 5. LICENSE GRANTS AND PERMITTED USE

Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara hereby grants Customer a non-exclusive, non-transferable right to use the Aclara Network during the Term, solely for its own internal business purposes in accordance with the terms and conditions herein..

ARTICLE 6. PAYMENT

6.1 Billing Rate.

The first term of the Aclara Network Freedom Fees shall be invoiced upon full execution of this Agreement; and invoiced annually, in advance, for each Renewal Period as set forth in the Maintenance Agreement and Schedule J, of the Maintenance Agreement.

6.2 Due Dates for Payment.

Payments for all invoices shall be due and payable thirty (30) days from the date of receipt . Any amounts not paid when due shall bear interest at the lesser of one and one half percent (1 ½%) per month or the highest permitted by law until paid. In the event that annually Fees remain unpaid for more than thirty (30) days after becoming due for payment, Aclara shall be entitled to withdraw Services.

6.3 Taxes.

Aclara shall be responsible for all corporate taxes measured by net income due to performance of, provision of or payment for Services or Work under this Agreement (“Aclara Taxes”). Customer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Aclara or its subcontractors) in relation to the Agreement or the performance of , provision of or payment for Services or Work under the Agreement other than Aclara Taxes ("Customer Taxes"). The price does not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Aclara receives the full Price without reduction for Customer Taxes. Customer shall provide to Aclara, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

ARTICLE 7. TERMINATION

7.1 Termination.

(a) Customer and Aclara may terminate this Agreement at any time with thirty (30) days prior written notice to the other party.

(b) either party may terminate this Agreement, effective upon delivery of at least ten (10) days prior written notice to the other party, (i) if the other party materially breaches this Agreement, and

(ii) further fails within thirty (30) days (or within such longer period as may be otherwise mutually agreed) after the non-breaching party provides the breaching Party with written notice of such breach; and

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

7.2 Effects of Termination

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

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

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

(c) Customer shall immediately cease all use of any Services or Aclara Materials and (i) promptly return to Aclara, or at Aclara's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Aclara Materials or Aclara's Confidential Information and (ii) permanently erase all Aclara Materials and Aclara's Confidential Information from all systems Customer directly or indirectly controls; provided that Customer may retain copies of such information that is stored in Customer's archive or back-up systems or as required by applicable law or Customer's document retention policy ; and (iii) certify to Aclara in a signed written instrument that it has complied with the requirements of this Section 7.2(c);

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

(e) if either Party terminates this Agreement pursuant to Section 7.1(b), Aclara shall be paid all Fees related to Deliverables provided and Services performed prior to the effective date of termination.

ARTICLE 8. CONFIDENTIALITY

8.1. Confidentiality.

From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), Confidential Information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed

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

8.2. **Exclusions.**

Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that to the Receiving Party's reasonable knowledge was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3. **Compelled Disclosure.**

If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.1; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

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

ARTICLE 9. INDEMNITY

For the purpose of this Section 9 only, "Customer Parties" shall mean Customer, its directors, officers, agents and employees, contractors and subcontractors (other than Aclara and Aclara Personnel), assignees, subsidiaries and affiliates, and each of them; "Aclara Parties" shall mean Aclara, its directors, officers, agents and employees, contractors and subcontractors at any tier, and the subcontractor's directors, officers, agents and employees, and each of them; and "Claims" shall mean third party claims, demands, suits or

causes of action. The Parties obligations under this Section 12 shall not be limited to their respective insurance coverage.

9.1. **General Indemnity for Network Deliverables.**

9.1.1. Aclara shall indemnify Customer Parties for any and all loss or liability, including the costs of settlements, judgments, damages and direct expense including reasonable attorney's fees, costs and expenses arising from Claims, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought against one or more Customer Parties by or on behalf of persons other than Customer Parties involving injuries or damages to persons or property arising from or in any manner relating to negligent acts or omissions of Aclara Parties under this Agreement provided: (i) Customer promptly notifies Aclara in writing of such claims; (ii) Customer fully cooperates with Aclara in assisting in the defense or settlement of such claims; and (iii) Aclara has the sole right to conduct the defense of such claims or to settle such claims. Aclara shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Customer, any suit or action brought against Customer Parties based upon such Claims. Further, provided that Customer promptly notifies Aclara in writing of any alleged violations described below, Aclara shall also indemnify Customer Parties for any and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Aclara Parties. Aclara's obligations under this **Section 9.1.1** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Customer Parties.

9.1.2. To the extent authorized by law, Customer shall indemnify Aclara Parties for any and all loss or liability, including the costs of settlements, judgments, damages and direct expense including reasonable attorney's fees, costs and expenses from Claims, at law or in equity, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought by or on behalf of persons other than Aclara Parties for injuries or damages to persons or property arising from or in any manner relating to acts or omissions of Customer Parties under this Master Agreement provided that: (i) Aclara promptly notifies Customer in writing of such Claims; (ii) Aclara fully cooperates with Customer in assisting in the defense or settlement of such Claims; and (iii) Customer has the sole right to conduct the defense of such Claims or to settle such Claims. Customer shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Aclara, any suit or action brought against Aclara Parties based upon such Claims. Further, provided that Aclara promptly notifies Customer in writing of any alleged violations described below, Customer shall also indemnify Aclara Parties for and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Customer Parties. Customer's obligations under this **Section 9.1.2** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Aclara Parties.

ARTICLE 10. INSURANCE

10.1. Minimum Insurance Coverages.

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

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

10.1.2. Statutory workers compensation insurance.

10.1.3. Cyber Risk Liability and Technology Errors and Omissions Insurance. Aclara shall maintain cyber risk liability and technology errors and omissions insurance with a combined aggregate limit of not less than \$5,000,000.00. Such insurance shall cover errors, omissions or negligent acts in the delivery of Services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement, such as copyrights, trademarks, and service marks.

10.2. Customer shall be provided for as an additional insured or loss payee as its interest may appear on the policy referred to in Section 10.1.1 above.

ARTICLE 11. LIMITATION OF LIABILITY

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

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

ARTICLE 12. FORCE MAJEURE

It is understood that, at times, unavoidable delays result from causes which may reasonably be presumed to be beyond the control of Aclara, or Customer such as: Acts of providence, floods, fortuitous events, unavoidable accidents, riots, strikes, and lock outs. Should the progress of the Services or Deliverables be or seem to be delayed at any time for such causes, the party claiming force majeure shall notify the counterparty in writing of the occurrence, in order that a record of same may be made. For force majeure events declared by Aclara, a corresponding extension of time for the completion of the Services or Deliverables shall be allowed by Customer. Aclara and Customer shall in good faith use such effort as is reasonable under all the circumstances known to it at the time to remove or remedy the cause(s) and mitigate the damage associated with a force majeure event.

ARTICLE 13. GENERAL CLAUSES

13.1. Relationship of the Parties.

Aclara is performing under the Agreement as an independent contractor. Aclara has the sole right and obligation to supervise, control, manage, and direct all work associated with the Deliverables and Services to be performed by all individuals and entities it assigns to perform work under this Agreement, which includes, but is not limited to, its employees, its contractors, and its subcontractors' employees, and Aclara

agrees that none of these persons or entities are employees or should be considered employees of Customer. As to these persons or entities Aclara assigns to perform work under this Agreement, Aclara will be solely responsible for: (a) the acts and omissions of all such persons and entities, (b) payment of compensation to such persons and entities, and (c) any injury to such persons in the course of their employment.

13.2. **Publicity.**

Neither Party may announce or release any information regarding this Agreement or its relationship with the other Party without the other Party's express prior written approval (which may be withheld in the other party's sole discretion). Neither Party shall use any trade name, trademark, service mark or any other information which identifies the other Party or any of the other Party's Affiliates in such Party's sales, marketing and publicity activities, including postings to the Internet, interviews with representatives of any written publication, television station or network, or radio station or network without the other Party's express prior written approval. Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from making such public disclosures as it, in its sole judgment, may deem appropriate to satisfy such Party's (or such Party's Parent's) disclosure obligations under any applicable law or requirement of any stock exchange.

13.3. **Assignment.**

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.

ARTICLE 14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, USA.

14.2. **Dispute Resolution.**

All disputes arising in connection with this Agreement, including any question regarding its existence or validity shall be resolved in accordance with this **Section 14**. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings. In the event that the parties choose arbitration, the decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

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

the confidentiality provisions set forth in **Article 8**. Monetary damages shall only be available in accordance with **Article 11**.

ARTICLE 15. NOTICES

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this **Article 15**), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Aclara:

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

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

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

In the case of Customer:

Town of Prosper
250 W. First Street
P.O. Box 307
Prosper, TX 75078


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

ARTICLE 16. ENTIRE AGREEMENT

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

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

Aclara Technologies LLC

Signed:  _____
Name: Kumi Premathilake
Title: DVP AMI and Services

Town of Prosper, TX

Signed: _____
Name: _____
Title: _____

Schedule 1

PERFORMANCE METRICS

A. CONTRACTED READ SUCCESS RATE

- 24 hour read rate success means 98.5% of endpoints.
- 72 hour read rate success means 99.5% of endpoints.

B. READ SUCCESS RATE CALCULATION

Aclara shall provide Read Success Rate and Suspect MTU reporting for the network each Friday.

Read Success Rate Reporting

Read Success Rate (RSR) reports are run for specific time periods to determine the network performance based on actual reads received versus reads expected for the active set of MTUs. This is calculated as follows:

of eligible MTUs = # of active MTUs - # of suspect MTUs

$$RSR = \frac{\text{total \# of eligible MTUs with at least one read over the time period}}{\text{\# of eligible MTUs}}$$

For purposes of RSR reporting for the Customer, reports will be run for a period of 7 days with the report start date 7 days prior to the report end date. Friday of each week, Aclara will provide RSR reporting with 14 (fourteen) values equal to the actual daily and 72 hour RSR calculated for end dates 5 to 11 days (inclusive) prior to the Friday reporting date.

Additionally, the aggregate period RSR deviation will be reported by calculation of the sum of differences between actual RSR and the Contracted Read Success Rate for each weekly reporting period, capped at 2% per period. Actual RSRs above the Contracted RSR shall be treated as having a 0% deviation.

An example of this calculation is provided using the dates in Table 1.

Table 1

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January 8	January 9	January 10	January 11	January 12	January 13	January 14
	RSR daily for 1/9	RSR daily for 1/10	RSR daily for	RSR daily for	RSR daily for 1/13	RSR daily for 1/14

	RSR 72 hr for 1/7- 1/9	RSR 72 hr for 1/8- 1/10	1/11 RSR 72 hr for 1/9-1/11	1/12 RSR 72 hr for 1/10- 1/12	RSR 72 hr for 1/11- 1/13	RSR 72 hr for 1/12- 1/14
January 15	January 16	January 17	January 18	January 19	January 20	
RSR daily for 1/15					Report Day	
RSR 72 hr for 1/13-1/15						

The deviation between the actual RSR and contracted RSR results in a credit against the Aclara Network Freedom fee as listed in Exhibit B – Pricing Agreement.

A sample calculation follows:

	Actual RSR	RSR Deviation
RSR daily for 1/9	99.5%	0.0%
RSR daily for 1/10	98.3%	-0.2%
RSR daily for 1/11	98.8%	0.0%
RSR daily for 1/12	97.9%	-0.6%
RSR daily for 1/13	98.5%	0.0%
RSR daily for 1/14	99.0%	0.0%
RSR daily for 1/15	98.2%	-0.3%

Aggregate period RSR daily deviation = -0.2%

	Actual RSR	RSR Deviation
RSR 72 hr for 1/7-1/9	99.9%	0.0%
RSR 72 hr for 1/8-1/10	99.3%	-0.2%
RSR 72 hr for 1/9-1/11	99.8%	0.0%
RSR 72 hr for 1/10-1/12	99.9%	0.0%
RSR 72 hr for 1/11-1/13	99.5%	0.0%
RSR 72 hr for 1/12-1/14	99.6%	0.0%
RSR 72 hr for 1/13-1/15	99.2%	-0.3%

Aggregate period RSR 72 hour deviation = -0.07%

The above calculation will be performed weekly and the aggregate annual RSR deviation (if negative) will be used to calculate the annual credit up to a 100% credit, capped at 2% per weekly reporting period. In the example above, a total of 0.27% credit would be applied to the annual Aclara Network Freedom fee for the period of 1/7 - 1/15.

Suspect MTU Reporting. An MTU is considered a “suspect MTU” under the following conditions and is thus excluded from the total count of eligible MTUs for RSR calculations:

- Installed outside of Contracted Coverage
- MTU or DCU equipment failure due to tampering, damage, or vandalism
- Meter failure or incompatibility
- Last gasp alarm triggered and transmitted
- Not installed per MTU installation guidelines (i.e. installed under a metal lid without using a remote antenna)
- Moved without proper re-installation
- Location not properly maintained (i.e. sinking meter boxes, boxes covered by dirt or asphalt, MTU covered by standing water, etc.)
- Permanent RF blockage added post installation (new buildings, metal box on top of MTU, etc.)
- RF interference added post installation until the interference is mitigated by (a) cooperation by the interfering party (b) the interfering party reprogramming their frequencies (c) additional DCUs to compensate for the interference, and/or (d) FCC intervention.

During each week, Aclara will provide Customer information on the MTUs that have been identified as Suspect MTUs. The reporting will provide sufficient detail for the Customer to identify addresses associated with the Suspect MTU. MTUs that are functioning and have been properly installed and field verified by Customer will not be considered a “suspect MTU” and will not be removed from the RSR calculation.