Department of Administrative Services
Multi-Agency Radio Communication System

MARCS SERVICE SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

The following are the terms and conditions of the MARCS Service Subscription Agreement made by and between MARCS, located at 4200 Surface Road, Columbus, Ohio, 43228 and the Subscriber. The MARCS Service Subscription Agreement and these terms and conditions are referred to as the Agreement.

SECTION 1: DEFINITIONS

1.1 Activation Date. The date that the device identification number was issued by MARCS.

1.2 MARCS. The Multi-Agency Radio Communication System, a 700/800 MHz radio and data network that utilizes state-of-the-art trunked technology to provide statewide interoperability with digital clarity to police, fire, and EMS services, as well as other public and private safety and service agencies.

1.3 Party/Parties. Party refers singularly to either MARCS or the Subscriber; Parties refers collectively to both.

1.4 Subscriber. The entity entering into this the Agreement. The following types of entities may subscribe to MARCS services: (1) a public or private entity that provides public safety services, provides public infrastructure, or materially contributes to homeland security; (2) equipment vendors that utilize subscription services for the support of MARCS and its current and potential subscribers; or (3) public or private school districts located within the state of Ohio.

SECTION 2: MARCS' RESPONSIBILITIES

2.1 MARCS agrees to provide the Subscriber with MARCS radio system service for MARCS approved and compatible devices and equipment. All approved devices must have a unique individual MARCS issued device ID per device except for pagers.

2.2 MARCS provides statewide interoperability to its Subscribers throughout Ohio and within approximately a 10 mile radius outside of Ohio.

2.3 MARCS agrees to provide continuous system availability from all applicable towers and central equipment infrastructure. Continuous system availability may be impacted by unforeseen equipment failure, natural disasters, and extreme weather. MARCS will work diligently to remedy any outages as soon as possible.

2.4 MARCS agrees to provide continuous access to live assistance via the Network Operations Center (866-OH-MARCS) to assist Subscribers.

2.5 MARCS agrees to work with Subscriber to develop talkgroup plans based on Subscriber's mission and agents' deployment and the interoperability requirements within the geographic location. MARCS staff may recommend the decommissioning of existing talkgroups based upon system performance or the lack of utilization of those talkgroups, and to ensure system security.

2.6 MARCS agrees to review additional devices for activation.

2.7 MARCS agrees to continually monitor the MARCS P-25 system for situations in which devices, utilization, and/or interference degrade the system's performance, and to take necessary actions with Subscribers and other entities to optimize the system performance.

SECTION 3: SUBSCRIBER'S RESPONSIBILITIES

3.1 Subscriber agrees to:

3.1.1 Maintain and repair all devices used for the subscription service.

3.1.2 Limit the use of devices to emergency services, public safety, first responders, or support of aforementioned services.

3.1.3 Not use profanity over the system.

3.2 Subscriber shall be responsible for the proper use of devices subscribed to MARCS. Subscriber agrees to use shortened transmissions, transmission breaks during lengthy traffic, deferral to emergency traffic, and other means of keeping the radio traffic as minimal as possible. Continued improper use of any device may result in the suspension or termination of the Agreement without a refund of any fees paid.

3.3 Subscriber shall not sublet activated devices or assign any subscription services to any individual, agency, or organization, without the express written consent of MARCS.

3.4 Subscriber shall notify MARCS immediately upon discovery of any lost or stolen devices so that the devices can be inhibited.

3.5 Subscriber shall work with MARCS' device management team to develop talkgroup plans that support the mission of the Subscriber, without negatively impacting the MARCS system. Subscriber understands that these talkgroups may be limited in number to ensure the system integrity, and shall include the MARCS interoperability talkgroups, as detailed in MARCS Policy MPP-15.0 posted to the MARCS website http://das.ohio.gov/MARCS, which can be found by typing MARCS into the Resources Filter on the Policy Finder.

3.6 Subscriber's talkgroups will generally be limited to the main county of operation and surrounding counties, with the exception of interoperability talkgroups. MARCS will work to a mutually agreed upon resolution with Subscriber if Subscriber has unique needs to expand certain talkgroups beyond this limitation.

3.7 Subscriber shall not utilize any patching, cradle point, bridging, or other similar devices to broadcast MARCS radio traffic onto other radio systems, LTE devices, or broadcast media without explicit written consent of the MARCS Program Director. This does not apply in the case of a short-term (less than 24-hour) emergency. Emergency use will not be permitted on a recurring, extended, or routine basis.

SECTION 4: SUBSCRIBER INVENTORY GUIDELINES

4.1 Subscriber's initial inventory and future inventory will be submitted via the process delineated at the MARCS website posted at https://das.ohio.gov/technology-and-strategy/marcs/subscribers (click Devices Form).

4.2 Subscriber's inventory is subject to audit by MARCS at any point in time. MARCS reserves the right to change or update Subscriber's inventory at any time, with notification to Subscriber.

4.3 Any device active on the MARCS system for a day in a month shall be charged the full monthly rate for service that month. MARCS does not pro-rate the service fee.

4.4 For an inventory discrepancy, all affected parties agree to cooperate to resolve the discrepancy. Invoicing will be based on the corrected inventory. If additional fees are due, MARCS will invoice Subscriber, and Subscriber agrees to pay any additional fees in the next quarterly payment. If the Subscriber has overpaid due to an inventory discrepancy, MARCS may credit Subscriber any fees owed to Subscriber but will not issue credits for more than one quarter in arrears.

SECTION 5: TERM OF AGREEMENT

5.1 The Agreement shall commence on the date that MARCS signs the Agreement and shall continue until June 30 of the current state fiscal biennium, unless earlier terminated pursuant to the terms of the Agreement.

5.2 The Agreement shall automatically renew for an additional two-year term on July 1 of each new state biennium upon the same terms and conditions as are set forth herein unless, 30 days prior to the end of the biennium, either Party provides the other with written notice of its intent not to renew.

SECTION 6: COMPENSATION

6.1 Subscriber agrees to pay the current device rate as set by the State's annual device rate setting process.

SECTION 7: REGULATORY CONTRACT REQUIREMENTS

7.1 Compliance With Laws. Subscriber must comply throughout the duration of the Agreement with all applicable federal, state, and local laws and Executive Orders regarding the use of MARCS radio system service.

7.2 Governing Law. The Agreement is governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.

SECTION 8: CONTRACT CONSTRUCTION

8.1 Amendments/Waiver.

8.1.1. Amendments. No change to any provision of the Agreement will be effective unless it is in writing and signed by both Parties to the Agreement.

8.1.2. Waiver. The failure of either Party at any time to demand strict performance by the other Party of any of the terms of the Agreement will not be a waiver of those terms or to any other terms of the Agreement. Waivers must be in writing to be effective, and either Party may at any later time demand strict performance.

8.2 Language Construction. The Agreement will be construed in accordance with the plain meaning of its language and neither for nor against the drafting Party.

8.3 Headings. The headings in the Agreement are for convenience only and will not affect the interpretation of any of the Agreement terms and conditions.

8.4 Notices. For any notice under the Agreement to be effective, the notice must be made in writing and delivered to

8.4.1 Subscriber at the address provided on the MARCS Service Subscription Agreement.

8.4.2 MARCS at State of Ohio Department of Administrative Services, Office of First Responder Communications, Attention: MARCS Program Director, 4200 Surface Road, Columbus, Ohio 43228.

8.5 Severability. If any provision of the Agreement or the application of any provision herein is held by a court to be contrary to law, the remaining provisions of the Agreement will remain in full force and effect.

8.6 Survivorship. All sections herein relating to payment and limitations on damages will survive the termination of the Agreement. In addition, to the extent necessary to carry out the purpose of the Agreement, all other terms, conditions, or representations contained in the Agreement will survive the expiration or termination of the Agreement.

8.7 Counterparts. The Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.8 Entire Agreement. The Agreement supersedes all prior agreements, written or oral, between Subscriber and MARCS related to the subject of the Agreement. Notwithstanding this paragraph, the Agreement does not supersede any Tier Agreement that may exist between MARCS and Subscriber. The Agreement and each of its provisions are binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by both Parties.

SECTION 9: INVOICING AND PAYMENT FOR SERVICE

9.1 Invoices will be generated quarterly based on the State of Ohio fiscal year (October/January/April/July). Invoices will be sent to Subscriber within 30 days after the end of each quarter. MARCS may allow for other invoicing periods, based on written agreement between MARCS and Subscriber.

9.2 Invoicing for subscription services will begin 30 days from the Activation Date of any device.

9.3 MARCS services will be invoiced at the current statewide device rate in effect at the time of each quarterly invoice.

9.4 All quarterly invoices are due and payable within 30 days after actual receipt of the invoice. Any invoice that is not disputed within 90 days after actual receipt shall be deemed payable as issued. Any unpaid invoices may be sent to the Ohio Attorney General's Office Collection Enforcement Section for collection and may be subject to additional fees and penalties.

9.5 Payments made by Subscriber shall contain the invoice number and shall be made payable to the Treasurer, State of Ohio. Remit payments to:

Treasurer, State of Ohio
Department of Administrative Services
L-3686
Columbus, OH 43260-3686

SECTION 10: PERFORMANCE AND COMPLIANCE

10.1 MARCS reserves the right to discontinue service if Subscriber's actions negatively impact other MARCS subscribers and/or MARCS services.

10.2 MARCS may terminate or suspend the Agreement for Subscriber's failure to pay its invoices for two consecutive quarters or for more than two nonconsecutive quarters, or for Subscriber's violation of the terms of the Agreement.

10.3 In the event of a suspension or termination of the Agreement, MARCS will issue a written notice to Subscriber. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice.