

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

BOARD AGENDA ITEM – May 11, 2021

DEPARTMENT/SCHOOL INITIATED AGREEMENT

21-396-A-WH - MPulse

<input type="checkbox"/> (BW) Bids Waived <input checked="" type="checkbox"/> (A) Agreement

REQUESTOR: Plant Operations and Maintenance **Legal Review Required:** Yes No
Standard Template Used with No Changes: Yes No
Standard Template Type: **Software License Addendum**

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
MPulse Software Inc., a JDM Company	\$33,068.00 Implementation and year 1 license fees \$42,968.00 Annual Fees Years 2 - 5	MPulse Enterprise License, Mobile Licensing, Implementation, and Support Services
Five Year Total	\$204,940.00	

<input type="checkbox"/> Contract Renewal	New Contract Amount	\$204,940.00
<input type="checkbox"/> Recurring Contract	Previous Contract Amount	N/A
<input checked="" type="checkbox"/> New Contract	Variance	N/A

PRICE INCREASE / DECREASE EXPLANATION: N/A

DISCUSSION:

Plant Operations & Maintenance (PO&M) currently uses TeamWorks computerized maintenance management software (CMMS) to process maintenance work orders district wide. There are specific management reports and other tools that TeamWorks cannot provide easily without modification. TeamWorks software was bought by the company that owns MPulse software, a much more capable and robust CMMS work order management system. PO&M evaluated MPulse software and determined that MPulse can produce the desired management reports and dashboards in its standard form. PO&M will migrate the management of the District’s work order system from TeamWorks to MPulse.

Additionally, MPulse software lends its functionality to two other Brevard Public Schools departments: Transportation Services and Educational Technology (ET). Transportation Services will use a separate MPulse database to manage both the yellow fleet of school buses, and the white fleet of passenger cars and work trucks. Essentially, a vehicle is similar to a facility building, consisting of components against which we track installation dates, warranties, work orders, and parts and labor costs for repairs. ET will use MPulse to manage the District’s Help Desk work tickets, similarly to the existing HEAT software.

This multi-department use of MPulse’s powerful database software is extremely cost efficient, with second year through fifth year annual renewal under \$15,000 for each of the three departments. This cost aligns with current TeamWorks and HEAT annual renewal fees and is far below the estimated \$300,000 annual cost for a dedicated fleet management software system.

The standard software license addendum template has been used, which does not require legal review.

CONTRACT TERM:

The initial contract term shall commence May 12, 2021 and continue until June 30, 2026.

RECOMMENDATION:

It is the recommendation of Susan Hann, P.E., Assistant Superintendent of Facilities Services, and Jim Ross, Director of Plant Operations and Maintenance to approve the attached agreement with MPulse Software Inc. in the amount of \$204,940.00.

AUTHORITY FOR ACTION:

Florida Administrative Code 6A-1.012 (11)(b)



Agreement #: 21-396-A-WH
Approval Date: _____

SOFTWARE LICENSE ADDENDUM

THIS SOFTWARE LICENSE ADDENDUM (“Software Addendum”) is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS”) and MPulse Software Inc., a JDM Company whose business address is 1574 Coburg Road, #779 Eugene, Oregon 97401, (hereinafter referred to as “Contractor”), and is intended to supplement the agreement entered into between the parties effective upon issuance of Purchase Order under Agreement #21-396-A-WH regarding software and/or Services to be provided by Contractor to BPS.

1. **TERM** – The term of this Software Addendum will coincide with the term of the agreement between the parties and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the parties.
2. **DEFINITION OF “AGREEMENT” AND CONFLICT** - As used herein, the term “agreement” shall mean Contractor’s standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor’s standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor’s agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor’s agreement, the following provisions as set forth in this Software Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency’s county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS’s rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State’s governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Annual licensing and maintenance costs are payable at the beginning of each renewal period. Payment for services will be in arrears. Any references to prepayment are deleted. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY** -BPS, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** -BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a “claims-made” basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S..

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION**

a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees (“Indemnitees”) from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys’ fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR’s performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR’s available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS’s sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of “solely negligent” should arise, a court agreeable to both Parties may be engaged to settle this dispute.

b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS’s sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS’s rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

25. **PUBLIC RECORDS – EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. RECORDSREQUEST@BREVARDSCHOOLS.ORG. THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Software Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Software Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Software Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor's agreement, a copy of Contractor's standard terms and conditions as they appear on the date of execution of this Software Addendum are attached hereto and incorporated herein as Exhibit "A."

28. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

IN WITNESS WHEREOF, BPS has made and executed this Software License Addendum and Contractor has made and executed this Software License Addendum on the day and year below written.

SIGNATURE PAGE TO FOLLOW

MPULSE SOFTWARE INC., A JDM COMPANY

By: Randall Brous Date: April 20, 2021
Authorized Representative Signature

Print Name: Randall Brous

Title: President

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____ Date: _____
Misty Belford, Board Chairperson

EXHIBIT "A"
CONTRACTOR'S STANDARD TERMS AND CONDITIONS ATTACHED

SOFTWARE SALES AND SUPPORT AGREEMENT

This Software Sales and Support Agreement (this “**Agreement**”), dated as of the date last signed by both parties (the “**Effective Date**”), is by and between The School Board of Brevard County, Florida (“**Customer**”), by and on behalf of itself and its current and future Affiliates, and MPulse Software, Inc., a Washington corporation (“**MPulse**”) by and on behalf of itself and its current and future Affiliates.

RECITALS

Customer wishes to purchase a license from MPulse to use and operate MPulse’s software, as further described herein, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. **Definitions.** Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

“**Additional Services**” has the meaning set forth in Section 2.3.

“**Affiliate**” means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with MPulse or Customer. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, or ownership of more than twenty percent (20%) of the voting securities of the person.

“**Authorized Users**” means all persons determined by Customer or any of its Affiliates, and authorized by MPulse, to access and use the Services through Customer’s account as set forth in the Quote. Without limitation, Authorized Users may include employees, contractors, and agents of Customer.

“**Customer Data**” means any and all information, data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of Customer or any Authorized User for Processing by or through the Hosted Services, or (b) collected, downloaded, or otherwise received by MPulse or the Hosted Services for Customer or any Authorized User pursuant to this Agreement or at the written request or instruction of Customer or such Authorized User.

“**Documentation**” means all generally available documentation relating to the Services, including all user manuals, operating manuals, and other instructions, specifications, documents,

and materials, in any form or media, that describe any component, feature, requirement, or other aspect of the Services, including any functionality, testing, operation, or use thereof.

“Hosted Services” has the meaning set forth in Section 2.2.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Losses” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable actual attorneys’ fees.

“Maintenance and Support Services” has the meaning set forth in Section 2.1.

“MPulse Materials” means all devices, documents, data, know-how, methods, processes, software, and other inventions, trade secrets, works, technologies and materials (including any and all MPulse Software, Documentation, computer hardware, programs, reports and specifications, client software, and deliverables), and any such related Intellectual Property Rights, that are proprietary to MPulse and provided or used by MPulse in performing the Services.

“MPulse Software” or **“Software”** means the MPulse software application or applications and all new versions, updates, revisions, improvements, and modifications, as may be further described in Exhibit B, of the foregoing, whether remotely accessed or locally installed, used as part of the Services.

“Process” means to perform any operation or set of operations on any data, information, material, work, expression, or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or (c) block, erase, or destroy. **“Processing”** and **“Processed”** have correlative meanings.

“Quote” means those terms and conditions of the purchase of the license, hosting and support and maintenance obligations further described herein, attached as Exhibit A.

“Representatives” means, with respect to a party, that party’s and its Affiliates’ respective employees, officers, directors, consultants, advisors, and, with respect to MPulse, MPulse’s subcontractors, and, with respect to Customer, its independent contractors that are Authorized Users.

“**Services**” means the Maintenance and Support Services, the Hosted Services and the Additional Services.

2. **Services.** Throughout the Term, MPulse shall, in accordance with this Agreement, provide to Customer and its Authorized Users with the following:

2.1 Maintenance and Support Services. The maintenance and support services set forth in Exhibit B (the “**Maintenance and Support Services**”).

2.2 Hosted Services. The hosting, management, and operation of the MPulse Software and other services for remote electronic access and use by the Customer and its Authorized Users (the “**Hosted Services**”).

2.3 Additional Services. Additional services not included within the Maintenance and Support Services and the Hosted Services (“**Additional Services**”) will be charged by MPulse pursuant to the terms set forth in Exhibits B and C.

3. **License Grant and Restrictions.**

3.1 MPulse Software License Grant. MPulse hereby grants to Customer and its Affiliates, exercisable by and through their Authorized Users, a worldwide, nonexclusive, perpetual and transferable (as permitted under Section 15.7) right and license to use the MPulse Software, subject to the restrictions set forth in Section 3.3. As is otherwise set forth in Section 5.5, the license granted under this Section 3.1 shall survive termination of this Agreement.

3.2 Hosted Services License Grant. MPulse hereby grants to Customer and its Affiliates, for the Term of this Agreement, exercisable by and through their Authorized Users, a worldwide, nonexclusive and transferable (as permitted under Section 15.7) right and license, subject to the restrictions set forth in Section 3.3, to:

(a) access and use the Hosted Services for Customer’s and its Affiliates’ lawful business purposes;

(b) make copies of the Documentation in connection with use of the Services under this Agreement (subject to the confidentiality provisions set forth in Section 8);

(c) perform, display, execute, reproduce, and distribute, and otherwise make available to Authorized Users, any MPulse Materials solely to the extent necessary to use the Services in accordance with this Agreement.

The license granted under this Section 3.2 may be suspended (a “**Suspension Period**”) without notice during any period which Customer is in default of this Agreement and shall terminate upon termination of this Agreement. During any Suspension Period, MPulse shall not be obligated to provide the Hosted Services or the Maintenance and Support Obligations unless and until such default is cured. During any Suspension Period, MPulse shall not be required to refund any portion of the fees paid hereunder and Customer’s payment obligations hereunder shall not be delayed or suspended during such periods. During any Suspension Period, MPulse shall be excused from performing its obligations hereunder, shall not be required to refund any portion of

the fees paid by Customer hereunder and Customer's payment obligations hereunder shall not be delayed or suspended during such periods.

3.3 License Restrictions; Ownership. Customer shall not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make any Services or MPulse Materials available to any third party, except as expressly permitted by this Agreement; or (b) use or authorize the use of the Services or MPulse Materials in any manner or for any purpose that is unlawful; or (c) directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to derive source code or MPulse's undisclosed trade secrets from the Services or the MPulse Materials.

4. Service Availability.

4.1 Service Availability. MPulse shall provide the Hosted Services in accordance with Exhibit D (Service Availability Agreement).

4.2 Failure to Meet Availability Levels. In the event MPulse does not meet the Availability level described in Exhibit D, MPulse shall: (a) use its best efforts to ensure that any unmet Availability level is subsequently met; and (b) investigate and report on the causes of the problem, including a root cause analysis and the status of remedial efforts being undertaken with respect to such problems. Notwithstanding the foregoing, MPulse will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Hosted Services.

5. Term and Termination.

5.1 Term. This Agreement shall be effective as of the Effective Date and shall continue for the period set forth in the Quote ("**Initial Term**") unless earlier terminated as provided in Sections 5.2 or 5.3. Upon expiration of the Initial Term, and each successive term thereafter (jointly, the "**Term**"), this Agreement will automatically renew for successive one (1) year terms unless either party gives the other written notice of nonrenewal at least thirty (30) days before expiration of the Term.

5.2 Termination for Cause. Either party may terminate this Agreement upon written notice to the other party upon the material breach by the other party of any provision of this Agreement and if such breach continues for a period beyond thirty (30) days after delivery of written notice specifying such breach.

5.3 Immediate Termination.

(a) This Agreement may be terminated immediately by either party upon written notice to the other party as follows:

- (i) If the other party engages in any act that would subject either party to criminal liability in the reasonable opinion of a party;
- (ii) Upon dissolution of either party;

- (iii) Upon the following: (i) the insolvency of a party; (ii) the filing of a voluntary or involuntary petition by or on behalf of a party under federal bankruptcy Law; (iii) a party entering into an agreement with creditors for the liquidation of its assets; or (iv) the appointment of a receiver or trustee to take charge of all the assets of a party; and

5.4 Effect of Termination; Transition.

(a) If this Agreement is terminated pursuant to Section 5.2 or 5.3, or if after expiration of the Term or other termination of this Agreement, Customer is determined to have breached its surviving obligations under this Agreement, the licenses granted by MPulse to Customer under Sections 3.1 and 3.2 and any other express or implied license to use the MPulse Materials shall terminate and Customer shall no longer have access to or the right to use the MPulse Materials. If this Agreement is terminated for any other reason, the license granted by MPulse to Customer under Section 3.2 shall terminate.

(b) Except as otherwise provided in this Agreement, upon and after the termination or expiration of this Agreement, Customer shall pay to MPulse all charges and amounts due and payable to MPulse, if any, for Services actually performed; and

(c) Notwithstanding any provisions of this Agreement to the contrary, upon termination or expiration of this Agreement, Customer may request and MPulse, at its discretion, may continue to provide the Services for a reasonable fee determined by MPulse, pursuant to the terms and conditions of this Agreement and otherwise reasonably cooperate with Customer, for a period of up to ninety (90) days from the effective date of such termination so as to allow Customer or its Affiliates to transition to use of a new service provider or prepare to support the MPulse Software internally (“**Termination Assistance Period**”). Such assistance shall include copying and transferring Customer Data from MPulse Systems to Customer Systems in a mutually agreeable format. For clarity, any Termination Assistance Period will be an extension of the Term.

5.5 Survival. The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1, Section 3.1, Section 3.3, Section 5.4, this Section 5.5, Section 6, Section 7, Section 8, Section 9.3, Section 11, and Section 15.

6. **Fees.** Customer agrees to pay the fees set forth in the Quote and on the terms and conditions set forth in Exhibit C. If the terms of Exhibit C and the Quote conflict, the terms set forth in the Quote shall govern.

7. Ownership.

7.1 Ownership of Customer Data. Customer may provide Customer Data to MPulse in connection with this Agreement. As between Customer and MPulse, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 7.2.

7.2 Limited License to Use Customer Data. Subject to the terms and conditions of this Agreement, Customer and each of its Affiliates hereby grant MPulse a limited, royalty-free, fully paid up, perpetual, nonexclusive, transferable (solely as set forth in Section 15.7), and sublicensable license to Process the Customer Data solely as necessary to provide the Services for Customer's and such Affiliates' benefit as provided in this Agreement for so long as Customer or any Authorized User uploads or stores such Customer Data for Processing in conjunction with the Services. Customer agrees the forgoing license grant shall allow MPulse to aggregate and otherwise use Customer Data to improve MPulse's services and for MPulse's internal research and development purposes, provided that MPulse complies with the confidentiality provisions set forth in Section 8. Except for this limited license, nothing contained in this Agreement shall be construed as granting MPulse or any third party any right, title, or interest in or to any Customer Data.

7.3 Ownership of MPulse Materials. As between Customer and MPulse, MPulse is and will remain the sole and exclusive owner of all right, title, and interest in and to the MPulse Materials, subject only to the licenses granted in this Agreement. Further, this Agreement does not transfer from MPulse to Customer any MPulse Materials, and Customer agrees that MPulse Materials constitute trade secrets of MPulse and may be subject to copyright or patent protection in favor of MPulse.

8. Confidentiality.

8.1 Confidential Information. In connection with this Agreement, each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). Subject to Section 8.2, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party marks as confidential or proprietary which may include information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, clients, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as “confidential.” Without limiting the foregoing, (a) all Customer Data is and will remain the Confidential Information of Customer; (b) the MPulse Software and Documentation are and will remain the Confidential Information of MPulse; and (c) the financial terms of this Agreement are the Confidential Information of both parties.

8.2 Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a nonconfidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3 Confidentiality and Use. Each Receiving Party recognizes and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party's business and that neither party would enter into this Agreement without assurance that such information and its value will be protected as provided in this Section 8 and elsewhere in this Agreement. As a

condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for so long as Confidential Information is in its possession:

(a) not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with any applicable Laws, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 8.3; and (iii) are bound by confidentiality obligations at least as protective as the terms set forth in this Section 8.3;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' noncompliance with, the terms of this Section 8; and

(e) notify the Disclosing Party in writing promptly of any unauthorized disclosure or use of the Disclosing Party's Confidential Information and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights and other rights therein.

8.4 Compelled Disclosures. If the Receiving Party or any of its Representatives are compelled by applicable Law to disclose any Confidential Information, then, to the extent permitted by applicable Law, the Receiving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement. If such an event occurs, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

8.5 Return or Destruction of Confidential Information. Subject to any contrary obligations under applicable Law and, upon a Disclosing Party's written request or within thirty (30) days of termination or expiration of this Agreement or, if applicable, expiration of any additional term in which MPulse provides the Services to Customer, the Receiving Party shall, as directed by the Disclosing Party, return or destroy all of the Disclosing Party's Confidential Information then possessed, in any form, and provide a written statement to the Disclosing Party certifying that it has complied with the requirements of this Section 8.5. In the event any applicable Law prevents a Receiving Party from returning or destroying the Disclosing Party's Confidential Information, the Receiving Party shall retain the minimum Confidential Information necessary, apply the confidentiality, security, and other requirements of this Agreement to such Confidential Information for as long as it is maintained; and promptly return or destroy the Confidential Information as soon as the applicable Law permits it to do so.

9. **Data Security.** Throughout the Term, MPulse shall:

9.1 maintain and enforce an information security measures including safety and physical and technical security policies and procedures with respect to its Processing of Customer Data that meet or exceed applicable industry practices and standards;

9.2 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of Customer Data and the nature of such Customer Data, consistent with industry practice and standards;

9.3 work with Customer to formulate a plan to rectify all security breaches and unauthorized access concerning Customer Data, upon occurrence of such event.

10. **Indemnification.**

10.1 General Indemnification.

(a) MPulse shall defend, indemnify and hold harmless Customer and each of Customer's Affiliates, and their respective officers, directors, employees, agents, contractors, permitted successors, and assigns (each of the foregoing persons, a "**Customer Indemnitee**"), from and against any and all Losses incurred by the Customer Indemnitee arising out of or relating to any claim, suit, action, or proceeding (each, an "**Action**") by a third party (other than an Affiliate of the Customer Indemnitee) to the extent that such Losses do or are alleged to arise out of or result from any gross negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of MPulse under this Agreement,

(b) Notwithstanding Section 10.1(a) above, to the extent that any Action or Losses described in this Section 10.1 arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party, MPulse's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of Section 10.2 and Section 10.3. Section 10.1, 10.2 and 10.3 set forth MPulse's sole obligation and liability and MPulse's exclusive remedies with respect to any Action or Losses described therein.

10.2 Infringement Indemnification by MPulse. MPulse shall indemnify, defend, and hold harmless each and all of the Customer Indemnitees from and against all Losses arising out of or resulting from any Action by a third party (other than an Affiliate of the Customer Indemnitee) to the extent that such Losses arise out of or result from a claim that any of the Services, or Customer's or any Authorized User's use thereof, infringes upon, misappropriates, or otherwise violates any Intellectual Property Right or other right of a third party, provided, however, that MPulse shall have no liability or obligation for any Action or Losses to the extent that such Action or Losses arise out of or results from any:

(a) alteration or modification of the Hosted Services or MPulse Software by or on behalf of Customer or any Authorized User without MPulse's authorization;

(b) use of the Services by Customer or an Authorized User pursuant to this Agreement in combination with any software or service not provided, authorized, or approved by or on behalf of MPulse, if (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in MPulse's or Customer's industry and there are no Documentation or other materials that have been provided to Customer indicating MPulse's specification, authorization or approval of the use of the Hosted Services in combination therewith;

(c) access to or use of the Services that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement or Documentation;

(d) material breach of this Agreement by Customer or material noncompliance herewith by any Authorized User; or

(e) violation of any applicable Law by Customer or any of its Authorized Users.

10.3 Mitigation.

(a) If MPulse learns of any actual or potential infringing component of the Services, MPulse shall promptly, at its sole cost and expense:

(i) procure for Customer the right to continue to access and use the Services to the full extent contemplated by this Agreement and the Documentation; or

(ii) modify or replace all actual and potentially infringing components, of the Services without reducing functionality of the Service.

(b) If neither of the remedies set forth in Section 10.3(a) is reasonably available then MPulse shall make good faith efforts to secure the right for Customer to continue using the Services for a transition period of up to six (6) months to allow Customer to replace the affected Services without disruption. If in good faith MPulse cannot or reasonably believes that it cannot secure such rights for Customer, MPulse may terminate this Agreement upon ten (10) days' written notice.

10.4 Indemnification By Customer. Customer shall indemnify, defend and hold harmless MPulse, and its respective officers, directors, employees, agents, contractors, permitted successors, and permitted assigns (each, an "**MPulse Indemnitee**") from and against all Losses incurred by the MPulse Indemnitee arising out of or resulting from any Action by a third party to the extent that such Losses do or are alleged to arise out of or result from:

(a) any claim that any Customer Data is unlawful or actually does or threatens to infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party; or

(b) any use of the Services or MPulse Software by Customer or any Authorized User that is beyond the scope of or otherwise fails to conform to the express requirements or

restrictions of this Agreement or any authorization or approval given in writing by MPulse to Customer or such Authorized User.

10.5 Indemnification Procedure. The party seeking indemnification shall promptly notify the Indemnifying Party in writing of any Action for which it seeks indemnification pursuant to this Section 10 and cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the other party's prior written consent. Any Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choice. A party's failure to perform any obligations under this Section 10.5 will not relieve the Indemnifying Party of its obligations under Section 10 except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure.

11. Limitations of Liability.

11.1 EXCLUSION OF INDIRECT DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES.

11.2 CAP ON MONETARY LIABILITY. IN NO EVENT SHALL MPULSE'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE FEES UNDER THIS AGREEMENT (INCLUDING AMOUNTS ALREADY PAID AND AMOUNTS THAT HAVE ACCRUED BUT NOT YET BEEN PAID) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has, and throughout the Term, the full right, power, and authority to enter into this Agreement and perform its obligations hereunder; and (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party. Each party shall comply with all applicable Laws as they concern this Agreement or the subject matter hereof.

12.2 MPulse Warranties. MPulse represents, warrants and covenants to Customer that:

(a) MPulse has, and throughout the Term, the unconditional and irrevocable right, power, and authority to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Agreement;

(b) as accessed and used by Customer or any Authorized User in accordance with this Agreement and the Hosted Services, Documentation and all other Services and materials

provided by MPulse under this Agreement will not infringe or misappropriate any Intellectual Property Right;

(c) the MPulse Software and Services will conform to and perform in accordance with the Documentation and this Agreement;

(d) MPulse will perform all Services in a timely, professional, and workmanlike manner with a level of skill consistent with best industry standards, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet MPulse's obligations under this Agreement.

12.3 **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 12 AND EXHIBIT B OF AGREEMENT, MPULSE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF.

13. **Insurance.**

13.1 **Required Coverage.** At all times during the Term, MPulse shall maintain all insurance coverage required by applicable Law and in any event reasonable insurance coverage at its discretion. MPulse currently carries the following coverages, in the following types and amounts:

(a) Commercial General Liability with limits no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate, which policy will include contractual liability coverage insuring the activities of MPulse under this Agreement; and

(b) Worker's Compensation and employers' liability insurance with limits no less than the minimum amount required by applicable Law; and

13.2 **Evidence of Coverage.** Upon Customer's reasonable request, MPulse shall provide Customer with insurance certificates evidencing coverage required pursuant to this Section 13.

14. **Force Majeure.** Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any: acts of God, flood, fire, earthquake or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; cyber-attacks or intrusions, strikes, labor stoppages or slowdowns, or other industrial disturbances; or passage of Law or any action taken by a governmental or public authority, including imposing any export or import restriction, quota, or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case, provided that (a) such event is outside the reasonable control of the affected party; (b) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. **Miscellaneous.**

15.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship, in each case, without the prior written consent of the other party. The foregoing notwithstanding, MPulse may (i) display Customer's name and logo on its webpage titled "MPulse Customers" (or any subsequent, substantially similar web page) featuring or displaying MPulse's current customers; and (ii) publish case studies or other similar marketing materials.

15.4 Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to the contact party set forth in the Quote (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4). Notices sent in accordance with this Section 15 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if sent by facsimile or email (in each case, with confirmation of transmission) during the addressee's normal business hours, and (d) on the next business day, if sent by facsimile or email (in each case, with confirmation of transmission) after the addressee's normal business hours; and (e) on the fifth (5th) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.5 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.6 Entire Agreement. This Agreement, including its schedules and Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The foregoing notwithstanding, unless in conflict with the terms set forth in this Agreement, in which case the terms of this Agreement shall govern, Customer and its personnel may be subject to such other terms and conditions that such parties otherwise agree upon in conjunction with the use of the MPulse Software and Services, including any terms of use, privacy policies or similar policies.

15.7 Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent shall not unreasonably be withheld or

delayed, provided that either party shall have the right, without the other party's consent, to assign or otherwise transfer this Agreement (i) to any of its Affiliates; or (ii) in connection with any merger, consolidation, or reorganization involving the transferring party (regardless of whether the transferring party is a surviving or disappearing entity), or a sale of all or substantially all of the party's business or assets relating to this Agreement to an unaffiliated third party. Customer agrees to provide notice to MPulse within thirty (30) days of the assignment or other transfer of any rights hereunder. Any purported assignment, delegation, or transfer in violation of this Section 15.7 is null and void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.8 Cumulative Warranties. The rights of each party hereunder are cumulative, and no exercise or enforcement by a party of any right or remedy hereunder shall preclude the exercise or enforcement by that party of any other right or remedy hereunder which that party is entitled by Law to enforce.

15.9 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

15.10 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise of that or any other right, remedy, power, or privilege.

15.11 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.12 Governing Law. This Agreement is governed by and construed in accordance with the internal Laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the State of Oregon.

15.13 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief,

including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.14 Attorneys' Fees. In the event that any Action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the nonprevailing party.

15.15 Exhibits. All Exhibits that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Exhibits are attached hereto and incorporated herein:

Exhibit A	Quote
Exhibit B	Maintenance and Support Services
Exhibit C	Pricing and Payment Terms and Conditions
Exhibit D	Service Level Agreement

15.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(Signatures on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MPULSE:

CUSTOMER:

MPulse Software, Inc.

By: *Randall Brous*

By: _____

Name: Randall Brous

Name: Misty Belford

Title: President

Title: Board Chairperson

Date: April 20, 2021

Date: _____

Software & Services Quotation

MPulse Software Inc., a JDM Company
 1574 Coburg Rd., #779
 Eugene, OR 97401
 Phone: 1(800) 944-1796
 Fax: (541) 302-6680



Quote Number 00010927

General Information

Account Name	School Board of Brevard County	Contact Name	Richard Vogt
Bill To	2700 Judge Fran Jamieson Way Viera, FL 32940-660	Expiration Date	4/30/2021
Created By	John Pfeifle		
Created Date	4/6/2021		
Payment Terms	Net 90		

Product	Product Description	List Price	Sales Price	Quantity	Discount	Total Price
MPulse Enterprise - SaaS - Infinity Tier	Annual Subscription to the MPulse Enterprise Edition Infinity Tier MPulse Enterprise Edition builds on the extensive capabilities of MPulse Advanced, providing all the features necessary to run large maintenance teams at even the most complex, geographically dispersed operations. Numerous Fortune 500 companies depend on MPulse Enterprise to get real-time visibility of their critical equipment and facilities, and to keep important assets running and available. Enterprise adds DataLink Integration Adapter to make integration with assets, databases, and ERP systems fast, reliable and easy. This edition also includes Single Sign-On to make identity management and system access a snap. Infinity Tier adds support for unlimited user licenses.	\$30,000.00	\$30,000.00	1.00	100.00%	\$0.00
MPulse Enterprise - SaaS - Infinity Tier - Additional Database	Annual subscription for adding an additional Database to the MPulse Enterprise Edition Infinity Tier	\$9,000.00	\$9,000.00	1.00		\$9,000.00
MPulse Mobile - SaaS	MPulse Mobile gives your team everything they need to get the job done in the field or on the plant floor, even if they can't connect to the Internet. Report problems, complete and close work orders, and track hours worked with activity timer.	\$800.00	\$800.00	1.00	100.00%	\$0.00
MPulse Data Import Service - TeamWORKS	Import includes all areas of TeamWORKS's databases (Access or MS-SQL Server) that are populated with data and compatible with MPulse. Data should be cleaned up in TeamWORKS if possible before import.	\$3,500.00	\$3,500.00	1.00	40.00%	\$2,100.00
MPulse Assured Implementation Program	A software implementation program designed to take you from software purchase through successful implementation, without missing any critical steps along the way. Our most comprehensive program, AIP gets you through planning, data migration, installation, training, and "Go Live" day.	\$9,500.00	\$9,500.00	1.00	40.00%	\$5,700.00
	Add AAI to Quickstart, AIP or MSIP at a reduced rate. Assess, Adjust and Implement (AAI) is a proven solution for customers who have been using MPulse for a period of time and want to either upgrade, improve or redirect their implementation. The AAI combines multiple services to provide the MPulse customer with their desired results. These services include: • online consulting to clearly identify the goals, or outcomes, expected from					

Software & Services Quotation

MPulse Software Inc., a JDM Company
 1574 Coburg Rd., #779
 Eugene, OR 97401
 Phone: 1(800) 944-1796
 Fax: (541) 302-6680



Quote Number 00010927

MPulse Add-On Assess, Adjust and Implement (AAI)	the AAI • existing data base assessment and adjustment to meet identified goals including up to 5 single table data imports if applicable. • create custom layouts and Information Manager widgets should they be required • onsite customized software training (typically three days) • “go live” onsite monitoring, or in-depth, one on one, training is available as a no cost option for a fourth day. The key to the AAI is to get the customer’s data in a shape they can use to meet their implementation and reporting goals. Once the AAI is completed customers are able to use their data their way to get the results they anticipated. Travel costs associated with on site services are not included in this quote. Travel costs will be billed separately, at their actual costs, after training is completed.	\$6,000.00	\$6,000.00	1.00	40.00%	\$3,600.00
MPulse Dedicated Account Manager	The single point of contact for anything MPulse related is your Dedicated Account Manager. With your Dedicated Account Manager, you are always working with someone who understands your organization and takes full ownership. Your MPulse Dedicated Account Manager is focused on your needs and ensuring your organization gets the most out its MPulse solution. Organizations speak with their MPulse Account Manager regularly and usually have a regular, scheduled phone meeting. Your MPulse Dedicated Account Manager is your MPulse consultant. The combination of their knowledge about your organization with their MPulse expertise ensures the ongoing success of your MPulse solution. The Dedicated Account Manager is a premium subscription service which ensures your organizations ongoing success with MPulse. Subscriptions are calculated at 10% of the total software value. (\$2,000 / yr min)	\$0.00	\$3,168.00	1.00		\$3,168.00
MPulse Assured Implementation Program	A software implementation program designed to take you from software purchase through successful implementation, without missing any critical steps along the way. Our most comprehensive program, AIP gets you through planning, data migration, installation, training, and “Go Live” day.	\$9,500.00	\$9,500.00	1.00		\$9,500.00

- Comments/Notes
1. Saas Subscription renewal for TeamWORKS/MPulse 9 will be a separate quote/invoice from renewals department for 22,711.50.
 2. Additional terms to allow Brevard to pay using current or next year budget.
 3. Implementation Services will be delivered separately for each Department basis.
 4. Additional database for Transportation Department.

Subtotal	\$71,468.00
Discount	53.73%
Total Price	\$33,068.00
Grand Total	\$33,068.00

Implementation and Year One:
 Implementation Period: May 12, 2021 – June 30, 2021
 Year One: July 1, 2021 – June 30, 2022

Exhibit B

Maintenance and Support Services

Description of Maintenance and Support Services

During the Term of this Agreement, MPulse will provide to Customer each of the following services (collectively, “**Maintenance and Support Services**”) off-site from Customer’s facilities:

1) General Support Obligations

- a) Standard Telephone Support. MPulse will provide Customer with access to its call center via a toll-free telephone number for use by Customer in reporting Software Errors. The call center will be available during MPulse’s normal business hours: Monday through Friday from 5:00 AM to 5:00 PM (Pacific Time). The call center is closed on weekends and on all statutory holidays observed in Oregon.
- b) Correction of Software Errors. MPulse will correct all Software Errors in accordance with the procedure set forth herein.
- c) Maintenance Releases. MPulse will provide all New Releases within the purchased version and Maintenance Releases for all MPulse Software subject to license pursuant to the Agreement from time to time.
- d) Additional Definitions. For the purposes of Exhibit B and Exhibit C, the following capitalized terms are defined as follows:
 - i) “**Maintenance Release**” means all updates, modifications and enhancements to the MPulse Software identified by a change to the number to the right of the second decimal point in the version number (e.g., 2.3.1 to 2.3.2) as they become commercially available during the applicable 12 month maintenance period, including: corrections and minor enhancements to the Software, including “temporary fixes” and “patches”.
 - ii) “**New Release**” means a new release of the MPulse Software, other than a New Version, identified by a change in the number to the right of the first decimal point in the version number (e.g., 2.3.2 to 2.4) as they become commercially available during the applicable 12 month maintenance period.
 - iii) “**New Version**” means a new version of the MPulse Software identified by a change in the number to the left of the first decimal point in the version number (e.g., 2.4 to 3.0) and that: (i) contains significant new features and/or functionality as compared to the then current Release and/or (ii) migrates the then-current Release to a new operating system or environment.
 - iv) “**Release**” means a commercially available release of the Software, as identified by the number to the right of the first decimal point in the version number (e.g., x.3).
 - v) “**Software Error**” means any reproducible failure of the MPulse Software to operate in substantial conformity with the Documentation published from time to time.

2) Correction of Software Errors

MPulse will correct all reproducible Software Errors in accordance with the following terms and conditions:

- a) Customer must report all Software Errors in reasonable detail promptly upon the occurrence thereof, including all steps taken by Customer personnel in an attempt to resolve or reduce the impact of such error on Customer's business operations;
- b) After receiving a report of a Software Error from Customer, MPulse will assign an MPulse specific tracking number to the reported error;
- c) MPulse will use commercially reasonable efforts to develop an appropriate correction (a "**Software Correction**") to the Software Error within a reasonable time after the initial report of the Software Error by: (i) assisting Customer by telephone or electronic mail to answer questions and diagnose problems with the Software and (ii) undertaking diagnosis and, where possible, commencing corrective measures on the MPulse Software via telephone modem or internet access to Customer's facilities;
- d) Customer acknowledges and agrees that a Software Correction may consist of one or more Maintenance Releases or temporary work-arounds which are designed to resolve the Software Error or to provide an interim solution to the business impediment caused by that Software Error. As part of a Software Correction, MPulse will provide the operating instructions necessary for Customer to implement the Software Correction;
- e) MPulse will include any Software Corrections delivered to Customer (or the functional equivalent) in all subsequent New Releases delivered to Customer; and
- f) At the request of Customer, MPulse will provide Maintenance and Support Services on site at Customer's facilities. All such Services will be Additional Services and will be subject to additional charge on a time-and-materials basis.

3) Restrictions and Qualifications

The following restrictions and qualifications apply to the provision of Maintenance and Support Services:

- a) MPulse's obligation to provide Maintenance and Support Services extends to the then-current Release from time to time and, subject to Subsection 3(b) hereof, to the immediately preceding Release thereof;
- b) MPulse's obligation to provide Maintenance and Support Services for the immediately preceding Release of the then-current Release from time to time will terminate 12 months after the date that MPulse makes the next subsequent Release commercially available (for example, if the then current Release number is 2.2, then MPulse will continue to provide Maintenance and Support Services for that Release and the immediately preceding Release, number 2.1, until the commercial release of the next subsequent Release, number 2.3, after which time MPulse will provide Maintenance and Support Services for Release numbers 2.2 and 2.3);
- c) MPulse has no obligation to provide Maintenance and Support Services for any MPulse Software that has been altered or modified other than with MPulse's prior written consent;
- d) MPulse has no obligation to provide Maintenance and Support Services for any Software Error caused by: (i) failure by Customer to maintain the Software at the then-current Release or the immediately preceding Release thereof (as permitted by Subsection 3(a) hereof), (ii) failure of Customer to perform its obligations under the Agreement and/or the Agreement, (iii) negligence with respect to, or any misuse or abuse of the Software or any of Customer's own software, hardware or other equipment, (iv) operator error or other error on the part of Customer or its employees or agents, (v) accidental damage, (vi) failure of

air conditioning, electrical power or humidity or other environmental control or (vii) a Force Majeure Event; and

- e) MPulse has no obligation to provide Maintenance and Support Services for any third party software bundled with the MPulse Software or otherwise used by Customer in connection with the MPulse Software unless otherwise expressly agreed in writing between MPulse and Customer.
- f) MPulse is not obligated to produce or generate any Maintenance Release, or carry out any work or service that could or would become a Compliance Release or any other Maintenance Release, unless determined by MPulse to be commercially viable. This determination may be influenced by various factors including the number of users affected, the cost to produce or generate the Compliance Release or any other Maintenance Release, and the frequency required. Where from time to time MPulse has determined not to produce or generate such Compliance Release or other Maintenance Release, MPulse and Customer may from time to time mutually agree to fulfill the requirement as an Additional Service for which Additional Charges will apply. In some cases, MPulse and Customer might mutually agree that the costs be shared or contributed to by Customer together with one or more other customers with the same or a similar need.

4) Exclusions for Customer Owned Systems (Local Installations)

The following matters do not form part of Maintenance and Support Services:

- a) software installation and reloads for operating systems and software products, or restoring applications back to an operational level;
- b) design, implementation or operation of disaster recovery plans or procedures;
- c) system administrator functions that are Customer's responsibility, including: (i) backup and restoration of the system and data, including the creation, testing and implementation of an effective disaster recovery plan, (ii) emergency diagnostics/installation media, (iii) software configuration and tuning, (iv) capacity management to include file and database maintenance, (v) security management, (vi) customer-tailored parameters, (vii) shell script creation or modification, (viii) training support including advice on operational/technical procedures and (ix) migration planning;
- d) software upgrades other than Maintenance Releases and New Releases;
- e) New Versions; and
- f) assistance with the configuration of third-party applications, components or products for use with software products other than the MPulse Software.

5) Customer Responsibilities

Customer and MPulse share a common goal: to minimize disruptions to Customer's business caused by Software Errors. Customer understands that in order to achieve this goal, Customer must perform its responsibilities under the Agreement, as well as the following responsibilities specific to the provision of Maintenance and Support Services:

- a) Primary Contacts. On or before the commencement date of the Term, Customer will designate up to 2 individuals as Customer's primary contacts and will identify such individuals in writing to MPulse. Customer will have the right to replace any primary contact from time to time upon identifying a new individual to MPulse.
- b) System Operation. Operating Customer's software, hardware and other equipment, providing back-up equipment and services upon product failure, designing and

implementing a reasonable and effective disaster recovery plan, taking reasonable actions to safeguard the Software as well as all data and removable storage media, and for reloading programs and data in the event of a failure.

- c) Problem Isolation. In order for MPulse personnel to analyze and diagnose Software Errors effectively, Customer must perform the following initial research and problem isolation activities: (i) review available system-level documentation and user manuals, (ii) isolate Software Errors to a specific area of the MPulse Software such as the particular software module within the application, (iii) collect all of the required documentation, such as error codes and steps to re-create the Software Error, (iv) contact MPulse promptly to report the Software Error in accordance with Subsection 2(a) of this Exhibit B and (v) to provide effective assistance in the resolution of the Software Error and installation of the Software Correction, MPulse may require Customer to provide a copy of Customer's systems software program that is experiencing the Software Error.
- d) Problem Repair. On-site implementation of Software Corrections, Maintenance Releases and New Releases supplied by MPulse, including: (i) timely application and testing, (ii) installation and (iii) system restoration from backup when necessary.
- e) Access. Customer will provide MPulse with remote access to Customer's systems during Customer's normal business hours and otherwise as reasonably required by MPulse in order to facilitate MPulse's ability to timely perform the Maintenance and Support Services. Remote access will be governed by the MPulse Remote Access Policy available at <https://support.mpulsesoftware.com>.
- f) Onsite Support. (i) Customer will provide MPulse with such working space and access to telephones, photocopying equipment and the like as MPulse may reasonably request while on Customer's premises. (ii) Customer will, upon the reasonable request from time to time of MPulse, cooperate with and assist MPulse in connection with Compliance Releases and other Maintenance Releases (e.g. by providing MPulse with information or resources relating to payroll taxes or other changes in federal, state, provincial and local government statutes and regulations).

6) Implementation of Services

Customer understands and agrees that all Software Corrections, Maintenance Releases and New Releases provided by MPulse should be promptly implemented to become part of the MPulse Software. Customer further recognizes that its failure to promptly implement any of the foregoing as provided by MPulse may render the MPulse Software unusable or non-conforming with applicable documentation and/or applicable statutes or regulations, and Customer hereby agrees to assume all risks therefrom and hereby releases MPulse, its divisions, subsidiaries and Affiliates, its shareholders, the assignees of each of the foregoing and their respective directors, officers, shareholders, employees and agents, from any loss, liability or claim resulting from such failure.

7) Warranty for Services

MPulse warrants that it will perform the Maintenance and Support Services and the Additional Services in a professional manner and using qualified personnel. MPulse's sole obligation and Customer's sole remedy for any breach of this warranty is for MPulse to promptly and at its own expense re-perform the applicable Maintenance and Support Services or Additional Services as warranted. Except for the warranty expressly set forth in this Section, all

Maintenance and Support Services and Additional Services are provided “as-is” and without warranty or condition of any kind, either express or implied, including but not limited to the implied warranties of merchantability, non-infringement and fitness for a particular purpose. Except as set forth in this Section, Customer assumes sole responsibility for: (a) determining that the Maintenance and Support Services and Additional Services meet the business requirements of Customer and (b) the results obtained from the Maintenance and Support Services and the Additional Services.

Exhibit C

Pricing and Payment Terms and Conditions

1) Fees, Expenses and Taxes

- a) MSP Subscription. The annual Maintenance and Service Program Subscription (the “MSP Subscription”) for Maintenance and Support Services provided for the MPulse Software during each 12 month period during the Term is the “TOTAL” shown in the Quote, or as otherwise stipulated or provided for in this Agreement or agreed by the parties from time to time. The MSP Subscription may be adjusted by MPulse upon notice to Customer.
- b) Additional Services. Customer understands and agrees that any services requested by it relating to the maintenance and support of the MPulse Software that are in addition to the Maintenance and Support Services are Additional Services, subject to charge by MPulse on a time-and-materials basis at its then current rates therefor, and Customer agrees to pay all charges for any such Additional Services.
- c) Expenses. Customer will reimburse MPulse for all reasonable out-of-pocket expenses incurred in connection with the Maintenance and Support Services and any Additional Services, including: (a) travel by MPulse personnel to a site specified by Customer to perform any such services; and (b) local transportation, meals and lodging for such personnel while performing such services.
- d) Taxes. All sales, use or goods and services taxes, customs duties, withholding taxes or similar levies of any kind (collectively, “Taxes”) arising with respect to the Maintenance and Support Services are the sole responsibility of and will be paid by Customer without deduction from the amounts owing to MPulse under the Agreement. Customer hereby agrees to indemnify MPulse from and against all such Taxes to the extent that MPulse is required to collect and remit such Taxes, they will be shown on the applicable invoice and paid by Customer to MPulse ; however, failure of MPulse to invoice therefor will not relieve Customer of its obligation to pay.

2) Invoice and Payment Terms

- a) Payment of Initial MSP Subscription. Customer will pay for the first 12 month maintenance period as set forth in the Quote.
- b) Invoices for Subsequent MSP Subscriptions. MPulse will invoice Customer for the MSP Subscription payable in respect of each subsequent 12 month maintenance period during the Term at least 30 days prior to the end of the then-current maintenance period. MPulse will from time to time invoice Customer for all Additional Services, together with all out-of-pocket expenses incurred by MPulse in providing any Services.
- c) Additional Charges. MPulse will invoice Customer for all fees for Additional Services (“Additional Charges”), together with all out-of-pocket expenses incurred by MPulse in providing any services under the Agreement, including delivery and handling charges.
- d) Invoices for Additional Charges. Each invoice for Additional Charges rendered to Customer under the Agreement will describe in reasonable detail the services, materials and expenses for which Customer is being charged and will include an invoice number, the time period covered by the invoice and the amount of any applicable tax.
- e) Invoicing and Overdue Amounts. All invoices for MSP Subscriptions and Additional Charges will be sent to the address of Customer specified in the notice provisions of the

Agreement, and are payable in full within 30 days after the date of the invoice or date of receipt or as specified on Exhibit A (Quote) which will prevail. Interest will apply and be paid by Customer on overdue amounts at the rate of 3% per month (36% per annum) for each calendar month (or portion thereof) during which it remains unpaid. If the invoice states a lower rate of interest, then the lower rate shall apply. Provided that if at any time and for any reason whatsoever the interest rate payable in respect of any overdue amount would otherwise exceed the maximum rate of interest permitted to be charged by MPulse to Customer under applicable law, then such interest rate shall be reduced automatically to the maximum rate of interest permitted to be charged under applicable law.

- f) Disputed Invoices. If Customer in good faith disputes the amount of an invoice, then within 15 days after receipt thereof Customer will provide written notice of such dispute, including the amount in dispute and the grounds upon which the dispute is based. Upon receipt by MPulse of a notice of dispute under this subsection, the parties will resolve the dispute in accordance with the dispute resolution procedures set out in the Agreement. Notwithstanding the delivery of a notice of dispute under this subsection, Customer will pay any amount of the disputed invoice not forming part of the notice of dispute within the time prescribed by this Exhibit C. If Customer does not deliver a notice of dispute under this subsection with respect to an invoice within the 15 day period provided therefor, then Customer will be deemed to have accepted the invoice as being correct.
 - g) No Refunds. Customer understands and agrees that, upon payment to MPulse, all MSP Subscriptions and all Additional Charges are not refundable nor subject to credit under any circumstances.
 - h) Acknowledgement. Customer acknowledges and agrees that MPulse will have no obligation to provide Maintenance and Support Services for any maintenance period until the MSP Subscription for that maintenance period has been paid in full.
- 3) **Additional Software**. Customer understands and agrees that the MSP Subscription is calculated based on the level of support for set forth in the Quote. In the event that: (a) additional software programs or modules are added under the Agreement so as to amend the definition of “MPulse Software”, (b) Customer elects to acquire a license for optional products listed in this Exhibit B or (c) Customer elects to modify the level of support set out in Quote, then, effective on the date of such addition or election (as the case may be), for each additional software program or module or for the new level of support (as the case may be), the MSP Subscription will be adjusted to include an amount equal to the then-current maintenance fee for each additional software program or module or level of support.

Exhibit D

Service Level Agreement

1. Service Availability

(a) Availability Requirement. MPulse shall make the Hosted Services Available, as measured over the course of each calendar year during the Term (each such calendar month, a “**Service Period**”), at least 99.9% of the time, except as provided below (the “**Availability Requirement**”). “**Available**” or “**Availability**” means the Hosted Services are available and operable for access and use by Customer and its Authorized Users over the internet in material conformity with the Documentation and the Agreement.

(b) Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- Customer’s misuse of the Hosted Services;
- failures of Customer’s internet connectivity;
- Customer’s failure to meet any minimum hardware or software requirements set forth in the specifications;
- Force Majeure Events; or
- Scheduled Downtime as set forth in Section 1.C.

(c) Scheduled Downtime. MPulse shall notify Customer within the application in writing at least twenty four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part (“**Scheduled Downtime**”). MPulse will make a good faith effort to limit Scheduled Downtime such that it will: (a) last no longer than one (1) hour; (b) be scheduled between the hours of 9:00 p.m. on Fridays to 3:00 a.m. the following Saturday, Pacific Time; and (c) occur no more frequently than once per week; provided that MPulse may conduct additional Scheduled Downtime by providing advance notice to Customer.

(d) Service Availability Reports. Upon Customer’s reasonable written request, MPulse shall provide to Customer a report in electronic form that includes, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement and any specifications in the Documentation; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement or specifications in the Documentation during the reporting period, a description in sufficient detail to inform Customer of the cause of such failure and the corrective actions the MPulse has taken and will take to ensure that the Availability Requirement and specifications are fully met.