

STATE OF NEW JERSEY
AMENDMENT to Software Publisher/Service Provider Agreement

THIS AMENDMENT ("Amendment") to the State of New Jersey's M0003 Software Publisher/Service Provider Agreement ("M0003 Agreement") is made effective as of August 11, 2014 ("effective date"), by and between MB3 Inc. ("Provider"), whose address is 7512 Dr. Phillips Blvd., Suite 50-112, Orlando, FL 32819 and the State of New Jersey, Department of the Treasury, Division of Purchase and Property whose address is 33 West State Street, 8th Floor, P.O. Box 230, Trenton, New Jersey 08625, on behalf of the Authorized Purchaser(s) (collectively "State").

WHEREAS, the State and Provider desire to amend certain provisions of the State of New Jersey Software Publisher/Services Provider Agreement as more fully described below by entering into this Amendment; and

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. The entire agreement between the parties shall consist of the following documents (which shall be collectively referred to as the "contract"):
 - a. State of New Jersey's M0003 Software Publisher/Service Provider Agreement, attached hereto as Exhibit 1, as amended;
 - b. The Provider's Software License Agreement ("SLA"), attached hereto as Exhibit 2;
 - c. The Provider's Statement of Work ("SOW"), as required when an Authorized Purchaser purchases software related services and/or Software as a Service from Provider;
 - d. All purchase orders submitted by the State to Provider's Reseller under the M0003 Software Reseller Contract for Provider's products and services during the term of the contract.

In the event of a conflict in the terms and conditions among the documents comprising the contract, the above order shall prevail for purposes of the interpretation thereof (listed from highest ranking to lowest ranking).

2. This contract replaces and supersedes:

- a. The Third Party Agreement between the State, Enpointe Technology Sales, Inc., and MB3 Technologies ("TPA 13-01"), dated January 11, 2013, with the exception of TPA 13-01 Exhibit A, which is incorporated in its entirety and attached as Exhibit 3 to this contract; and
- b. The Third Party Agreement between the State, SHI International Corp., and MB3 Inc. ("TPA 13-03"), dated April 1, 2013, with the exception of TPA 13-03 Exhibit A which is incorporated in its entirety and attached as Exhibit 4 to this contract; and;

3. **Scope** - The scope of the contract includes Provider's Software as a Service services acquired by the State under the State's Software Reseller Contract (M0003).
4. **Term** - The State may place orders with Reseller for Provider's qualifying products and services under the contract for three (3) years from the effective date, with three (3) options to extend the term for an additional one (1) year each, subject to the mutual written consent of the Provider and the Director of the Division of Purchase and Property at the same terms and conditions of the original contract.

5. Section 4.2, Paragraph d, Professional Liability Insurance, is revised to require Professional Liability Insurance in the amount of \$2,000,000 Canadian.
6. Terms and Conditions - The parties agree to be bound by all other terms and conditions of the contract not otherwise modified by this Amendment.
7. Execution of Amendment - The parties hereto agree that this Amendment may be executed in counterpart, each original signed page to become part of the original document.

IN WITNESS WHEREOF, authorized representatives of Provider and the State have executed this Amendment to be effective as of the latest date provided below.

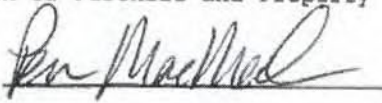

State of New Jersey, Department of the Treasury, Division of Purchase and Property	MB3 Inc.
By: 	By: 
Name: Peni MacMeekin	Name: Rodney Thornhill
Title: Technology Licensing Officer Division of Purchase & Property	Title: Chief Operating Officer
Date: 8/11/2014	Date: 08/07/2014

Exhibit 1

State of New Jersey M0003 Software Publisher/Services Provider Agreement

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT** - Unless the Software Publisher/Services Provider (Provider) is specifically instructed otherwise in writing, the following Terms and Conditions (Terms and Conditions) shall apply to all purchases made by the State of New Jersey or an Authorized Purchaser(s) as defined herein (collectively referred to as the "State" unless the context indicates otherwise) under the Commonwealth of Massachusetts Contract TS42 M0003. These Terms and Conditions shall prevail over any conflicts set forth in or incorporated by reference into a Provider's Software License Agreement ("SLA") and/or Scope of Work (SOW).
- 1.1 **DEFINITIONS** - The following definitions shall apply:
 - a. An Authorized Purchaser means:
 - (i) any government agency, department, or/eco-instrumentality, division, unit or other entity of the State,
 - (ii) any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State,
 - (iii) Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member; and
 - (iv) School districts per N.J.S.A. 52:25-16.1
 - (v) Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2, and
 - (vi) Independent institutions of higher education per N.J.S.A. 52:25-16.5,
 - (vii) County colleges per N.J.S.A. 18A:64A-25.9 and
 - (viii) State colleges per N.J.S.A. 18A:64-60
 - b. The term "Scope of Work" or "SOW" as used herein means the Provider's description of the products and services to be provided.
 - c. The term "contract" as used herein means the order placed by the State and/or Authorized Purchaser and encompasses the Provider's delivery of software and/or services under such order.
 - d. The terms "goods" and "products" as used herein shall be deemed to include software, software licenses and standard software maintenance and technical support.
 - e. The term "services" shall be deemed to include software related services such as installation, configuration, and training and all forms subscription services.
2. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL PROVIDERS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- 2.1 **BUSINESS REGISTRATION** - Pursuant to N.J.S.A. 52:22-14, the State is prohibited from entering into a contract with an entity unless the Provider and each subcontractor named in the SOW have a valid Business Registration Certificate on file with the Division of Revenue.

The Provider and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>

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- 2.2 **ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
- 2.3 **RESERVED.**
- 2.4 **AMERICANS WITH DISABILITIES ACT** - The Provider must comply with all provisions of the Americans with Disabilities Act (ADA) P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.
- 2.5 **MACBRIDE PRINCIPLES** - The Provider must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of non-discrimination in employment as set forth in N.J.S.A. 52:10A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989 and permit independent monitoring of their compliance with those principles.
- 2.6 **PAY TO PLAY PROHIBITIONS** - Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L. 2005, c. 51) and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to
- a. make or solicit a contribution in violation of the statute,
 - b. knowingly conceal or misrepresent a contribution given or received
 - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution
 - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee,
 - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself would subject that entity to the restrictions of the Legislation,
 - f. fund contributions made by third parties, including consultants, attorneys, family members and employees,
 - g. engage in any exchange of contributions to circumvent the intent of the Legislation, or
 - h. directly or indirectly through or by any other person or means do any act which would subject that entity to the restrictions of the Legislation
- 2.7 **POLITICAL CONTRIBUTION DISCLOSURE** - The Provider is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271 §3 as amended) if in a calendar year the Provider receives one or more contracts valued at \$50,000.00 or more. It is the Provider's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>
- 2.8 **STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on Provider activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988)
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g
 - b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards
 - c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with whether or not pursuant to employment contract or other agreement, express or implied, or sell any interest in such vendor to any State officer or employee or special State officer or

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employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52-130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d) No vendor shall influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e) No vendor shall cause or influence or attempt to cause or influence any State officer or employee or special State officer or employee to use or attempt to use his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f) The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

- 2.9 **NOTICE TO ALL PROVIDERS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L. 1995, c. 159 effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54-49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c. 52-32-32 et seq.), to the taxpayer shall be stayed.

- 2.10 **COMPLIANCE - LAWS** - The Provider must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the software and/or services provided hereunder.
- 2.11 **COMPLIANCE - STATE LAWS; JURISDICTION** - It is agreed and understood that any contracts and/or orders shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY without giving effect to its conflict of laws. Any action brought regarding the license agreement or products or services purchased thereunder shall be filed in the appropriate Division of the State of New Jersey Superior Court.

3. **STATE LAW REQUIRING MANDATORY COMPLIANCE BY PROVIDERS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

3.1 **RESERVED.**

3.2 **RESERVED.**

3.3 **ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -**

N.J.S.A. 10-5-33 and N.J.A.C. 17-27-3.5 require that during the performance of this contract, the Provider must agree as follows:

- a) The Provider or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Provider will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during

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employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b) The Provider or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- c) The Provider or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Provider's commitments under this act and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17-27-3.7 requires all Providers and subcontractors, if any, to further agree as follows:

- 1. The Provider or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17-27-5.2.
- 2. The Provider or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities and labor unions that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- 3. The Provider or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- 4. In conforming with the targeted employment goals, the Provider or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey and applicable Federal law and applicable Federal court decisions.

3.4 RESERVED.

3.5 RESERVED

- 3.6 SERVICE PERFORMANCE WITHIN U.S.** – Under N.J.S.A. 52-34-1.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Provider or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If during the term of the contract the Provider or subcontractor proceeds to shift the performance of any of the services outside the United States, the Provider shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of these terms and conditions, unless previously approved by the Director and the Treasurer.

- 3.7 BUY AMERICAN** – Pursuant to N.J.S.A. 52-32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Provider shall be required to so certify.

- 3.8 OWNERSHIP DISCLOSURE** – In accordance with N.J.S.A. 52-25-24.2, Provider shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the agreement, by submitting an Ownership Disclosure Form with its SOW. The Provider has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

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- 3.9 **PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., a person or entity listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran shall be ineligible to bid on, submit a proposal for, or enter into or renew a contract with a State agency for goods or services. Accompanying Provider's SOW, the Provider shall submit to the Division the State's Disclosure of Investment Activities in Iran certification.

4. INDEMNIFICATION AND INSURANCE

- 4.1 **INDEMNIFICATION** - The Provider's liability to the State and its employees in third party suits shall be as follows:

- a) The Provider shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i) For on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the contract or the order; and
 - ii) For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance (Intellectual Property Rights) furnished or used in the performance of the contract; and
 - iii) The Provider's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
- b) In the event of a claim or suit involving third-party Intellectual Property Rights, the Provider, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Provider in writing of the claim or suit, (2) Provider shall have control of the defense and settlement of any claim that is subject to Section 4.1(a), provided however that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Provider at its expense. Furthermore, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
- c) Notwithstanding the foregoing, Provider has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under this contract with any product, device, or software not supplied by Provider; (2) the State's unauthorized alteration or modification of any product supplied under this contract; (3) the Provider's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Provider with such designs, specifications, requests, or instructions, Provider reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Provider to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by Provider.
- d) Provider will be relieved of its responsibilities under Subsection 4.1(a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Subsection 4.1(a)(i) and (ii) which results in an unaffiliated third party claim. This is Provider's exclusive remedy for these claims.
- e) This section states the entire obligation of Provider and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Provider disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

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- 7) The State of New Jersey will not indemnify, defend, pay or reimburse for claims or take similar actions on behalf of the Provider

4.1.1 LIMITATION OF LIABILITY

- a) The Provider's liability to the State for actual, direct damages resulting from the Provider's performance or non-performance of, or in any manner related to, the contract for any and all claims, shall be limited in the aggregate to 200% of the fees paid to Provider for the products or services giving rise to such damages except that such limitation of liability shall not apply to the following:
- i) The Provider's indemnification obligations as described in Section 4.1 and
 - ii) The Provider's breach of its obligations of confidentiality described in Section 7.1 and
- b) The Provider shall not be liable for consequential or incidental damages.

- 4.2 INSURANCE** - The Provider shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- V.1 or better rating by A.M. Best & Company. The Provider shall provide the State with current certificates of insurance for all coverages and renewals in effect. If the Provider receives a notice of cancellation, the Provider will promptly replace such coverage so that no lapse in insurance occurs. Certificates of renewals shall be provided within five (5) business days of the replacement or renewal of the insurance. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at

ccdu.certificate@treas.state.nj.us

The insurance to be provided by the Provider shall be as follows:

- a) Occurrence Form Commercial General Liability Insurance or its equivalent. The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees and Authorized Purchasers under Contract _____ as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. Such Commercial General Liability Insurance policy shall be written on a current Standard Insurance Services Office form or its equivalent, and contain only such reasonable and customary exclusionary endorsements based on the Provider's industry and size. The insurance obligations under this contract are in addition to and shall not limit Provider's obligations under this contract including but not limited to the Provider's defense and indemnity obligations.
- b) Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per accident as a combined single limit. The State, its officers and employees and Authorized Purchasers under Contract _____ must be named as "Additional Insureds" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- c) Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE
\$1,000,000 DISEASE EACH EMPLOYEE
\$1,000,000 DISEASE AGGREGATE LIMIT

- d) Professional Liability Insurance. The Provider shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice insurance sufficient to protect the Provider from any liability arising out of the professional obligations performed pursuant to the requirements of this Agreement. The insurance shall be in an amount not less than \$5,000,000. If the Provider has claims-made coverage and subsequently changes carriers during the term of the contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage to the inception date of this contract.

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5. TERMS GOVERNING ALL CONTRACTS

5.1 PROVIDER IS INDEPENDENT CONTRACTOR – The Provider's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED.

5.3 RESERVED.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the Provider advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the Provider does not agree with the Director's proposed adjusted contract price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted contract price.
- (b) If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Provider shall be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW – Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the Provider of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- (a) If the Provider does not agree with the adjusted contract price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted contract price.
- (b) If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Provider shall be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK – The State may, for valid reason, issue a stop order directing the Provider to suspend work under the contract for a specific time. The Provider shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Provider shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Provider's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The Provider shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

a. For Convenience

1. Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the Provider.
2. The Provider shall have no right to terminate for convenience.

b. For Cause

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1. Where a Provider fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:27-2 et seq, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the Provider with an opportunity to respond.
2. Where, in the reasonable opinion of the Director, a Provider continues to perform a contract poorly as demonstrated by e.g. formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:27-2 et seq, and there has been a failure on the part of the Provider to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the Provider with an opportunity to respond.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the Provider shall be compensated for work performed in accordance with the contract up to the date of termination. Such compensation may be subject to adjustments.
- e. Notwithstanding anything to the contrary contained herein, if an Authorized Purchaser violates its obligations under the contract, the Provider may terminate the license(s) or cancel order(s) of such violating Authorized Purchaser only after providing written notice and an opportunity to cure of no less than thirty (30) days.
- f. If the Provider terminates license(s) or cancels order(s) of a violating Authorized Purchaser, it shall nonetheless continue to perform its obligations under this contract with respect to the State and the other non-violating Authorized Purchasers.

5.8 SUBCONTRACTING OR ASSIGNMENT

- a. Subcontracting: The Provider may not subcontract other than as identified in the Provider's SOW without the prior written consent of the Director. Such consent, if granted, shall not relieve the Provider of any of its responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the Provider uses a subcontractor to fulfill any of its obligations, the Provider shall be responsible for the subcontractor's (a) performance, (b) compliance with all of the terms and conditions of the contract, and (c) compliance with the requirements of all applicable laws.
- b. Assignment: The Provider may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE - Nothing contained in the Provider's SOW shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS - If, during the term of this contract, the Provider shall merge with or be acquired by another firm, the Provider shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The Provider shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Provider and new entity ratifying acceptance of the original contract, terms, conditions and prices, updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the Provider's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PROVIDER WARRANTIES -

1. Provider warrants that a product licensed to the State shall operate in all material respects as described in applicable product documentation for one year after delivery. State shall notify Provider of any product deficiency within one year after delivery. In the event of any breach of this warranty, State's exclusive remedy and Provider's entire liability shall be the correction of the product errors that caused the breach of warranty, or if Provider cannot substantially correct such breach in a commercially reasonable manner, State may end its

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usage and recover the fees paid to Provider for the license and any unused, prepaid technical support fees paid.

- b. Provider represents and warrants that, at the time of delivery and installation of the software provided pursuant to the contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the contract.
- c. Provider warrants that all services will be provided in a professional manner consistent with industry standards. State shall notify Provider of any services warranty deficiencies within 90 days from performance of the deficient services. In the event of any breach of this warranty, State's exclusive remedy and Provider's entire liability shall be the re-performance of the deficient services, or if Provider cannot substantially correct a breach in a commercially reasonable manner, State may end the relevant services and recover the fees paid to Provider for the deficient services.
- d. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE STATE'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

5.12 RESERVED.

- 5.13 APPLICABLE LAW AND JURISDICTION** - This contract shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

- 5.14 CONTRACT AMENDMENT** - Except as provided herein, the contract may only be amended by written agreement of the State and the Provider.

- 5.15 MAINTENANCE OF RECORDS** - The Provider shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the Comptroller, for audit and review.

- 5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The Provider recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and in consideration for executing this contract, the Provider, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the Provider:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 - 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit if the within assignment at the earliest practicable opportunity after the Provider has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Provider, it shall promptly pay over to the State of New Jersey the allotted share thereof. If any, assigned to the State hereunder.

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5.17 ORGAN DONATION - As required by N.J.S.A. 52:32-13.1, the State encourages Provider to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1120b-8 to serve in this State.

6. RESERVED.

7. MISCELLANEOUS

7.1 CONFIDENTIALITY

- i. The State's obligation to maintain the confidentiality of Provider's confidential information provided to the State under the contract is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA), the New Jersey common law right to know, and any other lawful document request or subpoena.
- ii. By virtue of the contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the contract. Provider's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure (Provider Confidential Information). Notwithstanding the previous sentence, the Provider acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- iii. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Provider in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).
- iv. A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party, (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party, (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure, or (d) is independently developed by the other party.
- v. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.
- vi. In the event that the State receives a request for Provider Confidential Information related to the contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Provider with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Provider shall take any action it deems appropriate to protect its documents and/or information.
- vii. In addition, in the event Provider receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Provider shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Provider's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information.
- viii. Notwithstanding the requirements of nondisclosure described in this Section 7.1, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Provider does not exercise its rights as described in subsection 7.1(f), or if Provider is unsuccessful in defending its rights as described in subsection 7.1(f), or (iv) in the case of Provider, if Provider determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 7.1(g), or if the State is unsuccessful in defending its rights as described in subsection 7.1(g).

7.2 OWNERSHIP

- i. **Provider Intellectual Property** - Provider retains ownership of all Provider intellectual Property and any modifications and derivatives thereof that Provider supplies to the State pursuant to the contract. Provider grants the State a license to use Provider intellectual Property as set forth in Provider's SLA. Provider

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Intellectual Property means any intellectual property that is owned by Provider and supplied to the State under the contract.

- b. **State Intellectual Property** – The State retains ownership of all State Intellectual Property provided to Provider pursuant to the contract. State Intellectual Property includes any intellectual property owned by the State. The State grants Provider a non-exclusive, royalty-free license to use, copy, display, distribute, transmit and prepare derivative works of State Intellectual Property and State data and background information solely to fulfill the purposes of the contract. The State's license to Provider is limited by the terms of the contract and the confidentiality obligations set forth in Section 7.1 of these Terms and Conditions.

- 7.3 **AUDIT DISPUTE RESOLUTION** - To the extent Provider's SLA and/or SOW permits Provider to conduct periodic audits of the State's usage of the products and/or services provided thereunder, such provision is amended to include the following dispute resolution process:

- a. If the State, in good faith, provides Provider with written notice of an alleged error in the amount of underpaid fees due Provider as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. may begin until either such Representative concludes, after a good faith effort to resolve the dispute that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the SLA or SOW, as applicable, while they endeavor to resolve the dispute under this paragraph.

- 7.4 **APPROPRIATION AND AVAILABILITY OF FUNDS** - The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

For the avoidance of doubt, the issuance of a State payment voucher or other State issued payment document shall not signify that an appropriation has been made or that the funds are available.

- 7.5 **REFERENCES TO EXTERNAL DOCUMENTATION** - Any external documentation incorporated by reference into Provider's SLA and/or SOW, including without limitation, Technical Reference Manuals, technical support policies, copyright notices, additional license terms, etc., are subject to these terms and conditions. In the event of any conflict between the terms of a document incorporated by reference into Provider's SLA and/or SOW, and these terms and conditions, these terms and conditions shall prevail.

I HEREBY ACCEPT THESE TERMS AND CONDITIONS

NAME: Matt Blakely

TITLE: President & CEO

COMPANY NAME: MB3 INC.

DATE: Oct 22, 2013

*Amendment to Software Publisher /
Exhibit 2 Service Provider
Agreement*

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SALES AND SUPPORT:

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SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT, including the Exhibits hereto ("Agreement"), is hereby made by and between MB3 INC., a Delaware corporation doing business in the State of Florida ("Licensor"), and the State customer ("Licensee").

1. DEFINITIONS

- 1.1 "Confidential Information" shall have the meaning given that term in Section 13.1.
- 1.2 "Data Processing Centers" shall have the meaning given that term in Section 2.2.
- 1.3 "Documentation" shall mean written materials or graphic files that are displayed or printed and that relate to and support the Software.
- 1.4 "Initial Installation Date" shall have the meaning given that term in Section 8.
- 1.5 "Software" shall mean Licensor's proprietary software described in Exhibit A, including any Upgrades thereto during the Warranty Period. Software will not include any Upgrades after the Warranty Period, unless agreed to by Licensor at its sole discretion. Licensor agrees to negotiate in good faith with respect to providing future Upgrades.
- 1.6 "Upgrades" shall mean new product versions or releases, enhancements, improvements, customizations or updates to the Software made by Licensee, including, without limitation, those made at the request of Licensee or otherwise.
- 1.7 "Warranty Period" shall mean the 3 month period beginning on the Initial Installation Date, without extensions thereto as a result of the installation of an Upgrade (except as specifically provided in Exhibit B).

2. OWNERSHIP: GRANT OF RIGHTS

- 2.1 Ownership. Licensor shall own all right, title, and interest in the Software, Documentation and all intellectual property rights inherent therein, including, without limitation, all changes, improvements and customizations requested or suggested by Licensee in the support and maintenance of the Software.
- 2.2 License Grant. Licensor hereby grants Licensee a perpetual, non-exclusive, non-transferable, fee-bearing license, subject to the limitations contained herein, to use the current version of the Software to manage disaster Grants within just the single State.

The Software shall initially be used only on equipment and at location(s) identified in Exhibit C as "Data Processing Centers." Use of the Software may be subsequently transferred to Data Processing Centers maintained by Licensee at other locations, provided (i) the total number of Data Processing Centers at which the Software is used by Licensee does not exceed the number of Data Processing Centers specified in Exhibit C, and (ii) Licensee provides Licensor with written notice 30 days before such transfer. The Software shall be used only for Licensee's own business, which shall include servicing, and maintaining records on behalf of, its customers and clients.
- 2.3 Documentation. Licensor agrees to provide Licensee copies of the Documentation for the Software in an electronic format. Licensor hereby grants Licensee a perpetual, non-exclusive, nontransferable license to reproduce and distribute the Documentation to its employees and agents subject to the terms and conditions of this Agreement.
- 2.4 No Implied License. Except for the express licenses granted herein, no other licenses are granted by implication, estoppel or otherwise.

3. RESTRICTIONS ON LICENSEE

- 3.1 No Reverse Engineering. Permitted modifications to the Software, if any, are limited to those set forth in Exhibit D. Licensee shall not (i) copy, modify, create any derivative work of, or include in any other software the Software or any portion thereof, or (ii) reverse assemble, decompile, reverse engineer or otherwise have the right to receive or use or attempt to derive source code (or the underlying ideas, algorithms, structure or organization) from the Software, except as specifically authorized in writing by Licensor.

3.2 Notices. Licensee shall ensure that all copies of the Software in Licensee's possession or control incorporate copyright and other proprietary notices in the same manner that Licensor incorporates such notices in the Software and Documentation or in any manner reasonably requested by Licensor. Licensee shall promptly notify Licensor in writing upon its discovery of any unauthorized use of the Software or infringement of the Software or Licensor's proprietary rights in the Software. Licensee shall not provide access to the Software to any party, including any employee of Licensee, if Licensor has notified Licensee that such party may be involved in potential unauthorized use of the Software or other infringement of Licensor's proprietary rights thereunder.

4. Price and Payment

4.1 Fees. Licensee shall make payment to Licensor for the Software license pursuant to the fees and payment terms set forth in Exhibit B.

4.2 Late Payments. Any sum not paid by Licensee when due shall bear interest until paid at a rate of 1.5% per month (i.e., 18% per annum) or the maximum rate permitted by law, whichever is less.

5. Software Ownership

Licensor represents that it is the owner of the Software and all portions thereof and that it has the right to modify the Software and to grant Licensee a license for its use.

6. Intent to Cooperate

Both Licensor and Licensee acknowledge that successful implementation of the Software pursuant to this Agreement shall require their full and mutual good faith cooperation, and Licensee acknowledges that it shall timely fulfill its responsibilities, including but not limited to those set forth below.

7. Title to Software Systems and Confidentiality

The Software and all programs developed hereunder, or related hereto, and all copies thereof are proprietary to, and trade secrets of, Licensor, and title thereto remains in Licensor, whether or not any portion thereof is, or may be, the subject of a valid patent, copyright or trademark. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications, improvements or customizations made at Licensee's request pursuant to Section 19 or otherwise are and shall remain in Licensor. Licensee shall not sell, transfer, publish, disclose, display or otherwise make available the Software or copies thereof to others. Licensee agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of Licensor's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to satisfy its obligations hereunder. All copies made by the Licensee of the Software and other programs developed hereunder, including translations, compilations, partial copies with modifications and updated works, are the property of Licensor. Violation of any provision of this Section shall be the basis for termination of this Agreement under Section 14.1.

8. Acceptance

The Software shall be deemed to have been installed and accepted on the first day on which it passes Licensor's standard test procedures on the equipment approved by Licensor pursuant to Section 16 (the "Initial Installation Date").

9. Use and Training

Licensee shall limit the use of the Software to its employees and consultants who have been appropriately trained. Licensor shall make training for the Software available to Licensee pursuant to its standard training procedures, or as agreed to by Licensor and Licensee in writing.

10. TRADEMARKS, TRADE NAMES AND BRANDING

10.1 Trademarks and Branding Guidelines. Licensee shall comply with trademark and branding guidelines communicated by Licensor.

10.2 Advertising and Promotional Media. Notwithstanding any other provision of this Agreement, Licensee agrees that Licensor may use Licensee's name in Licensor's advertising and promotional media. Licensee may use Licensor's product names in Licensee's advertising and promotional media provided that (i) Licensee conspicuously indicates in each such medium that such names are trademarks of Licensor, and (ii) Licensee follows reasonable trademark usage guidelines communicated by Licensor.

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10.3 Obligation upon Termination or Expiration. Upon expiration or termination of this Agreement for any reason, at Licensor's request, Licensee will immediately cease all use of Licensor's trademarks, marks, and trade names that Licensor may adopt from time to time and, at Licensor's election, either destroy or deliver to Licensor all materials in Licensee's control or possession which bear such marks or names.

11. Warranty

11.1 Specification Conformance. Licensor warrants that, during the Warranty Period, the Software will conform, as to all substantial operational features, to Licensor's current published specifications when installed and will be free of defects which substantially affect system performance.

11.2 Defects. Licensee must notify Licensor during the Warranty Period of its claim of any such defect by making an on-line submittal of a claim as provided at mb3online.com. If the Software is found defective by Licensor, Licensor's sole obligation under this warranty is to remedy such defect in a manner consistent with Licensor's regular business practices.

11.3 LIMITATION OF LIABILITY. THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY LICENSOR. THE SOFTWARE IS PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR MAKES AND LICENSEE RECEIVES NO WARRANTY EXPRESS OR IMPLIED AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. LICENSOR SHALL HAVE NO LIABILITY WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. LICENSOR WILL NOT BE LIABLE FOR ANY LOST REVENUE, FUNDING, PROFIT OR DATA HOWEVER CAUSED ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE. LICENSEE ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE. IN ANY CASE, Licensee agrees that Licensor's liability arising out of contract, negligence, strict liability in tort, warranty OR OTHERWISE shall not exceed any amounts payable TO LICENSOR by Licensee for the Software.

11.4 Licensee Modifications. If any modifications are made to the Software by Licensee during the Warranty Period without the written authorization of Licensor, this warranty shall immediately be terminated. Correction for difficulties or defects traceable to Licensee's errors or systems changes shall be billed at Licensor's standard time and material charges.

12. Indemnity

12.1 Indemnification by Licensor.

(a) Licensor shall defend any claim, suit or proceeding brought against Licensee so far as it is based on a claim that use of the Software supplied hereunder infringes a United States copyright or an existing United States patent. As a condition to such defense, Licensee will provide Licensor with prompt written notice of the claim and permit Licensor to control the defense, settlement, adjustment or compromise of any such claim. Licensee may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Licensor or its counsel or because Licensor does not assume control, Licensor will bear the reasonable expense of such counsel. Licensee shall have no authority to settle any claim, lawsuit or proceeding without Licensor's prior written approval.

(b) If, as a result of any claim of infringement against any patent, copyright, license or other property right, Licensor is enjoined from using the Software, or if Licensor believes that the Software is likely to become the subject of a claim of infringement, Licensor at its option and expense may procure the right for Licensee to continue to use the Software, or replace or modify the Software so as to make it non-infringing. If neither of these two options is reasonably practicable, in the sole judgment of Licensor, Licensor may discontinue the licenses granted herein on one month's written notice and refund to Licensee the unamortized portion of the license fees paid with respect to the year in which Licensee's use of the Software is terminated (based on straight line depreciation over such year, with such depreciation to commence on the first day of such year). The foregoing states the entire liability of Licensor with respect to infringement of any copyrights or patents by the Software or any parts thereof.

(c) Licensor shall have no obligation under subsections (a) and (b) above to the extent any claim of infringement or misappropriation results from (i) use of the Software in combination with any other product, end item, or subassembly if the infringement would not have occurred but for such combination; (ii) use or incorporation in the Software of any design, technique or specification furnished by Licensee, if the infringement would not have occurred but for such incorporation or use; (iii) any claim based on Licensee's use of the Software as

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installed by Licensor after Licensor has informed Licensee of modifications or changes in the Software required to avoid such claims and offered to implement those modifications or changes, if such claim would have been avoided by implementation of Licensor's suggestions. Licensor shall not be liable hereunder for enhanced or punitive damages which could have been avoided or reduced by actions within the control of Licensee.

(d) THE FOREGOING PROVISIONS OF THIS SECTION 12.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF LICENSOR AND THE EXCLUSIVE REMEDY OF LICENSEE AND ITS CUSTOMERS, WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF ANY PROPRIETARY RIGHTS, INCLUDING BUT NOT LIMITED TO PATENTS, COPYRIGHTS AND TRADE SECRETS, BY THE SOFTWARE OR ANY PART THEREOF. LICENSOR'S OBLIGATIONS UNDER THIS SECTION 12.1 ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 11.3.

12.2 Indemnification by Licensee.

(a) Licensee shall defend, indemnify and hold harmless Licensor and its officers, directors, employees, shareholders, customers, agents, successors and assigns from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals), as incurred, resulting from, or arising out of (i) any breach of this Agreement; (ii) any third party claim which alleges that the Licensee's hardware incorporating the Software infringes upon, misappropriates or violates any patents, copyrights, or registered trademarks of persons, firms or entities who are not parties to this Agreement where such unlawful activity is completely independent of the Software; (iii) any claim relating to negligence, misrepresentation, error or omission by Licensee, or its officers, directors, employees, customers, agents, successors and assigns, or failure to pay required taxes due under this Agreement; and (iv) any warranties Licensee makes to customers, clients or other third parties beyond the scope of this Agreement.

(b) As a condition to such defense and indemnification, Licensor will provide Licensee with prompt written notice of the claim and permit Licensee to control the defense, settlement, adjustment or compromise of any such claim. Licensor may employ counsel at its own expense to assist it with respect to any such claim, provided, however, that if such counsel is necessary because of a conflict of interest of either Licensee or its counsel or because Licensee does not assume control, Licensee will bear the reasonable expense of such counsel.

13. CONFIDENTIALITY

13.1 Confidential Information. The parties acknowledge that in soliciting Licensee and negotiating this Agreement, Licensor has provided certain confidential or proprietary information to the Licensee ("Confidential Information"), which includes, without limitation, some or all of the following information: customer lists, prospect lists, data, financial information, business plans, marketing information, know-how, techniques, trade secrets, samples, intellectual property, and product research, development and other ideas or concepts. Licensee shall not disclose the Confidential Information to any third party other than employees, agents and contractors who have a need to have access to and knowledge of the Confidential Information solely for the purposes contemplated by this Agreement. Licensee shall take appropriate measures by instruction and agreement prior to disclosure to such employees, agents and contractors to assure against unauthorized use or disclosure. Licensor shall retain all right, title and interest to the Confidential Information. Except as specifically provided in this Agreement, no license under any trademark, patent or copyright, or application for same which are now or hereafter may be obtained by such party is either granted or implied by the disclosure of Confidential Information. The obligations of Licensee concerning confidentiality shall survive the termination of this Agreement.

13.2 Agreement as Confidential Information. The parties shall treat the terms and conditions of this Agreement as Confidential Information. Each party shall obtain the other's consent prior to any publication, presentation, public announcement or press release concerning the terms and conditions of this Agreement. Notwithstanding the foregoing, it is understood and agreed that Licensor may disclose the existence of this Agreement to third parties, including, without limitation, potential customers.

13.3 Exclusions. Licensee shall have no obligation under Section 13.1 with respect to information which (a) was rightfully in possession of or known to Licensee without any obligation of confidentiality prior to receiving it from the Disclosing Party; (b) is legally and publicly available without breach of this Agreement; (c) is rightfully obtained by Licensee from a source other than Licensor without any obligation of confidentiality; or (d) is disclosed by Licensee pursuant to a valid order issued by a court or government agency or pursuant to any law or regulation requiring disclosure of public records or information, provided that Licensee provides Licensor prior written notice of such obligation and the opportunity to oppose such disclosure or obtain a protective order.

14. Termination

14.1 Termination for Cause. Licensor shall have the right to terminate this Agreement and the licenses granted herein upon ten days' written notice in the event that Licensee or its officers, directors, employees or agents violates any covenant, agreement, representation or warranty of this Agreement in any material respect, including, but not limited to, (i) reverse engineering or otherwise infringing Licensor's proprietary rights by Licensee or its employees or agents; (ii) violation of the license grants; (iii) nonpayment of license or other fees; (iv) attempts to assign this Agreement; (v) failure to pay in a timely manner, or (vi) breach of confidentiality obligations. Termination of this Agreement and the licenses granted herein shall be in addition to and not in lieu of any equitable remedies available to Licensor.

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14.2 Return of Materials. In the event of termination by reason of the Licensee's failure to comply with any part of this Agreement, or upon any act which shall give rise to Licensor's right to terminate, Licensor shall have the right, at any time, to terminate the licenses granted herein and take immediate possession of the Software and Documentation and all copies wherever located, without demand or notice. Within five (5) days after termination of the licenses, Licensee will return to Licensor the Confidential Information and Software in the form provided by Licensor or as modified by Licensee, or upon request by Licensor, destroy the Confidential Information and Software and all copies, and certify in writing that they have been destroyed.

14.3 Survival. Sections 3, 4, 10, 11, 12, 13, 14, 15 and 20 shall survive termination or expiration of this Agreement. Notwithstanding anything in this Agreement to the contrary, in the case of termination by Licensor for cause pursuant to Section 14.1, Licensee shall pay any outstanding license or other fees owed to Licensor after termination.

15. Taxes

Licensee shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, federal, state, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement (other than income taxes on Licensor) regardless of when such tax liability arises or is asserted. Without limiting the foregoing, Licensee shall promptly pay to Licensor an amount equal to any such items actually paid, or required to be collected or paid by Licensor.

state is exempt

16. Hardware Requirements

Licensee shall make available for the Software Implementation, at each location listed in Exhibit C, computer equipment and software configurations approved by Licensor as adequate for such implementation at such location.

17. Delivery AND Installation

The Software shall be delivered and installed at each Data Processing Center identified in Exhibit C in accordance with the delivery and installation schedule provided to Licensee by Licensor.

18. Licensed Locations

Use of the Software by the Licensee at any location other than those described in Section 17 shall be the basis for immediate termination of this Agreement under Section 14.1.

19. Custom Modifications

All custom modifications to the Software shall be undertaken by Licensor at its then current time and materials charges. For each custom modification requested, Licensee shall provide written specifications to Licensor, which shall be mutually agreed upon prior to commencement of such custom modification effort.

not permitted under this contract

20. MISCELLANEOUS

20.1 Force Majeure. Licensor shall not be liable to Licensee for delays or failures in performance resulting from causes beyond the reasonable control of Licensor, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties. However, in any case, Licensee's obligations to pay the license or other fees and payments hereunder shall continue.

20.2 Relationship of Parties. Licensee acknowledges and agrees that Licensee has independently verified that the Software is appropriate for the purposes for which Licensee intends to use the Software, and that Licensee did not rely upon any skill or judgment of Licensor in such selection. The parties are independent contractors under this Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

20.3 No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Licensor and Licensee any rights, remedies or other benefits under or by reason of this Agreement.

SOFTWARE LICENSE AGREEMENT

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20.4 EQUITABLE RELIEF. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

20.5 ATTORNEYS' FEES. In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs. *PK*

20.6 NOTICES. Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by first class mail (certified or registered), or by facsimile confirmed by first class mail (registered or certified), to the other party. Either of the parties may from time to time change its address or fax number for notice by giving written notice to the other party. Notices will be deemed effective (i) three (3) working days after deposit, postage prepaid, if mailed, (ii) the next day if sent by overnight mail, or (iii) the same day if sent by facsimile and confirmed as set forth above. A copy of any notice shall be sent to the following:

If to Licensor:

MB3 INC.
7512 Dr. Phillips Blvd., Suite 50-112
Orlando, FL 32819
Attn: Matt Blakely
Fax: (321) 206-3779

If to Licensee:

Fax: _____

20.7 ASSIGNMENT. Licensee may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Licensor. Any attempted assignment or delegation without Licensor's written consent will be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

20.8 WAIVER AND MODIFICATION. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.

20.9 SEVERABILITY. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

20.10 CONTROLLING LAW, JURISDICTION AND TIME LIMITATION ON ACTIONS. This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Delaware and the United States, without regard to the conflicts of laws provisions thereof. Unless waived by Licensor (which it may do in its sole discretion) the exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement shall be the federal or state courts sitting in the State of Delaware, and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. No action, regardless of form, arising out of this Agreement may be brought by Licensee more than two years after the cause of action has arisen. *MB3 prevails* *PK*

20.11 HEADINGS. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

20.12 ENTIRE AGREEMENT. This Agreement, including all exhibits which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. *MB3 prevails* *PK*

20.13 COUNTERPARTS. This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

20.14 BASIS OF BARGAIN. EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

EXHIBIT A: SOFTWARE

EMGrantsPro Premium Edition

EMGrantsPro is the revolutionary grant management system for State EM departments. You can manage grants, applicants, projects, and the entire reimbursement process online, all while collaborating and having access to instant reports. The system has proven to significantly reduce the workload of staff, while increasing the productivity of your organization, ultimately leading to getting recovery funds to applicants faster and speeding up the recovery process.



Highlights:

- Administer Grants
- Manage Applicants
- Track Projects
- Process Payments
- Collaborate
- Generate Reports & More

For more information about EMGrantsPro, including detailed features and benefits, please visit EMGrantsPro.com.

EXHIBIT B: FEES AND PAYMENT TERMS

Product & Implementation Details:

EMGrantsPro: Premium Edition

EXHIBIT C: DATA PROCESSING CENTERS

The product will be either hosted with Licensor or installed on one single web server (optionally mirrored or backed up at an alternate location) which shall be managed by the State.

EXHIBIT D: SOFTWARE INTEGRATION

The product will optionally integrate with the State financial and payroll systems, sending and receiving data.

Amendment to Software Publisher/Service Provider Exhibit 3 Agreement

Third Party Agreement

EXHIBIT "A"

EMGrantsPro Version 4: Premium Edition

- EMGrantsPro Version 4 – Premium Edition (see <http://emgrantspro.com/features/list.cfm> for detailed functionality)
 - o Enabled Grant Programs: PA and HMGP combined in 1 system
 - o Unlimited users and data usage
- Importing/Customization: 50 Hour Budget for importing of Sandy data (Applicants, RPAs, Projects) or standard customization (form fields or reports) (note that additional customization is typically quoted per project, although it can also be done at \$190/hour)
- Training: 2 Days Onsite for Implementation & Training + up to 15 Hours of Remote Training (via GoToMeeting.com)
- Support: Gold Support through June 30, 2013. This package includes an annual budget of 100 incidents and 50 support hours. As with all packages, product updates are included and unlimited bug fixes (see Support Guide for details).
- Hosting: Advanced Hosting Package through June 30, 2013. This package includes 50 GB disk space, 2 GB of monthly transfer, daily backup of database and document repository. Additional disk space is \$20/month for each block of 10GB (with 25% discount available for upgrading in blocks of 100GB or more). Additional bandwidth is \$10/month for 1 GB extra per month.
- Domain Setup: Implementation of website address - NJOEM.org (or NewJerseyPA.org and MitigationNJ.org which could both point to the same system)

SILVER SUPPORT PACKAGE (JULY 1, 2013-JUNE 30, 2014)

This package includes an annual budget of 25 incidents and 20 consultant-based hours. As with all packages, product updates are included and unlimited bug fixes (see Support Guide for details). Note that annual support fees are due at the beginning of each billing year.

ADVANCED HOSTING PACKAGE (STARTING JULY 1, 2013-JUNE 30, 2014)

50 GB disk space, 2 GB of monthly transfer, daily backup of database and document repository. Note that annual hosting fees are due at the beginning of each billing year.

Hosting Details

All MB3 products are hosted within their dual server configuration, including the following:

- Dedicated Database server (running Microsoft SQL 2005)
- Dedicated Web Server (running Adobe ColdFusion 9)

Both servers are equipped with the following specifications:

- System Configuration: Single Processor -Intel Quad Core Pentium
- Operating System: Win2003 Server (Standard Edition)

- Processor: Intel Quad Core E6600 2.66GIG 8MEG SINGLE 1066M
- Memory: 4GB DDR2-667-ECC (Pentium-D)
- RAID Controller Software Raid 1

In the event of a loss of data, both servers have a service running called Advanced System Recovery (ASR) that takes a nightly snap shot of the server to back up on an external drive.

- 24/7 monitoring and security by onsite security personnel
- Biometric access control systems and video camera surveillance
- Gas fire suppression system and pre-action sprinkler systems
- Redundant, computer grade air conditioning and humidity control systems
- Massive power distribution system with full UPS backup and diesel generator protection
- Redundant fiber-based backbone connections to multiple Tier 1 Internet backbone providers

MB3 hosting packages include the following services:

- Daily backup of database and files
- Weekly offsite backup of database and files
- Server performance monitoring
- Windows updates and routine maintenance
- Major software upgrades as required by EMGrantsPro (including SQL, ColdFusion, IIS, Windows)

Hosting Terms:

- Providing at least 2 days advance notice before any scheduled maintenance with the following exceptions; (i) routine windows updates and security patches that take place between 8PM and 5AM EST. and (ii) required emergency server maintenance.
- Providing and maintaining all software and hardware, including, but not limited to, the Software, Hosting Software, Hosting Hardware, server software, server telecommunications hardware and software, server security hardware and server software, and other software that is necessary to operate and maintain the Software, System and host site.
- Ensuring that the Software, System and host site will be accessible at least 99.9% of the time, 24 hours a day, 7 days a week, 365 days a year, except for scheduled maintenance.

Exhibit 4
Amendment to Software Publisher/Service Provider
Agreement
Third Party Agreement

EXHIBIT "A"

Platinum Annual Support from July 1, 2013 – June 30, 2014 (includes 175 hours)

Credit for Pre-Paid Silver Support Package from July 1, 2013 – June 30, 2014

400 Additional Development Hours (for system customization or as requested) - \$170/hour

Purchase of Time Record, Travel Voucher, and Course Management Modules

Discount on Additional Modules (due to multi-product purchase)