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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-sublicensable, 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").
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 - (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.
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 - (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);
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 - 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 If You acquire an On-Premise Perpetual License, You may terminate this Agreement at any time, at which point Your license hereunder will also terminate.
- 6.2 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.
- 6.3 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.
- 6.4 Upon termination or expiration of Your On-Premise License, You shall immediately discontinue using the Software and Documentation.
- 6.5 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.
- 6.6 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.
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.
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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,

- copying, or disclosure of the Software, if any, Documentation or any portion thereof.
- 8.3 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 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,
 - (b) At MARS's request and expense, give MARS such information and assistance as is reasonable under the circumstances, and
 - (c) Give MARS sole control over the defense and settlement of the Indemnity Claim.

- 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:
- If You acquire an On-Premise Perpetual License, You receive a refund or credit for (i) the Service Plan fee You incurred to purchase or renew Your most recent Service Plan and (ii) a pro-rata portion of the On-Premise Perpetual License fees You incurred for the purchase of Your initial On-Premise Perpetual License and all upgrades, which pro rata portion will be determined based on the remaining period of a useful life of (5) five years, where the five-year useful life begins on the date You purchase Your initial license.
 - 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.
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- 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.
- 13.5 Perpetual License Upgrades. At its sole discretion, MARS may make Minor Software Releases or minor feature enhancements and/or other error modifications ("Perpetual License Upgrades") available to You. Such Perpetual License Upgrades, if applicable and offered, are available: (i) free of charge if you have a valid and current Perpetual License Upgrade Plan, or (ii) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. 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.
- 13.6 Perpetual License Major Upgrades. At its sole discretion, MARS may make Major Software Releases or major feature enhancements and/or other error modifications ("Perpetual License Major Upgrades") available to You. Such Perpetual License Major Upgrades, if applicable and offered, are available: (i) at an additional cost to You if You possess a valid Perpetual On-Premise License for a prior version to purchase the now current version, or (ii) free of charge if you have a valid and current Perpetual License Major Upgrade Plan. Any obligation MARS may have to support the previous version(s) may end with the availability of the Minor Release Software. 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 per 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 is governed by the laws of the United States and the State of Florida, 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 adjudicated in the appropriate federal or state court located in said state.
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 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 and 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.
- 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 MARS will install the On-Premise Perpetual Licensed Software MARS On-Premise Equipment, configure the Software for your use, and test the Software to confirm that it complies with the MARS specifications.
- 22.11 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.
- 22.12 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.
- 22.13 Third-Party Beneficiaries. Except as provided in Section 7.2, 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.
- 22.14 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 or business of

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

22.15 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

22.16 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.

22.17 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.

22.18 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.

22.19 Full Disclosure.

- (a) Acknowledgment of Third-Party Licenses, MARS expressly discloses that the MARS Test Bench Solution contains third-party licenses, including but not limited to the Microsoft Windows operating system license. By using the MARS Test Bench Solution, the customer acknowledges and agrees to the terms and conditions of these third-party licenses in accordance with the End User License Agreement ("EULA") addendum at <https://www.marswater.com/third-party-addendum>
- (b) Hyperlink Disclosure, The Parties agree that any terms and conditions, including those related to third-party licenses, that are provided via hyperlinks are considered fully disclosed and incorporated into this agreement. The Licensee and/or Purchaser agree to review and accept these terms as part of their acceptance of this Agreement.