



## SUPPLY AGREEMENT NO. 3563

### Aclara Gas MTU's

THIS **Aclara Gas MTU's Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Aclara Technologies, LLC ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Aclara Gas MTU's in response to Request for Bid No. **SS-3563** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Aclara Gas MTU's in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for two years. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$1,416,562.50, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi  
Attn: Accounts Payable  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Joanna Moreno  
Department: Utilities  
Phone: 361-826-1649  
Email: JoannaM@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, Contractor shall provide the City with at least 20 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 6. Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Contractor until such time as the products are delivered and accepted by the City.
- 7. Inspection and Acceptance.** City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced at no charge to the City provided that City notifies the Contractor in writing within 20 days ("Acceptance Period") of Contractor delivering the products to a particular place designated by the City. In the event City does not notify Contractor on or before the expiration of the Acceptance Period of the unacceptability of any delivered products, such products shall be deemed to be acceptable to City, and such goods shall be warranted pursuant to Paragraph 8.

## 8. **Warranty.**

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** In providing the Goods, Contractor will not enter into subcontracts or utilize the services of subcontractors. For the avoidance of doubt, although a contract manufacturer of Products is not deemed a subcontractor under this Article, a contract manufacturer shall be considered an agent for purposes of this Agreement and Contractor shall be responsible and liable for the acts and omissions of such contract manufacturer.
13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this

Agreement waives any subsequent breach of the same.

15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Joanna Moreno  
Title: Contracts/Funds Administrator  
1201 Leopard St.  
Corpus Christi, TX 78401  
Phone: 361-826-1649

**IF TO CONTRACTOR:**

Aclara Technologies, LLC  
Attn: Legal Department  
77 Westport Plaza,  
Suite 500.  
St. Louis, MO 63146  
Phone: 314-895-6425

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION BROUGHT BY A THIRD PARTY ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, REASONABLE ATTORNEYS’ FEES AND REASONABLE EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT WHICH RESULTS IN DIRECT DAMAGES OR RESULTS FROM TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS PROVIDED THAT: A. THE CITY PROMPTLY NOTIFIES CONTRACTOR IN WRITING OF SUCH CLAIMS;**

**B. CITY FULLY COOPERATES WITH CONTRACTOR IN ASSISTING IN THE DEFENSE OR SETTLEMENT OF SUCH CLAIMS; AND C. CONTRACTOR SHALL INVESTIGATE SUCH CLAIMS AND HAS THE SOLE RIGHT TO CONDUCT THE DEFENSE OF SUCH CLAIM OR TO SETTLE SUCH CLAIM. CONTRACTOR SHALL DEFEND AT ITS OWN EXPENSE, WITH COUNSEL OF ITS CHOOSING, BUT REASONABLY ACCEPTABLE TO THE CITY, ANY SUIT OR ACTION BROUGHT AGAINST INDEMNITEES BASED UPON SUCH CLAIMS.**

**18. Termination.**

(A) The City may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement. The City must give the Contractor 30 days' written notice of the breach. If the Contractor has not cured within the 30-day period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**19. Limitation of Liability.** Notwithstanding anything contained herein to the contrary, the total aggregate liability of either Party for all liability arising out of or in connection with the performance of its obligations under this Agreement shall be limited to the aggregate sum of payments made by the City to Contractor under this Agreement. IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE, OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**20. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

**21. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

**22. Order of Precedence.** In the event of any conflicts or inconsistencies between this

Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,
- D. the Contractor's bid response (Exhibit 2).

- 23. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 24. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 25. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 26. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

**(SIGNATURE PAGE FOLLOWS)**

**CONTRACTOR**

Signature: DocuSigned by:  
*Robert Enyard*  
F98927BE951D46E... \_\_\_\_\_

Printed Name: Robert Enyard Jr.

Title: Vice President

Date: 6/1/2021

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Josh Chronley  
Interim Assistant Director, Contracts and Procurement  
Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Assistant City Attorney Date

**Attached and Incorporated by Reference:**

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

**Incorporated by Reference Only:**

- Exhibit 1: RFB No. 3564
- Exhibit 2: Contractor's Bid Response

## Attachment A - Scope of Work

### General Requirements

- A. The Supplier shall supply Gas Meter Transmission Units (MTU's) and associated parts.
- B. The Supplier is responsible for all shipping charges. The City is responsible for shipping charges for the return of units under warranty.
- C. The Supplier shall ship items ordered to:
  - City of Corpus Christi
  - Gas Department
  - 4225 South Port Avenue
  - Corpus Christi, TX 78415
- D. Delivery Schedule

- 1. It is expected that American MTU – Model #3131-010-RBS2 (Std Range) will be delivered every quarter as follows:

| <u>Qty</u> | <u>Delivery Date</u> |
|------------|----------------------|
| 560        | September 2021       |
| 560        | December 2021        |
| 560        | March 2022           |
| 560        | June 2022            |
| 560        | September 2022       |
| 560        | December 2022        |

- 2. All other MTU's and associated parts will be ordered on an "as needed" basis.
- 3. The Delivery Schedule provided here is for estimation purposes only and is not a guaranty that any specific meters will be purchased on a specified timeline. If the City is aware that specified meters are not needed, the City will endeavor to provide 30 days' notice of the actual requested amount to the Supplier.

- E. Invoices will be submitted as follows:

- 1. The original invoice will be submitted to:
  - City of Corpus Christi
  - Attn: Accounts Payable (Gas Department)
  - P.O. Box 9277
  - Corpus Christi, TX 78469-9277
- 2. An electronic copy of invoice emailed to the Maintenance and Operations Superintendent at [SergioL@cctexas.com](mailto:SergioL@cctexas.com).



**Attachment B: Bid/Pricing Schedule****City of Corpus Christi****Senior Buyer: Cynthia Perez****Purchase of Aclara Gas MTU'S****Quotation #: Q-18821-1****Aclara Technologies, LLC  
St. Louis, Missouri**

| Product Description   | Part No.       | Qty   | Net Unit Price | Extended Price |
|---|----------------|-------|----------------|----------------|
| Series 3100 Gas MTU - Direct Mount_Sensus/Rockwell (11 Tooth) Style   | 3141-021-RBS2  | 4,000 | USD 72.50      | USD 290,000.00 |
| Series 3500 Gas MTU - On demand - Direct Mount - Residential - Sensus/Rockwell R275 (11                         | 3541-021-RBS2  | 4,000 | USD 72.50      | USD 290,000.00 |
| Series 3100 Gas MTU - Direct Mount - Extended Range_Sensus/Rockwell (11 Tooth)                                  | 3141-021-RBS2W | 100   | USD 80.50      | USD 8,050.00   |
| Series 3500 Gas MTU - On demand - Direct Mount - Extended Range - Residential - Sensus/Rockwell R275 (11 Tooth) | 3541-021-RBS2W | 100   | USD 80.50      | USD 8,050.00   |
| Series 3100 Gas MTU - Direct Mount_Itron/Sprague Style  | 3151-031-RBS2  | 400   | USD 72.50      | USD 29,000.00  |
| Series 3500 Gas MTU - On demand - Direct Mount - Residential - Itron/Sprague                                    | 3551-031-RBS2  | 400   | USD 72.50      | USD 29,000.00  |
| Series 3100 Gas MTU - Direct Mount - Extended Range_American Style  | 3131-010-RBS2W | 100   | USD 80.50      | USD 8,050.00   |
| Series 3500 Gas MTU - On demand - Direct Mount - Extended Range - Residential -                                 | 3531-010-RBS2W | 100   | USD 80.50      | USD 8,050.00   |
| Series 3100 Gas MTU - Commercial_American Style   | 3171-015-RBS2  | 600   | USD 111.50     | USD 66,900.00  |
| Series 3500 Gas MTU - On demand - Direct Mount - Commercial - American  | 3571-015-RBS2  | 600   | USD 111.50     | USD 66,900.00  |
| Series 3320 Gas MTU - Pulse Input - Extended Range_Single Port  | 3321-000-RBS2W | 200   | USD 80.50      | USD 16,100.00  |
| Series 3600 Gas MTU - On demand - Remote Mount - Extended Range - Single Port                                   | 3621-000-RBS2W | 200   | USD 80.50      | USD 16,100.00  |
| Series 3100 Gas MTU - Direct Mount_American Style   | 3131-010-RBS2  | 4,000 | USD 72.50      | USD 290,000.00 |
| Series 3500 Gas MTU - On demand - Direct Mount - Residential - American   | 3531-010-RBS2  | 4,000 | USD 72.50      | USD 290,000.00 |
| Series 3100 Gas MTU - Direct Mount_Sensus/Rockwell (18 Tooth) Style   | 3141-022-RBS2  | 5     | USD 72.50      | USD 362.50     |

## ATTACHMENT C: INSURANCE AND BOND REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies by endorsement, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.

| TYPE OF INSURANCE  | MINIMUM INSURANCE COVERAGE                                   |
|--|--|
| Contractor will provide a 20-written day notice of cancellation, material change in coverage, or intent not to renew any of the policies   | Bodily Injury and Property Damage Per occurrence - aggregate |
| Commercial General Liability Including:<br>1. Commercial Broad Form<br>2. Premises - Operations<br>3. Products/ Completed Operations<br>4. Contractual Liability<br>5. Independent Contractors<br>6. Personal Injury- Advertising Injury | \$250,000 Per Occurrence                                     |

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business

in the State of Texas and with an A.M. Best's rating of no less than A- VII.

C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi Attn:  
Risk Manager  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

D. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide twenty (20) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.

H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

**Bond Requirements:**

No bonds are required, therefore, Service Agreement 3563 , Section 5 Insurance; Bonds subsection 5(B), is hereby void.

2020 Insurance Requirements Ins.

Req. Exhibit 4-D

Contracts for General Services - Services Performed Offsite

06/08/2020 Risk Management -Legal Dept.

**ATTACHMENT D**

**Aclara® RF Water / Gas Warranties**

1. Aclara® RF Water / Gas MTU Warranty. Aclara Technologies LLC (“Aclara”) warrants to the original Purchaser of an Aclara RF Water or Gas Meter Transmission Unit (“MTU”) that the MTU shall be free from defects in material and workmanship for a period of ten (10) years from the date of original product shipment (“Warranty Period”).

Any MTU manufactured by Aclara that, within Warranty Period, fails as a result of a defect in material or workmanship, when returned to Aclara, freight prepaid, will be repaired or replaced, at the option of Aclara, without charge to the Purchaser. A MTU which has been repaired or replaced by Aclara will be returned to the Purchaser by Aclara, freight prepaid. Aclara warrants replacement MTUs for the remaining term of the Warranty Period applicable to the MTU repaired or replaced.

Subject to the limitations set forth herein, Aclara will replace any MTU that, after expiration of the Warranty Period but before the expiration of the twentieth (20<sup>th</sup>) full year after the date of original product shipment, fails as a result of a defect in material or workmanship. The price of replacement will be prorated in accordance with the following table based on the number years of service before failure:

| Years of Service | Replacement Price Percentage |
|------------------|------------------------------|
| 11               | 55%                          |
| 12               | 60%                          |
| 13               | 65%                          |
| 14               | 70%                          |
| 15               | 75%                          |
| 16               | 80%                          |
| 17               | 85%                          |
| 18               | 90%                          |
| 19               | 95%                          |
| 20               | 100%                         |

The price to replace a defective MTU will be calculated by multiplying the applicable Replacement Price Percentage by the MTU price in effect at the time of replacement.

The warranty offered to Purchaser shall only cover MTUs (i) configured to default factory settings (hourly readings and four (4) transmissions per day), (ii) operated within standard operating conditions (averaging no more than two (2) on-demand or valve position change requests per month, up to two (2) firmware downloads and one (1) full ninety-six (96) day data log extraction over the life of the MTU), and (iii) was installed and initiated within one (1) year of the date of original product shipment date.

2. Aclara® RF DCU Warranty. Aclara warrants to the original Purchaser of an Aclara RF Data Collection Unit (“DCU”) that the DCU shall be free from defects in material and workmanship for a period of one (1) year from the date of original product shipment (“Warranty Period”).

Any DCU manufactured by Aclara that, within the Warranty Period, fails as a result of a defect in material or workmanship, will be repaired or replaced, at the option of Aclara, without charge to the Purchaser. Aclara shall either: (1) Provide a return authorization to the Purchaser to return the defective DCU for repair; or (2) Perform on-site repair of the defective DCU, provided Purchaser pays all reasonable Aclara travel expenses. Aclara will be responsible for cost inbound and outbound freight when using shipping method of Aclara’s choice. Purchaser must provide reasonable access to the DCUs and shall be responsible for additional costs incurred should Aclara be prevented access at the scheduled time.

Aclara warrants replacement DCUs for the longer of: (i) the remaining term of the Warranty Period applicable to the DCU repaired or replaced, or (ii) ninety (90) days from the date the repaired DCU or its replacement is returned to Purchaser.

3. Aclara® RF Water / Gas Wireless Field Programming Coil Warranty. Aclara warrants to the original Purchaser of an Aclara RF Water / Gas Wireless Field Programming Coil (“Programmer”) that the Programmer shall be free from defects in material and workmanship for a period of

one (1) year from the date of original product shipment (“Warranty Period”).

Any Programmer manufactured by Aclara that, within the Warranty Period, fails as a result of a defect in material or workmanship, when returned to Aclara, freight prepaid, will be repaired or replaced, at the option of Aclara, without charge to the Purchaser. A Programmer which has been repaired or replaced by Aclara will be returned to the Purchaser by Aclara, freight prepaid. Aclara warrants replacement Programmers for the longer of: (i) the remaining term of the Warranty Period applicable to the Programmer repaired or replaced, or (ii) ninety (90) days from the date the repaired Programmer or its replacement is returned to Purchaser.

4. Software. All of the products set forth herein include software which is proprietary to Aclara and which is protected by United States Copyright Laws with which the Purchaser must comply. Purchaser has the right to utilize the software in the product with the product, but Purchaser may not disassemble, decompile, or modify the software. The software is confidential and the property of Aclara and shall not be disclosed to others.
5. Return Material Authorization Process. The return of defective products under a warranty claim must be returned in accordance with Aclara’s Return Material Authorization (RMA) Process. Please refer to the latest process document posted to the Aclara customer portal at: <https://aclaratech.force.com/login>
6. Warranty Claim. The warranty remedies set forth herein shall be contingent upon: (1) Purchaser providing written notice of a warranty claim to Aclara within the applicable warranty period; and (2) Purchaser returning the defective product to Aclara within sixty (60) days of removal and in accordance with the RMA Process..
7. Exceptions to Warranties. The following apply to all warranties offered to Purchaser by Aclara and set forth herein.
  - a. All costs associated with the removal and/or reinstallation of a defective product shall be the responsibility of the Purchaser.
  - b. The warranties set forth herein do not cover repairs or replacements required as a result of misuse, mishandling, improper storage, accident, modification, improper operation, installation errors, meter failures, theft, vandalism, acts of god or repair by unauthorized personnel.
  - c. Aclara reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.
8. **NO IMPLIED WARRANTIES.** THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LIABILITY OF ACLARA SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY. THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA.