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11 Attorneys for Plaintiffs
   MARS, INCORPORATED and MARS
12 INFORMATION SERVICES, INC.

13
                SUPERIOR COURT OF THE STATE OF CALIFORNIA
14
                        COUNTY OF SAN FRANCISCO
15

16
   MARS, INCORPORATED, a Delaware   Case No. CGC-15-548606
17 corporation, and MARS INFORMATION
   SERVICES, INC., a Delaware corporation, **DECLARATION OF ELOISE BACKER IN**
18   **SUPPORT OF PLAINTIFFS MARS,**
                                            INCORPORATED'S AND MARS
19   Plaintiffs,   **INFORMATION SERVICES, INC.'S**
                                            MOTION FOR A PRELIMINARY
20 v.   **INJUNCTION**

21 ORACLE CORPORATION, a Delaware   Date: December 2, 2015
   corporation, ORACLE AMERICA, INC., a   Time: 9:30 am
22 Delaware corporation, and   Dept.:   302
   Does 1-25,   Reservation No.: 10231202-10
23
                Defendants.   Action Filed: October 23, 2015
24

25   **PUBLIC VERSION WITH EXHIBITS**

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I, Eloise Backer, declare:

1.   I am employed by Mars, Incorporated located at 100 International Drive, Mt. Olive, NJ 07828, and hold the title Commercial Manager - Applications.

2.   I submit this declaration in support of Plaintiffs' Motion for a preliminary injunction.

3.   This Declaration is made based upon my personal knowledge.

License Review/Audit

4.   By letter dated September 15, 2014, Oracle's License Management Services ("LMS") Group informed Mars that Mars had been selected for a "License Review." (A true and correct copy is attached as Exhibit 1.)

5.   The "License Review" did not purport to be an audit and appeared inconsistent with Oracle's audit rights under Section 2.4 of the License and Services Agreement, as follows:

      a.   Under the terms of the License and Services Agreement, Oracle is required to conduct any audit onsite at Mars, and at Oracle's expense. In contrast, the License Review demanded that Mars collect information on Oracle's behalf and at Mars' expense – without Oracle ever arriving onsite.

      b.   Under the terms of the License and Services Agreement, Mars is required to provide a list of server "locations, types and serial numbers." In contrast, the License Review demanded that Mars complete an "Oracle Server Worksheet," which is an Excel spreadsheet that requests: server names, models, processor types, processor counts, core counts, operating system names, database instance names, connection strings, and descriptions of any installed options and OEM Packs.

      c.   Under the terms of the License and Services Agreement, Oracle is not entitled under the terms of the Agreement to run or have Mars run diagnostic software on Mars' servers. In contrast, the License Review contemplated that Mars would use Oracle software and scripts to assemble information on use of Oracle programs.

- 2 -

d.   The License Review did not request a certification from Mars and did not propose that Oracle be present at Mars facilities.

6.   After Mars received Oracle's "License Review" letter, Mars sought to accommodate Oracle's demands for information, consistent with staff workloads and availability, security concerns, and acceptable audit processes. In addition, I reached out to internal stakeholders to understand how the information demanded by Oracle could be collected.

7.   By agreement, Oracle is required to ensure that Oracle's audit activities do not unreasonably interfere with Mars' business activities.

8.   Mars representatives worked diligently to come to a mutually-agreeable process for completing an audit consistent with this imperative.

9.   Over a period of months, Mars and LMS representatives met repeatedly in an effort to structure the audit and spent significant time and effort seeking to come to agreement on a Letter of Understanding to govern the audit process.

10.   Ultimately, LMS informed Mars that LMS was unable to agree to any Letter of Understanding.

11.   On April 17, 2015, Oracle sent to Mars a letter stating that Mars had materially breached the Agreement by unreasonably delaying and refusing to permit Oracle's license review. (A true and correct copy is attached as Exhibit 2.)

12.   Oracle stated that "Oracle will terminate the Agreement on May 20, 2015."

13.   On April 24, 2015, Mars provided to Oracle completed Oracle Server Worksheets.

14.   The Worksheets included more information than Mars would have been required to provide in a written certification (if Oracle had requested a written certification).

15.   Mars provided this information in good faith, even though there was no requirement under Section 2.4 that Mars do so.

16.   On May 5, 2015, Mars explained in a letter to Oracle that Mars was not, and had never been, in breach of Section 2.4 – and notified Oracle that if Oracle were to terminate the License and Software Agreement as threatened, Oracle would materially breach the License and

- 3 -

1   Services Agreement and cause significant, irreparable harm to Mars. (A true and correct copy is

2   attached as Exhibit 3.)

3   17.   Mars also offered to provide to Oracle audit assistance on a voluntary basis, "even

4   though the contract places on Oracle the expense of conducting the audit."

5   18.   Mars proposed that, for the audit not to unreasonably interfere with Mars' business

6   activities, the audit would "need to be conducted in a credible manner that reflects general audit

7   principles."

8   19.   On May 8, 2015, Oracle responded that "no such obligation appears in the

9   Agreement" that "Oracle's audit must be conducted according to 'general audit principles.'"(A

10 true and correct copy is attached as Exhibit 4.)

11   20.   Oracle reiterated that "Oracle will terminate the Agreement on May 20, 2015."

12   21.   In the interest of avoiding litigation, Mars agreed to voluntarily, at Mars' expense,

13 assist with Oracle's audit on the following basis: rather than seeking to establish mutually-

14 agreeable audit procedures (which had eluded the parties for months), Mars would voluntarily

15 assemble and provide to Oracle information reasonably necessary to determining Mars' use of

16 Oracle software – and Mars would provide only such information, and not information that did

17 not align with the License and Services Agreement.

18   22.   Notwithstanding this agreement, on May 20, Oracle informed Mars that, rather

19 than rescinding the breach notice, Oracle was instead extending by 7 days the deadline by which

20 Mars had to cure the alleged breach. (A true and correct copy is attached as Exhibit 5.)

21   23.   Only on May 27, 2015, did Oracle confirm in writing that Oracle would withdraw

22 its notice of breach. (A true and correct copy is attached as Exhibit 6.)

23   24.   Mars and Oracle agreed that Mars would provide on a rolling basis documents in

24 response to Oracle demands. This Agreement is reflected in Mars' cover letter accompanying

25 Mars' first tranche of production. (A true and correct copy is attached as Exhibit 7.)

26   25.   From May 13 through September 2, 2015, Mars assembled fourteen tranches of

27 materials, consisting of 233,089 pages of documents.

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DECLARATION OF ELOISE BACKER

26.   Mars assembled the information at Mars' expense without Oracle ever being present on Mars facilities.

27.   In addition to assembling and producing information reasonably necessary to audit Mars' use of Oracle's software, Mars also responded to demands from Oracle that were outside the scope of the audit provision.

28.   Over the summer, Oracle made various demands for Mars to provide information that was outside the scope of the audit called for in the License and Services Agreement. For example, on August 21, 2015, Oracle demanded that Mars provide a listing of all clusters and servers included in Mars' VMware environment. Oracle asserted that, because Mars was using VMware version 5.1 or higher, "all additional servers and/or clusters not running oracle must be licensed." (A true and correct copy is attached as Exhibit 8.)

29.   By email dated September 3, 2015, Oracle demanded that Mars provide information outside of the scope of the audit provision in the License and Services Agreement, as follows:

- "identify the population of users that have access to Agile data" in three systems to which Agile data are exported;
- provide purportedly "[m]issing VMware information" that had been previously demanded, including screenshots of servers in the VMware environment that show additional servers and/or clusters not running Oracle; and
- furnish a "[c]certification of completeness signed by a C-Level executive."

(A true and correct copy is attached as Exhibit 9.)

30.   Oracle further stated that "[i]f we are missing any information on 9/9, this engagement will go back in escalation via Oracle Legal."

31.   Mars viewed these demands as beyond the scope of Section 2.4 of the Agreement. However, by letter dated September 9, 2015, Mars invited Oracle to clarify and provide the contractual basis for its demands. (A true and correct copy is attached as Exhibit 10.)

32.   For over two weeks, Oracle declined to respond to Mars' request for Oracle to provide the contractual basis for, or otherwise clarify, Oracle's demands. Instead, Oracle

1   reiterated its demands for the information and threats to escalate the matter to Oracle Legal if

2   Mars did not acquiesce to Oracle demands.

3   <u>**Oracle's Two-Day On-Site Visit to Mars**</u>

4   33.   On September 23-24, 2015, Mars and Oracle representatives met for two days to

5   go through a line-by-line review of Oracle LMS's preliminary compliance findings. During the

6   two days, the parties addressed certain factual and contract interpretation issues that had arisen

7   during the audit process. Oracle's representatives did not appear well-prepared on the first day

8   and did not even appear to have brought their laptops with them into the conference room.

9   Nonetheless, Mars viewed the effort as productive because Oracle came to agree with Mars that

10   there was an anomaly in the script that Oracle used to detect use of one software option.

11   34.   It is important to note that, at this juncture, the various factual and contract

12   interpretation issues that have arisen in the course of the unfinished audit are not the subject of the

13   dispute before the Court, with the exception of the two issues related to Oracle's demands for out-

14   of-scope information " which are the basis for Oracle's breach notification.

15   <u>**Oracle's September 25, 2015, Letter to Mars**</u>

16   35.   On September 25, 2015, Oracle responded to Mars' September 9 request for

17   Oracle to clarify and provide Oracle's views as to the contractual basis for Oracle's demands. (A

18   true and correct copy is attached as Exhibit 11.)

19   36.   In the very same letter, and without providing to Mars any opportunity to review

20   Oracle's response or engage with Oracle on these matters, Oracle issued a (second) breach

21   notification and stated that "Oracle will terminate its license agreement with Mars on October 26,

22   2015."

23   37.   On September 30, 2015, Mars responded to Oracle's September 25 Letter. (A true

24   and correct copy is attached as Exhibit 12.)

25   38.   In the letter, Mars provides its analysis as to why Oracle's demands are outside the

26   scope of Oracle's audit rights under the License and Services Agreement.

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ARENT FOX LLP
ATTORNEYS AT LAW
SAN FRANCISCO

DECLARATION OF ELOISE BACKER

39.   Mars has fulfilled its obligation to provide information related to the use of Oracle software in the VMware environment by providing screenshots that show all clusters and physical servers that use the Oracle software.

40.   As a final point, in 2013, Mars requested Oracle to provide Oracle's views as to the status of information exported from the Agile environment. Based on email messages that I have read: (i) Oracle (Gary Six) stated: "The data belong[] to Mars, Oracle is OK with you extracting the data."; and Oracle (Wes Frierson) further stated: "No issues with extracting data from or attaching reporting tools to [Agile]".

The Software License and Services Agreement and Ordering Documents

41.   Attached as Exhibit 13 is a true and correct copy of the November 23, 1993 Software License and Services Agreement between Oracle Corporation and Mars, Incorporated.

42.   Attached as Exhibit 14 is a true and correct copy of the December 23, 2010 Ordering Document between Mars IS UK Ltd. and Oracle Corporation UK Limited.

43.   Attached as Exhibit 15 is a true and correct copy of the December 20, 2012 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.

44.   Attached as Exhibit 16 is a true and correct copy of the May 31, 2013 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.

45.   Attached as Exhibit 17 is a true and correct copy of the October 17, 2014 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.

46.   Attached as Exhibit 18 is a true and correct copy of the March 28, 2001 Ordering Document between Mars, Incorporated and Oracle Corporation.

47.   Attached as Exhibit 19 is a true and correct copy of the May 31, 2009 Document between Mars Information Services, Inc. and Oracle USA, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DECLARATION OF ELOISE BACKER

1   Executed this 23rd day of October, 2015, at Mt. Olive, New Jersey.

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4   _Eloise Backer_

5   ELOISE BACKER

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- 8 -

DECLARATION OF ELOISE BACKER

Declaration of Eloise Backer

Exhibits 1 to 19

Exhibits 13 to 19 Conditionally Under Seal

Exhibit 1

September 15, 2014

Vittorio Cretella
Chief Information Officer
Mars, Inc.
100 International Dr
Budd Lake, NJ 07828

Dear Mr. Vittorio Cretella,

Re: Oracle License Review of Mars, Inc.

Oracle's License Management Services (LMS) Group is a global organization established to manage software compliance risk through expert license advisory and review services. Under the rights contained in our software agreements, LMS regularly conducts License Reviews as part of its license management validation program.

Mars, Inc. ('Mars') has been selected for a License Review by Oracle's License Management Services Group to ensure that its use of Oracle software is in accordance with the terms and conditions specified in the its software agreements.

The scope of the License Review includes all Oracle programs.

This License Review will achieve the following objectives:

- Reconcile Mars' Oracle license agreements and support records with Oracle's records.
- Assess and verify Mars' actual usage of Oracle software to ensure license compliance.
- Advise on the suitability of Mars' license structure to support its current usage and, if applicable, planned usage of Oracle programs.
- Provide Mars with additional information about Oracle licensing agreements, policies, and business practices, as requested.

The standard, most efficient approach for completing a License Review is as follows:

1. **Introductory Call** - Within three (3) days of receipt of this notification letter, I will reach out to schedule an Introductory Call to discuss the License Review process, address any questions Mars has about the review process and to determine the most efficient approach and timeline for completing the License Review.

2. **Oracle Server Worksheet** - LMS requests that Mars complete the Oracle Server Worksheet (see example attached), which will help us understand your Oracle product usage. We ask that you return the Oracle Server Worksheet via e-mail (sandev.x.chhokar@oracle.com) within seven (7) days of the Introductory Call. When completing the worksheet, please include all installations of Oracle products within the organization (including all production, test, development and backup instances). If you do not obtain an electronic version of the Worksheet within one day of receiving this letter, please forward me your e-mail address within the next 3 days.

3. **Oracle Server Worksheet Call** - After the Oracle Server Worksheet is completed, we will arrange a call with your relevant IT personnel and application system administrators to understand the general layout of your Oracle systems and how they interact with third-party applications and users. The goal of this call is to ensure LMS has a complete and accurate understanding of your organization's use of Oracle products.

4. **LMS Measurement & Validation** - License Management Services will perform validation procedures to confirm your Oracle program usage, including leverage of measurement scripts, queries of your systems, or alternate measurement procedures as necessary.

5. **Reconciliation & Report** – At this stage, LMS will provide Mars with a report summarizing Mars' current license usage position to its reconciled license entitlements. Mars will have the opportunity to review, validate, and confirm our findings.

In the event that compliance issues are noted, Mars will be requested to remedy those issues within thirty days of written notice.

Our goal is to conduct this License Review in a collaborative and transparent manner to limit the impact on Mars' resources. In doing so, we will be able to efficiently assess deployment, provide an accurate entitlement baseline, and ensure Mars is receiving full benefit of their Oracle investment.

Within the next 3 days, I will be in contact to arrange an introductory call to initiate the License Review process.

In the meantime, please don't hesitate to reach out should you have any questions.

Sincerely,

Sandev Chhokar
Senior License Consultant
Oracle License Management Services
500 Oracle Parkway
Redwood City, CA 94065
+1 650 5066422

Cc: John Davidson
Business Manager
Mars, Inc.
100 International Dr
Budd Lake, NJ 07828

Exhibit 2

ORACLE®

Oracle America Inc.   500 Oracle Parkway   Phone   650-506-5689
Redwood Shores   www.oracle.com
California 94065

April 17, 2015

Via FEDEX

John Donofrio
Vice President, Secretary, and General Counsel
Mars, Inc.
6885 Elm Street
McLean, VA 22101

Re: **Oracle License Review of Mars, Inc.**

Dear Mr. Donofrio:

I am informed that Vittorio Cretalla is no longer with Mars, and I have been unable to identify his replacement. Therefore, I am writing you regarding Oracle's letter to Mr. Cretella dated September 15, 2014, and Mars' subsequent failure to comply with Oracle's license review (a copy of the previous letter is enclosed for your convenience).

Oracle's letter, sent almost seven months ago, outlined the objectives of Oracle's license review and the most efficient manner in which Mars could make the required information available. On September 22, Sonny Chhokar sent a follow-up email to Mr. Cretella. Oracle held an informational call with Mars employees Eloise Backer and Andrea Lambert on October 10, and followed up in writing with next steps the same day. Oracle subsequently provided measurement tools to assist with the review. Since then, Oracle diligently has offered to provide further assistance and has urged Mars to permit the license review to proceed. Mars has not complied. Instead, Eloise Backer informed Oracle on February 26 that Mars had reassigned unspecified resources working on the license review until at least late May or early June. Additionally, Ms. Backer stated on March 19 that in no event would Mars permit a license review without written consent by Oracle to unreasonable and unmerited demands by Mars.

The Software License and Services Agreement (the "Agreement") between Mars and Oracle states in Section 2.4:

> On Oracle's written request, not more frequently than annually, Client shall furnish Oracle with a signed certification (a) verifying that the Programs are being used pursuant to the provisions of this Agreement, including any User limitations; and (b) listing the locations, types and serial numbers of the Designated Systems on which the Programs are run.

> Oracle may, at its expense, audit Client's use of the Programs. Any such audit shall be conducted during regular business hours at Client's facilities and shall not unreasonably interfere with Client's business activities. If an audit reveals that Client has underpaid fees to Oracle, Client shall be invoiced for such underpaid fees based on the corporate discount (such as a Project User Agreement) in place between Client and Oracle in effect at the time the audit is completed. Audits shall be conducted no more than once annually.

Mars has materially breached the Agreement by unreasonably delaying and now refusing to permit Oracle's license review. Thus, pursuant to Section 4.3 of the Agreement, Oracle hereby is providing written notice that Mars must correct this breach by fully cooperating with Oracle License Management Services so that, within 30 days of receipt of this letter, Oracle has available all information requested from Mars to permit a meaningful

license review and complete assessment of Mars' program usage. If Mars does not comply, Oracle will terminate the Agreement on May 20, 2015. Should Oracle terminate the Agreement, Mars will be prohibited from all further use of the Programs.

Mars should immediately begin working to complete and return the Oracle Server Worksheets previously provided by Oracle, including by providing information on all tabs pertaining to any Oracle Database and Technology products, and any Oracle Agile application products, used by Mars. Please send the completed worksheets to Sonny Chhokar (sandev.x.chhokar@oracle.com) and Michael Murphy (michael.m.murphy@oracle.com) as soon as possible, but by no later than April 24, 2015 so that adequate time remains, assuming cooperation by Mars, for Oracle to obtain complete usage information within 30 days. Thank you for your prompt attention to this matter.

Regards,

Chad Russell
Corporate Counsel
Phone: 650-506-5689
chad.l.russell@oracle.com
Oracle Legal Department
500 Oracle Parkway 5op766
Redwood Shores, California 94065

Enclosure

cc via email only: Eloise Backer (eloise.backer@effem.com)
Steve Larrabee (steve.larrabee@errem.com)
Rob Bailey (rob.bailey@effem.com)
Andrew Sutherland (andrew.sutherland@errem.com)

September 15, 2014

Vittorio Cretella
Chief Information Officer
Mars, Inc.
100 International Dr
Budd Lake, NJ 07828

Dear Mr. Vittorio Cretella,

Re: Oracle License Review of Mars, Inc.

Oracle's License Management Services (LMS) Group is a global organization established to manage software compliance risk through expert license advisory and review services. Under the rights contained in our software agreements, LMS regularly conducts License Reviews as part of its license management validation program.

Mars, Inc. ('Mars') has been selected for a License Review by Oracle's License Management Services Group to ensure that its use of Oracle software is in accordance with the terms and conditions specified in the its software agreements.

The scope of the License Review includes all Oracle programs.

This License Review will achieve the following objectives:

- Reconcile Mars' Oracle license agreements and support records with Oracle's records.
- Assess and verify Mars' actual usage of Oracle software to ensure license compliance.
- Advise on the suitability of Mars' license structure to support its current usage and, if applicable, planned usage of Oracle programs.
- Provide Mars with additional information about Oracle licensing agreements, policies, and business practices, as requested.

The standard, most efficient approach for completing a License Review is as follows:

1. **Introductory Call** - Within three (3) days of receipt of this notification letter, I will reach out to schedule an Introductory Call to discuss the License Review process, address any questions Mars has about the review process and to determine the most efficient approach and timeline for completing the License Review.

2. **Oracle Server Worksheet** - LMS requests that Mars complete the Oracle Server Worksheet (see example attached), which will help us understand your Oracle product usage. We ask that you return the Oracle Server Worksheet via e-mail (sandev.x.chhokar@oracle.com) within seven (7) days of the Introductory Call. When completing the worksheet, please include all installations of Oracle products within the organization (including all production, test, development and backup instances). If you do not obtain an electronic version of the Worksheet within one day of receiving this letter, please forward me your e-mail address within the next 3 days.

3. **Oracle Server Worksheet Call** - After the Oracle Server Worksheet is completed, we will arrange a call with your relevant IT personnel and application system administrators to understand the general layout of your Oracle systems and how they interact with third-party applications and users. The goal of this call is to ensure LMS has a complete and accurate understanding of your organization's use of Oracle products.

4. **LMS Measurement & Validation** - License Management Services will perform validation procedures to confirm your Oracle program usage, including leverage of measurement scripts, queries of your systems, or alternate measurement procedures as necessary.

5. **Reconciliation & Report** – At this stage, LMS will provide Mars with a report summarizing Mars' current license usage position to its reconciled license entitlements. Mars will have the opportunity to review, validate, and confirm our findings.

In the event that compliance issues are noted, Mars will be requested to remedy those issues within thirty days of written notice.

Our goal is to conduct this License Review in a collaborative and transparent manner to limit the impact on Mars' resources. In doing so, we will be able to efficiently assess deployment, provide an accurate entitlement baseline, and ensure Mars is receiving full benefit of their Oracle investment.

Within the next 3 days, I will be in contact to arrange an introductory call to initiate the License Review process.

In the meantime, please don't hesitate to reach out should you have any questions.

Sincerely,

Sandev Chhokar
Senior License Consultant
Oracle License Management Services
500 Oracle Parkway
Redwood City, CA 94065
+1 650 5066422

Cc: John Davidson
Business Manager
Mars, Inc.
100 International Dr
Budd Lake, NJ 07828

Exhibit 3

MARS

information services

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May 5, 2015

VIA E-MAIL AND FEDEX

Mr. Chad Russell
Corporate Counsel
Oracle Legal Department
500 Oracle Parkway 5op766
Redwood Shores, California 94065

Re: License Audit

Mr. Russell:

This is in response to your April 17, 2015 letter to Mr. John Donofrio, Vice President, Secretary and General Counsel of Mars, Inc., ("Mars") in which you assert that Mars has materially breached Section 2.4 of the applicable Software License and Services Agreement (the "Agreement") by "unreasonably delaying and now refusing to permit Oracle's license review".[1] You state that Oracle will terminate the Agreement on May 20, 2015 if Mars does not fully cooperate with Oracle License Management Services ("LMS") so that Oracle has available all information requested from Mars to permit a meaningful license review.

We were surprised and disappointed by your letter. Since notice of Oracle's license audit, Mars representatives have worked diligently to accommodate Oracle's requests for information, consistent with staff workloads and availability, security concerns, and the need to follow generally accepted audit principles. We met repeatedly with LMS representatives to structure the audit – and, in good faith, we spent significant time and effort seeking to come to agreement on a Letter of Understanding to govern the audit process. We were vexed when it became apparent, after months of negotiation, that LMS ultimately would not even provide an email in support of the Letter of Understanding.

In any event, Mars' obligations to provide information to Oracle are specific – and have been fulfilled. The first paragraph of Section 2.4 provides that:

---

[1] Please be advised that Vittorio Cietella is still the Chief Information Officer of Mars, Inc.

MARS
information services

On Oracle's written request, not more frequently than annually, Client shall furnish Oracle with a signed certification (a) verifying that the Programs are being used pursuant to the provisions of this Agreement, including any User limitations; and (b) listing the locations, types and serial numbers of the Designed Systems on which the Programs are run.

On April 24, 2015, Mars Information Services responded to a written request from Oracle to complete Oracle Server Worksheets, by submitting completed worksheets for Mars Information Services servers worldwide. The Oracle Server Worksheets constitute a listing of "types" of designated systems – and Mars Information Services completed them in fulfillment of its obligation under Section 2.4. The Worksheets solicited significant additional information, including: server name, model, processor type, processor count, core count, operating system, database instance, connection string, and a description of any installed options and OEM Packs. In good faith, Mars Information Services provided this additional information to Oracle even though there was no requirement under Section 2.4 that Mars do so. At this juncture, there are no other pending written requests from Oracle seeking information described in the first paragraph of Section 2.4.

Under the second paragraph of Section 2.4, Oracle has certain audit rights:

> Oracle may, at its expense, audit Client's use of the Programs. Any such audit shall be conducted during regular business hours at Client's facilities and shall not unreasonably interfere with Client's business activities.

Oracle has asked Mars Information Services to provide a wide range of data about Mars Information Services' servers, database installations and network topography that do not constitute "location, type, and serial number" information. In effect, Oracle has invited Mars Information Services to assist in the audit that Oracle is entitled to perform under Section 2.4.

Of course, Mars Information Services has been and remains willing to provide to Oracle such audit assistance – even though the contract places on Oracle the expense of conducting the audit. However, for the audit not to unreasonably interfere with Mars' business activities, the audit will need to be conducted in a credible manner that reflects general audit principles. For example, the audit will have to have a defined audit scope, appropriate sampling methodology and period of review, protocols for protecting confidential information, and a process for review of potential concerns identified by the audit. There is no obligation for Mars Information Services to run untested or untrusted code on its servers. However, we remain willing to use alternative

MARS

information services

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approaches to gather information that Oracle reasonably needs to audit Mars Information Services' use of Oracle programs.

Since at least January, we have been seeking to come to an agreement on audit procedures – and we remain hopeful to reach agreement with Oracle. To that end, we are meeting again with LMS representatives this week to develop a path forward.

In view of the foregoing, Mars is not in material breach of the Agreement. At this juncture, any purported termination by Oracle of Mars' right to use the Oracle programs would constitute a material breach of the Agreement, would disrupt Mars' business operations, and would cause significant, irreparable harm. We are hopeful that we will agree on a path forward following our meeting with LMS which will put all of the issues raised in your letter to rest in manner acceptable to all concerned.

Sincerely,

Eloise Backer
Commercial Manager

Exhibit 4

ORACLE®

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Redwood Shores   www.oracle.com
California 94065

May 8, 2015

Via Email and FEDEX

Eloise Backer
MARS Information Services
100 International Drive
Mount Olive, NJ 07828
email: eloise.backer@effem.com

       Re: Oracle License Review of Mars, Inc.

Dear Ms. Backer:

I write in response to your letter dated May 5, 2015 regarding Oracle's license review of Mars. Oracle disagrees with the positions Mars takes in your letter. Mars has not fulfilled its certification obligations under Section 2.4 of the Agreement, has not complied with its obligation to permit Oracle's audit under Section 2.4 of the Agreement, and remains in material breach of the Agreement. Oracle also is in receipt of the proposed Mars "Work Plan" sent today at approximately 11:00AM. The plan fails to cure Mars' breach.

Certification

Section 2.4 of the Agreement states in part:

> On Oracle's written request, not more frequently than annually, Client shall furnish Oracle with a signed certification (a) verifying that the Programs are being used pursuant to the provisions of this Agreement, including any User limitations; and (b) listing the locations, types and serial numbers of the Designated Systems on which the Programs are run.

First, Mars has not provided a signed certification, period. Second, Mars has not provided complete information regarding Users of the Oracle programs, and has not indicated that it is using Oracle's Programs pursuant to the provisions of the Agreement. Thus, Mars has not met its certification obligation under the Agreement.

Audit

Oracle sent its license review notification letter to Mars on September 15, 2014. More than seven months later, on April 24, 2015, Mars provided certain initial information responsive to Oracle's requests. Mars did so only after forcing Oracle to involve its legal department and to send formal notification of breach. Oracle is confident a court would agree that by no stretch has Mars "worked diligently to accommodate" Oracle's requests for information.

Mars states that Oracle's audit must be conducted according to "general audit principles." No such obligation appears in the Agreement. Nor does Mars identify any such supposed "general audit principles." Nor does Mars identify any legal authority for this proposition. Oracle's audit right is clear, and does not hinge on Oracle's acquiescence to unreasonable and meritless demands from Mars. As just one example, Section 2.4 of the Agreement states in part, "Audits shall be conducted no more than once annually." Yet Mars has stated that it will not permit Oracle's audit unless Oracle agrees that it "shall not conduct an Oracle License Review of any Mars

software products for five (5) years from the License Review." (Proposed "Letter of Understanding" dated January 9, 2015) Seeking to extract such a concession before allowing Oracle to exercise its agreed contractual right is itself a material breach of the Agreement. Similarly, the "work plan" received today is insufficient. For example, Mars refuses to permit Oracle to audit more than a small sample of its servers, and will not commit to running Oracle's measurement tools or making technicians available.

Mars raises other concerns in your letter, none of which are legitimate or are reasonable justification for Mars' extreme delay and current refusal to cooperate:

> "Defined audit scope" – The scope of the audit has always been defined. As Oracle stated in its letter on September 15, 2014, "The scope of the License Review includes all Oracle programs." Regardless, Mars has no right to demand a more narrow scope.

> "Appropriate sampling methodology" – Oracle has the right to audit Mars' use of the Programs – not merely a sampling of Mars' use of the programs. Mars has no right to withhold information from Oracle by demanding that Oracle agree to less than a complete audit.

> "Protocols for protecting confidential information" – Both Oracle's and Mars' obligations regarding "Confidential Information" are already clear. See Section 7.1 of the Agreement. Mars has no right to insist on new or additional "protocols."

> "Process for review of potential concerns identified by the audit" – Oracle and Mars can and will review any concerns identified by the audit when and if such concerns arise. Mars has no right to insist on limitations regarding *review* of the audit results before permitting Oracle to *obtain* the audit results.

> Running "untested or untrusted code" – Mars has had access to Oracle's audit scripts since at least November 13, 2014. That is more than enough time for Mars to have tested the scripts and to have identified any concerns. Mars did not do so. Now, after almost six months, Mars insists that it must develop its own scripts without identifying the information those scripts will capture or any specific problems with Oracle's tools. Mars has no right to continue to refuse to permit Oracle's audit on this basis. Regardless, Mars has no legitimate justification for not "trusting" Oracle's standard measurement tools.

Oracle is disappointed that Mars has used time and resources since receiving Oracle's April 17 letter to assemble an ill-conceived legal response instead of cooperating to complete Oracle's license review. Oracle has provided its measurement tools to *minimize*, not add to, any potential intrusion on Mars' operations. If Mars does not wish to provide the information that Oracle has requested then Oracle will conduct its audit in person at Mars' facilities during business hours and until the review is complete, per Section 2.4 of the Agreement. Therefore, please immediately begin providing on a rolling basis the output of the tools provided by Oracle so that the audit can proceed as quickly as possible, given Mars' already unreasonable delay.

The Oracle Technology tools include the ReviewLite script entitled ReviewLite15.1.sql and the CPU queries entitled lms_cpuq.sh and lms_cpuq.cmd. For Oracle Agile, Mars must:

(1) collect MRU data using the query

SELECT
mru.*, u.UserName from commonObjectMRULog mru join Users u on u.pkid=mru.fkUser; and

(2) collect User data by executing the SQL query:

SELECT
PKID,USERNAME,FIRSTNAME,LASTNAME,STATUS,HASADMINACCESS,HASSPAACCESS,
HASGSMACCESS,HASPQSACCESS,HASNPDACCESS,HASSCRMACCESS,HASSCBSACCESS,
HASEQACCESS,HASREPORTINGACCESS,HASCSSPORTALACCESS,HASREGACCESS,
HASWFAACCESS,HASUGMACCESS,HASDRLACCESS,HASHRLACCESS,HASLMPACCESS,
HASPQMACCESS
FROM USERS.

As stated above, Mars has had access to these tools, and additional related information and instructions, since at least November 13, 2014. Oracle also requires for its license review additional User information related to Oracle Agile. The tool required for this information is version-specific and thus, without waiving any rights whatsoever, Oracle is willing to discuss the timing related to obtaining this information in light of Mars' alleged pending Agile upgrade.

Alternatively, if Mars does not wish to provide the information called for by the tools listed above, please immediately contact Michael Murphy at michael.m.murphy@oracle.com or Sonny Chhokar at sandev.x.chhokar@oracle.com to arrange to accommodate Oracle's onsite audit, which shall begin by May 18 and run continuously during business hours until complete.

If Mars refuses both options, then Oracle will terminate the Agreement on May 20, 2015. Should Oracle terminate the Agreement, Mars will be prohibited from all further use of the Programs. Please note that pursuant to Section 4.3 of the Agreement, Oracle may approve an extension of the cure period for Mars' breach if it becomes satisfied that Mars finally has commenced with permitting the audit and agrees to work to correct its breach in good faith.

Thank you for your prompt attention to this matter.

Regards,

Chad Russell
Corporate Counsel
Phone: 650-506-5689
chad.l.russell@oracle.com
Oracle Legal Department
500 Oracle Parkway 5op766
Redwood Shores, California 94065

cc via FedEx only: John Donofrio
                        Vice President, Secretary, and General Counsel
                        Mars, Inc.
                        6885 Elm Street
                        McLean, VA 22101

Exhibit 5

ORACLE

May 20, 2015

Via Email

Katleen Pelsmakers
MARS Information Services
100 International Drive
Mount Olive, NJ 07828
email: katleen.pelsmakers@effem.com

      Re: Oracle License Review of Mars, Inc.

Dear Katleen:

I write in response to your letter to Oracle sent by email this morning. Per your request, Oracle confirms it is not terminating its Agreement with Mars today. Oracle acknowledges that Mars has provided information in response to Oracle's requests sufficient to justify an extension of the deadline to cure Mars' breach, pursuant to Section 4.3 of the Agreement. However, Oracle continues to require additional information Mars has committed to provide, including ReviewLite script output and Agile audit function data. Therefore, Oracle agrees to extend the original 30-day cure deadline to May 27, 2015, an additional 7 days from today. If Mars has provided the remaining outstanding data by that date, or has agreed in writing by that date to provide the data at another mutually agreed time, then Oracle will not terminate the Agreement for failure to permit Oracle's audit, and the parties can proceed with any follow-up issues and compliance analysis. In the meantime, Oracle continues to reserve all rights, including the right to conduct its audit at Mars' facilities if the information Mars has chosen to provide in the alternative is incomplete and/or insufficient after further detailed review.

Please note that Oracle does not agree with or concede any positions or characterizations stated by Mars in your letter of this morning, or in any other recent correspondence, beyond acknowledging receipt of data Mars has provided. Eloise Backer of Mars sent a letter addressed to me dated May 13, 2015. I am also aware of at least two other recent letters, dated May 13 and May 15, 2015, from Ms. Backer to Michael Murphy, without copy to me, and there may be others. While Oracle does not waive its right to do so in the future, it makes no sense for Oracle to take the time to respond in writing on each point of recent disagreement at this time. As I stated in my letter to Ms. Backer on May 8, Oracle and Mars should focus on the license review rather than legal correspondence that adds distracting burden and expense. We trust Mars will move forward in the same spirit.

                        Regards,

                        Chad Russell
                        Corporate Counsel
                        Phone: 650-506-5689
                        chad.l.russell@oracle.com
                        Oracle Legal Department
                        500 Oracle Parkway 5op766
                        Redwood Shores, California 94065

Exhibit 6

From: Melissa Alexander <melissa.alexander@oracle.com>
Date: 27 May 2015 16:30:34 BST
To: "Pelsmakers, Katleen" <katleen.pelsmakers@effem.com>, Michael Murphy
<michael.m.murphy@oracle.com>, Sonny Chhokar <sandev.x.chhokar@oracle.com>
**Cc:** "Lambert, Andrea L" <Andrea.Lambert@effem.com>, Sara Malek <sara.malek@oracle.com>,
"Backer, Eloise" <eloise.backer@effem.com>
Subject: RE: Folloiwing today's call

Thank you for the follow up information, Katleen.

We have conferred with counsel. In light of the data Mars provided on Friday and Mars' commitment to continue to cooperate in the audit process, Oracle confirms that Mars is no longer in breach for failure to permit Oracle's audit and Oracle withdraws its notice of termination on that basis.

Many thanks for all your efforts in moving this forward,
Melissa
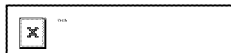
Melissa Alexander Dallmeyer | Director, LMS | Enterprise Accounts
Phone: 4259458292| Mobile: 2675660541 |
ORACLE | 411 108th Ave NE, Suite 900 , Bellevue, WA | 98103

Oracle is committed to developing practices and products that help protect the environment

Exhibit 7

MARS
information services

May 13, 2015

VIA E-MAIL

Mr. Michael Murphy
Senior License Consultant
Oracle License Management Services
120 Park Avenue
New York, NY

Re: Tranche 1 Materials in Assistance of Oracle Audit

Michael:

Mars Information Services ("Mars") hereby provides the information included herewith or attached hereto in response to requests from Oracle for assistance in completing an audit of Mars' use of Oracle programs. As agreed, Mars is providing materials on a "rolling" basis – producing materials as they become available and are processed. This is the first tranche of materials provided in assistance to Oracle's audit, and follows after Mars' April 24, 2015 submission of certain Oracle Server Worksheets that are relevant to Oracle's audit.

The information conveyed herewith is Mars proprietary and confidential information – and has been marked as Confidential Information consistent with Section 7.1 of the Software License and Services Agreement between Mars and Oracle. We trust that you will handle these materials with appropriate care, consistent with Section 7.1.

Mars maintains datacenters in Mt. Olive, New Jersey and Exton, Pennsylvania that use VMware on some servers. Mars VMware servers and clusters in these datacenters are configured so that each VMware cluster has a specific purpose. For example, there is a cluster for Oracle database servers and a separate and distinct cluster for SAP Oracle database servers. As configured, processing within one cluster cannot be moved to or performed by a different cluster. In addition, each cluster has dedicated storage that is inaccessible to the servers in the other clusters – so that, even if work could move between clusters (which is not be possible in our current VMware environment without changing its configuration), the destination cluster would have no access to necessary database data.

Each of the datacenters in Mt. Olive and Exton has four VMware clusters that use Oracle software, as set forth in the table below. Screen shots of these servers are included as Attachment 1 hereto.

Cluster Description	Cluster Name	
	Mt. Olive, NJ	Exton, PA
Database Expert Center ("DBEC") cluster	MTOVMCLS08	ISX-ORACLE_DB-PROD-07
SAP cluster	MTOVMCLS04	ISXVMCLS04-SAP_ORACLE
SAP-partitioned cluster	MTOVMCLS05	ISXVMCLS05-SAP_ORACLE_PARTITIONED
JDA cluster	MTOVMCLS10	ISXVMCLS10

Mars also maintains in Germany a VMware cluster that uses Oracle. Included as Attachment 2 hereto are screenshots for the servers in that cluster.

Per your request, Mars provides the following information in regard to the Verdant Data Loader program:

> How is Verdant Data Loader used with P4P? Business users use Verdant Data Loader in the POC environment to load specifications and validate the quality of data. Every business user that uses this tool has an existing Agile license, as they need to validate the data in the system once loaded.

> Who are the users that use Verdant Data Loader? Business users (as noted above) use Verdant Data Loader, as do five service and development resources.

> How are Verdant Data Loader users tracked/managed? All users with access to the environment are tracked in a spreadsheet and reviewed every four weeks with the Agile Active User report. Users that have not accessed the system for 90 days are reviewed with functional experts. Accounts of users that no longer need access (e g , personnel who have left the company) are disabled.

I am informed that the Agile upgrade is on track to go live tomorrow (i.e., March 14). As we discussed in our meeting today, we were able to run the two SQL queries prior to go live. We are processing that information and anticipate having it to you Friday. In this regard, I misspoke in the meeting today when I suggested we would have it to you today. Apologies for the confusion.

Also, consistent with the Work Plan, we anticipate having to you on Friday the information we discussed to validate server, processor and core counts. In your email this afternoon summarizing the meeting, you have a delivery date of today for those items. I could find nothing in our notes of the meeting where we committed to a date different than in the Work Plan.

Finally, it has come to my attention that eight physical servers where Oracle software runs or is installed were inadvertently not included in the Oracle Server Worksheet that we sent you on April 24, 2015. Information about these servers is presented in the table below, and additional

information is included herewith as Attachment 3. All of these servers are in the VMware clusters in Exton or Mount Olive. As we understand it, information included in the Worksheets for the VMware clusters was collected using an administrative tool that queried server information on a dynamic basis – and these servers were not included in query results because those servers were not running Oracle at the time of the query. In an abundance of caution, we are double-checking to ensure that the Worksheets list all relevant servers.

Physical Server Name	Server Model	Processor Model	Processors (Sockets)	Cores per Processor	Physical Cores
isxe1207	x86_64	GenuineIntel x86_64	2	6	12
isxe1307	x86_64	GenuineIntel x86_64	2	6	12
isxe1308	x86_64	GenuineIntel x86_64	2	6	12
mtoe1160	x86_64	GenuineIntel x86_64	2	6	12
mtoe1507	x86_64	GenuineIntel x86_64	2	6	12
mtoe1516	x86_64	GenuineIntel x86_64	2	6	12
mtoe1607	x86_64	GenuineIntel x86_64	2	6	12
mtoe1608	x86_64	GenuineIntel x86_64	2	6	12

If you have any questions in regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Eloise Backer
Commercial Manager

Exhibit 8

Hi Eloise,

By way of review of yesterday's call, we anticipate to receive the following by no later than Tuesday August 25:

(1) Remaining Server outputs for about half a dozen servers
(2) Confirmation on all Subsidiaries
(3) Answers to the Questionnaire for Agile

Further, by way of reiteration, please provide the expanded tree (Left hand side of the vCenter Console) as shown in the attachment for all the vCenters where Oracle Clusters are running. We have made the assumption that each physical location is its own vCenter (i.e. Mt Olive Exton and Germany) but if that is not the case we need to know. Further, given the usage of 5.1 and higher, all additional servers and/or clusters not running oracle must be licensed. Please provide details around your vCenter configuration listing out which clusters and servers are in which vCenter.

Thank you.

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--
Michael Murphy
Oracle License Management Services | Senior License Consultant
Email: michael.m.murphy@oracle.com (DON'T FORGET THE "M" MIDDLE INITIAL)
phone: 212-813-5065
120 Park AVE | New York, NY USA
```

Exhibit 9

From: Michael Murphy <michael.m.murphy@oracle.com>
Date: 3 September 2015 02:04:48 BST
To: "Backer, Eloise" <eloise.backer@effem.com>, "Lambert, Andrea L" <Andrea.Lambert@effem.com>, "Pelsmakers, Katleen" <katleen.pelsmakers@effem.com>, Sonny Chhokar <sandev.x.chhokar@oracle.com>, Sara Malek <sara.malek@oracle.com>, Melissa Alexander <melissa.alexander@oracle.com>
Subject: Oracle LMS | Touch Point Follow Up

Andrea, Eloise and Katleen,

Per our Call today, the following outstanding data is required to be collected on or before 9/9:
- All outstanding DB script information.
- Agile missing data point (See attached PDF and question below):
    1. Please identify the population of users that have access to Agile data in SAP Global Reference Data, Radar, and Document Repository.
- Missing VMware information pertaining to the vCenter Configuration (previously requested in attached email).
- Certification of completeness signed by C-Level executive (we will accept email communication as a placeholder this week but the certification is required as part of the engagement completion)(See Attached).

If we are missing any information on 9/9, this engagement will go back in escalation via Oracle Legal.

--

```
Michael Murphy
Oracle License Management Services | Senior License Consultant
Email: michael.m.murphy@oracle.com (DON'T FORGET THE "M" MIDDLE INITIAL)
phone: 212-813-5065
120 Park AVE | New York, NY USA
```
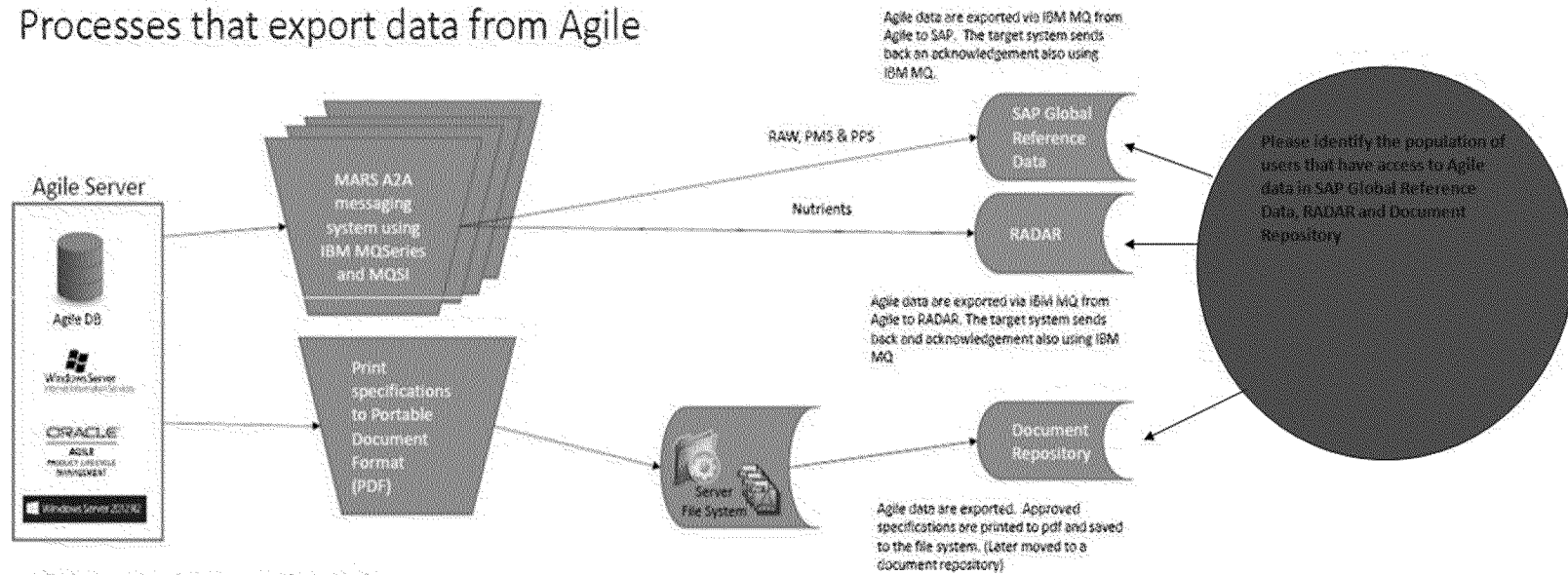
Processes that export data from Agile

Agile data are exported via IBM MQ from Agile to SAP. The target system sends back an acknowledgement also using IBM MQ.

Agile Server

RAW, PMS & PPS

SAP Global Reference Data

Please identify the population of users that have access to Agile data in SAP Global Reference Data, RADAR and Document Repository

Agile DB

MARS A2A messaging system using IBM MQSeries and MQSI

Nutrients

RADAR

WindowsServer
Internet Information Services

ORACLE
AGILE
PRODUCT LIFECYCLE MANAGEMENT

Print specifications to Portable Document Format (PDF)

Agile data are exported via IBM MQ from Agile to RADAR. The target system sends back and acknowledgement also using IBM MQ

Windows Server 2012 R2

Server File System

Document Repository

Agile data are exported. Approved specifications are printed to pdf and saved to the file system. (Later moved to a document repository)

All changes to data are made in Agile.

MARS0252990

[Today's Date]

Michael Murphy
Senior Licensing Consultant
Oracle America, Inc.
120 Park Ave
New York, New York 10017

This certification is made by MARS Information Services (hereafter "MARS") and serves as certification of the information required by Oracle License Management Services.

MARS certifies and warrants that:

- The Oracle Server Worksheet (OSW), and subsequent information in Tranche 1-[TBD], provided by MARS, is a complete and accurate account of all instances of Oracle Database and Oracle Database Option products installed and/or in use by MARS and any of its subsidiaries worldwide.

Signed by a duly authorized C-Level representative of MARS:

Signature   _____

Name   _____

Title   _____

Date   _____

Exhibit 10

MARS
information services

CONTAINS CONFIDENTIAL INFORMATION

Setpember 9, 2015

VIA E-MAIL

Mr. Michael Murphy
Senior Licensing Consultant
Oracle License Management Services
120 Park Avenue
New York, NY

Re: Tranche 15 – Assistance of Oracle Audit

Michael,

This is in response to your email of 2 September, 2015, in which you request certain additional information from Mars.

Mars is committed to supporting Oracle's audit efforts (as attested to by the 233,089 pages of materials that Mars has provided to Oracle). However, it is not inappropriate to note that our contract defines the scope of Oracle's audit rights: "Oracle may, at its expense, audit Client's _use_ of the Programs. Any such audit shall be conducted during regular business hours at Client's facilities and shall not unreasonably interfere with Client's business activities." (_emphasis added_). As touched on below, although Mars has been amenable to assisting Oracle in conducting the audit, Mars must insist that Oracle stay within the agreed-to bounds (_i.e._, audit of _use_ of software).

Responses to specific requests are set forth below.

1.   Agile. Oracle LMS has asked that Mars "identify the population of users that have access to Agile data in SAP Global Reference Data, RADAR and Document Repository." We request that you clarify the information that is sought. In particular, we are uncertain what is meant by "Agile data." Data exported from Agile are "Mars data". As stated by Gary Six (Oracle Sales): data exported from Agile "belongs to Mars"; "Oracle is OK with [Mars] extracting the data" from Agile. We do not believe any users of SAP, RADAR or the Document Repository, in their roles as such, access "Agile data."

It perhaps merits mention that to the extent that Oracle LMS requests information about users of Mars's deployment of SAP, RADAR and the Document Repository, that information is unrelated to Mars' _use_ of Agile software – and is outside the scope of Oracle's audit rights.

MARS
information services

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MOUNT OLIVE, NJ 07828
T+1 973 691 3500
F+1 973 691 3820

2.   <u>VMware</u>. Oracle LMS has requested screenshots of servers in the VMware environment that show "additional servers and/or clusters not running [O]racle". Servers and clusters that do not run Oracle are not probative of Mars' <u>use</u> of Oracle software and are outside the scope of Oracle's audit rights. Mars is amenable to considering any contract provision that Oracle might point to in support of Oracle LMS's request.

3.   <u>Certification of completeness</u>. Oracle LMS has asked for a "[c]ertification of completeness signed by C-Level executive." The requested certificate is different than the certification that Oracle may request under the contract. Under the contract, Oracle may request a certification "verifying that the Programs are being used pursuant to the provisions of [the] Agreement". Mars is amenable to considering an Oracle proposal for Mars to provide a certificate of completion, provided that that certificate take the place of the contractually-defined certification – *i.e.*, Mars would provide one, not two, certifications.

4.   <u>Outstanding DB script information</u>. We have no further ReviewLite script output to provide for any additional database instances – and are unaware of any unanswered requests for such information.

Finally, we have not yet heard back from you with respect to scheduling the line-by-line review and the proposal to complete all factual development (*i.e.*, the line-by-line) prior to issuing a final audit report. Please advise as to when you anticipate being in a position to respond.
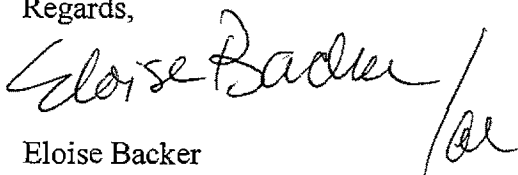
Regards,

Eloise Backer
Commercial Manager

Exhibit 11

ORACLE®

Oracle America Inc.   500 Oracle Parkway   Phone   650-506-5689
Redwood Shores   www.oracle.com
California 94065

September 25, 2015

Via Email

Mars, Incorporated
c/o Khaled Rabbani, General Counsel
6885 Elm Street
McLean, VA 22101
khaled.rabbani@effem.com

      Re: Mars' Breach of Audit Obligations

Dear Mr. Rabbani:

I write regarding Mars' breach of its license agreement by repeatedly refusing to provide Oracle access to information that is required for Oracle to complete its license audit.

Agile Software

In the course of Oracle's audit, Mars has revealed that it uses Oracle's Agile software to populate multiple additional systems used by Mars employees. To Oracle's knowledge, those systems include SAP Global Reference Data, RADAR, and a Document Repository. Oracle's Agile software, among other things, analyzes and configures data input by Mars to manage its product lifecycle and provide employees with the single current accurate view of its product system records across multiple business processes. Use of the records created by Agile is use of the Agile software, whether or not Mars exports the records to another system as an interim step. Therefore, Oracle has requested that Mars identify the population of users of those systems that access data provided by Agile. This information is critical to Oracle's audit of Mars' use of Agile programs, because, pursuant to its Software License and Services Agreement, Mars' use of Agile is limited to the number of users for which it has purchased licenses.

Mars refuses to respond to Oracle's request on the grounds that data exported from Agile are "Mars data" and "belongs to Mars." That is irrelevant. The issue is not the Mars-authored content of the exported data, but whether those accessing the data are making use of the Agile programs. Indeed, Mars' Software License and Services Agreement specifically addresses this situation – a "User" is defined as *any* individual "authorized by [Mars] to use the Programs, *regardless of whether the individual is actively using the Programs at any given time.*" (Emphasis added) Those employees working with data provided by Agile obviously are using Oracle's proprietary analytical, configuration, organizational, and management tools in the Agile programs. If that were not the case, Mars simply would provide its original, raw data to the employees. Therefore, these users must be licensed, and Mars must identify them.

VMware Environments

Also in the course of Oracle's audit, Mars has revealed that it deploys Oracle Database Enterprise Edition and other Oracle programs in VMware vCenter environments. Mars licenses these programs on a Processor basis. Pursuant to Mars' agreement, it must purchase licenses for "all processors where the Oracle Programs are installed and/or running." Oracle programs are installed on any processors where the programs are available for use. Third-party VMware technology specifically is designed for the purpose of allowing live migration of

programs to *all* processors across the entire environment. Thus, Oracle Database Enterprise Edition is installed and available for use on every processor in a vCenter. Therefore, to complete its audit of Mars' use of Oracle programs, Oracle requires and is entitled to complete information about vCenters where Oracle software is installed. For that reason, Oracle has requested screenshots from each physical server from all clusters and all datacenters in Mars' vCenter Server Instance, whether or not Mars contends that any such given server or cluster is not "running" Oracle software.

Mars refuses to provide this information on the grounds that the server and cluster information it is withholding is not probative of Mars' use of Oracle software. This position has no merit, per the obligations in Mars' license agreement discussed above.

Notice of Termination

Oracle informed Mars of its attempt to conduct an audit pursuant to its license agreement with Mars more than a year ago. Mars refused to cooperate for more than seven months, and then began providing responsive information only after Oracle sent a notice of breach of contract and informed Mars that it would exercise its right to terminate Mars' agreement if Mars did not comply. Mars now once again is inappropriately delaying Oracle's audit and withholding access to information in material breach of its obligations in Section 2.4 of its license agreement. Oracle requested both the Agile and VMware information more than a month ago, and has reiterated its requests multiple times. It is improper for Mars to continue to delay Oracle's audit by refusing to respond to these requests based on meritless arguments. Oracle reiterates its requests for immediate access to the information requested above. If Mars continues to refuse, then Oracle will terminate its license agreement with Mars on October 26, 2015. Should Oracle terminate the agreement, Mars will be prohibited from all further use of the Oracle programs.

Thank you for your prompt attention to this matter.

Regards,

Chad Russell
Corporate Counsel
Phone: 650-506-5689
chad.l.russell@oracle.com
Oracle Legal Department
500 Oracle Parkway 5op766
Redwood Shores, California 94065

Exhibit 12

MARS
information services

100 International Drive
Mt. Olive, NJ 07828-1808

VIA E-MAIL

September 30, 2015

Chad Russell
Corporate Counsel
Oracle Legal Department
500 Oracle Parkway 5op766
Redwood Shores, California 94065

       Re: Oracle Audit of Mars Inc.'s Use of Oracle Software

Mr. Russell:

       This is in response to your September 25, 2015 letter in which you assert that Mars has materially breached the Software License and Services Agreement (Agreement) by "inappropriately delaying Oracle's audit and withholding access to information." You state that Oracle will terminate the Agreement on October 26, 2015 if Mars refuses to provide certain information that Oracle has requested with respect to Agile and VMware.

       Your notice of contractual breach is simply unjustified by the facts. As described below, Mars has in fact <u>fully</u> complied with the audit provisions of the Agreement[1] and we therefore vehemently reject the assertion that Mars is in material breach of the Agreement. Any purported termination by Oracle of Mars' right to use the Oracle programs would constitute a material breach of the Agreement by Oracle, would disrupt Mars' business operations, and would cause significant and irreparable harm for which Mars would hold Oracle responsible. In light of the above, we demand that Oracle rescind its notice of breach no later than Monday, October 5, 2015.

       Last week, Mars and Oracle representatives met for two days to go through a line-by-line review of Oracle LMS's preliminary compliance findings. Although Oracle's representatives did not appear well-prepared on the first day, we viewed the effort as productive – and are looking forward to receiving the additional information that LMS committed to provide with respect to servers where Oracle purported to have found use and where Mars was unable to validate Oracle's findings.

       During our meeting, LMS promised to respond to our September 9, 2015 requests for clarification as to the basis for Oracle's requests for certain Agile and VMware information. Your

---

[1] Mars has provided 233,089 pages of information in support of Oracle's audit – and has spent significant resources in assembling that information for Oracle (at no cost to Oracle). Under the Agreement, the audit "shall not unreasonably interfere with Client's business." The parties worked diligently to come to a mutually-agreeable process for completing the audit consistent with this imperative. That effort took time, but was undertaken in good faith. Oracle's assertion that Mars previously was in breach of the Agreement and your statement that "Mars refused to cooperate for more than seven months" fly in the face of the actual facts.

letter of September 25 was the first written response that Mars received in response to that request. We were disappointed that Oracle included a breach notice in the same letter that provided to Mars, for the first time, the basis for the requests that are at issue.

We have been committed to handling the audit process at the business level – and it remains our preference to do so. Nonetheless, we are prepared to make our arguments to a judge if Oracle decides to litigate the Agile and VMware issues that are the grounds for the breach notice – and are confident that we would prevail under such circumstances.

Agile Software

Mars has repeatedly provided to Oracle information as to all users of Agile software. The Agile software itself tracks users. Those data show Mars has a surplus of licenses. At Oracle's request, Mars ran the "Collect User Data" query in all of Mars' Agile environments. The "Collect User Data" query assembled user names and other attributes for all Agile user accounts. The query results showed 481 active Agile user accounts. Mars has a total of 566 licenses for Agile – and thus has a license surplus.[2]

The information that Mars has provided satisfies in full the audit of Agile software that is called for in the Agreement. Pursuant to Section 2.4 of the Agreement, Oracle "may, at its expense, audit Client's *use of the Programs.*" By Oracle's design, a user account is necessary for an individual to log into Agile and to use Agile. Those user accounts are established and tracked in the Agile software – and information about all of these user accounts has been provided to Oracle (as described above). Oracle's assertion that Mars has not yet delivered information that is relevant to Mars' "use of" Agile is factually wrong.[3]

In reality, Oracle is seeking information that has nothing to do with the use of Agile software. Oracle asserts that "[u]se of the records created by Agile is use of the Agile software, whether or not Mars exports the records to another system as an interim step." We disagree. An individual that reads a PDF generated by Agile does not use Agile any more than the recipient of a letter prepared in Microsoft Word could be said to have used Microsoft Word.

As to the point that the definition of "user" includes an individual "regardless of whether the individual is actively using the programs at any given time," this provision stands for the proposition that an authorized individual (*i.e.*, an individual with a user account) is counted as a "user" for licensing purposes whether or not that individual is logged in and actively using Agile at a given time – in effect, this provision precludes multiple users from "time-sharing" one user account or license. It does not stand for the self-serving and absurd proposition which you advocate – namely, that an employee who lacks an Agile user account, who is not trained on Agile, who never logs into Agile and

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[2] At Oracle's request, Mars also ran the MRU query and certain audit log queries that provided further user information. We have no reason to doubt that the queries designed by Oracle accurately capture user information. Certainly, Oracle has never identified any defect in the "Collect User Data" query – or suggested that the query fails to collect user data.

[3] In addition, the Agreement's definition of User requires that Mars *authorize* an individual to use Agile: A User "is defined as an individual *authorized by you to use the application programs . . .*" Mars authorizes its personnel to use Agile by issuing to personnel user names and accounts so that the personnel can log into Agile. Mars does not authorize SAP users (and the others identified in your letter), in their roles as such, to log into Agile. Accordingly, none of those individuals have been authorized to use Agile for purposes of the contract definition of User.

who never even touches a machine that hosts the software, miraculously becomes a "user of the program" when they read a data point that at some point was exported from Agile.

Even if Oracle's view had merit (it does not), Oracle has waived any claim it otherwise might have had that there is a licensable event after information is exported from Agile. In 2013, Mars requested Oracle to provide Oracle's views as to the status of information that is exported from the Agile environment. Oracle (Gary Six) stated: "The data belong[] to Mars, Oracle is OK with you extracting the data." Oracle (Wes Frierson) further stated: "No issues with extracting data from or attaching reporting tools to [Agile.]" Oracle was correct, then – and Mars was entitled to rely on these statements and the plain text of its license agreements (and did so).

VMware

Mars has fulfilled in full its obligations to provide information related to use of the Oracle software in the VMware environment. For example, Mars has provided screenshots for all servers in all VMware clusters where Mars *uses* the Oracle software at issue. *See, e.g.*, MARS0181916 – 31. Oracle does not contend otherwise.

Instead, Oracle seeks to expand the scope of its audit – by looking at all servers where Oracle is "running and/or installed". Oracle is not entitled to do so. Oracle's audit rights extend only to audit of "Clients' *use* of the Programs." The screenshots that Mars has provided include all clusters and all physical servers that use the Oracle software at issue – and Oracle has received all the screenshots to which it is entitled. As we noted in May 13, 2015:

> *Mars VMware servers and clusters in these datacenters are configured so that each VMware cluster has a specific purpose. For example, there is a cluster for Oracle database servers and a separate and distinct cluster for SAP Oracle database servers. As configured, processing within one cluster cannot be moved to or performed by a different cluster. In addition, each cluster has dedicated storage that is inaccessible to the servers in the other clusters – so that, even if work could move between clusters (which is not possible in our current VMware environment without changing its configuration), the destination cluster would have no access to necessary database data.*

Oracle attempts to justify expanding the scope of its audit by asserting that Mars is contractually required to purchase licenses for all processors where the Oracle programs are installed. That misstates Mars' contractual commitment. The mutually-agreed standard for whether Mars is contractually required to purchase licenses is based on Mars' *use* of software. *See* Agreement at § 2.4 ("Oracle may . . . audit Client/s use of the Programs. . . . If an audit reveals that Client has underpaid fees to Oracle, Client shall be invoiced for such underpaid fees based on the corporate discount"). However, even using the misstated legal standard proposed by Oracle, Mars nevertheless has provided all applicable screenshots to Oracle – because *Mars has provided screenshots for all physical servers where the Oracle software is installed. See, e.g.*, MARS0181916 – 31.

Oracle concedes that, at a minimum, a program must be "available for use" in order for the program to be considered installed.[4] Mars has provided conclusive video evidence that Oracle software that is available in one VMware cluster is *unavailable* to all other VMware clusters: at Mars,

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[4] Mars reserves its right to argue that software must be "installed" – and not merely "available for use." However, even under Oracle's looser "available for use" standard, Mars has complied in full with the audit provision.

the VMware software itself does not permit a user to live migrate a virtual machine across clusters. Accordingly, software that is in one cluster is not installed in a different cluster, and software that is available in one cluster is unavailable to a different cluster.

Oracle's apparent concern is based on a fact pattern that simply is not present at Mars. Oracle states that: "VMware technology specifically is designed for the purpose of allowing live migration of programs to *all* processors across the entire environment". In contrast, as Mars has explained, as Mars has demonstrated in video evidence, and as Mars stands ready to further demonstrate as needed to on-site Oracle auditors, as deployed and configured at Mars, the VMware technology *does not allow* any live migration of programs across VMware clusters. There is no basis for Oracle to assert that Oracle database or add-on packs are used, installed or running on any server beyond the VMware cluster where the software is installed.

We invite you to watch the videos that we have provided to LMS so that you will see for yourself that, at Mars, the VMware technology does not facilitate any live migration of a virtual machine from one cluster to another cluster.

Rescinding the Notice of Termination

In view of the foregoing, Mars is not in material breach of the Agreement. We expressly reserve all our legal rights and again ask that you rescind the notice of breach no later than Monday, October 5, 2015.

Sincerely,

Khaled Rabbani

General Counsel—Mars Global Services

Exhibit 13

Conditionally Filed
Under Seal

Exhibit 14

Conditionally Filed
Under Seal

Exhibit 15

Conditionally Filed Under Seal

Exhibit 16

Conditionally Filed Under Seal

Exhibit 17

Conditionally Filed Under Seal

Exhibit 18

Conditionally Filed Under Seal

Exhibit 19

Conditionally Filed Under Seal