



Prepared By:	Prepared For:	Proposal:	
MARS Company	Town of Apex Water Resources ("Customer")	Quote:	021323TOA
Attn: Jim Hendricks	Attn: Jessica Sloan	Contract Price:	\$57,433
3925 SW 13th Street	105-A Upchurch St. PO Box 250	Proposal Date:	02/13/2023
Ocala Florida 34474	Apex, NC 27502	Proposal Expires:	03/14/2023
(352) 843-0532	(919) 372-7478	Term:	Five (5) year

**Equipment, Software, and Services Contract**

**WHEREAS**

The Equipment, Software and Services Contract ("Contract") and its Schedules are made pursuant to the terms of the MARS Warranty, General Terms and Conditions between Customer and OW Investors, LLC. Dba MARS Company of 3925 SW 13th St., Ocala, Florida (the "MARS").

The Customer accepts the offer on the terms and conditions specified in this Contract.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

I. Price Summary:

Please refer to Schedule 1 for details.

II. Equipment, Software and Services List:

Equipment list: Please refer to Schedule 2 for details.

III. Non-Standard Terms and Conditions

Please refer to Schedule 3 for details.

IV. Validity of Agreement

This Contract shall commence on the date of final execution "Effective Date" and shall be in force for the Term.

V. List of Schedules

- Schedule 1 - Price Summary
- Schedule 2 - Equipment List
- Schedule 3 - Non-Standard Terms and Conditions
- Schedule 4 - MARS Warranty, General Terms and Conditions
- Schedule 5 - MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (if applicable)

**THE MODIFICATION(S) IN SCHEDULE 4 SUPERSEDE AND HAVE CONTROL OVER THE MARS Warranty, General Terms and Conditions.**

**IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed.**

For and on Behalf of MARS Company:

For and on Behalf of Town of Apex Water Resources

Name: David B. Corey

Name:

Title: CEO

Title:

Date:

Date:

## Schedule 1 - Price Summary

### Town of Apex Proposal

			CY 2023 <sup>13</sup>			
			Qty	Model Number	Annual Fee	One-Time Fee <sup>9</sup>
Equipment Maintenance	<b>MARS Calibration Certification (MCC) - Annual<sup>6</sup></b>					
	> Series 1010 Volumetric Test Bench System		1	81-00001-13	\$12,749	
	Sub-Total				\$12,749	

<b>Sub Grand Total</b>		<b>\$12,749</b>	
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<b>MARS Calibration Certification (MCC) - Annual</b>		<b>\$12,749</b>	
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<b>Grand Total (Including Any Applicable Discounts)</b>		<b>\$12,749</b>	
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Notes:

- 1- If MCC is purchased, MCC does not reflect Prevailing Wage labor rates except in CA, NJ, NY, and TX.
- 4- All M3 Upgrade and MCC must be coordinated with MARS and pricing is valid for 30 days from the date of this proposal.
- 5- MARS General Terms and Conditions apply to this proposal.
- 6- If MCC is purchased, it includes quantity of 1 separate MCC visit(s) per 12 month period.
- 9- One-Time Fee includes T&E, installation labor, and training.
- 11- The pricing does NOT include any compliance to seismic requirements, bonding fees, taxes, duties, or tariffs, if applicable.
- 12- Pricing does not include permits or other applicable fees. MARS Company is not responsible for permits.
- 13- The firm pricing above is valid for 30 days from the date of quotation. Budgetary pricing (subject to change) is valid for the calendar year beginning Jan. 1 and ending Dec 31 of the respective year.

M3 Software Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with 5 year contract; 4% discount when prepaid.  
MCC Multi-Year Subscription Renewal Discount: 2% discount on std annual subscription renewal with 5 year contract; 4% discount when prepaid.

## Schedule 1 - Price Summary (Continued)

MULTI-YEAR OPTIONS

Town of Apex Proposal



### STANDARD vs MULTI-YEAR DISCOUNTED PRICING - PAYMENT TERMS: ANNUALLY

#### MAINTENANCE CALIBRATION & CERTIFICATION (MCC) - PRIORITY

Equipment	Contract Options	Multi-Year Contract Discount <sup>7</sup>	MCC - 2023	2024	2025	2026	2027	5-Year Sub-Total	5-Year MCC Savings	Compounded Savings %
(1) Series 1010 Volumetric Test Bench System	Non-Contracted	0%	\$ 10,290	\$ 11,062	\$ 11,892	\$ 12,784	\$ 13,743	\$ 59,771	\$ 0	0%
	5-Year Contract	2%	\$ 12,749	\$ 12,084	\$ 11,454	\$ 10,856	\$ 10,290	\$ 57,433	\$ 2,338	4%

Notes: 1- MCC does not reflect Prevailing Wage labor rates  
 2- Multi-year discounts are based on annual payment in full in advance of the respective five year contract amount.  
 3- All Discounts are year to year and require customer to be actively engaged in respective discount category  
 4- All M3 Upgrade and MCC must be coordinated with MARS and pricing is valid for 30 days from the date of this proposal  
 5- MARS Warranty, General Terms and Conditions (the "Terms") apply to this proposal  
 8- X-Year Contract fee is calculated as follows: previous year fee times (One plus (respective Multi-Year Contract Discount percentage subtracted from the respective prevailing standard increase percentage)).

## Schedule 2 - Equipment List

In accordance with this contract agreement, MARS Company will provide Town of Apex Water Resources with the following Equipment:

- Provide MARS Calibration Certification (MCC) annual service for the MARS Series 1010 Volumetric Test Bench System

### Schedule 3 - Non-Standard Terms and Conditions

Non-Standard Terms & Conditions:

NONE

## Schedule 4 - MARS Warranty, General Terms and Conditions



## MARS COMPANY

## WARRANTY, GENERAL TERMS AND CONDITIONS

1) **General.** These terms and conditions (these "Terms"), the Equipment, Software and Services Contract (the "Contract") and its Schedules, the M3 Enterprise Software End User License Agreement (the "EULA"), MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"), any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto, (collectively, this "Agreement") are supplemental to the Standard Service Agreement (the "SSC") between the Town of Apex and MARS Company. "MARS On-Premise Equipment" means computer, software and related equipment including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) routers, and (iv) mobile test bench laptop computers and operating system software that are owned by MARS and provided to the Licensee (defined hereafter) to use during the M3 Software subscription or usage term. "Equipment" means the hardware, parts, iPads, cables, printers, and accessories, excluding MARS On-Premise Equipment, sold under the purchase order accompanying these Terms. "Software" means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or any new features (collectively, the "Software" and together with the Equipment and the MARS On-Premise Equipment, the "MARS Test Bench Solution"). "Purchaser" means the entity buying the Equipment or Software pursuant to the Contract or purchase order accompanying these Terms. "Licensee" means the entity identified on the Contract by and between these parties. "Services" means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by MARS Company related to the Equipment. Last two sentences deleted.

## 2) Delivery of Equipment and Performance of Services.

- All Equipment to fulfill MARS' obligations under this Agreement is delivered F.O.B. to destination designated by Purchaser. The date on which the Equipment (which may include pre-loaded Software) is delivered to Purchaser is the "Delivery Date."
- If the scheduled Delivery Date is delayed by Purchaser or by a force majeure event, MARS Company may move the Equipment to a temporary storage location approved by the Purchaser for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered, the date of such deemed delivery shall be the Delivery Date, and payment for the delivered Equipment and Software shall be due in accordance with Section 5(b). All expenses for the temporary storage transportation, storage fees, redelivery fees, etc. shall be the sole responsibility of Purchaser and payable to MARS Company together with payment for Equipment and Software in accordance with Section 5(b).
- Shipping and delivery times are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for MARS Company's performance hereunder.
- Claims for shortages or other errors in delivery must be made in writing to MARS Company within ten (10) days of the Delivery Date. Claims for damage caused by delivery shall be made directly by Purchaser with the common carrier.
- Except as expressly set forth herein, Purchaser may not return any goods without MARS's written consent. All returns are subject to a restocking fee/handling charge of 25%, which may change from time to time. Contact MARS to determine the exact amount. If the goods are specially ordered by the Purchaser, they cannot be returned to MARS. MARS shall have no obligation to accept the return of the goods, and Purchaser shall remain liable for the entire purchase price of the goods.
- MARS Company shall provide, and Purchaser shall pay for MARS Company's performance of, the Services described in one or more statements of work executed by MARS Company and any person listed as Purchaser's authorized representative in writing by Purchaser. With respect to the Services, Purchaser shall (i) cooperate with MARS Company in all matters relating to the Services and provide such reasonable access to Purchaser's premises, and such office accommodation and other facilities as may reasonably be requested by MARS Company, for the purposes of performing the Services; (ii) respond promptly to any MARS Company request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for MARS Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as MARS Company may reasonably request to perform the Services in a timely manner; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

## 3) Purchase Order and Acceptance.

- Purchaser shall be deemed to accept these Terms upon the execution of the SSC

## 4) Purchase Price and Service and Software Fees.

- The purchase price of the Equipment and the hourly rates for Services are set forth in the Contract. Unless otherwise agreed by the parties in writing, all Proposals expire thirty (30) days from the date thereof.
- Unless otherwise stated in a statement of work, the hourly rates set forth in the Contract is based on Services performed during normal business hours (8 a.m. to 5 p.m. Monday through Friday). Any Services performed on: (i) a business day outside of normal business hours or on a Saturday will be billed at one and one-half (1 1/2) times the hourly rate; (ii) Sunday will be billed at two (2) times the hourly rate; and (iii) a federal holiday, including any falling on a Saturday or Sunday, will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Service rates are subject to change without notice.
- The purchase price of the Equipment does not include any federal, state or local property, license, permits, privilege, sales, use, excise, gross receipts, manufacturer's tax, occupation tax, transfer tax, privilege tax, excise tax, duty, custom, tariff, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever, whether international, national, state, or local, however designated, which is levied or imposed by any governmental authority, on or measured by the transaction between MARS Company and Purchaser, shall be paid by Purchaser in addition to the prices quoted or invoiced, or in lieu thereof the Purchaser shall supply MARS Company with an appropriate tax exemption certificate. In the event MARS Company is required to pay any such tax, fee, interest or charge, Purchaser shall reimburse MARS Company therefore. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon submitting a purchase order, provide MARS Company a copy, acceptable to the relevant governmental authorities of any such certificate or permit. Purchaser agrees that, in the event of a Significant Cost Increase, MARS may increase the price of the MARS Test Bench Solution in an equitable amount for so long as such Significant Cost Increase is occurring. A "Significant Cost Increase" for purposes of this Agreement and any purchase order or similar issued hereunder shall be an increase of five percent (5%) or

more of the then-prevailing aggregate cost to MARS of raw materials, energy and transportation costs incurred in connection with the manufacture, delivery and/or servicing of any component of the MARS Test Bench Solution. In the event a Significant Cost Increase is no longer occurring, the price of the MARS Test Bench Solution shall revert back to that of the applicable purchase order.

- Services fees, including but not limited to MARS calibration certification equipment maintenance and services (MCC) fees, shall be (i) designated in the manner set forth on the Proposal or the MCC, and (ii) payable ANNUALLY IN ADVANCE of performance of Services.
- Software fees shall be (i) designated in the manner set forth on the Proposal or the Contract, and (ii) payable ANNUALLY IN ADVANCE of Software activation, renewal, re-activation, etc.; as appropriate.
- In the event Purchaser prepays Software fees to be applied against future MARS Services projects, Purchaser shall have twelve (12) months from the effective date of the Schedule of Software and Services to utilize the prepaid Fees towards a Services project. Any Fee credits shall expire after twelve (12) months and Purchaser shall not be entitled to any refund.
- If Licensee purchased an On-Premise Subscription Usage License, then:
  - Software fees shall be calculated based upon the monthly pro-rated amount of M3 Annual Meter Testing Usage and respective M3 Usage Tier and Usage Tier Discount as follows: the multiplication of each of the amounts: (i) One (1) subtracted by the Usage Tier Discount, and (ii) prevailing annual On-Premise Subscription Term License.
  - By way of example, if Licensee M3 Annual Meter Testing Usage exceeds Usage Tier I during five months into a 12-month renewal term and does not exceed Usage Tier 2 during the following seven months, then the Software Fee calculation would be: [(1-Usage Tier I Discount) x (5/12)] + [(1-Usage Tier Discount II) x (7/12)]. Licensee agrees that Usage Tiers may be increased but not decreased.
- MARS may increase its license and other fees, not included in this Agreement, at any time without notice so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.
- If Licensee purchased an On-Premise Subscription License, MARS may not increase the associated license fees more than once in any 12-month period following Licensee's initial purchase by more than ten percent (10%). MARS will notify Licensee of a price increase at least 90 days before the increase takes effect.
- This paragraph intentionally deleted
- You are responsible for providing MARS with the most current contact and billing information. Purchaser may provide updates to Purchaser's contact information to MARS at Sales@MARSwater.com and updates to Purchaser's billing information to MARS. You agree that, so long as the On-Premise Subscription Term License is active, MARS may, on a monthly basis, automatically bill the same credit card or bank account Purchaser provides to MARS.

## 5) Payment.

- Unless specified to the contrary in writing by MARS Company, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice by ACH or wire transfer to the account designated by MARS Company in the Proposal.
- Notwithstanding Section 5(b) above, payment terms for Equipment and Software are net cash, payable without offset, in United States Dollars and due on the Delivery Date by ACH or wire transfer to the account designated by MARS Company to Purchaser in writing (which may be delivered by email).
- If Purchaser fails to pay any reasonably undisputed invoice by the due date, MARS Company may require payment in advance, payment security satisfactory to MARS Company, or may terminate the purchase order, whereupon MARS Company shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date MARS Company is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest allowable rate allowed by law on all such overdue amounts [remainder of sentence deleted] if the purchaser's account is overdue (except with respect to amounts subject to a bona fide dispute), in addition to any of its other rights or remedies, MARS reserves the right to (i) suspend any MARS Services to Purchaser, and (ii) terminate Your use of the software and Purchaser shall pay a non-refundable, software reactivation fee ("Software Reactivation Fee") calculated as follows: (i) twenty-five hundred dollars (\$2,500) if reactivation is within 30 days of license expiration, plus (ii) five thousand dollars (\$5,000) for each subsequent 30 days, payable in advance of software reactivation, without liability, until such amounts are paid in full. By way of example, if Licensee reactivates the software 90 days after license expiration, then Software Reactivation Fee calculation would be: ((\$2,500) + (2 x \$5,000)) = \$12,500.

## 6) Changes.

- Any changes to a statement of work requested by Purchaser must be accepted by MARS Company and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change (the "Change Order"), and comply with the provisions of Section 27(e)(i).
- MARS Company may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications agreed upon by the parties. If Purchaser objects to any such changes, MARS Company shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.
- MARS Company may, at any time while the Equipment is under warranty, make such changes in design and construction of Equipment that it deems, in its sole discretion, to be an improvement. MARS Company may furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

## 7) Title & Risk of Loss.

- Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.
- Title to the Equipment shall remain with MARS Company until Purchaser has paid MARS Company the full purchase price of the Equipment.

- Bonding.** Any cost related to Payment Bonds, Performance Bonds, Labor and Material Bonds, hereinafter referred to as "BONDS" or any such financially bonding documents and/or mechanism required by Contract are not included unless specified to the contrary in writing by MARS Company. BONDS, if applicable, will be provided for either, (i) 12 months from the issuance / requirement date from Purchaser, or (ii) Contract Completion, whichever occurs



## WARRANTY, GENERAL TERMS AND CONDITIONS

first. Any costs to extend the requirement or to maintain or extend BONDS coverage beyond 12 months will be paid by Purchaser.

### 9) Inspection, Testing, Installation and Acceptance.

- a) Any inspection by Purchaser of Equipment on MARS Company's premises shall be scheduled in advance to be performed during normal working hours.
- b) If the purchase order provides for factory acceptance testing of the Equipment, MARS Company shall notify Purchaser when MARS Company will conduct such testing, which will be prior to shipment. UNLESS PURCHASER PROVIDES MARS COMPANY WITH WRITTEN NOTICE OF SPECIFIC OBJECTIONS WITHIN TEN (10) DAYS AFTER COMPLETION OF FACTORY ACCEPTANCE TESTING, COMPLETION OF THE FACTORY ACCEPTANCE TEST CONSTITUTES PURCHASER'S FULL ACCEPTANCE OF THE EQUIPMENT AND ITS AUTHORIZATION FOR SHIPMENT.
- c) MARS Company agrees to supply and install the MARS Test Bench Solution at a mutually agreeable location on the Purchaser's facility. For such installation, the Purchaser, at its sole cost and expense, shall: (i) provide a mutually agreeable electrical source and a water source to the MARS Test Bench Solution and (ii) engage a licensed plumber and licensed electrician to connect the MARS Test Bench Solution with such electrical and water sources (collectively, the "Purchaser Installation Responsibilities").
- d) After the Purchaser completes the Purchaser Installation Responsibilities to MARS Company's reasonable satisfaction and MARS Company installs the MARS Test Bench Solution, MARS Company and the Purchaser will perform testing in accordance with the detailed process and specification in accordance with acceptance test procedure ("ATP") addendum at marswater.com/ATP. A summary of the ATP is outlined as follows: (i) phase one - calibrate the MARS Test Bench Solution for accuracy (collectively, "Accuracy Calibration"). MARS shall be responsible for hiring a licensed, independent scale calibration and accuracy company ("Licensed Accuracy Calibration Company") to provide test bench scale system calibration to confirm that the Test Bench Solution meets NIST traceability and accuracy and adheres to local licensing requirements and industry standards. MARS and the Licensed Accuracy Calibration Company shall document the accuracy testing in accordance with scale system calibration & accuracy that is set forth on ATP Schedule A. If the test results conform to ATP Schedule A, the parties mutually agree that the Test Bench Solution will be deemed to have successfully passed this Accuracy Calibration phase; (ii) Following the completion of the Accuracy Calibration, MARS shall then perform phase two - Test Bench Solution testing for repeatability based on the Accuracy Calibration data. The repeatability testing ("Repeatability Testing") shall document the performance of the Test Bench Solution using statistical process control model detailed in the ATP. If the test results conform to ATP Schedule B, the parties mutually agree that the Test Bench Solution will be deemed to have successfully passed this Test Bench Solution Repeatability phase; (iv) MARS Company and Purchaser will jointly perform phase three - operator training and variable meter size acceptance testing of the MARS Test Bench Solution to ensure that the MARS Test Bench Solution conforms to the specifications set forth in the Agreement and per AWWA M6 Manual, Fifth Edition pages 63 & 64, Table 5-3. The data from phase three will be made available to the Purchaser and upon receipt will be deemed accepted in so far as operator training and variable meter testing. Upon successful completion of the ATP of this Section, the parties mutually agree that the MARS Test Bench Solution will be deemed acceptable by the Purchaser (collectively, the "Acceptance Testing").
- e) The Purchaser shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting Purchaser's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

**10) Operational Control.** OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 9).

### 11) Limited Warranties and Remedies (unless otherwise stated).

- a) **Equipment and Services Warranty.** MARS Company warrants that Equipment shall be delivered free of defects in material and workmanship. The Warranty Period for Equipment (excluding, spare parts and refurbished or repaired parts) shall end twelve (12) months after the Acceptance Date. The Warranty Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Period for Services shall end ninety (90) days after the date of completion of Services or one-hundred and twenty (120) days after Services are initiated, whichever comes first.
- b) **MARS On-Premise Equipment Warranty.** MARS Company warrants that MARS On-Premise Equipment shall be delivered free of defects in material and workmanship.
- c) **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to MARS Company promptly after such discovery and within the applicable Warranty Period, MARS Company shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services, (ii) refund the portion of the purchase price applicable to the nonconforming portion of Equipment or Services, or (iii) refund the full purchase price of the Equipment if any nonconformance with the above warranty causes the Equipment to be inoperable. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such Equipment or Services or thirty (30) days from completion of such repair, replacement or re-performance, whichever is later, MARS Company will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Period shall not otherwise be extended.
- d) **Exceptions.** MARS Company shall have no obligation hereunder with respect to any Equipment which (i) has been installed by non-MARS authorized entities; (ii) has been improperly repaired or altered by Purchaser or a third party; (iii) has been subjected to misuse, negligence or accident; (iv) has been used in a manner contrary to MARS Company's instructions; (v) is comprised of materials provided by or a design specified by Purchaser; or (vi) has failed as a result of ordinary wear and tear. Equipment supplied by MARS Company but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

The Warranty Period is void if the Purchaser does not adhere to storage instructions specifying both storage time and temperature or if MARS Company determines, at its sole discretion, that the AMR Radio equipment is improperly maintained, modified, subjected to excessive operating conditions, incidental damage, intentional or unintentional destruction, act of God, abuse or physically damaged. If any portion of the AMR Radio so repaired or replaced fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such ARM Radio or thirty (30) days from the shipment date of such repair or replacement, whichever is later, MARS Company will repair or replace such nonconforming AMR Radio. The original Warranty Period shall not otherwise be extended.

- e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND MARS COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

**12) End User License Agreement.** BY EXECUTING THE SOFTWARE, INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, LICENSEE IS CONSIDERED TO HAVE READ, AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THE END USER LICENSE AGREEMENT ("EULA"). IF LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THE EULA, LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. THE SOFTWARE, INCLUDING ANY UPDATES, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, ARE SUBJECT TO THESE TERMS AND CONDITIONS OF THE EULA.

**13) Care and Use of MARS On-Premise Equipment.** MARS Company shall maintain and service the MARS On-Premise Equipment from the Delivery Date until either: a) the expiration of the applicable EULA license Term, or b) the date of earlier termination in accordance with the EULA.

In all other respects, except for damage or repairs due to the acts or omissions of MARS Company or its employees, agents, or contractors, Purchaser shall maintain in good operating condition, repair, and appearance, the MARS On-Premise Equipment at Purchaser's own cost and expense, and Purchaser shall protect the MARS On-Premise Equipment from damage and deterioration, other than that caused by normal wear and tear.

Purchaser shall use the MARS On-Premise Equipment in the regular course of business only, within its normal capacity, without abuse, and in the manner contemplated by the parties as of the date of this Agreement. Purchaser shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use and operation of the MARS On-Premise Equipment, and shall not make any modification, alteration or addition to the MARS On-Premise Equipment without prior written approval by MARS Company. Neither Purchaser nor its employees, agents or representatives shall tamper with, disassemble, revise, engineer or otherwise examine the manual workings of the MARS On-Premise Equipment. If through the negligence of Purchaser or the breach of this Agreement by Purchaser repairs are required of MARS Company, then Purchaser shall reimburse MARS Company for all reasonable costs incurred by MARS Company to repair, replace, or perform such maintenance to correct any faults. If Purchaser has not corrected such repairs or performed such maintenance to MARS Company's satisfaction within ten (10) calendar days following MARS Company's written notice to Purchaser, MARS Company shall have the right during normal business hours, with reasonable prior notice to Purchaser and subject to applicable laws and regulations, to enter the Facility in order to inspect, observe, or upon termination or expiration of Licensee's EULA, remove the MARS On-Premise Equipment or otherwise protect MARS Company's interests, and Purchaser shall cooperate fully in affording MARS Company the opportunity to do the same. Purchaser shall permit MARS Company to review all documentary and electronic information relating to the MARS On-Premise Equipment and the operation of it. In the event of theft or loss of the MARS On-Premise Equipment while in use and control of the Purchaser, Purchaser agrees to reimburse MARS Company for all reasonable costs incurred by MARS Company to replace MARS On-Premise Equipment.

In the event the Licensee (i) terminates the license subscription, except if terminated for breach or cause by MARS, or (ii) does not renew the M3 license pursuant to Section 4. Licensee shall pay an equipment decommissioning fee ("Equipment Decommissioning Fee" or "EDF") for the expenses related to the return and recovery of MARS owned, MARS On-Premise Equipment. The EDF includes but is not limited to labor, travel, and expenses associated with the decommissioning, de-installation, shipping and return of the MARS On-Premise Equipment from the Licensee location to MARS located at 3925 SW 13th St., Ocala, Florida 34474. Further, Licensee agrees to pay MARS a non-refundable EDF fee in the amount of \$5,000 (five-thousand dollars) for each decommissioned Test Bench System within 30 days of the date of equipment decommissioning. By way of example, if Licensee does not renew the M3 annual subscription on two 2400 Series test benches and a single large test bench, the EDF for the three separate system would be: (3 x \$5,000) = \$15,000.

**14) Inventions and Information.** Unless otherwise agreed in writing by MARS Company and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with MARS Company. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of MARS Company. Purchaser shall not, without MARS Company's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

### 15) Patent Indemnity.

- a) MARS Company shall defend at its own expense, and shall indemnify and hold Purchaser harmless from, any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by MARS Company (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given MARS Company prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.
- b) MARS Company shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by MARS Company; (ii) any Equipment or Process supplied according to a design, other than a MARS Company design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of MARS Company.





**WARRANTY, GENERAL TERMS AND CONDITIONS**

- c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, MARS Company shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF MARS Company AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.
- d) This paragraph intentionally deleted.

**16) Limitation of Liability.**

- a) EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, IN NO EVENT SHALL MARS COMPANY, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, [deleted], STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MARS COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, MARS COMPANY'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, [deleted], STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE (EXCEPT AS PROVIDED IN THE SECTION ENTITLED "PATENT INDEMNITY") EXCEED [clause deleted] THE PURCHASE PRICE ALLOCABLE TO THE EQUIPMENT OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE CLAIM.
- b) ALL CAUSES OF ACTION AGAINST MARS COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN **TWO** YEARS OF THE TIME OF ACCRUAL THEREOF. This paragraph intentionally deleted.

**17) Laws and Regulations.** MARS Company and Purchaser shall comply with all applicable laws in performance of its obligations under this Agreement. MARS Company does not assume any responsibility for compliance with any laws and regulations relating to the operation or use of the Equipment, which is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Acceptance Date. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Section 6. Nothing contained herein shall be construed as imposing responsibility or liability upon MARS Company for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment. This Agreement is governed by the laws of the United States and the State of North Carolina, without reference to conflicts of law principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. [sentence intentionally deleted] If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

**18) OSHA.** MARS Company warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the Proposal Date. Upon prompt written notice from the Purchaser of a breach of this warranty, MARS Company will replace the affected part or modify it so that it conforms to such standard or regulation. MARS Company's obligation shall be limited to such replacement or modification. IN NO EVENT SHALL MARS COMPANY BE RESPONSIBLE FOR LIABILITY ARISING OUT OF THE VIOLATION OF ANY OSHA STANDARDS RELATING TO OR CAUSED BY PURCHASER'S DESIGN, LOCATION, OPERATION, OR MAINTENANCE OF THE EQUIPMENT, ITS USE IN ASSOCIATION WITH OTHER EQUIPMENT OF PURCHASER, OR THE ALTERATION OF THE EQUIPMENT BY ANY PARTY OTHER THAN MARS COMPANY.

**19) Force Majeure.** MARS Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), [clause deleted] fire, pandemic, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the purchase price will be adjusted to compensate MARS Company for such delay.

**20) Cancellation.** Any purchase order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified in the purchase order incurred prior to the effective date of notice of termination and all expenses incurred by MARS Company attributable to the termination, plus a fixed sum of ten (10) percent of the final total purchase price to compensate for disruption in scheduling, planned production and other indirect costs.

**21) Termination.** In addition to any remedies that may be provided under these Terms, MARS company may terminate this Agreement with immediate effect upon written notice to Purchaser if Purchaser: (a) fails to pay any reasonably undisputed amount when due under this Agreement; (b) has not otherwise materially performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Purchaser may terminate this Agreement for MARS Company's material breach if MARS Company fails to cure or begin taking reasonable steps to cure any such material breach within fifteen

(15) days after receiving written notice from Purchaser specifying such breach

**22) Export Control.**

- a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by MARS Company or the "direct product"

thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

- b) If applicable, MARS Company shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after acceptance of the purchase order. Any delay in obtaining such license shall suspend performance of this Agreement by MARS Company. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by MARS Company without liability for damages of any kind resulting from such cancellation. At MARS Company's request, Purchaser shall provide to MARS Company a Letter of Assurance and End-User Statement in a form reasonably satisfactory to MARS Company.
- 23) **Assignment.** Purchaser shall not assign this Agreement or of any rights or obligations under this Agreement without the prior written consent of MARS Company.
- 24) **Warranty of Capacity to Execute Agreement.** Each of the parties warrants and represents on behalf of itself that it has full power and authority to enter into this Agreement and to bind the parties, that any and all necessary consents and approvals have been obtained, and that no other consent, approval or action is required.
- 25) **Severability.** If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 26) **Entire Agreement.** This Agreement is a legal agreement and constitutes a supplement to the SSC between Purchaser and MARS Company with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein. This Agreement may not be amended or modified except in a writing duly signed by the authorized representative of Purchaser and an authorized representative of MARS Company.

**27) Miscellaneous.**

- a) Equipment consumables including printer ink, paper, etc. are Purchaser responsibility at all times.
- b) This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- c) Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- d) If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- e) Conflicts. MARS Company and Purchaser agree and acknowledge that due to the nature of the commercial relationship, and the public or quasi-public sector nature of Purchaser, this transaction will be regulated by multiple documents. Occasionally, conflicts will arise between different documents, or between different versions of the same document. The purpose of this Section 27(e) is to provide simple rules for resolving such conflicts.
  - i) Change Order – A Change Order shall only be effective to prevail over a conflicting term if such Change Order contains an express statement of the Parties' intent for the Change Order provision to control over the conflicting provision in the other document. Such statements must be prominently and conspicuously in BOLD CAPITAL LETTERS, must be in a font no smaller than that of this Section of this Agreement, and must expressly reference the section and page number of the conflicting provision in the other document that the Change Order provision prevails over. Any effective statement shall only be effective as to that provision in that Change Order; it shall have no force or effect relative to previous or subsequent agreements or addendums thereto.
  - ii) Conflicts Between Different Dated Versions of Same Document – For conflicts between versions of the same document (i.e., a EULA) that bear different dates, the most recent version will prevail.
  - iii) Conflict Between Different Documents – For conflicts between different documents (i.e., a term in the EULA and a conflicting term in the Proposal), such conflicts shall be resolved by reference to the chart below. Utilizing the foregoing example, a conflict between a EULA term and a Proposal term would place in conflict "4" with "G" and the chart shows that 4, the EULA, would prevail.

	A	B	C	D	E	F	G	H
1	-	1	1	1	1	1	1	H
2	A	-	2	2	2	2	2	H
3	A	B	-	3	3	3	3	H
4	A	B	C	-	4	4	4	H
5	A	B	C	D	-	5	5	H
6	A	B	C	D	E	-	6	H
7	A	B	C	D	E	F	-	H
	8	8	8	8	8	8	8	

1-Change Order	A-Change Order
2-Contract	B-Contract
3-Terms	C-Terms
4-EULA	D-EULA
MCC	E-MCC
Purchase Order	F-Purchase Order
Proposal	G-Proposal
8 - SSC	H - SSC

- f) All notices hereunder shall be made by certified or registered airmail, return receipt requested, by recognized overnight courier, by facsimile transmission, answer back requested, but excluding e-mail, and shall be sent to the parties at the addresses indicated in the purchase order (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof). MARS Company's address is 3925 SW 13<sup>th</sup> St, Ocala, Florida 34474.
- g) During the term of this Agreement and for one (1) year thereafter, neither party shall solicit the other parties' current employees or full-time consultants for employment, directly or indirectly, without such other parties' written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party.
- h) This Agreement may only be modified by written agreement of the parties.
- i) Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original.

## Schedule 5 - MARS Calibration Certification - General Conditions of Service & Maintenance Agreement



**IMPORTANT--READ CAREFULLY**

THANK YOU FOR SELECTING MARS CERTIFIED FOR YOUR SERVICE AND MAINTENANCE REQUIREMENTS. MARS COMPANY ("MARS") PROVIDES SERVICE AND MAINTENANCE TO CUSTOMER SUBJECT TO THE TERMS CONTAINED IN THIS GENERAL CONDITIONS OF SERVICE AND MAINTENANCE AGREEMENT (each individually a "Party" and collectively the "Parties"). CUSTOMER AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAS NO EFFECT NOR ANY INFLUENCE OR ANY CONNECTION WITH - IF ANY - ANY OTHER MARS COMPANY AGREEMENT(S) WHICH ARE APPLICABLE ON MARS COMPANY PROGRAM PRODUCTS PURCHASED BY CUSTOMER.

1 **DEFINITIONS** - As used herein, the following terms have the following meanings:

- 1.1 **"Additional Charge"** means a charge payable by the Customer for additional services outside the scope of the Services in accordance with MARS' prevailing rates for such services including without limitation, the supply of spare parts and goods.
- 1.2 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, where "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- 1.3 **"Agreement"** means, collectively, this MARS Calibration Certification - General Conditions of Service and Maintenance Agreement ("**MCC**"), and its Schedules; the **Standard Services Agreement between Customer and MARS ("SSC")**; the M3 Enterprise Software End User License Agreement (the "**EULA**"); the MARS Company Warranty, General Terms and Conditions (the "**Terms**"); the Equipment, Software and Services Contract (the "**Contract**") and its Schedules; any proposal from MARS Company received by Purchaser (the "**Proposal**"), the purchase order and any change orders attached and incorporated hereto, are the only terms that govern Equipment and Services sold or provided by MARS Company and comprise the entire agreement between the parties regarding the Equipment and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- 1.4 **"Conditions"** means these General Conditions of Service & Maintenance which are incorporated into and form part of the Agreement.
- 1.5 **"Customer"** means the person or persons, firm or company named on the cover page of the Agreement.
- 1.6 **"Customer Support"** means assistance You receive by phone, email, chat, access to on-line information or by similar means because You purchased a Service Plan.
- 1.7 **"Documentation"** means the specifications that are set forth in the Equipment help files and any release-related notes, guides or manuals MARS publishes specific to the current version of the Equipment.
- 1.8 **"Equipment"** means the equipment and software listed in Schedule 1.
- 1.9 **"Fee"** means the fee payable for the Services as specified in Section II of the Agreement.
- 1.10 **"MARS"** means OW Investors LLC, dba MARS Company that offers the Products.
- 1.11 **"Services"** means the maintenance and other services provided in respect of the Equipment detailed in Schedule 2 and as defined in these Conditions.
- 1.12 **"Service Time"** means the period set out in Clause 2 herein.
- 1.13 **"Site"** means the premises where the Services are provided.
- 1.14 **"Term"** means the duration of the Agreement as set out in Section III of the Agreement.
- 1.15 **"You"** or **"Your"** or **"Customer"** means or refers to the company or person that is named on the cover page of the Agreement.

**2 Service Time**

- 2.1 The Services shall be performed within the Service Time, which shall be between 8.00 a.m. and 5.00 p.m., Mondays to Fridays, Public Holidays excluded unless otherwise agreed in Schedule 2. Response times for corrective maintenance services shall be as set out in Schedule 2 or as otherwise agreed between the Parties

**3 Modification, Changes and Enhancements**

- 3.1 During the Term, MARS shall at their discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by MARS to be necessary and/or to prevent or minimize damage to the Equipment.
- 3.2 MARS will before undertaking any such modification, change or enhancement etc. as mentioned in 3.1 above, explain to the Customer, if MARS deems necessary, the need and cost (where applicable) of such modification, change or enhancement. The Customer shall pay any Additional Charge for such modification, change or enhancement according to Clause 7.2.

**4 Exclusions & Additional Services**

- 4.1 The Services do not include:
  - 4.1.1 Repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Customer or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Customer.
  - 4.1.2 Repair of damage arising from changes, alterations, additions or modifications of the Equipment by a person other than MARS.
  - 4.1.3 Repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor.
  - 4.1.4 Repair of damage caused by the operation of the Equipment other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of MARS or its personnel.
  - 4.1.5 Repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than MARS.
  - 4.1.6 Repair of damage caused by any circumstances beyond MARS' reasonable control.
  - 4.1.7 Furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the Equipment unless otherwise provided in Schedule 2.
  - 4.1.8 Transportation charges, whether for air, sea or land transport for Services carried on within or outside the United States.
  - 4.1.9 Work performed outside MARS' Service Time.
  - 4.1.10 The cost of any Equipment or part whether a spare part, consumable or otherwise supplied, unless otherwise provided in Schedule 2.
  - 4.1.11 The upgrading of or retrofitting of improvements or major modification to the Equipment.
- 4.2 MARS may at the Customer's option provide any of the services referred to in clause 4.1 or any other services requested by the Customer, at the relevant Additional Charge. MARS shall inform the Customer of the associated Additional Charge, and the Customer shall accept the Additional Charge in writing before the services are performed. The Additional Charge shall be payable by the Customer according to clause 7.2.

**5 Customer's Responsibilities**

- 5.1 The Customer shall undertake to release all Equipment which is being maintained by MARS from all operational demands when so requested to do so by MARS in order for MARS to perform the Services. Alternatively, the Customer shall ensure that MARS' personnel have full and safe access to the Equipment at all reasonable times for the purpose of providing the Services. The Customer shall also ensure that such access conforms to any specifications issued by MARS from time to time.
- 5.2 The Customer will ensure that MARS' personnel or representatives are provided a safe and secure work environment at all times while they are on the Site to enable work to be carried out.
- 5.3 The Customer shall provide on request a suitably qualified or informed representative, agent or employee to accompany MARS' personnel when providing the Services or to render such assistance or to give such advice as will enable MARS' personnel to exercise unrestricted access to the Site and the Equipment and otherwise to perform the Services effectively.
- 5.4 The Customer shall supply auxiliary facilities and services when requested by MARS as necessary for the provision of the Services. Where the Customer does not provide the auxiliary facilities and services, MARS shall be entitled to procure such auxiliary facilities and services and seek full reimbursement from the Customer provided MARS has given the Customer written notice of the non-compliance and the Customer has failed to remedy the non-compliance within the time specified in the notice. The auxiliary facilities and services shall include without limitation:
  - 5.4.1 Adequate telephone/communications facilities;
  - 5.4.2 Lighting for all work areas;
  - 5.4.3 Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the reasonable satisfaction of MARS;
  - 5.4.4 240-volt, 60-phase (single cycle) at three pin-general purpose outlets at suitable locations;
  - 5.4.5 Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools;
  - 5.4.6 Suitable rooms on or adjacent to the Site with adequate air-conditioning, lighting, washing, toilet and drinking water facilities for the use of MARS' personnel or representatives; and/or
  - 5.4.7 Lifting machinery or devices, timber, planking, strutting, cement, fuels, water, gas etc.
- 5.5 The Customer shall upon MARS' request furnish to MARS sufficient information which, in MARS' reasonable opinion, will enable the Services to be carried out forthwith and without interruption. The Customer shall be responsible for and bear the cost of any modification to the scope of the Services arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by the Customer.
- 5.6 All such assistance to be provided by the Customer under this Clause 5 or in general shall be at the Customer's sole cost and expense.
- 5.7 Nothing in this Agreement shall relieve the Customer from its obligations to perform normal day to day maintenance on the Equipment as per the Operator's Manuals supplied by the manufacturer and/or MARS including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 5.8 During the continuance of this Agreement, the Customer shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the Equipment other than day to day maintenance and the Customer shall not permit any other person except MARS' personnel or representatives to carry out such work unless prior written approval has first been obtained from MARS.

**6 Replacement and Spare Parts**

- 6.1 In the case of Services for which an Additional Charge is payable by the customer for replacement of spare parts, title in such replacement or spare parts shall pass to the Customer only upon full payment of the Additional Charge. Unless otherwise agreed in writing between the Parties, the risk of damage to or loss of replacement spare parts shall pass to the Customer as soon as they are delivered to the Customer's designated premises.
- 6.2 Where parts of the Equipment have been replaced by or upon the instruction, recommendation or direction of MARS or otherwise, title in the replaced parts will pass to MARS upon removal from the Equipment.
- 6.3 MARS may from time to time require the Customer to purchase and store at the Site such spare parts as MARS considers necessary for the provision of effective Services.
- 6.4 MARS will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Customer to comply with clause 6.3.
- 6.5 Save as aforesaid, the property of and risk in the Equipment is not affected by the provisions contained in this Agreement.

**7 Payment, Charges and Fees, etc.**

- 7.1 The Customer shall pay all Fees at the rate and in the manner specified in Section II of the Agreement.
- 7.2 The Customer shall pay the Fee, all Additional Charges and any cost wherever and howsoever incurred within thirty (30) days from the date of MARS' invoice.
- 7.3 If the Customer fails to make full payment on the due date, then without prejudice to any other right or remedy available to MARS, MARS shall be entitled to:
  - 7.3.1 Terminate the Agreement or suspend any further Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
  - 7.3.2 At its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and MARS, including but not limited to deposits or security payments, towards the payment of the relevant invoice; and/or
  - 7.3.3 Charge the Customer interest on the amount unpaid on a daily basis at the maximum rate allowable by law from the due date until payment in full is received by MARS.
- 7.4 The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to MARS unless agreed in writing by MARS.
- 7.5 MARS shall be entitled to an adjustment of the Fees and Additional Charges in the event of changes in law or engineering standards applicable to or affecting the Equipment and/or Services after the execution of the Agreement.
- 7.6 MARS may increase, at any time without notice, Fees and Additional Charges due for service and maintenance and any new purchases may be more than a previous purchase.
  - 7.6.1 MARS may not increase the associated Fees more than once in any 12-month period following Customer's initial purchase by more than five percent (5%).
  - 7.6.2 MARS will notify Licensee of a price increase at least 60 days before the increase takes effect.
- 7.7 You are responsible for providing MARS with the most current contact and billing information. Customer may provide updates to Customer's contact information to MARS at



Sales@MARSwater.com and updates to Customer's billing information to MARS.

#### 8 Maintenance Equipment

- 8.1 MARS shall provide all the necessary tools, equipment, testing and diagnostic apparatus which MARS requires in order to carry out the Service unless otherwise agreed.

#### 9 Customer Records & Service Reports

- 9.1 The Customer shall keep such records relating to the use and performance of the Equipment as may be directed by MARS from time to time.  
9.2 The Customer shall permit MARS to have access to such records at all reasonable times, including all periods during which the Services are being performed or preparations are being made for the Services to be performed.

#### 10 Confidentiality & Confidential Content

- 10.1 Customer agrees that, unless otherwise specifically provided herein or agreed by MARS Company in writing, the Equipment and, if any, the Documentation, provided to Customer by MARS Company constitute confidential, proprietary information of MARS Company. Customer shall permit only authorized users to use the Equipment if any, the Documentation. Customer agrees not to transfer, copy, disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of MARS Company. Customer agrees to implement reasonable security measures to protect such confidential information, but without limitation to the preceding, shall use best efforts to maintain the security of the Equipment provided to Customer by MARS Company. Customer will use its best efforts to cooperate with and assist MARS Company in identifying and preventing any unauthorized use, copying, or disclosure of the Equipment, if any, Documentation, or any portion thereof.  
10.2 All information available concerning the Equipment is confidential information of MARS Company. For a period of five years from the time Customer accessed this confidential information, Customer may not disclose this confidential information to any third party. This restriction will not apply to any information that is or becomes publicly available without a breach of this restriction; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source that can disclose it is lawfully and without an obligation to keep it confidential; or is independently developed. Customer may disclose this confidential information if required to comply with a court order or other government demand that has the force of law. Before doing so, you must seek the highest level of protection available and, when possible, give MARS Company enough prior notice to provide a reasonable chance to seek a protective order.

#### 11 Limited Warranty

- 11.1 MARS warrants that:  
11.1.1 it will provide the Services in a proper, skillful and professional manner at all times;  
11.1.2 it will exercise the reasonable standards of skill, care, and diligence in the performance of the Services;  
11.1.3 it will retain a sufficient number of personnel with the expertise required to provide the Services; and  
11.1.4 its personnel possesses the required skills and experience required to provide the Services.  
11.2 The above warranties shall not replace or supersede the warranty applicable to the Equipment as specified in any sale and purchase agreement.

#### 12 Disclaimer

- 12.1 To the maximum extent permitted by applicable law, and except for the Limited Warranty set forth herein, THE EQUIPMENT (AND ACCOMPANYING DOCUMENTATION) IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, UMARS, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, CONDITIONS OF MERCHANTABILITY, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, SECURITY, QUALITY OR WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR A LACK OF VIRUSES. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.  
12.2 WITHOUT LIMITATION OF THE FOREGOING, MARS COMPANY EXPRESSLY DOES NOT WARRANT THAT THE EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE EQUIPMENT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR SELECTING THE EQUIPMENT TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE EQUIPMENT. CUSTOMER SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE EQUIPMENT.  
12.3 ANY DOWNLOAD AND USE OF LICENSED SOFTWARE PROGRAM PRODUCT IS DONE AT THE CUSTOMER'S OWN RISK AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO – WITHOUT LIMITATION – ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD IT PROVE DEFECTIVE, CUSTOMER ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION. IT IS THEREFORE UP TO THE CUSTOMER TO TAKE ADEQUATE PRECAUTION AGAINST POSSIBLE DAMAGES RESULTING FROM THIS SOFTWARE.

#### 13 Exclusions of and Limitation of Liability

- 13.1 You acknowledge Your understanding that Equipment is inherently complex and may not be free from errors and that You have been advised to verify the work produced by the software or Equipment. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, NEITHER MARS NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, ~~clause deleted~~  FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER RESULTING FROM ANY DEFECT IN THE EQUIPMENT, SOFTWARE OR MEDIA, EVEN IF MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.  
13.2 IN NO EVENT SHALL MARS'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT OR SOFTWARE, YOUR SERVICE PLAN, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED (i)

THE FEE ACTUALLY PAID BY YOU TO PURCHASE A SERVICE PLAN (ii) THE FEES ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM, OR (iii) THE FEES ACTUALLY PAID BY YOU TO PURCHASE OR RENEW THE ANNUAL SERVICE PLAN IN EFFECT WHEN THE CLAIM AROSE. You acknowledge and agree that this Agreement allocates risk between You and MARS as authorized by applicable law and that the pricing of MARS products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

#### 14 Indemnification

- 14.1 If You receive notice of any claim that Your use of any part of the Equipment infringes any third party's intellectual property right in a patent, copyright, or trade secret (an "Indemnity Claim"), MARS shall defend and shall indemnify and hold You harmless by paying any resulting costs and damages finally awarded by a court with respect to any such Indemnity Claim provided that You:  
14.1.1 Notify MARS in writing promptly upon becoming aware of the Indemnity Claim,  
14.1.2 At MARS's request and expense, give MARS such information and assistance as is reasonable under the circumstances, and  
14.1.3 Give MARS the right to settle the Indemnity Claim in MARS's sole discretion and at MARS's expense.  
14.2 This indemnification does not extend to any Indemnity Claim arising from the combination of the Equipment with other elements not under MARS's sole control or arising from any part of the Equipment that You or a third-party modify, or that incorporates specifications, designs or formulas that You provide. If You are prevented from Using the Equipment because of an actual or claimed infringement, then at MARS's option, MARS shall promptly either obtain for You the right to continue Using the affected part of the Equipment, replace or modify the affected part of the Equipment so that it becomes non-infringing, or if none of the foregoing alternatives are possible after MARS exercises commercially reasonable efforts, You may terminate this Agreement and Your Service Plan, and MARS shall ensure that If You acquire a Service Plan, You receive a refund or credit for the Service Plan fee You incurred to purchase or renew Your most recent Service Plan.  
14.3 THIS SECTION 14 SETS OUT MARS'S ENTIRE FINANCIAL LIABILITY FOR ANY INDEMNITY CLAIM.

#### 15 Termination and/or Suspension of Services

- 15.1 In addition to MARS' right to terminate the Agreement under Clause 7.3, MARS shall be entitled to (i) terminate the Agreement or suspend any further Services under the Agreement without any liability to the Customer, and (ii) demand that the Fee, Additional Charges or balance thereof shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Customer and apply the said security or monies against the assessed loss and damages, if any, suffered by MARS, in the event that:  
15.1.1 the Customer is in breach of the Agreement; or  
15.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or has an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposal, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager or be placed under a judicial management order; or  
15.1.3 an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or  
15.1.4 the Customer ceases, or threatens to cease, to carry on business; or  
15.1.5 there is a change in control of the Customer which in the reasonable opinion of MARS adversely affects the position, rights or interests of the Customer. (For the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of Agreement, ownership of shares, or otherwise howsoever); or  
15.1.6 in the reasonable opinion of MARS, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Agreement; or  
15.1.7 MARS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.  
15.2 Termination of the Agreement by MARS shall not discharge the Customer from any existing obligation accrued due on or prior to the date of termination.  
15.3 The rights and remedies granted to MARS pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

#### 16 United States Government

- 16.1 The Equipment and accompanying Documentation may be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Equipment and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. The manufacturer is MARS. The MARS address is 3925 SW 13<sup>th</sup> St, Ocala Florida 34474.

#### 17 Export Controls

- 17.1 During the term of this Agreement, neither the Software nor the Documentation and underlying information or technology may be downloaded, exported, or re-exported (i) into (or to a national or resident of) Cuba, Iran, North Korea (Democratic People's Republic of Korea), Sudan, Syria, or any other country to which the United States has embargoed goods or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders. By accessing, downloading or using the Software You are agreeing to the foregoing and You are certifying that You are not located in, under the control of, or a national or resident of any such country or on any such list.  
17.2 YOU SHOULD ALSO BE AWARE OF THE FOLLOWING. EXPORT OF THE EQUIPMENT MAY BE SUBJECT TO COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED FROM TIME TO TIME BY THE BUREAU OF EXPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, WHICH RESTRICT THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE EQUIPMENT IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE EQUIPMENT SHALL NOT BE EXPORTED OR RE-EXPORTED, DIRECTLY OR INDIRECTLY, (A) WITHOUT ALL EXPORT OR RE-EXPORT LICENSES AND UNITED STATES OR OTHER GOVERNMENTAL APPROVALS



REQUIRED BY ANY APPLICABLE LAWS, OR (B) IN VIOLATION OF ANY APPLICABLE PROHIBITION AGAINST THE EXPORT OR RE-EXPORT OF ANY PART OF THE SOFTWARE. SOME COUNTRIES HAVE RESTRICTIONS ON THE USE OF ENCRYPTION WITHIN THEIR BORDERS, OR THE IMPORT OR EXPORT OF ENCRYPTION EVEN IF FOR ONLY TEMPORARY PERSONAL OR BUSINESS USE. YOU ACKNOWLEDGE IT IS YOUR RESPONSIBILITY TO COMPLY WITH ANY AND ALL GOVERNMENT IMPORT, EXPORT AND OTHER APPLICABLE LAWS.

**18 Relationship.**

18.1 MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as specifically agreed by the parties, MARS has the sole obligation to supervise, manage, contract, direct, procure and perform our obligations under this Agreement. MARS reserves the right to determine which of our representatives shall be assigned to perform its obligations and to replace or reassign such representatives as we deem appropriate.

**19 Attorneys' Fees**

19.1 This paragraph intentionally deleted.



**20 Severability**

20.1 If any provision of this license is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

**21 Governing Law and Arbitration**

21.1 This Agreement is governed by the laws of the United States and the State of North Carolina, without reference to conflicts of law principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. [sentence deleted]



**22 Entire Agreement**

22.1 This Agreement is a legal agreement and is supplemental to the SSC and between Customer and MARS Company with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein. This Agreement may not be amended except in a writing duly signed by Customer and an authorized representative of MARS Company.



**23 Misc. Provisions**

- 23.1 No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by MARS or a duly authorized representative of MARS. You hereby acknowledge a breach of this Agreement would cause irreparable harm and significant injury to MARS that may be difficult to ascertain and that a remedy at law would be inadequate. You agree that MARS shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under this Agreement in addition to any other rights and remedies it may have. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If You have received a translation into a language other than English, it has been provided for Your convenience only.
- 23.2 If you are or become the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or other similar proceeding, federal or state, voluntary or involuntary, under any present or future law, you consent to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement, including, any stay imposed by the United States Federal Bankruptcy Code, as amended.
- 23.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- 23.4 Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- 23.5 If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- 23.6 Advertising. MARS has the right to include Your name in a general listing of users of our products and services. However, neither party shall use any logo or trademark owned by the other party unless pre-approved in writing by one of its officers.
- 23.7 You agree to maintain internet connectivity from your equipment to MARS as specified by MARS. MARS will install the Software on your Equipment, configure the Software for your use, and test the Software to confirm that it operates in conformity with the MARS specifications. Installation Date is the date the MARS software is installed.
- 23.8 Notice. All notices hereunder shall be made by certified or registered airmail, return receipt requested, by recognized overnight courier, by facsimile transmission, answer back requested, but excluding e-mail, and shall be sent to the Parties at the addresses indicated on the Schedule of Software and Services (or at such other address for a Party as shall be specified by like notice); provided that notices of a change of address shall be effective only upon receipt thereof, or, in the alternative, in the case of notices to Customer, the same address as invoices.
- 23.9 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of [clause deleted] strikes, pandemic, lockouts, labor troubles, inability to procure materials, restrictive government laws, or regulations or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), that Party shall be granted an extension to perform its obligations hereunder equal to the time the underlying cause prevented performance. Should any obligations of the other Party be dependent upon this Party's performance, such obligations shall be similarly extended. Notwithstanding the foregoing, should the underlying cause prevent performance for ninety (90) days or more, the Party awaiting performance shall have the right to immediately terminate this Agreement.
- 23.10 Third Party Beneficiaries. The Parties acknowledge and agree that there are no third-party beneficiaries to this Agreement.
- 23.11 Non-solicitation of Employees. During the term of this Agreement and for one (1) year

thereafter, neither Party shall solicit the other Parties' current employees or full-time consultants for employment, directly or indirectly, without such other Parties written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party.

- 23.12 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other Party's prior written consent which shall not be unreasonably withheld, except that either Party may assign this Agreement in its entirety in the event of a merger, corporate reorganization or a sale of all or substantially all of the assets of the assigning Party without obtaining the other Party's consent.
- 23.13 Equitable Relief. The Parties acknowledge that any threatened or actual breach of all confidentiality and intellectual property related obligations under this Agreement shall constitute immediate, irreparable harm for which an award of monetary damages is an inadequate remedy and for which equitable remedies may be awarded by a court of competent jurisdiction without requiring the post of any bond. The Parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.
- 23.14 Conflicts. MARS Company and Purchaser agree and acknowledge that due to the nature of the commercial relationship, and the public or quasi-public sector nature of Purchaser, this transaction will be regulated by multiple documents. Occasionally, conflicts will arise between different documents, or between different versions of the same document. The purpose of this Section 23.14 is to provide simple rules for resolving such conflicts.
  - 23.14.1 Change Order – A Change Order shall only be effective to prevail over a conflicting term if such Change Order contains an express statement of the Parties' intent for the Change Order provision to control over the conflicting provision in the other document. Such statements must be prominently and conspicuously in BOLD CAPITAL LETTERS, must be in a font no smaller than that of this Section of this Agreement, and must expressly reference the section and page number of the conflicting provision in the other document that the Change Order provision prevails over. Any effective statement shall only be effective as to that provision in that Change Order; it shall have no force or effect relative to previous or subsequent agreements or addendums thereto.
  - 23.14.2 Conflicts Between Different Dated Versions of Same Document – For conflicts between versions of the same document (i.e., a EULA) that bear different dates, the most recent version will prevail.
  - 23.14.3 Conflict Between Different Documents – For conflicts between different documents (i.e., a term in the EULA and a conflicting term in the Proposal), such conflicts shall be resolved by reference to the chart below. Utilizing the foregoing example, a conflict between a EULA term and a Proposal term would place in conflict "4" with "G" and the chart shows that 4, the EULA, would prevail.

	A	B	C	D	E	F	G
1	-	1	1	1	1	1	1
2	A	-	2	2	2	2	2
3	A	B	-	3	3	3	3
4	A	B	C	-	4	4	4
5	A	B	C	D	-	5	5
6	A	B	C	D	E	-	6
7	A	B	C	D	E	F	-

H  
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1-Change Order	A-Change Order
2-Contract	B-Contract
3-Terms	C-Terms
4-EULA	D-EULA
5-MCC	E-MCC
6-Purchase Order	F-Purchase Order
7-Proposal	G-Proposal
8-SSC	H-SS

- 23.15 Unless otherwise noted in the Schedule, you are solely responsible for any taxes or similar charges arising out of this Agreement, including all applicable customs, duties, sales taxes, use taxes, value-added taxes, excise charges or brokerage fees. You shall also be solely responsible for assessing and remitting payment for any such items to the appropriate authorities.
- 23.16 This Agreement may only be modified by written agreement of the parties. Termination of this Agreement shall not affect the rights or obligations of the parties that arose prior to, or that are expressly intended by their terms to continue beyond, any such termination, and such rights or obligations, and the dispute resolution set forth in these terms and conditions, including Sections 4, 10, 12, 13, 14 as well as subsections 23.4, 23.6, 23.11, shall survive any such termination.
- 23.17 Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original.

