




FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue
Fairfax, Virginia 22031-2218
www.fairfaxwater.org


OFFICE OF PROCUREMENT
Elizabeth B. Dooley, CPPO, CPPB
Procurement Manager

Date: April 10, 2026

To: Jamie Bain Hedges, P.E., General Manager

To: Jeff Butt, Vice President of Operations, OW Investors, LLC

Through: Elizabeth B. Dooley, CPPO, CPPB, Procurement Manager  ^{Initial}

Through: David J. Webb, C.P.M., CPPB, Procurement Program Supervisor  ^{Initial}

From: Daniel W. Gardner, CPPB, VCA Procurement Specialist III

Subject: Contract Award CW8029 for M3 Enterprise Software and Maintenance Calibration & Certification

Contract No. CW8029 is to be awarded to OW Investors, LLC in the amount of \$149,088.00, for the Initial Contract Term, for the M3 Enterprise Software and Maintenance Calibration & Certification (the Services). Further, the Contract is to allow renewal of the Contract annually for up to four additional one-year periods, for which prices have been negotiated in the amounts of \$155,052.00, \$161,255.00, \$167,707.00, and \$174,416.00 for the respective Renewal Contract Terms. The pricing is based on a tier usage system capped at fewer than 2,500 annual aggregate meter tests across all systems. The Contract also may require time and materials expenditures for work not covered by warranties. Therefore, the requirements Contract expenditures may be more or less, subject to actual requirements, not to exceed \$200,000 in any Contract term.

Fairfax Water (FW) has made a determination in accordance with Section 2.2-4303(E) of the Code of Virginia, as amended, that OW Investors, LLC is the only known source practicably available to obtain the goods and/or services specified herein. As a result, FW wishes to award Contract No. CW8029 to OW Investors, LLC for an Initial Contract Term from April 24, 2026 through April 23, 2027, with four (4) Renewal Contract Terms.

Therefore, it is recommended that FW award Contract No. CW8029 to OW Investors, LLC. Contract No. CW8029 is now presented for signature by OW Investors, LLC and will later be fully executed by the General Manager. The Contract shall be effective from April 24, 2026 through April 23, 2027.

Attachments:

- Contract CW8029- M3 Enterprise Software and Maintenance Calibration & Certification.
- Sole Source Determination

Fairfax Water Procurement Procedures

ATTACHMENT E
SOLE SOURCE DETERMINATION OVER \$75,000



8570 Executive Park Avenue
Fairfax, VA 22031

APRIL 10, 2026

MEMORANDUM

To: Jamie Bain Hedges, P.E., General Manager

Through: Kimberly Oates, Director, Finance ^{DS}

Through: Elizabeth B. Dooley, CPPO, CPPB, Procurement Manager ^{Initial}

From: Christopher Long, Manager, Customer Service Operations ^{Initial}

Subject: Request for Sole Source Contract Award to OW Investors, LLC

1. Background: This request is to purchase M3 Enterprise Software and Maintenance Calibration & Certification from OW Investors, LLC, the original equipment manufacturer of the MARS Series 2410 Test Bench System at the Willard Maintenance Facility.
2. Justification: The M3 Enterprise Software and Maintenance Calibration & Certification are necessary for the MARS Series 2410 Test Bench System to perform water meter tests. OW Investors, LLC, as the original equipment manufacturer, is the only known source practicably available to obtain the M3 Enterprise Software and Maintenance Calibration & Certification.
3. Recommendation: I have reviewed contract pricing and believe it to be in the best interest of Fairfax Water to award a Sole Source contract to OW Investors, LLC in the amount of \$149,088.00 for the Initial Contract Term. Further, the contract is to allow renewal annually for up to four additional one-year periods, for which prices have been negotiated in the amounts of \$155,052.00, \$161,255.00, \$167,707.00, and \$174,416.00 for the respective Renewal Contract Terms.
4. Determination: In accordance with Section 2.2-4303(E) of the Code of Virginia, as amended, it is my determination that the above named vendor is the only known source practicably available to obtain the goods and/or services specified above.

Signed by:

EAD275217B8641D

4/21/2026

Date: _____

Jamie Bain Hedges, P.E.
General Manager

AGREEMENT FOR SERVICES

FAIRFAX COUNTY WATER AUTHORITY

PROCUREMENT DEPARTMENT

8570 EXECUTIVE PARK AVENUE

FAIRFAX, VA 22031

AGREEMENT NO. CW8029

THIS AGREEMENT is made and entered into by and between Fairfax County Water Authority ("FW") and OW Investors LLC ("Contractor") a Florida Corporation authorized to do business in the Commonwealth of Virginia, and is effective as of the date executed by FW.

FW and the Contractor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, hereby agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

This Agreement,

Exhibit A - Pricing,

Exhibit B - Proposal for Fairfax County Water Prepared on March 3, 2026 "Base Proposal"

Exhibit C - Proposal for Fairfax County Water Prepared on April 8, 2026 "Escalator Option"

Exhibit D - MARS General Terms and Conditions as Negotiated,

Exhibit E - MARS Calibration Certification (MCC) and Maintenance Service Agreement as Negotiated,

Exhibit F - MARS End Use License Agreement (EULA) as Negotiated,

Exhibit G - MARS Calibration Certification (MCC) Data Sheet,

Collectively, "Contract Documents".

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between FW and the Contractor. FW and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or the "Agreement."

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to provide the MARS MCC and EULA. The Contract Documents set forth the minimum work estimated by FW and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost and expense, to provide the specific services set forth in the Contract Documents and all other services reasonably necessary in order to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the

Contractor's responsibility to manage the details and execution of the Work further defined in Exhibit B.

3. CONTRACT TERM

The term of this Agreement shall commence April 24, 2026 and expiring on April 23, 2027 (Initial Contract Term).

This Contract may be renewed for a term not to exceed one (1) year ('Renewal Contract Term') by written Notice given by FW at any time prior to expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of FW has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein. FW, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions. If funding is not available to complete orders during the Initial Contract Term and the four Renewal Contract Terms, FW reserves the right to renew the Contract until all orders have been received.

If FW does not exercise this right to renewal, or terminates the Contract early, FW shall pay a fee ('Fee for Non-Renewal of Subsequent Renewal Contract Term(s)') in the Amount of 1% of the standard annual rates for the then-current Initial Contract Term or Renewal Contract Term, and any completed Initial Contract Term or Renewal Contract Term, as specified in Exhibit A – Pricing.

4. CONTRACT AMOUNT

FW will pay the Contractor in accordance with the terms of the Paragraph 6 – Payment, and Exhibit A - Pricing for the Contractor's completion of the Work described and required in the Contract Documents. The Contractor agrees that it shall complete the Work for the prices specified on Exhibit A (such prices, subject to modification in accordance with this Agreement, referred to herein as the "Contract Amount"). FW, at its sole discretion, has the right, but is under no obligation, to exercise Exhibit C - Escalator Option, in accordance with the Contract Documents.

5. INTENTIONALLY DELETED

6. PAYMENT

The Contractor will be paid by check upon its submission of a completed written invoice, satisfactory to the Project Officer, that meets the requirements of this section and other applicable provisions of the Contract. The Project Officer shall either approve the invoice or require corrections. The invoice shall be submitted electronically.

7. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of FW's Project Officer ("Project Officer") who shall be appointed by the Division Director of FW's Division or Department requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

8. ADJUSTMENTS FOR CHANGE IN SCOPE

FW may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by FW and the Contractor and providing an agreed amount of compensation due. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by FW and the Contractor and a FW purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

9. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in Exhibit B and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by FW and the Contractor, and a Purchase Order is issued by FW covering the expected cost of such services.

Additional services agreed upon by the parties will be billed at the rates set forth in Exhibit A unless otherwise agreed by the parties in writing.

10. REIMBURSABLE EXPENSES

No expenses except those identified on Exhibit B of this Contract as project-related expenses will be reimbursed if incurred without the prior written approval of FW and the issuance of a FW purchase order detailing the specific expenses to be incurred by the Contractor and their estimated amount. Payment for approved reimbursable expenses will be made within thirty (30) days after receipt by the Project Officer of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to FW on a unit price basis at the Contractor's cost. All amounts paid for reimbursable expenses shall be considered part of the Contract Amount.

The total amount paid for project related expenses shall not exceed the amount shown in Exhibit A, unless otherwise agreed by the parties in writing.

11. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by FW for work performed by any subcontractor under this Contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from FW attributable to the Work performed by the subcontractor under this Contract;
- or

b) Notify FW and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from FW for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of FW. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

12. NON-APPROPRIATION

All funds for payments by FW to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by FW for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, FW will terminate the Contract, without termination charge or other liability to FW, on the last day of the then current calendar year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and FW shall not be obligated under this Contract beyond the date of termination specified in FW's written notice.

13. FAIRFAX WATER PURCHASE ORDER REQUIREMENT

FW purchases are authorized only if a FW Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. FW will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by FW's Procurement Manager. If the Contractor provides goods or services without a signed FW Purchase Order, it does so at its own risk and expense.

14. PROJECT STAFF

FW will, throughout the Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If FW reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to FW in a timely manner and at no additional cost to FW. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

15. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

16. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.

c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d) The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

e) The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

17. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

18. DRUG FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or

advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by FW in accordance with the Virginia Public Procurement Act, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

19. TERMINATION FOR BREACH BY THE CONTRACTOR

The Contract shall remain in force for the Contract Term and until FW determines that all of the following requirements and conditions have been satisfactorily met: FW has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, FW shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by FW in its discretion.

If FW determines that the Contractor has failed to perform satisfactorily, then FW will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by FW prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the FW Project Officer within fifteen (15) days after the expiration of the Cure Period. FW may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If FW terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from FW to the Contractor (unless FW in

its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to FW for all costs incurred by FW after the effective date of termination, including costs required to be expended by FW to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to FW upon demand by FW. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to FW, and FW shall be entitled to recover, direct damages, which shall include legal fees and court costs incurred by FW, to which FW is entitled by this Contract up to the two and one-half (2.5) times the Contract value.

Except as otherwise directed by FW in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

20. TERMINATION FOR THE CONVENIENCE OF FW

The performance of work under this Contract may be terminated by the FW Procurement Manager in whole or in part whenever the Procurement Manager shall determine that such termination is in FW's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by FW prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

Upon receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to FW; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

21. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to be responsible for claims, damages, losses, or expenses to the extent caused by the acts or omissions of, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents, its employees, or subcontractors in the performance of the Work under this Agreement Contractor's obligations under this section shall survive termination of this Agreement, subject to the limitations set forth herein Notwithstanding anything to the contrary in this Agreement, FW does not waive, and expressly reserves, all sovereign and governmental immunity available to it under Virginia law. Nothing herein shall be construed as requiring FW to indemnify, defend, or hold harmless the Contractor or any third party. Contractor's obligations under this section shall be limited to the extent of Contractor's fault and shall be subject to the limitation of liability set forth elsewhere in this Agreement.

21A. LIMITATION OF LIABILITY

To the fullest extent permitted by applicable law, and notwithstanding any other provision of this Contract to the contrary, the total cumulative liability of the Contractor arising out of or relating to this Contract, whether in contract, tort, or otherwise, shall not exceed two and one-half (2.5) times the Contract value.

In no event shall the Contractor be liable for any indirect, incidental, consequential, special, or punitive damages, including but not limited to loss of revenue, loss of use, loss of data, or business interruption, even if advised of the possibility of such damages.

The limitations set forth in this section apply notwithstanding the failure of any essential purpose of any limited remedy and shall survive termination or expiration of this Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including copyright, patent, mask work, trademark, industrial property, and trade secret rights) of third parties are infringed or in any manner involved in or related to the Equipment, System, Licensed Software, source code, documentation, or services provided hereunder.

The Contractor shall pay all copyright, patent or other royalties, licenses, or fees, if any, in respect of the use of the software or System. The Contractor shall defend, at its expense, any action or claim brought against FW to the extent that the action or claim is based on a claim that the manufacture, sale, operation or use of the Equipment, System, Licensed Software, source code, documentation, or services (or any part thereof) infringes any third party's intellectual property rights (including copyright, patent, mask work, trademark, industrial property, and trade secret rights) or breaches any third party's contract or quasi-contract rights, and the Contractor shall pay any and all costs (including but not limited to fines, penalties, license fees, court costs, attorney's fees and any costs or fees to the United States Patent and Trademark Office) and damages payable by FW in respect of any such action. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by FW, the Contractor fails to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse FW for any and all expenses, including but not limited to, attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by FW and failure to do so may result in such amounts being withheld from any amounts due to the Contractor under this Contract.

In addition, and without obviating the Contractor's responsibilities set forth above, if the Equipment, System, Licensed Software, source code, documentation, or services (or any part thereof) becomes or in the Contractor's opinion is likely to become the subject of a claim based on an alleged infringement or breach as aforesaid, the Contractor may, at its expense and option, with prior written notice of agreement by FW, do one of the following:

- a) modify the Equipment, System, Licensed Software, source code, documentation, or services so that there is no longer any infringement or breach without adversely affecting the functional capabilities of the foregoing;
- b) procure for FW the right to continue to use the Equipment, System, Licensed Software, source code, documentation, or services;

c) substitute for the relevant Equipment, System, Licensed Software, source code, documentation, or services other equipment, software, or materials having a capability equivalent to the replaced Equipment, System, Licensed Software, source code, documentation, or services at no further expense to FW.

The Contractor shall have no liability respecting any claim of infringement or breach as aforesaid based entirely upon the combination, operation or use of the Equipment or Licensed Software with equipment, software, apparatus, devices or items not supplied by the Contractor and in a manner not substantially consistent with the Contractor's specifications and instructions.

23. INTELLECTUAL PROPERTY DEVELOPED PURSUANT TO CONTRACT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to FW all right, title and interest, including the sole exclusive and complete patent, copyright, trade secret, or other intellectual property right or interest, in any and all works specifically created pursuant to this Contract and capable of patent, copyright, trade secret, or other intellectual property protection. This assignment excludes any pre-existing intellectual property, methodologies, tools, templates, know-how, or other proprietary materials of Contractor that existed prior to this Contract or were developed independently of this Contract. The Contractor further agrees to execute such documents and undertake such actions as FW may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to FW by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

The use of subcontractors or third parties in developing or creating input into any materials capable of patent, copyright, trade secret, or other intellectual property protection and produced as a part of this Contract is prohibited unless FW approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

24. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose FW's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of FW's request for services under this Contract, are the exclusive property of FW ("Record" or "Records"). All such Records are subject to the assignment provisions of paragraph 28 above and shall be provided to and/or returned to FW upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of FW. Additionally, the Contractor agrees that the Records are "FW Information" as set forth in paragraph 30 below, that the Records are subject to the provisions of paragraph 30 below, and that neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At FW's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at FW's request, shall destroy all computer records created as a result of FW's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

25. VIRGINIA FREEDOM OF INFORMATION ACT

The parties understand and agree that FW is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 et. seq, the Virginia Freedom of Information Act ("VFOIA"). All public records in FW's custody, possession or control shall be open to the public for inspection and

copying to the extent such disclosure is required by law. Certain exemptions or exclusions may apply, but it is the Contractor's obligation to assert any applicable VFOIA exclusions or exemption, to the satisfaction of the FW Project Officer, within the statutory deadlines. Thereafter it is the obligation of the Contractor to defend and indemnify FW from any claim or suit that may arise as a result of the withholding of records. The FW Project Officer shall make available to the Contractor any VFOIA request which the Project Officer reasonably believes the Contractor may have an interest in.

26. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Virginia law, as well as any federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

27. FAIRFAX WATER EMPLOYEES

No employee of FW shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

28. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

FW shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of FW that make performance impossible or illegal, unless otherwise specified in the Contract.

29. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by the Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of FW.

30. RELATION TO FAIRFAX WATER

The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of FW. FW will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. FW will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, FW will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by FW for its employees.

31. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to FW all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by FW under this Contract.

32. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the

Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to FW, the Contractor shall comply with the following guidelines:

All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;

All copies shall be double-sided;

Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);

The use of plastic covers or dividers should be avoided; and

Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

33. AUDIT

The Contractor shall secure an independent certified public accountant's audit of its finances and program operation after the close of each calendar year (December 31), but no later than October 15 of each such year, and shall forward to FW the findings of such audit in whole, including the management letter or other ancillary audit components, and permit FW to make such review of the records of the Contractor as may be deemed necessary by FW to satisfy audit purposes. In instances where a management letter was not prepared as an audit function, the Contractor must so certify in writing to FW at the time the audit report is submitted. All

accounts of the Contractor are subject to such audit, regardless whether the funds are used exclusively for specific program activities or mingled with funds for other agency activities.

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. FW or its authorized agents shall have reasonable access upon reasonable notice to and the right to examine any of the above documents related to this Contract during this period and during the Contract Term and for a period of five (5) years thereafter during normal business hours and no more than once per calendar year unless required by law. If the Contractor wishes to destroy or dispose of records (including confidential records to which FW does not have ready access) within five (5) years after final payment, the Contractor shall notify FW at least thirty (30) days prior to such disposal, and if FW objects, shall not dispose of the records.

34. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of FW.

35. AMENDMENTS

This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and FW.

36. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to FW's General Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the General Manager in the event of a contractual dispute is fifteen (15) days. If Contractor disagrees with the General Manager's decision, Contractor reserves the right to pursue all available legal remedies. The Contractor shall not cause a delay in the

Work pending a decision of the Project Officer, General Manager, or a court, as the case may be.

37. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Fairfax County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

38. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

39. NONEXCLUSIVITY OF REMEDIES

All remedies available to FW under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to FW at law or in equity.

40. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

41. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

42. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by FW pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of FW. The parties intend for this provision to be read as broadly as possible.

43. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically states that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO FAIRFAX WATER; OWNERSHIP AND RETURN OF RECORDS; AUDIT; INTELLECTUAL PROPERTY DEVELOPED PURSUANT TO CONTRACT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION AND DATA SECURITY.

44. HEADINGS

The paragraph and section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

45. AMBIGUITIES

Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

46. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Jeff Butt

OW Investors, LLC dba MARS Company

3925 SW 13th Street Ocala, FL 34474

Tampa, FL, 33609

TO FAIRFAX WATER:

Christopher Long

Manger Customer Service Operations

Fairfax County Water Authority

8570 Executive Park Avenue

Fairfax, Virginia 22031

AND

Elizabeth B. Dooley, CPPO, CPPB

Procurement Manager

Fairfax County Water Authority

8570 Executive Park Avenue

Fairfax, Virginia 22031

47. NON-DISCRIMINATION NOTICE

FW does not discriminate against faith-based organizations.

48. INSURANCE REQUIREMENTS

The Contractor shall provide to the FW Procurement Manager a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to FW. The minimum insurance coverage shall be:

- a) Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. FW will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c) Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).

d) The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.

e) Insurance Against Intellectual Property Infringement - \$2,000,000.

f) Cyber Security Liability Insurance Coverage: \$5,000,000 per occurrence.

g) Additional Insured - Fairfax Water, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

h) Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the FW Procurement Manager immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify FW upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and FW notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

i) Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement

consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

j) Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. FW reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, FW may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for FW.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, Workers' Compensation insurance and Insurance Against Intellectual Property Infringement in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to FW immediately upon request by FW.

No acceptance or approval of any insurance by FW shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to FW for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to FW. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

49. ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any FW websites, or FW's presence on other third-party website, the Contractor shall perform such work in compliance with the Americans with Disabilities Act of 1990 (ADA).

50. ADA COMPLIANCE

Compliance with the Americans with Disabilities Act of 1990 (ADA) shall be the sole responsibility of the Contractor. The Contractor shall defend and hold FW harmless from any expense or liability arising from the Contractor's non-compliance therewith. The Contractor's responsibilities related to ADA compliance shall include, but not be limited to, the following:

a. Access to Programs, Services and/or Facilities: The Contractor shall ensure its programs; services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to services.

b. Effective Communication: The Contractor, upon request, shall provide appropriate aids and services to facilitate effective communication with qualified persons with disabilities so that such persons can participate equally in the Contractor's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.

c. Modifications to Policies and Procedures: The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an

equal opportunity to enjoy the Contractor's programs, services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor's offices or facilities, even where pets are generally prohibited.

d. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy.

e. Employment: The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.

f. Responding to inquiries from the U.S. Department of Labor.

WITNESS these signatures:

FAIRFAX COUNTY WATER AUTHORITY

AUTHORIZED SIGNATURE:  Signed by: Jamie Bain Hedges
EAD275217B8641D...

NAME: JAMIE BAIN HEDGES, P.E.
TITLE: GENERAL MANAGER

DATE: 4/21/2026

OW INVESTORS, LLC

AUTHORIZED SIGNATURE:  DocuSigned by: Dave Corey
DC377D38534748C...

NAME AND TITLE: Dave Corey

DATE: 4/21/2026

Contract No. CW8029 - Exhibit A - Pricing Schedule

Contract Item No.	Description	Initial Contract Term Unit Price - Annual Fee, April 24, 2026 through April 23, 2027	Renewal Contract Term Unit Price - Annual Fee, April 24, 2027 through April 23, 2028	Renewal Contract Term Unit Price - Annual Fee, April 24, 2028 through April 23, 2029	Renewal Contract Term Unit Price - Annual Fee, April 24, 2029 through April 23, 2030	Renewal Contract Term Unit Price - Annual Fee, April 24, 2030 through April 23, 2031
1	M3 Enterprise Software	\$ 118,518.00	\$ 123,259.00	\$ 128,190.00	\$ 133,319.00	\$ 138,652.00
2	Maintenance Calibration & Certification (MCC)	\$ 30,570.00	\$ 31,793.00	\$ 33,065.00	\$ 34,388.00	\$ 35,764.00
	Annual Total	\$ 149,088.00	\$ 155,052.00	\$ 161,255.00	\$ 167,707.00	\$ 174,416.00
	Fee for Non-Renewal of Subsequent Renewal Option Term(s)	\$ 1,490.88	\$ 3,041.40	\$ 4,653.95	\$ 6,331.02	\$ 8,075.18

End of Contract No. CW8029 - Exhibit A - Pricing Schedule

Note: The Exhibit B - Pricing Schedule is conditioned on the maximum number of tests as described in the Contract Documents, reference Section 4 - Contract Amount, of the Agreement.



Proposed By:	Bill To:	Ship To:	Order Form:	
MARS Company	Fairfax County ("Customer")	Fairfax County	Quote #:	082525FAIR
Attn: Jeff Butt	Attn: Chris Long	Attn: Chris Long	Proposal Date:	8/27/2025
E: jbutt@marswater.com	E: clong@fairfaxwater.org	E: clong@fairfaxwater.org	Proposal Expires:	5/01/2026
3925 SW 13th Street	14325 Willard Road	14325 Willard Road	Total Price:	\$807,518
Ocala, Florida 34474	Chantilly, VA 20151	Chantilly, VA 20151		
W: (352) 414-7710	W: (571) 585-2116	W: (571) 585-2116		

ORDER FORM

Terms and Conditions

Term	Five (5) Year
Billing Method	Email
Contract Start Date	Effective Date ⁽¹⁾

Payment Method:	ACH
Initial Payment Terms	Net 30
Billing Frequency:	Annual
Renewal Payment Terms	In Advance

Note 1 - This Order Form shall commence on the date of final execution, "Effective Date," and shall be in force for the Term ("Term"). This Agreement shall become null and void if not fully executed and received by both parties before the Proposal Expiration date above.

Equipment, Software, and Services Schedules

I. Price Summary:

Please refer to Schedule 1 for details.

II. Equipment, Software, and Services List:

Equipment list: Schedule 2
 Software and Services List: Schedule 3
 Statement of Work: Schedule 4

III. Non-Standard Terms and Conditions

Please refer to Schedule 5 for details.

Purchase Order Information

Is a Purchase Order (PO) required for the purchase or payment of products / services on this Order Form (Customer to Complete)

No

Yes – Please complete below

PO Number: _____

PO Amount: _____

For and on Behalf of Fairfax County

Signature: _____

Name: Chris Long

Title: Manager, Customer Service Operations

Date:

Upon signature by Customer and submission to MARS, this Order Form ("Order Form") shall become legally binding contract ("Contract") unless this Order Form is rejected by MARS for any of the following reasons: (1) the Customer signatory does not have the authority to bind Customer to this Order Form, (2) changes have been made to this Order Form (other than completion of the purchase order information and the signature block), or (3) the requested purchase order information or signature is incomplete or does not match our records or the rest of this Order Form. This Order Form is governed by the terms of the MARS Warranty, General Terms, And Conditions, found at (https://marswater.com/TC_0824) and Mars Calibration Certification, General Conditions Of Service And Maintenance, found at (http://marswater.co/MCC_0225) and these documents shall supersede and control any other written terms and conditions or verbal discussions unless MARS and Customer have a currently valid and fully executed agreement in writing, in which case, in the event of a conflict, such written agreement(s) would supersede and control. For the avoidance of doubt, the applicable agreement takes precedence over the Order Form unless set forth otherwise in writing in Schedule 5.

Schedule 1 - Price Summary

Fairfax County Water Proposal

				CY 2026 ¹³	
		Qty	Model Number	Annual Fee ¹⁰	One-Time Fee ⁹
Software	MARS M3 Enterprise Advanced Software Suite				
	➤ Series 2410 Test Bench System				
		1	71-44201-26	\$59,259	
	➤ Annual Subscription Usage License Tier II ^{10,14,15,17}				
➤ Large Meter Test Bench System					
	1	74-44201-26	\$172,123		
➤ Annual Subscription Usage License Tier II ^{10,14,15,17}					
Sub-Total				\$231,382	
Equipment Maintenance	MARS Maintenance Calibration Certification (MCC) - Annual^{1,4,6}				
	➤ Series 2410 Test Bench System				
		1	81-00000-16	\$14,985	
	➤ Large Meter Test Bench System				
	1	82-00000-16	\$20,980		
➤ Recirculation System Included with Test Bench Systems					
Sub-Total				\$35,965	
TAB Bundle	MARS Total Advantage Bundle (TAB) Solution - (\$60,000+ Value): Qualification³: Not Eligible				
	➤ Save Money: Significant Cost Savings & Enhanced Service Offerings				
	➤ Increased Efficiency & Productivity: Expert Consulting Included at No Additional Cost				
	➤ Bundled Enhanced Support Offering: M3 Enterprise, Equipment & Services Enhanced Support				
➤ Customer Portal: Centralized View of MARS Billing, Support & Training					
➤ MARS TAB is Subject to Meeting Eligibility Requirements					
Sub-Total				Not Currently Eligible	

Sub Grand Total	\$267,347
------------------------	------------------

Grand Total	\$267,347
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5-Year Agreement	MCC Multi-System Discount Amount ³	(\$5,395)
	M3 Series 2410 Tier II 5-Year Agreement Discount Amount ^{3,17}	(\$28,216)
	M3 Large Meter Test Bench System Tier II 5-Year Agreement Discount Amount ^{3,17}	(\$84,648)
	MARS Calibration Certification (MCC) - Annual	\$30,570
	M3 Enterprise Annual Software Maintenance & Support	\$118,518
	First Year Grand Total (Including Any Applicable Discounts)^{5,9,11,12}	\$149,088
	First Year Total Discounts Included ³	\$118,259
First Year Discount % ³	44%	

Notes:

- 1- If MCC is purchased, MCC does not reflect Prevailing Wage labor rates except in CA, NJ, NY, and TX.
- 3- All Discounts and Bundle Eligibility 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 General Terms and Conditions apply to this proposal. All pricing is in US Dollars (USD).
- 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.
- 10- Includes ONLY First Year of the Annual Software License Fee; all current M3 Software Licenses need to be 1) active and 2) all outstanding balances need to be current, if applicable.
- 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.
- 14- Tiered Pricing Maximum Limit < 2500 meter tests in aggregate (sum of all benches) per 12 months.
- 15 - Annual M3 Software License Type: On-premise Subscription Usage License.
- 16- M3 Software Multi-Year Subscription Renewal Discount: 1% discount on std annual subscription renewal with a 5-year contract; 2% discount when prepaid. MCC Multi-Year Subscription Renewal Discount: 1% discount on std annual subscription renewal with a 5-year contract; 2% discount when prepaid. A separate discount is available for MCC only, if a 5-year MCC contract is signed within 90 days of respective equipment acceptance, equal to an additional 1% discount on std annual subscription renewal; 1% discount when prepaid.
- 17- M3 Usage-based tiered pricing discounts are contingent upon signing a multi-year agreement.
- 18- The MARS T&C documents shall supersede and control any other written terms and conditions or verbal discussions unless MARS Company and you have a written agreement, in which case such written agreement(s) would supersede, govern and control.
- 19- MARS may, at its expense and sole discretion, modify the Equipment or Services to meet agreed specifications.

Schedule 1 - Price Summary (Continued)

MULTI-YEAR OPTIONS

Fairfax County Water Proposal



STANDARD vs MULTI-YEAR DISCOUNTED PRICING - PAYMENT TERMS

M3 ENTERPRISE SOFTWARE

Equipment	Contract Options	Multi-Year Contract Discount ⁵	M3 - 2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year M3 Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	M3, Tier II, 5-Year Agreement, Annual Pay	1%	\$ 118,518	\$ 123,259	\$ 128,190	\$ 133,319	\$ 138,652	\$ 641,938	\$ 324,820	33.60%

MAINTENANCE CALIBRATION & CERTIFICATION (MCC)

Equipment	Contract Options	Multi-Year Contract Discount ⁵	MCC - 2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year MCC Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	MCC, Priority, 5-Year Agreement, Annual Pay	1%	\$ 30,570	\$ 31,793	\$ 33,065	\$ 34,388	\$ 35,764	\$ 165,580	\$ 3,347	1.98%

TOTAL COST

Equipment	Contract Options	Multi-Year Contract Discount ⁵	2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year Total Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	5-Year Agreement, Annual Pay	1%	\$ 149,088	\$ 155,052	\$ 161,255	\$ 167,707	\$ 174,416	\$ 807,518	\$ 328,167	28.90%

- Notes: 1- MCC does not reflect Prevailing Wage labor rates
 2- Multi-year discounts are based on pre-payment in full of entire five year contract amount in advance.
 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
 6- If initial pricing is based upon a tiered, usage-based license agreement, actual price will vary in accordance with actual aggregate meter test bench usage over a 12-month period.
 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)).
 9- Compared to non-contracted 1-year agreement amount.

Total Contract Price: \$807,518

Schedule 2 - Equipment List

Equipment List:

Asset Warranty and Ownership:

Asset Warranty and Ownership

Asset Description	Warranty Term	Annual Subscription	Ownership
Test Bench Equipment ⁵	12 Months	NA	Customer ¹
Printer ²			
Ipad ³			
Cables & Misc Adapters			
M3 Server (HW & SW & OS)	NA	Covered	MARS
Test Bench Local PC			
Rugged Mobile Test Tablet/PC ⁴			
Router ³			

Notes:

- 1 - Ownership is conveyed per T&Cs
- 2 - Consumables including Ink, Paper, etc is Customer responsibility at all times
- 3 - Included only with optional Connectivity Module
- 4 - Included only with Mobile Test System
- 5 - Includes Test Bench hardware, Advanced Scale and Control System (Console and Unitronics Scale hardware)

Schedule 3 - Software and Services List



M3 Enterprise Software & Test Bench Hardware Subscription 2026 Product Configuration		License ¹ & Maintenance Fees
GRAND TOTAL ALL SYSTEMS	# of Systems =	2
		Annual
	Grand Total After All Discounts	\$ 118,518

Small Meter Test Bench System - Series 2410		Tiered Pricing Limit < 2500 Meter Tests per 12 Months	
M3 Enterprise Software ^{3,5}	Model Number(s): 71-44201-26		
➤ Core Software Application and Platform Architecture		\$	14,109
➤ Advanced Connectivity Module		\$	14,109
➤ Custom Test, Reporting, and Export Module		\$	14,109
➤ Advanced Scale & Control Module		\$	14,109
		Sub-Total	\$ 56,436
M3 Enterprise Hardware			
➤ Server & Database Software		\$	2,823
		Sub-Total	\$ 59,259
		Total License + Advanced Maintenance per System	\$ 59,259
		M3 Tier II 5-Year Agreement Discount Amount	\$ (28,216)
		Total (per System) After All Discounts	\$ 31,043
		Total Number of Systems =	1
			Annual
		Grand Total Price	\$ 31,043

Large Meter Test Bench System		Tiered Pricing Limit < 2500 Meter Tests per 12 Months	
M3 Enterprise Software ^{3,5}	Model Number(s): 74-44201-26		
➤ Core Software Application and Platform Architecture		\$	42,325
➤ Advanced Connectivity Module		\$	42,325
➤ Custom Test, Reporting, and Export Module		\$	42,325
➤ Advanced Scale & Control Module		\$	42,325
		Sub-Total	\$ 169,300
M3 Enterprise Hardware			
➤ Server & Database Software		\$	2,823
		Sub-Total	\$ 172,123
		Total License + Advanced Maintenance per System	\$ 172,123
		M3 Tier II 5-Year Agreement Discount Amount	\$ (84,648)
		Total (per System) After All Discounts	\$ 87,475
		Total Number of Systems =	1
			Annual
		Grand Total Price	\$ 87,475

Notes

- 1- Software License Subscription billed annually in advance and (requires minimum 12 month term(s)) unless specified and agreed upon in writing.
- 2- Install pricing for TYPICAL configuration; Additional config & data migration services / hours billed separately.
- 3- Annual M3 Software subscription based upon Tiered usage pricing; and in accordance with MARS Warranty, Standard Terms and Conditions ('Terms').
- 4- Initial pricing is based upon a tiered, usage-based license agreement, actual price will vary in accordance with actual aggregate meter test bench usage over a 12-month period.
- 5- Software License and Maintenance Fees for One (1) Year.

Legend

- **Bold Text** - Req'd for min. configuration
- *Italics* - optional configuration

Service Level: Priority

Service Level	Service Level				Description
	Basic	Priority	Critical	TAB	
Calibration Certification Point-Inspection Services					
Check & Calibrate: Carrier, Spacer Bar & Pin System Alignments to Factory Specs.	8-pt.	8-pt.	8-pt.	8-pt.	
Clean & Calibrate Operational Sensitivity for Rotameter Assembly	5-pt.	5-pt.	5-pt.	5-pt.	
Valves, Adapters & Gaskets Inspection	5-pt.	10-pt.	10-pt.	10-pt.	
Water Leak Checklist	5-pt.	10-pt.	10-pt.	10-pt.	
Hydraulic Actuators Pressure & Leak Cycle Time Inspection		6-pt.	6-pt.	6-pt.	
Bleeder Solenoid Function Test & Performance Inspection		6-pt.	6-pt.	6-pt.	
Consulting Services					
Savings, Efficiency, and Productivity Consulting				Yes	
Customized Management Reports and Analytics				Yes	
Hardware Services					
Equipment Calibration, Accuracy and Dependability Certification	Yes	Yes	Yes	Yes	MARS Certified Maintenance Inspection & Certification (Includes Certification Decal)
- Gage R&R (Repeatability and Reproducibility)		Yes	Yes	Yes	GR&R is defined as the statistical process used to evaluate a gauging instrument's (water meter test bench) accuracy by ensuring its measurements are repeatable and reproducible ³ .
Factory Preventative Maintenance Procedures	Yes	Yes	Yes	Yes	Preventative Maintenance Schedule. MARS Company will perform a PM on the Test Bench System(s) and other related MARS equipment specified under the Agreement.
Priority MCC Service discount of 10% off MCC				10%	Priority MCC Service discount of 10% off MCC
Consumable Parts Included		\$500	Yes	\$1,000	MARS will cover Consumable Parts for each Test Bench System during each MCC 12-month term in the maximum aggregate amount of up to five hundred dollars (\$500.00) for each Test Bench System and one thousand dollars (\$1,000) for TAB. ⁴
Parts & Labor/Service Discount	Yes	20%	Yes	25%	Parts beyond warranty coverage are not included in the service contract, if any are required. All parts and labor to install parts will be sold at a twenty percent (20%) discount from the current list price. MARS will separately quote any service call or parts installation outside of this agreement.
Parts Warranty (days)	90	90	90	120	All parts used under this Agreement are warranted for a period of ninety (90) days from the date of purchase and one-hundred twenty (120) day for TAB. MARS will replace and re-install, if necessary, parts installed by MARS under this service contract which fail solely due to quality manufacturing defect, within the warranty period at no additional cost.
Scale(s) Recalibration (MARS and third-party subcontractor)		Yes	Yes	Yes	If the tanks and scales are out of calibration at the time of an annual MCC visit, MARS Company will, as part of the service contract, have a mutually agreed upon, local third party representative recalibrate the scales to maintenance tolerance within NIST Handbook 44 specifications. MARS will use its best efforts to work in conjunction with customer to have a local agreed upon scale calibration representative at a cost of up to \$800.00 USD per occurrence.
Priority Phone and E-mail Support		Yes	Yes	Yes	This service contract includes MARS Company personnel providing assistance in resolving operational issues over the phone or by e-mail. ¹
Repair and Return of Defective Devices		Yes	Yes	Yes	Repair and Return of defective devices. Customer responsible for all shipping and insurance fees which will be quoted separately.
Advance Hardware Replacement		Yes	Yes	Yes	Defective device replacement shipping in advance of return (billed if defective devices are not returned in 7 days). Customer responsible for all shipping and insurance fees which will be quoted separately.
Large Bench Hydraulic Maintenance (third-party)		Yes	Yes	Yes	MARS will assist large test bench customer to identify third-party for maintenance every 10 years.
Support Services					
Dedicated Support Team and Priority Support				Yes	MARS technical assistance via Remote Computer Access During the Service Time
Remote Technical Assistance	Yes	Yes	Yes	Yes	MARS technical assistance via Remote Computer Access During the Service Time
24/7 Remote Technical Assistance		Yes	Yes	Yes	MARS technical assistance via Remote Computer Access available 24/7
Service Call Discounts - 20% discount on Critical and 2nd level				20%	Service Call Discounts - 20% discount on Critical and 2nd level
Priority Return Service Calls		Yes	Yes	Yes	The Meter Shop has the right to request service or repairs as needed as an additional service call and MARS will make an additional service call within 5 working days, based on parts availability if the issues cannot be resolved over the phone or by e-mail. MARS Company will provide "best effort" to meet the five working day target.
Discounted Rate for Extra Service		Yes	Yes	Yes	Any service calls in excess of one trip per year will be quoted separately.
Centralized Customer Portal				Yes	
Enhanced Training and Certification Programs				Yes	
Early Access to New Features				Yes	
Prioritized New Feature Development				Yes	
Enhanced Remote Diagnostics and Monitoring				Yes	
Knowledge Services					
Instructor On-Site Training		Yes	Yes	Yes	MARS Company will provide a up to four (4) hours of onsite equipment re-training for previously MCC certified operators during the annual on-site service call.
Self-Study Courses		Yes	Yes	Yes	(expected availability 2H 2024)
Additional Instructor On-Site Training					MARS Company will provide a specified number of hours of equipment training during the annual on-site service call.
Meter Test Training					MARS Company will provide a specified number of hours of training for the Meter personnel during the annual on-site service call.
Test Bench Audit					MARS will conduct a comprehensive Test Bench Audit and recommend "Best Practices"

Optional

- Note: 1 - Response time will be within 24 hours subject to best efforts and Force Majeur.
 2 - MCC will be performed for a single instance per 12 month period unless otherwise agreed to in writing
 3 - American Society for Quality (ASQ); <https://asq.org/quality-resources/gage-repeatability>
 4 - Subject to specific coverage limitations detailed in MCC agreement

Note: All specifications subject to change without notice; Product prototype pictures may vary from final product design.

Schedule 4 - Statement of Work

NONE

Schedule 5 - Non-Standard Terms and Conditions

Non-Standard Terms & Conditions*: NONE

*Non-Standard Terms & Conditions SUPERSEDE AND CONTROL OVER THE MARS Warranty, General Terms and Conditions.

Fairfax County Water Proposal

				CY 2026 ¹³	
		Qty	Model Number	Annual Fee ¹⁰	One-Time Fee ⁹
Software	MARS M3 Enterprise Advanced Software Suite				
	<ul style="list-style-type: none"> ➤ Series 2410 Test Bench System ➤ Annual Subscription Usage License Tier III^{10,14,15,17} ➤ Large Meter Test Bench System ➤ Annual Subscription Usage License Tier III^{10,14,15,17} 	1	71-44201-26	\$59,259	
	Sub-Total				\$172,123
				\$231,382	
Equipment Maintenance	MARS Maintenance Calibration Certification (MCC) - Annual^{1,4,6}				
	<ul style="list-style-type: none"> ➤ Series 2410 Test Bench System ➤ Large Meter Test Bench System ➤ Recirculation System Included with Test Bench Systems 	1	81-00000-16	\$14,985	
	1	82-00000-16	\$20,980		
		Sub-Total		\$35,965	
TAB Bundle	MARS Total Advantage Bundle (TAB) Solution - (\$60,000+ Value): Qualification³: Not Eligible		1	11-11111-11	Not Currently Eligible
	<ul style="list-style-type: none"> ➤ Save Money: Significant Cost Savings & Enhanced Service Offerings ➤ Increased Efficiency & Productivity: Expert Consulting Included at No Additional Cost ➤ Bundled Enhanced Support Offering: M3 Enterprise, Equipment & Services Enhanced Support ➤ Customer Portal: Centralized View of MARS Billing, Support & Training ➤ MARS TAB is Subject to Meeting Eligibility Requirements 				
	Sub-Total				

Sub Grand Total		\$267,347	
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Grand Total		\$267,347	
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5-Year Agreement	MCC Multi-System Discount Amount ³	(\$5,395)	
	M3 Series 2410 Tier III 5-Year Agreement Discount Amount ^{3,17}	(\$14,108)	
	M3 Large Meter Test Bench System Tier III 5-Year Agreement Discount Amount ^{3,17}	(\$42,324)	
	MARS Calibration Certification (MCC) - Annual	\$30,570	
	M3 Enterprise Annual Software Maintenance & Support	\$174,950	
	First Year Grand Total (Including Any Applicable Discounts)^{5,9,11,12}		\$205,520
First Year Total Discounts Included ³		\$61,827	
First Year Discount % ³		23%	

Notes:

- 1- If MCC is purchased, MCC does not reflect Prevailing Wage labor rates except in CA, NJ, NY, and TX.
- 3- All Discounts and Bundle Eligibility 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 General Terms and Conditions apply to this proposal. All pricing is in US Dollars (USD).
- 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.
- 10- Includes ONLY First Year of the Annual Software License Fee; all current M3 Software Licenses need to be 1) active and 2) all outstanding balances need to be current, if applicable.
- 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.
- 14- Tiered Pricing Maximum Limit < 5000 meter tests in aggregate (sum of all benches) per 12 months.
- 15- Annual M3 Software License Type: On-premise Subscription Usage License.
- 16- M3 Software Multi-Year Subscription Renewal Discount: 1% discount on std annual subscription renewal with a 5-year contract; 2% discount when prepaid. MCC Multi-Year Subscription Renewal Discount: 1% discount on std annual subscription renewal with a 5-year contract; 2% discount when prepaid. A separate discount is available for MCC only, if a 5-year MCC contract is signed within 90 days of respective equipment acceptance, equal to an additional 1% discount on std annual subscription renewal; 1% discount when prepaid.
- 17- M3 Usage-based tiered pricing discounts are contingent upon signing a multi-year agreement.
- 18- The MARS T&C documents shall supersede and control any other written terms and conditions or verbal discussions unless MARS Company and you have a written agreement, in which case such written agreement(s) would supersede, govern and control.
- 19- MARS may, at its expense and sole discretion, modify the Equipment or Services to meet agreed specifications.



M3 Enterprise Software & Test Bench Hardware Subscription 2026 Product Configuration	License ¹ & Maintenance Fees
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GRAND TOTAL ALL SYSTEMS	# of Systems =	2
		Annual
Grand Total After All Discounts	\$	174,950

Small Meter Test Bench System - Series 2410		Tiered Pricing Limit < 5000 Meter Tests per 12 Months	
M3 Enterprise Software ^{3,5} Model Number(s): 71-44201-26			
➤ Core Software Application and Platform Architecture		\$	14,109
➤ Advanced Connectivity Module		\$	14,109
➤ Custom Test, Reporting, and Export Module		\$	14,109
➤ Advanced Scale & Control Module		\$	14,109
	Sub-Total	\$	56,436
M3 Enterprise Hardware			
➤ Server & Database Software		\$	2,823
	Sub-Total	\$	59,259
		Total License + Advanced Maintenance per System	\$ 59,259
		M3 Tier III 5-Year Agreement Discount Amount	\$ (14,108)
		Total (per System) After All Discounts	\$ 45,151
		Total Number of Systems =	1
			Annual
		Grand Total Price	\$ 45,151

Large Meter Test Bench System		Tiered Pricing Limit < 5000 Meter Tests per 12 Months	
M3 Enterprise Software ^{3,5} Model Number(s): 74-44201-26			
➤ Core Software Application and Platform Architecture		\$	42,325
➤ Advanced Connectivity Module		\$	42,325
➤ Custom Test, Reporting, and Export Module		\$	42,325
➤ Advanced Scale & Control Module		\$	42,325
	Sub-Total	\$	169,300
M3 Enterprise Hardware			
➤ Server & Database Software		\$	2,823
	Sub-Total	\$	172,123
		Total License + Advanced Maintenance per System	\$ 172,123
		M3 Tier III 5-Year Agreement Discount Amount	\$ (42,324)
		Total (per System) After All Discounts	\$ 129,799
		Total Number of Systems =	1
			Annual
		Grand Total Price	\$ 129,799

- Notes**
- 1- Software License Subscription billed annually in advance and (requires minimum 12 month term(s)) unless specified and agreed upon in writing.
 - 2- Install pricing for TYPICAL configuration; Additional config & data migration services / hours billed separately.
 - 3- Annual M3 Software subscription based upon Tiered usage pricing; and in accordance with MARS Warranty, Standard Terms and Conditions ("Terms").
 - 4- Initial pricing is based upon a tiered, usage-based license agreement, actual price will vary in accordance with actual aggregate meter test bench usage over a 12-month period.
 - 5- Software License and Maintenance Fees for One (1) Year.

Legend - Bold Text - Req'd for min. configuration - <i>Italics</i> - optional configuration

MULTI-YEAR OPTIONS

Fairfax County Water Proposal



STANDARD vs MULTI-YEAR DISCOUNTED PRICING - PAYMENT TERMS

M3 ENTERPRISE SOFTWARE

Equipment	Contract Options	Multi-Year Contract Discount ¹	M3 - 2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year M3 Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	M3, Tier III, 5-Year Agreement, Annual Pay	1%	\$ 174,950	\$ 181,949	\$ 189,228	\$ 196,798	\$ 204,671	\$ 947,596	\$ 175,090	15.60%

MAINTENANCE CALIBRATION & CERTIFICATION (MCC)

Equipment	Contract Options	Multi-Year Contract Discount ¹	MCC - 2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year MCC Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	MCC, Priority, 5-Year Agreement, Annual Pay	1%	\$ 30,570	\$ 31,793	\$ 33,065	\$ 34,388	\$ 35,764	\$ 165,580	\$ 3,347	1.98%

TOTAL COST

Equipment	Contract Options	Multi-Year Contract Discount ¹	2026	2027	2028	2029	2030	5-Year Sub-Total	5-Year Total Savings ⁹	Compounded Savings % ⁹
(1) Series 2410, (1) Large Meter, & (1) Recirc System	5-Year Agreement, Annual Pay	1%	\$ 205,520	\$ 213,742	\$ 222,293	\$ 231,186	\$ 240,435	\$ 1,113,176	\$ 178,437	13.82%

- Notes: 1- MCC does not reflect prevailing Wage labor rates
 2- Multi-year discounts are based on pre-payment in full of entire five year contract amount in advance.
 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
 6- If initial pricing is based upon a tiered, usage-based license agreement, actual price will vary in accordance with actual aggregate meter test bench usage over a 12-month period.
 8- 5-Year Contract fee is calculated as follows: previous year fee times [(1 plus (respective Multi-Year Contract Discount percentage subtracted from the respective prevailing standard increase percentage))]
 9- Compared to non-contracted 1-year agreement amount.



WARRANTY, GENERAL TERMS AND CONDITIONS

- 1) **General.** These terms and conditions (these "Terms"), the Equipment, Software and Services Contract or Order Form, as appropriate (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 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. "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. ~~PURCHASER WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS UNLESS MARS COMPANY RECEIVES WRITTEN NOTICE OF ANY OBJECTION WITHIN THREE (3) BUSINESS DAYS AFTER PURCHASER'S RECEIPT. THESE TERMS ARE SUBJECT TO CHANGE WITHOUT NOTICE. "Days" means Monday through Friday except Fairfax Water holidays.~~
 - 2) **Delivery of Equipment and Performance of Services.**
 - a) All Equipment to fulfill MARS' obligations under this Agreement is delivered F.O.B. to the destination designated in writing by the Purchaser. The date on which the Equipment (which may include pre-loaded Software) is delivered to Purchaser is the "Delivery Date."
 - b) If the scheduled Delivery Date is delayed by the 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 the Purchaser, at which point 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 per Section 5(b). All expenses for the temporary storage transportation, storage fees, redelivery fees, etc., shall be the sole responsibility of the Purchaser and payable to MARS Company together with payment for Equipment and Software per Section 5(b).
 - c) Shipping and delivery times are contingent upon the Purchaser's timely approvals and delivery of any documentation required for MARS Company's performance hereunder by the Purchaser.
 - d) **Delivery Acceptance**
 - (i) Purchaser shall make the timely inspection of all delivered Equipment to verify the receipt, inspection, and acceptance ("Delivery Acceptance") or rejection ("Delivery Rejection"). If through no fault of MARS, the Purchaser does not provide MARS written confirmation of either Delivery Acceptance or Delivery Rejection within three (3) days from the Delivery Date, Delivery Acceptance shall be deemed as acceptance of Equipment received.
 - e) **Non-Delivery Rejections, Shortages, and Shipping Damages**
 - (i) The Purchaser may reject any Equipment found, upon examination within three (3) business days, not to conform to the terms of this Agreement. Purchaser agrees to provide written notice of Delivery Rejection and shall specify the reasons for rejection, providing MARS with reasonable time to address or rectify the rejection.
 - (ii) Claims for shortages or other errors in delivery must be made in writing to MARS Company within three (3) days of the Delivery Date.
 - (iii) Claims for damage caused by shipping or delivery shall be made in writing within three (3) business days by Purchaser to MARS.
 - f) 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 Purchaser specially orders the goods, 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.
 - g) 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 to perform 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 per 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 concerning the Services before the date on which the Services are to start.
 - 3) **Purchase Order and Acceptance.**
 - a) Purchaser shall be deemed to accept these Terms irrevocably, and MARS Company's furnishing of Equipment, Software, and Services per these Terms, upon the earlier to occur of the following: (i) Purchaser's issuance of a purchase order; (ii) Purchaser's non-rejection of Equipment, Software or Services on the earliest Delivery Date; or (iii) Purchaser's payment for Equipment, Software or Services, in whole or in part.
 - 4) **Purchase Price and Service and Software Fees.**
 - a) 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 and pricing expire thirty (30) days from the date thereof. Pricing within a calendar year ("CY") is dependent on (i) valid pricing effective prior to expiration and (ii) receiving a purchase order and notice to proceed satisfactory to MARS by the end of the respective calendar year. For example, to qualify for CY 2024 pricing (i) the pricing must be valid and prior to expiration (i.e., within 30 days of the quote) and (ii) MARS must receive a purchase order and notice to proceed satisfactorily to MARS by December 31, 2024.
 - b) Unless otherwise stated in a statement of work, the hourly rates set forth in the Contract are based on Services performed during regular business hours (8 a.m. to 5 p.m., Monday through Friday). Any Services performed on: (i) a business day outside of regular 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.~~

- c) 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. If MARS Company is required to pay any such tax, fee, interest or charge, the Purchaser shall reimburse MARS Company accordingly. If the Purchaser is exempt from the payment of any tax or holds a direct payment permit, the Purchaser shall, upon submitting a purchase order, provide MARS Company a copy of any such certificate or permit acceptable to the relevant governmental authorities. ~~The 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 a Significant Cost Increase occurs. A "Significant Cost Increase" for purposes of this Agreement and any purchase order or similarly 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. If a Significant Cost Increase is no longer occurring, the price of the MARS Test Bench Solution shall revert to that of the applicable purchase order.~~
 - d) 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.
 - e) 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, reactivation, etc., as appropriate.
 - f) If the 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.
 - g) If Licensee purchased an On-Premise Subscription Usage License, then:
 - (i) 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.
 - (ii) 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.
 - h) 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.
 - i) 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.
 - j) Unless otherwise terminated in accordance with this Agreement, upon the expiration of the applicable license Term, this Agreement ~~will automatically renew for an additional term of the same duration as the initial service term or previous renewal (each, a "Service Renewal Term") unless either party provides the other with written Notice of non-renewal at least 90 days prior to the expiration of the then-current Term. Licensee agrees to pay any automatic renewal Software License fees due for continued use of the Software during the Service Renewal Term in the amount of the then-current, annual license fee list price may be renewed in accordance with the Contract Documents.~~
 - k) Upon activation of a Temporary Software License (as defined in the EULA), Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.
 - l) 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.**
 - a) ~~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.
 - b) 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).
 - c) 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.
 - d) 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 applicable rate allowed by law on all such overdue amounts plus MARS Company's attorneys' fees and court costs incurred in connection with collection. If 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) for each test bench system if reactivation is within 30 days of license expiration, plus (ii) five thousand dollars (\$5,000) for each test bench system every 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 M3 annual subscription within 60 days after license expiration, on two 2400 Series test benches and a single large test bench, then Software Reactivation Fee calculation would be: [(\$2,500 x 3 systems) + (\$5,000 x 3 systems) = \$22,500.



**MARS COMPANY
WARRANTY, GENERAL TERMS AND CONDITIONS**

6) Changes.

- a) 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).
- b) 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.
- c) 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.

- a) Title to the Equipment shall transfer to the Purchaser upon Delivery Acceptance.
- b) Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon Delivery Acceptance.

8) 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 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) **Factory Testing**
 - (i) Any inspection by Purchaser of Equipment on MARS Company's premises shall be scheduled a minimum of five (5) days in advance and to be performed during normal working hours.
 - (ii) If the purchase order provides for factory acceptance testing of the Equipment, MARS Company shall notify the 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 FIVE (5) 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.
- b) 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").
- c) 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 with the 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 use its best efforts to work in conjunction with the customer to have 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 will be responsible for the cost of up to \$500.00 USD for the Licensed Accuracy Calibration Company to perform the ATP and any amounts in excess will be the responsibility of the Purchaser. 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 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 the 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 Repeatably phase; (iii) 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 this Section of the ATP, the parties mutually agree that the MARS Test Bench Solution will be deemed acceptable by the Purchaser (collectively, the "Acceptance Testing").

- d) 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 AMR 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 CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 SOFTWARE LICENSE DIALOG BOX, BY 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, MAR 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



**MARS COMPANY
WARRANTY, GENERAL TERMS AND CONDITIONS**

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 an 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.
- 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) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that MARS Company is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by MARS Company or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against MARS Company, Purchaser shall defend and indemnify MARS Company in the same manner and to the same extent that MARS Company would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

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, NEGLIGENCE, 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, NEGLIGENCE, 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 ONE HALF (1/2) OF 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 ONE YEAR OF THE TIME OF ACCRUAL THEREOF.**
- c) **PURCHASER SHALL INDEMNIFY AND HOLD MARS, ITS OFFICERS, EMPLOYEES, DIRECTORS, MEMBERS, INDEPENDENT CONTRACTORS, SUBCONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, LIENS, CLAIMS, ACTIONS OR DAMAGES ARISING FROM THE RESALE OF ANY EQUIPMENT TO A THIRD PARTY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF MARS.**

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 Florida Virginia, 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. **Any controversy or claim, whether in law or in equity, arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in Marion County administered by JAMS in accordance with its Streamlined Arbitration Rules & Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.** 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), Acts of God, 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 (b) 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 the complete and exclusive agreement 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
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	-

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



**MARS COMPANY
WARRANTY, GENERAL TERMS AND CONDITIONS**

- f) Beta Test Program
 - (i) Beta Test Discount Eligibility: MARS Company may, at its sole discretion, offer certain customers favorable terms in exchange for participating in the MARS Beta Test Program ("BTP"). To be eligible for the BTP, customers must be invited by MARS and agree to perform testing and fulfill obligations in accordance with the detailed specification as set out in the Beta Test Matrix ("BTM") addendum at marswater.com/BTM, provided by MARS alongside the contractual agreement.
 - (ii) Acknowledgment of Concession: By accepting and agreeing to the BTP, the Customer acknowledges and agrees that they are receiving a material concession from MARS in the form of favorable terms for the respective products or services.
 - (iii) Renewals and Contract Changes: For any contract renewals or changes, MARS will provide a new or updated BTM along with the updated contract. Continued eligibility for the BTP and favorable terms will be contingent on agreement and compliance with the updated BTM.
 - (iv) Failure to Fulfill Obligations: In the event a Customer fails to fulfill their obligations as outlined in the BTM, MARS reserves the right to revoke the BTP and revert the pricing of products or services to the standard rate, retroactively to the start of the contract period.
 - (v) BTP Audit Rights: MARS reserves the right to audit a customer's compliance with the BTM at any time. Customers are required to cooperate fully with such audits and to provide any necessary documentation upon request.
- g) 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 13th St, Ocala, Florida 34474.
- h) 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
- i) This Agreement may only be modified by written agreement of the parties.
- j) 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



MARS CALIBRATION CERTIFICATION
GENERAL CONDITIONS OF SERVICE AND MAINTENANCE



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 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 or Order Form, as appropriate (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 "Consumable Parts" are components or materials of the Equipment that are expected to wear out, degrade, or be depleted over time as a result of normal usage.
 - 1.6 "Customer" means the person or persons, firm or company named on the cover page of the Agreement.
 - 1.7 "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.
 - 1.8 "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.
 - 1.9 "Equipment" means the equipment and software listed in Schedule 1.
 - 1.10 "Fee" means the fee payable for the Services as specified in Section II of the Agreement.
 - 1.11 "MARS" means OW Investors LLC, dba MARS Company that offers the Products.
 - 1.12 "Services" means the maintenance and other services provided in respect of the Equipment detailed in Schedule 4 and as defined in these Conditions.
 - 1.13 "Service Time" means the period set out in Clause 2 herein.
 - 1.14 "Site" means the premises where the Services are provided.
 - 1.15 "Term" means the duration of the Agreement as set out in Section III of the Agreement.
 - 1.16 "You" or "Your" or "Customer" means or refers to the company or person that is named on the cover page of the Agreement.

1. **Maintenance, Calibration and Support**

- 1.1 MCC Service Plan. MARS posts standard MCC Service Plan information for MARS products from links at <https://MARSwater.com/support/MCCServicePlan> (or a successor website for the Service Plan information) and related web pages describing the MCC Service Plan features for the Equipment. A non-standard MCC Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract. In the event a MCC Service Plan is not specifically documented an Agreement, the default will be the priority tier plan.
- 1.2 Customer Support. If You are entitled to receive Customer Support as part of an MCC Service Plan, MARS warrants that while Your MCC Service Plan is in effect and if You have paid all required MCC Service Plan fees, MARS will use qualified personnel to provide You with Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 1.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.

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.
- 3.3 The Term of the Agreement shall automatically renew for subsequent periods of the same length as the initial term unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then current term may be renewed in accordance with the Contract Documents.

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.
- 4.1.12 Calibration and certification are strictly limited to MARS Company equipment that complies with its original design and specifications or has been modified or upgraded exclusively by MARS in accordance with agreed-upon specifications. MARS cannot and will not calibrate or certify any equipment that has been altered, modified, or deviates from the original or MARS-approved upgraded specifications by any party other than MARS.

- 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 In the event that MARS is unable to provide Services hereunder due to Purchaser's unwillingness or inability to schedule a site visit, the Fee and any related Additional Charges shall nonetheless be due and payable as invoiced by MARS.

- 5.9 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 **Consumable, Replacement and Spare Parts**

- 6.1 MARS agrees to provide a Consumable Parts allowance for each Test Bench System during each MCC 12-month term in the maximum aggregate amount of up to five hundred dollars (\$500.00) for each Test Bench System provided that (i) no single Consumable Part exceeds \$100.00, and (ii) limited to Consumable Parts associated with Equipment under this MCC. Examples of Consumable Parts include the following: gaskets, ball valves, and solenoid valves. Installation of Consumable Parts is the Customer's responsibility; however, MARS will install Consumable Parts during an MCC visit on a best-effort and time-available basis.

- 6.2 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.

- 6.3 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.

- 6.4 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.

- 6.5 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.
- 6.6 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 seven and one-half percent (7.5%).
 - 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**
- ~~12.4 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, FOR NEGLIGENCE, AND 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 ~~(#) 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~~ the insurance coverage required by the Contract Documents. 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 27.7202 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 13th 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 Nations 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 If any party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses. The term "prevailing party" means that party, as plaintiff or defendant, who substantially prevails against the other party. Notwithstanding the foregoing, if a written offer of compromise made by either party is not accepted by the other party within thirty (30) days after receipt and the party not accepting such offer fails to obtain a more favorable judgment, the non-accepting party shall not be entitled to recover its costs of suit and reasonable attorney's fees and costs (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney's fees and costs incurred by the offering party.

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 Florida Virginia, 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. Any controversy or claim, whether in law or in equity, arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in Marion County administered by JAMS in accordance with its Streamlined Arbitration Rules & Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

22 Entire Agreement

22.1 This Agreement is a legal agreement and constitutes the complete and exclusive agreement 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 acts of God, 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	-

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

23.15 Unless otherwise noted in the applicable 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



MARS CALIBRATION CERTIFICATION
GENERAL CONDITIONS OF SERVICE AND MAINTENANCE



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.



IMPORTANT--READ CAREFULLY

THANK YOU FOR SELECTING THE MARS METER MANAGEMENT ("M3") ENTERPRISE SOFTWARE. BY CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 LICENSE DIALOG BOX, BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE, BY SIGNING THE EQUIPMENT, SOFTWARE AND SERVICES CONTRACT, THE LICENSEE IS CONSIDERED TO HAVE READ AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE MARS STANDARD WARRANTY TERMS AND CONDITIONS: <https://marswater.com/terms>. IF THE LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, THE LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. IF YOU REPRESENT A COMPANY, ORGANIZATION, OR OTHER LEGAL AFFILIATE (LATER DEFINED), IN THAT CASE, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH AFFILIATE AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERMS "YOU," "YOUR," OR RELATED TERMS HEREIN SHALL REFER TO SUCH AFFILIATE AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OBJECT TO ANY OF THESE TERMS OR ANY SUBSEQUENT MODIFICATIONS, YOUR ONLY RECOURSE IS TO DISCONTINUE YOUR USE OF THE SOFTWARE IMMEDIATELY. THE SOFTWARE, INCLUDING ANY UPDATES, UPGRADES, VERSIONS, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE SOFTWARE MAY INCLUDE PRODUCT AUTHORIZATION OR REGISTRATION TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE YOUR COMPUTER TO CONNECT TO THE INTERNET AUTOMATICALLY OR PROMPT YOU TO CONTACT MARS AND PREVENT THE USE OF THE SOFTWARE THAT IS NOT PERMITTED.

THE LICENSEE AGREES AND ACKNOWLEDGES THAT THE TERMS AND CONDITIONS IN THIS AGREEMENT HAVE NO EFFECT NOR ANY INFLUENCE OR CONNECTION WITH – IF ANY – ANY OTHER MARS SOFTWARE LICENSE AGREEMENT WHICH ARE APPLICABLE TO MARS SOFTWARE PRODUCTS LICENSED BY THE LICENSEE.

1. **Definitions.** As used herein, the following terms have the following meanings:
- 1.1 **"Affiliate"** means any entity that controls You, that You control, or that is under common control with You, whereas "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.
- 1.2 **"Agreement"** means, collectively, this M3 Enterprise Software End User License Agreement (the "EULA") and its Schedules, and; the MARS Company Warranty, General Terms and Conditions (the "Terms"); the Equipment, Software and Services Contract (the "Contract") and its Schedules; the 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, are the only terms that govern Equipment, Software 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.
- 1.3 **"Allowed Number"** means one (1) unless otherwise indicated on the Contract.
- 1.4 **"M3 Total Annual Meter Testing Usage"** means the aggregate total number of individual meter tests and individual meter subtests that the Software has reported initiating (but not necessarily completing an entire test cycle) during any twelve (12) month renewal term for all On-Premise Subscription Usage Licenses as specified in the Equipment, Software and Services Contract.
- 1.5 **"Confidential Information"** shall mean any and all commercial, technical, financial, proprietary, and other information of a party hereto and its Affiliates that is identified as "confidential" or that a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to, samples, data, technical information, know-how, formulas, ideas, inventions, discoveries, patents, patent applications, intellectual property (whether or not patentable), product development plans, demonstrations, business and financial information, applications and designs, names of customers and potential customers, information related to research and development, and all manifestations or embodiments relating to any of the foregoing and all improvements made thereto, in whatever form provided, whether oral, written, visual, machine-readable, electronic, or otherwise. "Confidential Information" of MARS also includes the Software and Documentation and the existence of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the disclosing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) subject to disclosure pursuant to an open records act or similar applicable law.
- 1.6 **"Customer Support"** means Software assistance You receive by phone, email, chat, access to online information, or by similar means because You purchased a Service Plan or an On-Premise License.
- 1.7 **"Documentation"** means the user manuals, technical manuals, and any other materials provided by MARS, in printed, electronic, or other forms, that describe the installation, operation, use, or technical specifications of the Software.
- 1.8 **"Maintenance Software"** means Software that MARS delivers because You have purchased a Service Plan or an On-Premise Subscription License.
- 1.9 **"Major Software Release"** means Software that provides major new feature enhancements and is denoted by incrementing the first numeric digit of the respective software release name. For example, software release 3.xx would be a major release from software release 2.xx.
- 1.10 **"Minor Software Release"** means Software that provides minor new feature enhancements and is denoted by incrementing the last two numeric digits within the respective Software release name. For example, (i) Software release 3.20 would be a minor release from Software release 3.10. For clarity, this Software does NOT include Minor or Major Software Releases to the next incremental major or minor release. For example, If software release 3.0 were initially installed, you would receive all 3.xx minor software releases but would NOT receive 4.xx and later software releases.
- 1.11 **"MARS"** means OW Investors LLC, dba MARS Company.
- 1.12 **"MARS On-Premise Equipment"** means a 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) and routers that are owned by MARS and provided to the Licensee (defined hereafter) to use during the Software subscription or usage term.
- 1.13 **"M3 Legacy Software"** means all M3 Software licensed to the Licensee prior to the release of M3 Enterprise Software. This M3 Legacy Software was deactivated on 12/31/2016 and is no longer supported by MARS.
- 1.14 **"On-Premise License"** means an On-Premise Perpetual License or On-Premise Subscription License according to this Agreement.
- 1.15 **"On-Premise Perpetual License"** means a license to use the Software indefinitely in

- accordance with this Agreement.
- 1.16 **"On-Premise Subscription Term License"** means a license to use the Software and a Service Plan according to this Agreement for the subscription term specified in the Equipment, Software and Services Contract.
 - 1.17 **"On-Premise Subscription Usage License"** means a license to use the Software and a Service Plan according to this Agreement for the M3 Annual Meter Testing Usage and term specified in the Equipment, Software and Services Contract.
 - 1.18 **"On-Premise Subscription License"** means either an On-Premise Subscription Usage License or an On-Premise Subscription Term License according to this Agreement.
 - 1.19 **"Perpetual License Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Upgrades for a specified period.
 - 1.20 **"Perpetual License Major Upgrade Plan"** means a plan You purchase separately or acquire as part of the purchase of a Perpetual On-Premise License providing You Customer Support and/or Perpetual License Major Updates for a specified period.
 - 1.21 **"Reseller"** means the independent third-party reseller from whom You may have acquired the Software.
 - 1.22 **"Equipment, Software and Services Contract"** means a signed mutually agreed ordering document for the purchase of (i) the Equipment, (ii) the Software license granted hereunder, and (iii) the Services.
 - 1.23 **"Services"** means the information technology-related consulting services provided by MARS.
 - 1.24 **"Service Plan"** means a plan You purchase separately or acquire as part of the purchase of an On-Premise License providing You with Customer Support and/or Maintenance Software for a specified period.
 - 1.25 **"Software"** means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or new features.
 - 1.26 **"Temporary Software License"** means a temporary Software License that authorizes interim use of currently licensed Software, including functionality necessary for the continued operations of the existing Software and to support existing Software services and equipment.
 - 1.27 **"Usage Information"** means meter testing usage information including, but not be limited to, meter testing frequency, meter size, meter test results, meter start reading, meter end reading, meter manufacturer, etc. for each respective meter test performed.
 - 1.28 **"You" or "Your" or "Licensee"** means the entity identified on the Equipment, Software and Services Contract.
2. **Grant of License**
 - 2.1 Subject to Your compliance with the terms and conditions of this Agreement, including payment of all applicable license and maintenance fees, MARS hereby grants to You a limited, non-sub-licensable, non-exclusive, non-transferable right, during the term set forth in the Contract ("Term"), to use the Software and Documentation solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants You the right to:
 - (a) Install one (1) copy of the Software on the Allowed Number of computers owned or leased and controlled by, You ("Client Devices").
 - (b) Use and run the Software on the Allowed Number of Client Devices in accordance with the Documentation and solely for Your internal business purposes.
 - (c) Make one (1) copy of the Software solely for your archival purposes.
 - (d) Make a reasonable number of backup copies of the Software solely to reinstall the Software if reinstallation becomes necessary.
 - (e) Make one (1) copy of the Software for use in a testing environment solely for testing purposes.
 - (f) Make and install one copy of the Software at a disaster recovery site for Your use only for so long as a disaster or other emergency prevents You from Using the Software at Your original installation site.
 - (g) Download or otherwise make one (1) copy of the Documentation and use such Documentation solely in support of Your licensed use of the Software.
 - (h) The term of the license will not be affected whatsoever based on the licensee's ability to use the license due to the operability of customer-owned equipment.
 - 2.2 MARS reserves the right to periodically conduct audits of Your use of the Software upon a thirty-day advance written notice to verify compliance with the terms of this Agreement. Audits will be conducted during business hours, at a mutually agreeable time and date and will occur no more than once in any 12-month period. Audits will be conducted at no expense to You. MARS and the licensee agree that MARS can regularly confirm licensee software and equipment Usage Information, and this usage-based diagnostic information does not constitute an audit. Meter testing Usage Information is explicitly not considered Confidential Information.
 3. **License Restrictions.** Except as otherwise explicitly permitted in this Agreement, the Licensee shall not:
 - 3.1 Use the Software individually or jointly in full or in part on more than the Allowed Number of client devices. Use of software, hardware, or services that bypass any Software license restrictions and/or reduce the number of client devices, individual users and/or seats, as may be applicable, accessing or utilizing the Software (e.g., "multiplexing," "pooling," "virtualization" or third party add on software or hardware) expressly does not reduce the number of licenses required (i.e., the required number of licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end").
 - 3.2 Modify or create any derivative works of the Software, including – without limitation – translation or localization; (code written to published APIs (Application programming interfaces) for the Software shall not be deemed derivative works);
 - 3.3 Copy the Software except as provided in this Agreement or elsewhere by MARS;
 - 3.4 Separate Software, which is licensed as a single product, into its component parts;
 - 3.5 Reverse engineer, decompile, or disassemble or otherwise attempt to derive the source code for any Product of the Software (except to the extent applicable laws expressly prohibit such restriction);
 - 3.6 Redistribute, encumber, sell, rent, loan, lease, sublicense, use the Software in a timesharing or service bureau arrangement, or otherwise transfer rights to any Software.
 - 3.7 Remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Software; or
 - 3.8 Publish or make public any results of benchmark tests run on any Software to a third party without MARS' prior written consent.
 4. **Software Acceptance.**
 - 4.1 The Licensee shall have accepted the Software ("Accepted") the earlier of (i) Completion of the site acceptance testing constituting Purchaser's / Licensee's full acceptance of the Equipment and Software; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED AFTER TEN (10) DAYS AFTER THE SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TEST SHALL BE DEEMED COMPLETED AND THE SOFTWARE SHALL BE DEEMED ACCEPTED BY THE PURCHASER. "Acceptance Date" means the date the Software was Accepted.
 - 4.2 ON THE DELIVERY DATE (AS DEFINED IN THE TERMS), THE LICENSEE SHALL PAY MARS COMPANY THE FULL PURCHASE PRICE OF THE SOFTWARE, AND THE



LICENSEE SHALL NOT WITHHOLD PAYMENT FOR ANY REASON.

5. **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 THE PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 4.

6. **Term and Termination.** This Agreement and the license granted hereunder are effective from the Acceptance Date and continue in effect until the expiration of the applicable license Term or until earlier terminated in accordance with this Agreement.

6.1 The On-Premise Subscription License will run for the term length set forth in the Contract. Notwithstanding the foregoing, this Agreement and the license granted to You will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement, including but not limited to the payment of all reasonably undisputed license fees when due. THE SOFTWARE MAY CONTAIN TECHNOLOGY THAT ALLOWS MARS TO TERMINATE YOUR USE OF THE SOFTWARE OR CONVERT YOUR ACCESS TO THE SOFTWARE TO READ-ONLY IN THE EVENT YOU MATERIALLY BREACH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO YOUR FAILURE TO PAY REASONABLY UNDISPUTED LICENSE FEES WHEN DUE. IF MARS CONVERTS YOUR ACCESS TO READ-ONLY, YOU WILL CONTINUE TO HAVE ACCESS TO DATA YOU ENTERED BEFORE THE CONVERSION BUT WILL NOT BE ABLE TO ENTER NEW DATA. IF THE PURCHASER'S ACCOUNT IS THIRTY (30) DAYS OR MORE OVERDUE (EXCEPT WITH RESPECT TO AMOUNTS SUBJECT TO A BONA FIDE DISPUTE), IN ADDITION TO ANY OF ITS OTHER RIGHTS OR REMEDIES, IN THAT CASE, MARS RESERVES THE RIGHT TO 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) FOR EACH TEST BENCH SYSTEM IF REACTIVATION IS WITHIN 30 DAYS OF LICENSE EXPIRATION, PLUS (II) FIVE THOUSAND DOLLARS (\$5,000) FOR EACH TEST BENCH SYSTEM EVERY 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 M3 ANNUAL SUBSCRIPTION WITHIN 60 DAYS AFTER LICENSE EXPIRATION, ON TWO 2400 SERIES TEST BENCHES AND A SINGLE LARGE TEST BENCH, THEN SOFTWARE REACTIVATION FEE CALCULATION WOULD BE: [(\$2,500 X 3 SYSTEMS) + (\$5,000 X 3 SYSTEMS)] = \$22,500.

6.2 Upon activation of a Temporary Software License, Licensee agrees to pay all of the pro-rated license fees during the duration of the Temporary Software License in the amount of the lesser of (i) the Software license fee as proposed in advance and in writing by MARS for the continued use of the Software beyond the expiration date, or (ii) the then-current, annual license fee list price. The granting of a Temporary Software License (i) does not change the terms of this Agreement, such as the renewal date of the Software unless explicitly agreed to in writing by the parties, and (ii) is NOT an extension to your current annual contract but will be part of your software subscription renewal.

6.3 Upon termination or expiration of Your On-Premise License, You shall immediately discontinue using the Software and Documentation.

6.4 Within thirty-five (35) days after the termination or expiration of Your On-Premise License, or this Agreement, You shall return the Software and MARS On-Premise Equipment to MARS and destroy all other Software copies in Your possession or control subject to applicable law.

6.5 Upon the expiration of the applicable license Term, this Agreement may be renewed in accordance with the Contract Documents.

7. **Intellectual Property Rights**

7.1 Ownership. You acknowledge and agree that the Software and Documentation are provided under license and not sold to You. MARS and its licensors are and will remain the sole and exclusive owners of all rights, title, and interest in and to the Software and Documentation, including all intellectual property rights arising out of or relating thereto, subject only to the limited license granted to You under this Agreement. The Licensee will not remove copyright notices from the Software. The Licensee shall prevent any unauthorized use or copying of the Software and Documentation. MARS reserves all rights not expressly granted to You under this Agreement.

7.2 Submissions. Should Licensee decide to submit any materials ("Submissions") to MARS via electronic mail, through or to MARS website(s), or otherwise (whether as feedback, data, questions, comments, ideas, concepts, techniques, suggestions, or the like) that are specifically related to the functionality of the Software or Services, Licensee agree that such Submissions are unrestricted and shall be deemed Your Confidential Information. You grant to MARS and its assigns a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, use, copy, transmit, distribute, create derivative works of, commercialize, display and perform such Submissions. Submissions do not include any content that You may create while utilizing the Software.

8. **Confidentiality & Confidential Content**

8.1 Except as otherwise permitted herein, neither party will use the other party's Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used to protect its own confidential information. Neither party may disclose the other party's Confidential Information to anyone other than its employees or contractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. The confidentiality obligations set forth in this Section will survive for five (5) years after the termination of this Agreement; provided, however, that the confidentiality obligations herein shall survive in perpetuity with respect to any Confidential Information that is a trade secret under applicable law

8.2 The Licensee shall permit only authorized users who possess rightfully obtained license keys to use the Software or to view if any, the Documentation. The Licensee shall implement reasonable security measures to protect and maintain the security of the Software. Licensee will cooperate with and assist MARS in identifying and preventing any unauthorized use,

8.3 copying, or disclosure of the Software, if any, Documentation or any portion thereof. Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party's possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees, or agents.

8.4 Notwithstanding the foregoing, either party may disclose Confidential Information pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the disclosing party of any such requirement and reasonably cooperate with any attempt to procure a protective order or similar treatment at the cost and expense of the party that owns the information that is being requested.

9. **Limited Warranty**

9.1 MARS warrants that for (1) year from the date of installation of the Software ("Software Warranty Period"): (a) the Software will perform substantially in accordance with the Documentation, and (b) the media on which the Software is contained will be free from defects in materials and workmanship under normal use. If You report to MARS in writing within the Software Warranty Period any nonconformity between the Documentation and the Software (a "Warranty Claim") along with proof of purchase to MARS Customer Service at (support@MARSwater.com), and if MARS can replicate and verify that such nonconformity exists, MARS shall make commercially reasonable efforts to correct such nonconformity at no additional cost to You. If such efforts are unsuccessful and the nonconformity is material, Your sole remedy for a breach of the warranty described in this Section shall be as follows:

- (a) If You acquire an On-Premise Subscription License, You may terminate this Agreement, and MARS will ensure that You receive a refund of the On-Premise Subscription License fees You paid in the three (3) months preceding the Warranty Claim.
- (b) With respect to any media by which You may have received Your installation copy of the Software, Your sole remedy shall be the replacement of defective media.

10. **Disclaimer**

10.1 To the maximum extent permitted by applicable law, and except for the limited warranties set forth herein, THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, INDUSTRY CUSTOM, OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, IMPLIED WARRANTIES 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.

10.2 WITHOUT LIMITATION OF THE FOREGOING, MARS EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ASSUMES ALL RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE ITS INTENDED RESULTS AND FOR THE RESULTS OBTAINED FROM ITS USE OF THE SOFTWARE. THE LICENSEE SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SOFTWARE.

10.3 ANY USE OF THIS SOFTWARE IS DONE AT THE LICENSEE'S OWN RISK, AND THE LICENSEE WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO - WITHOUT LIMITATION - ANY COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES. SHOULD THE SOFTWARE PROVE DEFECTIVE, THE LICENSEE ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION TO NON-MARS INSTALLED EQUIPMENT. IT IS, THEREFORE, UP TO THE LICENSEE TO TAKE ADEQUATE PRECAUTIONS AGAINST POSSIBLE DAMAGES RESULTING FROM THIS SOFTWARE.

11. **Exclusions of and Limitations of Liability**

11.1 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL MARS OR ITS SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON 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 AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) RESULTING FROM ANY DEFECT IN THE SOFTWARE OR MEDIA, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR MARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 EXCEPT FOR CLAIMS ARISING UNDER SECTION 12 OF THIS AGREEMENT, IN NO EVENT SHALL MARS'S TOTAL AGGREGATE LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED TWO AND ONE-HALF (2.5) TIMES THE TOTAL AMOUNT PAID BY YOU TO MARS FOR THE SOFTWARE DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE CLAIM YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT ALLOCATES RISK BETWEEN YOU AND MARS AS AUTHORIZED BY APPLICABLE LAW AND THAT THE PRICING OF THE SOFTWARE REFLECTS THIS ALLOCATION OF RISK AND THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.3 You acknowledge that MARS will: (i) be providing installation of the Software per this Agreement; and (ii) not provide You with custom software implementation services under this Agreement unless You and MARS otherwise agree in writing. You agree that MARS shall have no liability whatsoever for any failure associated with any custom implementation services performed by any party other than MARS.

12. **Indemnification**

12.1 If You receive notice of any claim that Your use of any part of the Software infringes any third party's intellectual property right in a patent, copyright, trade secret, or other intellectual property rights (an "Indemnity Claim"), in that case, MARS shall defend and shall indemnify and hold You harmless from and against any legal proceedings filed against You by such third party, including by paying any resulting costs and damages finally awarded by a court with respect to any such Indemnity Claim provided that You:

- (a) Notify MARS in writing promptly upon becoming aware of the Indemnity Claim, and,
- (b) At MARS's request and expense, give MARS such information and assistance as is reasonable under the circumstances.



- 12.2 This indemnification does not extend to any Indemnity Claim arising from the combination of the Software with other elements not provided by MARS or under MARS's sole control, arising from the implementation of the Software by a third party, or arising from any part of the Software that You or a third-party modify, or that incorporates specifications, designs or formulas that You provide. If You are prevented from Using the Software 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 Software, replace or modify the affected part of the Software 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:
 - (a) If You acquired an On-Premise Subscription License, You would receive a refund of or credit for any prepaid but unused portion of the On-Premise Subscription License fees paid by You for the Software.
- 12.3 THIS SECTION SETS FORTH YOUR SOLE REMEDIES AND MARS'S SOLE LIABILITY AND OBLIGATION FOR ANY INDEMNITY CLAIM.
- 13. **Maintenance and Support.**
- 13.1 Service Plan. MARS posts standard Service Plan information for MARS products from links at <https://MARSwater.com/support/ServicePlan> (or a successor website for the Service Plan information) and related web pages describing the Service Plan features for the Software. A non-standard Service Plan may be mutually agreed upon and defined in the Equipment, Software and Services Contract.
- 13.2 Customer Support. If You are entitled to receive Customer Support as part of a Service Plan, MARS warrants that while Your Service Plan is in effect and if You have paid all required Service Plan fees, MARS will use qualified personnel to provide You Customer Support in a professional manner consistent with industry standards. Your sole remedy under this subsection 13.2 is limited to MARS's re-performance of the Customer Support services giving rise to Your claim.
- 13.3 Updates. At its sole discretion, MARS may make software bug fixes, patches, updates and/or other error corrections ("Updates") available to You. Such Updates, if applicable and offered, are available at no additional cost to You unless otherwise specified in writing. All Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement.
- 13.4 Subscription License Upgrades. At its sole discretion, MARS may make Major Software Releases, Minor Software Releases, major or minor feature enhancements and/or other error modifications ("Upgrades") available to You. Such Upgrades, if applicable and offered, are available: (i) free of charge if you have a valid and current On-Premise Subscription License or (ii) at an additional cost to You if You possess a valid license for a prior version to purchase the now current version. All Upgrades will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Any obligation MARS may have to support the previous version(s) may end with the availability of the Upgrade or Update. If Licensee licenses an Upgrade, the previous version of the Software or M3 Legacy Software must be removed, and no further use or access is permitted except archival copies in accordance with Section 2.
- 14. **Collection and Use of Information.**
- 14.1 Mars Product Enhancement Program. If You have not previously opted out of participating in our Product Enhancement Program ("PEP"), You may automatically be enrolled in PEP when the Software is installed. Through PEP, MARS collects information on the hardware, how You use it, when the Software is installed, and its in-product Help and services. This helps MARS identify trends and MARS patterns to improve the quality of the products and services MARS offers.
- 15. **United States Government.** The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, as such terms are defined in 48 C.F.R. §2.101. Accordingly, if You are the US Government or any contractor, therefore, You shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.
- 16. **Export Controls.**
- 16.1 During the term of this Agreement, neither the Software nor the Documentation 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 agree 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.
- 16.2 EXPORT OF THE SOFTWARE 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 RESTRICTS THE EXPORT AND RE-EXPORT OF CERTAIN PRODUCTS AND TECHNICAL DATA. IF THE EXPORT OF THE SOFTWARE IS CONTROLLED UNDER SUCH RULES AND REGULATIONS, THEN THE SOFTWARE 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. YOU SHALL COMPLY WITH ANY AND ALL APPLICABLE GOVERNMENT IMPORT, EXPORT, AND OTHER LAWS.
- 17. **Relationship.** MARS is an independent contractor. Neither MARS nor any of its representatives shall be considered your employee. Except as expressly 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.
- 18. **Attorneys' Fees.** If any party employs attorneys to enforce any rights arising from or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses. The term "prevailing party" means that party, as plaintiff or defendant, who substantially prevails against the other party. Notwithstanding the foregoing, if a written offer of compromise made by either party is not accepted by the other party within thirty (30) days after receipt and the party not accepting such offer fails to obtain a more favorable judgment, the non-accepting party shall not be entitled to recover its costs of suit and reasonable attorney's fees and expenses (even if it is the prevailing party) and shall be obligated to pay the costs of suit and reasonable attorney's fees and costs incurred by the offering party.
- 19. **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.
- 20. **Governing Law and Arbitration.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. Any action or proceeding arising out of or related to these Terms shall be brought only in the courts of competent jurisdiction in the Commonwealth of Virginia. The parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves. The parties waive any right to a jury trial in connection with any such litigation. .
- 21. **Entire Agreement.** This Agreement is a legal agreement and constitutes the complete and exclusive agreement between Licensee and MARS with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not expressly incorporated herein. This Agreement may not be amended except in writing duly signed by the authorized representative of the Licensee and an authorized representative of MARS.
- 22. **Miscellaneous.**
- 22.1 If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.
- 22.2 If either party is or becomes 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.
- 22.3 This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- 22.4 Any provision in this Agreement which, when reasonably read as intended to survive the termination of this Agreement, shall survive, including without limitation, the disclaimer of warranties and limitations of liability.
- 22.5 Neither party shall be deemed to have waived any of its rights under this Agreement without explicitly agreeing to do so in writing duly executed by such party's authorized representative. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- 22.6 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.
- 22.7 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.
- 22.8 You agree to maintain internet connectivity to MARS On-Premise Equipment as specified by MARS.
- 22.9 MARS will install the On-Premise Subscription Licensed Software on MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 22.10 Notice. All notices hereunder shall be made by certified or registered airmail, return receipt requested, by recognized overnight courier, but excluding email, and shall be sent to the Parties at the addresses indicated below (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 You, the same address as invoices. MARS's address is 3925 SW 13th St, Ocala, Florida, 34474.
- 22.11 Force Majeure. If any of the Parties should fail in the performance of any obligation under this Agreement, other than payment, by reason of acts of God, strikes, pandemics, 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 terminate this Agreement immediately.
- 22.12 Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing herein is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 22.13 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.



the assigning party without obtaining the other party's consent.

22.14 Conflicts. MARS Company and Purchaser agree and acknowledge that multiple documents will regulate this transaction due to the nature of the commercial relationship and the public or quasi-public sector nature of Purchaser. Occasionally, conflicts will arise between different documents, or between different versions of the same document. The purpose of this Section 22.15 is to provide simple rules for resolving such conflicts.

- (a) 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, in a font no smaller than 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.
- (b) Conflicts Between Different Dated Versions of the Same Document – For conflicts between versions of the same document (i.e., a EULA) that bear different dates, the most recent version will prevail.
- (c) 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	-

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

22.17 The M3 Software provided as part of this agreement controls essential functionality required for the full operation of the MARS Test Bench. Without the use of the M3 Software, the test bench will operate with limited functionality, and certain features may be inaccessible.

22.18 Full Disclosure.
(a)

22.15 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 the execution of an original.

22.16 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.

Summary of MARS Calibration Certification Service Levels^{1,2}

Support to Complement Existing Resources or Comprehensive Coverage with Outsourced Operations, MCC Solutions are Designed to Protect Water Meter Testing Resources

MARS Calibration Certification is available in pre-packaged maintenance service levels that simplify the selection of maintenance services to support network operations, equipment and software. Maintenance levels may be customized by selecting additional service offerings from the maintenance and support portfolio.

Summary of MARS Calibration Certification^{1,2}

Calibration Certification Point-Inspection Services	Service Level				Description
	Basic	Priority	Critical	TAB	
Check & Calibrate: Carrier, Spacer Bar & Pin System Alignments to Factory Specs.	8-pt.	8-pt.	8-pt.	8-pt.	
Clean & Calibrate Operational Sensitivity for Rotameter Assembly	5-pt.	5-pt.	5-pt.	5-pt.	
Valves, Adapters & Gaskets Inspection	5-pt.	10-pt.	10-pt.	10-pt.	
Water Leak Checklist	5-pt.	10-pt.	10-pt.	10-pt.	
Hydraulic Actuators Pressure & Leak Cycle Time Inspection		6-pt.	6-pt.	6-pt.	
Bleeder Solenoid Function Test & Performance Inspection		6-pt.	6-pt.	6-pt.	
Consulting Services					
Savings, Efficiency, and Productivity Consulting				Yes	
Customized Management Reports and Analytics				Yes	
Hardware Services					
Equipment Calibration, Accuracy and Dependability Certification	Yes	Yes	Yes	Yes	MARS Certified Maintenance Inspection & Certification (Includes Certification Decal)
- Gage R&R (Repeatability and Reproducibility)		Yes	Yes	Yes	GR&R is defined as the statistical process used to evaluate a gauging instrument's (water meter test bench) accuracy by ensuring its measurements are repeatable and reproducible ³ .
Factory Preventative Maintenance Procedures	Yes	Yes	Yes	Yes	Preventative Maintenance Schedule. MARS Company will perform a PM on the Test Bench System(s) and other related MARS equipment specified under the Agreement.
Priority MCC Service discount of 10% off MCC				10%	Priority MCC Service discount of 10% off MCC
Consumable Parts Included		\$500	Yes	\$1,000	MARS will cover Consumable Parts for each Test Bench System during each MCC 12-month term in the maximum aggregate amount of up to five hundred dollars (\$500.00) for each Test Bench System and one thousand dollars (\$1,000) for TAB. ⁴
Parts & Labor/Service Discount	Yes	20%	Yes	25%	Parts beyond warranty coverage are not included in the service contract, if any are required. All parts and labor to install parts will be sold at a twenty percent (20%) discount from the current list price. MARS will separately quote any service call or parts installation outside of this agreement.
Parts Warranty (days)	90	90	90	120	All parts used under this Agreement are warranted for a period of ninety (90) days from the date of purchase and one-hundred twenty (120) day for TAB. MARS will replace and re-install, if necessary, parts installed by MARS under this service contract which fail solely due to quality manufacturing defect, within the warranty period at no additional cost.
Scale(s) Recalibration (MARS and third-party subcontractor)		Yes	Yes	Yes	If the tanks and scales are out of calibration at the time of an annual MCC visit, MARS Company will, as part of the service contract, have a mutually agreed upon, local third party representative recalibrate the scales to maintenance tolerance within NIST Handbook 44 specifications. MARS will use its best efforts to work in conjunction with customer to have a local agreed upon scale calibration representative at a cost of up to \$800.00 USD per occurrence.
Priority Phone and E-mail Support		Yes	Yes	Yes	This service contract includes MARS Company personnel providing assistance in resolving operational issues over the phone or by e-mail. ¹
Repair and Return of Defective Devices		Yes	Yes	Yes	Repair and Return of defective devices. Customer responsible for all shipping and insurance fees which will be quoted separately.
Advance Hardware Replacement		Yes	Yes	Yes	Defective device replacement shipping in advance of return (billed if defective devices are not returned in 7 days). Customer responsible for all shipping and insurance fees which will be quoted separately.
Large Bench Hydraulic Maintenance (third-party)		Yes	Yes	Yes	MARS will assist large test bench customer to identify third-party for maintenance every 10 years.
Support Services					
Dedicated Support Team and Priority Support				Yes	MARS technical assistance via Remote Computer Access During the Service Time
Remote Technical Assistance	Yes	Yes	Yes	Yes	MARS technical assistance via Remote Computer Access During the Service Time
24/7 Remote Technical Assistance		Yes	Yes	Yes	MARS technical assistance via Remote Computer Access available 24/7
Service Call Discounts - 20% discount on Critical and 2nd level				20%	Service Call Discounts - 20% discount on Critical and 2nd level
Priority Return Service Calls		Yes	Yes	Yes	The Meter Shop has the right to request service or repairs as needed as an additional service call and MARS will make an additional service call within 5 working days, based on parts availability if the issues cannot be resolved over the phone or by e-mail. MARS Company will provide "best effort" to meet the five working day target.
Discounted Rate for Extra Service		Yes	Yes	Yes	Any service calls in excess of one trip per year will be quoted separately.
Centralized Customer Portal				Yes	
Enhanced Training and Certification Programs				Yes	
Early Access to New Features				Yes	
Prioritized New Feature Development				Yes	
Enhanced Remote Diagnostics and Monitoring				Yes	
Knowledge Services					
Instructor On-Site Training		Yes	Yes	Yes	MARS Company will provide a up to four (4) hours of onsite equipment re-training for previously MCC certified operators during the annual on-site service call.
Self-Study Courses		Yes	Yes	Yes	(expected availability 2H 2024)
Additional Instructor On-Site Training					MARS Company will provide a specified number of hours of equipment training during the annual on-site service call.
Meter Test Training					MARS Company will provide a specified number of hours of training for the Meter personnel during the annual on-site service call.
Test Bench Audit					MARS will conduct a comprehensive Test Bench Audit and recommend "Best Practices"

Optional

Note: 1 - Response time ("Service Time") will be within 24 hours subject to best efforts and Force Majeur.
 2 - MCC will be performed for a single instance per 12 month period unless otherwise agreed to in writing
 3 - American Society for Quality (ASQ); <https://asq.org/quality-resources/gage-repeatability>
 4 - Subject to specific coverage limitations detailed in MCC agreement

Note: All specifications subject to change without notice



MARS Calibration Certification & Maintenance (MCC)

Ensuring Equipment Accuracy and Dependability through MARS Independent, Third-Party Certification

First Independent Equipment Accuracy and Calibration Certification Solution Specifically Designed for the Water Industry

The Industry's ONLY AWWA / ISO C715-18 Equipment Compliance Inspection and Certification



Manage Costs While Maximizing Service Quality

Equipment Accuracy & Dependability protects both MARS and selected third-party equipment with technical assistance, software upgrades, preventative maintenance, spares management and on-site maintenance



Maintenance, Support & Certification

Independent, Third-Party Certification: Industry's first independent equipment accuracy and dependability certification solution designed for the Water Industry



Pre-Packaged Service Levels with Customization Offerings- All Include 24/7 Remote Technical Assistance

Whether support to complement existing resources or comprehensive coverage with outsourced operations is needed, there is a MARS Certified solution designed to protect these water meter testing resources



MARS Calibration Certification & Maintenance

Features & Benefits

Improved Accuracy

- Regular Maintenance ensures that MARS Test Bench System Equipment maintains accuracy for precise measurement of water usage

Reduced Downtime

- Proactively identifies potential issues, inspecting and cleaning to address issues that could impede system operation

Increased Productivity

- Operating a well-maintained MARS Water Meter Test Bench reduces the time needed and allows for safe and efficient test performance

Longer Lifespan

- Proper maintenance helps to extend the lifespan of equipment, reducing the need for costly repairs or replacement.
- Continuous cleaning through the MARS MCC program, removes potentially abrasive debris and prevents downtime while minimizing impeller and plate wear within pumps which can shorten life expectancy.

Compliance

- Regular maintenance of water meter test benches ensures that they meet regulatory requirements and standards.

Safety

- Proper maintenance ensures that the equipment is safe to use and poses no risk of injury to technicians or others working on or within proximity of the equipment.

Training

- MARS MCC training can help users learn how to operate the test bench equipment safely, reducing risk of accidents and injuries.
- Properly trained users:
 - are less likely to damage the equipment due to malfunction.
 - can identify and address issues with the equipment more quickly, reducing the need for expensive repairs and replacements.
 - reduce municipalities' risk of potential lawsuits due to improper use of equipment and testing best practices.
- Continuously trained customers can learn about new features and functionality of the equipment and M3 software, allowing them to maximize its performance.



Accuracy Calibration



C715 Compliance



Customers who receive MARS MCC training on how to properly operate the equipment, will experience fewer issues with the equipment and achieve greater product satisfaction.



For Best Results and Highest Precision of Accuracy

MARS Test Bench Systems, M3 Report Generation using M3 Enterprise Software & MCC utilizing Key Operator Training on Meter Testing Practices

SB 555 Compliant