

MASTER AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
Berry, Dunn, McNeil & Parker, LLC

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and Berry, Dunn, McNeil & Parker, LLC, (hereinafter BerryDunn or Supplier) located at 2211 Congress Street, Portland, ME 04102. For purposes of this Master Agreement MHEC and BerryDunn are referred to collectively as the “Parties” or individually as “Party”.

Whereas, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

Whereas, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, SREB Member States, and the WICHE Member States access MHEC’s Technology Initiative contracts, including this Master Agreement; and

Whereas, NEBHE Member States refers to any state that is a member, or affiliate member of NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

Whereas, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

Whereas, WICHE Member States refers to any state that is a member or an affiliate member of WICHE. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai’i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

Whereas, BerryDunn offers certain quality technology related services; and

Whereas, MHEC conducted a competitive sourcing event for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020 and upon completion of the competitive process BerryDunn received an award; and

Therefore, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and BerryDunn agree as follows:

1. Definitions

BerryDunn-branded Products: refers to any Products that are made available under this agreement and are marked with the “BerryDunn” brand, including all Standard Configurations thereof, but does not include any of the following items: (i) accessories or parts added to the BerryDunn -branded hardware products (ii) accessories or parts that are not installed in the BerryDunn factory; or (iv) Third Party Software and Peripheral products.

Deliverables: refers to the tangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that BerryDunn delivers to Procuring Eligible Organization.

Eligible Organizations: This Master Agreement shall be the framework under which Eligible Organizations can acquire solution offerings as defined herein from BerryDunn. Eligible Organizations shall include:

1. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions;
2. All K-12 schools and school districts;
3. All city, county, and other local governments; and
4. All state governments and their departments.

Eligible Organizations shall also include all not-for-profit private and public institutions and/or systems of higher education; K-12 schools and districts; city, county, and other local governments; and state governments and their departments located within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).

Equipment: refers to BerryDunn’s full line or “family” of product, which include devices that have a primary function related to the collection, transfer, storage, or processing of data that BerryDunn delivers to Procuring Eligible Organization.

Large Order Negotiated Pricing: refers to the prices or additional discounts that may be offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated pricing shall be by mutual agreement of the Eligible Organization and Supplier. Large Order Negotiated Pricing shall apply only to those items that meet the applicable additional terms and conditions negotiated by Supplier and the Eligible Organization.

Promotional Prices: refers to special prices that may be offered nationally or regionally under this Master Agreement to a specific category of customers intended to include similarly situated public entity and institutional Eligible Organizations for defined time periods and in similar quantities under defined terms and conditions.

Order: refers to an Eligible Organization’s purchase order or other ordering document evidencing its intent to procure Services from Supplier under the terms and conditions of this Master Agreement.

Procuring Eligible Organization: refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.

Products: refers to the full line of market offerings for attention, acquisition, use or consumption to satisfy the Eligible Organization’s need or want that BerryDunn makes available under this Master Agreement. BerryDunn may incorporate changes to their product offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award.

Retail Price List: refers to the BerryDunn's retail price list and is a complete list of Products and Services with the corresponding retail prices for those Products and Services made available for purchase by Eligible Organizations under this Master Agreement. The Retail Price List typically contains an item number, item description and the retail price for each Product.

Services: refers to the Services offered by BerryDunn under this Master Agreement that deliver value to Eligible Organizations by facilitating outcomes Eligible Organizations want to achieve without taking on the ownership of specific costs and risks. BerryDunn may incorporate changes to their service offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award. Some Services may require additional contract terms and conditions that Eligible Organizations shall negotiate with the Supplier as applicable, such as service level agreements and/or statements of work.

Application Software: means computer programs that are designed to perform specialized data processing tasks for the user and any Software specifically designated by BerryDunn as Application Software.

Supplier: refers to BerryDunn.

Third Party Products: refers to any Equipment ("Third Party Equipment") or Software ("Third Party Software") other than parts that are BerryDunn branded or originally listed as components of BerryDunn -branded Products. Third Party Software is not considered components of BerryDunn -branded Products.

Third Party Services: refers to any Services performed by someone other than BerryDunn or its subcontractors.

2. Scope of Work

Procuring Eligible Organizations shall purchase from Supplier, and Supplier shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Supplier. Accordingly, Supplier shall provide Products or Services only upon the issuance and acceptance by Supplier of a valid Order. Orders may be issued to purchase any Products or any Services listed on the Retail Price List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in BerryDunn's Retail Price List at the prices stated herein. For Large Order Negotiated Pricing, Supplier and Eligible Organization may negotiate quantity discounts below the Products and Services Pricing for a given purchase order. As it sees fit, Supplier may offer under this Master Agreement discounts that result in prices below those listed in the Product and Services Price List. BerryDunn is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. Notwithstanding anything to the contrary contained in this Master Agreement or Order under the Master Agreement, MHEC shall not be liable for any Eligible Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

This Master Agreement covers the solutions as described in for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020. The category awarded under this Master Agreement is:

Security Consulting Services: Security consulting firms are advisory and consulting services related to information and IT security design, evaluation and recommendations. These services are procured by various stakeholders in an organization, including boards of directors, CEOs, chief risk officers (CROs), chief information security officers (CISOs), chief information officers (CIOs), and other business and IT leaders for the purpose of obtaining and ensuring acceptable risk levels for a specific client organization.

3. Purchasing Under Master Agreement

- A. **Services:** Procuring Eligible Organization shall purchase Services from Supplier under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Supplier to perform; (iii) the price of the Service in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement. Eligible Organizations purchasing on-site Support, on-site Training, Professional, or IT as a Service shall negotiate the terms and conditions of such purchase with the Vendor, including, as applicable, service level agreements and/or statements of work.
- B. Each Order that is accepted by Supplier will become a part of the Agreement as to the Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier is binding.
- C. Procuring Eligible Organization may request in writing a change or cancellation of an Order that Supplier has previously accepted up until the time BerryDunn has begun performing the Services.
- D. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order.

4. Due Diligence

Notwithstanding MHEC’s role in entering into this Agreement and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- a) Eligible Organization is solely responsible for its own due diligence regarding the Agreement;
- b) MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of the Agreement for the Eligible Organization specifically; MHEC has not made any legally binding representations regarding Contractor and that MHEC does not guarantee or warrant the products or services of BerryDunn; and
- c) MHEC is not responsible for the actions or omissions of Supplier.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Agreement.

5. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain information technology products and services from other sources during the term of the Master Agreement.

6. Master Agreement Term

This Agreement will become effective from the date it has been executed by all parties. and shall remain in effect until June 30, 2024 (Term Ending Date) unless otherwise terminated pursuant to the terms of the Agreement. The Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Participants may procure products and services from Supplier under the terms of the MHEC Master Agreement at any time during the duration of the Agreement or any renewal thereof.

7. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and BerryDunn may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. Likewise, a Procuring Eligible Organization and BerryDunn may enter into an addendum to supplement or modify this Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and BerryDunn.

In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Mutually agreed upon Statement of Work ("SOW") or Service Level Agreement ("SLA")
- B. Executed addendum, not to include Purchase Orders, between Eligible Organization and BerryDunn
- C. The terms and conditions of this Master Agreement or any MHEC- BerryDunn addenda to this Master Agreement and its Exhibits
- D. The list of Services contained in the Order

8. Payment Provisions

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all Products and Services delivered meet the BerryDunn's published specifications. Unless otherwise agreed upon between the Eligible Organization and BerryDunn, the Eligible Organization shall within fifteen (15) calendar days from the date of delivery, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise the Products or Services shall be deemed accepted.
- B. **Prepayment:** Eligible Organization will not be required to make any advance payments to Contractor for any task deliverable or time-and-materials based orders under this Master Agreement. This clause does not apply to subscriptions for which payment is commonly expected prior to activation of coverage, such as periodical subscriptions, memberships, or annual maintenance agreements.
- C. **Payment of Invoice.** Payments shall be delivered to Supplier at the address shown on the invoice. Payments shall be made within forty-five (45) days from the date of invoice. In the event that Supplier is required to pursue the collection of past due amounts not subject to a good faith dispute between Supplier and the Procuring Eligible Organization, Supplier will be entitled to recover interest accrued at the lesser of 1.5% per month or in accordance with the applicable state laws of the Procuring Eligible Organization.
- D. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Supplier of any billing discrepancies or disputes about an invoice within **fifteen (15)** business days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice") or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Supplier will be subject to interest charges accruing from the original due date.
- E. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified "No Partial Shipment" on each purchase order.

- F. **Payment of Taxes.** The prices listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Equipment, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Suppliers net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

9. Shipping

BerryDunn shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon delivery to Procuring Eligible Organization's destination point. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. BerryDunn shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Organization. Standard 3-5 day ground shipping will be included in the price of the equipment. All equipment must be shipped fully configured with the required components unless as otherwise noted.

10. Product Delivery

- A. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete Product or Services from the Master Agreement and/or cancel Master Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under the agreement for a Procuring Eligible Organization, the Procuring Eligible Organization retains all of its remedies for a default. Failure of MHEC or the Procuring Eligible Organization to exercise its rights of termination for cause or other remedies for default due to a Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- B. Suppliers may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

11. Purchase of Open Market Items

Open Market items are incidental items, non-contract items, and items not on the price schedule. These items must be clearly identified on any sales quote or sales order referencing this Master Agreement as being open market items.

12. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Master Agreement, or Large Order Negotiated Pricing at the time of Order (provided that, with respect to the applicability of Large Order Negotiated Pricing, such Procuring Eligible Organization is a party to the Large Order Negotiated Pricing negotiations and the purchase is part of the project for which the Large Order Negotiated Pricing was negotiated). When Eligible Organizations purchase under this Master Agreement, BerryDunn shall not sell Products or Services to Eligible Organizations at prices higher than those awarded via this Master Agreement and in instances where this Provision is applied, this Master Agreement contract number shall be referenced in the Supplier's quote.

13. Services Pricing

BerryDunn agrees to maintain the Service Pricing in accordance with the following provisions:

- A. For any standard Services, in which the Services and corresponding SKU are on Retail Price List, the applicable discount percentage as noted in Exhibit A will apply. Except as set forth in Section 12, "Price Guarantees" or Section 43 "Administrative Reporting and Fees," the discount percentage set forth in

Exhibit A shall remain firm for the term of the Master Agreement. BerryDunn shall add new Service(s) to Retail Price List as new Service(s) become available for sale. The pricing for all new Service(s) shall be at the price discount levels provided herein, or as agreed to by the Parties.

- B. For any custom Services that are not included on the Retail Price List, the prices for such Services purchased under this Master Agreement will be as mutually agreed upon by both BerryDunn and Procuring Eligible Organization and as set forth in a BerryDunn quote or an applicable SOW or negotiated agreement.
- C. Specific geographic restrictions on the availability of Services must be conveyed to the Procuring Eligible Organization.

14. Data Ownership

Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Offeror will use Eligible Organization's data only for the purpose of fulfilling its duties under the Master Agreement or an order under the Master Agreement, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.

15. License and Proprietary Rights

The terms applicable to any software are in its license agreement, included with the Software media packaging, or presented to Procuring Eligible Organization during the installation or use of the Software.

16. Proprietary Rights

All right, title, and interest in and to the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products, Deliverables and all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, feedback, photographs, graphs, videos, typefaces, music, sounds, and software, as well as the methods by which any Services are performed and the processes that make up the Services, shall belong solely and exclusively to Supplier or its suppliers or licensors, and Procuring Eligible Organization shall have no rights whatsoever in any of the above, except as expressly granted in this this Master Agreement.

17. Warranties

- A. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE PRODUCT OR SERVICE DOCUMENTATION, BERRYDUNN (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "BERRYDUNN PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (B) RELATING TO THIRD-PARTY PRODUCTS; OR (C) RELATING TO THE RESULTS OR PERFORMANCE OF THE SOLUTION, INCLUDING THAT THE SOLUTION WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.
- B. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY BERRYDUNN (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED

OR INTENDED FOR USE WITH THE SOLUTION. WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.

- C. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT BERRYDUNN'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO PROCURING ELIGIBLE ORGANIZATION IN PROCURING ELGIBILE ORGANIZATIONS'S JURISDICTION WILL APPLY TO PROCURING ELIGIBLE ORGANIZATION, AND BERRYDUNN'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- D. **HIGH-RISK DISCLAIMER:** BERRYDUNN SHALL NOT BE LIABLE TO THE PROCURING ELIGIBLE ORGANIZATION FOR USE OF THE SOLUTION IN HAZARDOUS OR HIGH-RISK ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, IN WHICH THE FAILURE OR MALFUNCTION OF THE SOLUTION COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE. SUCH USE IS AT PROCURING ELIGIBLE ORGANIZATION'S OWN RISK, EVEN IF BERRYDUNN KNOWS OF SUCH USE, AND BERRYDUNN EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.
- E. **Services:** BerryDunn represents and warrants that the Services provided under this Master Agreement will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the BerryDunn employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner. Any additional warranty for Services will be decided on a case by case basis and be mutually agreed upon in a SOW.
- F. **Third-Party Products and Services Warranties:** BerryDunn does not warrant Third-Party Products or Services. Any warranty provided on Third-Party Product(s) or Service(s) is provided by the publisher, original manufacturer, or service provider and may vary from product to product or service to service. Such warranties shall be provided to the Procuring Eligible Organization with the Third Party Products and Services.
- G. **Transfer of Title.** BerryDunn warrants that Procuring Eligible Organization shall acquire good and clear title to BerryDunn -branded Products being purchased under this Master Agreement, free and clear of all liens and encumbrances. For any non- BerryDunn branded Products, BerryDunn warrants that it has the right to provide such Products to the Procuring Eligible Organization.

18. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving BerryDunn ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after the Product has begun production or been shipped for such Products that don't require production. At any time, BerryDunn may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve BerryDunn of any warranty or other service obligations incurred under the terms of this Master Agreement.

- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto.
- D. In the event this Master Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- E. Procuring Eligible Organization or BerryDunn may terminate an Order under this Master Agreement for cause based upon material breach of the Order or Master Agreement by the other, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within 30 days after receipt of a written notice the breaching party has not corrected the breach, or in the case of a breach that cannot be corrected in 30 days, begun and proceeded in good faith to correct the breach, the non-breaching party may terminate the Order effective immediately. The non-breaching party shall retain any and all remedies available to it under the law. A breach and any resulting termination of an Order under this Section 19 shall have no effect on any other Order made by any other Eligible Organization.

19. Non-Appropriation

This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any Order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by BerryDunn and shall be final and binding. A Procuring Eligible Organization shall provide sixty (60) days' notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to BerryDunn a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from BerryDunn will be paid by the Procuring Eligible Organization.

20. Records and Audit

BerryDunn agrees to maintain records directly related to the Invoices and Purchase Orders under this Master Agreement for a period of three (3) years or such term as required by applicable law from the date

of receipt of final payment after termination of the Master Agreement. These records shall be subject to inspection, which may be initiated no more than twice annually, at an agreed upon time and location, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

21. Background Checks. Supplier will perform background investigations within the scope of the Suppliers current standard policies and practices for any Supplier employees or subcontractors entering upon a Procuring Eligible Organizations premises, where legally acceptable and culturally permissible.

22. Insurance

The Contractor shall, at its own expense, obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless MHEC specifies otherwise. Eligible Organizations may have additional requirements. Eligible Organization will be responsible for managing compliance with the requirements of this section and/or their institutional requirements.

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows: a. Each Occurrence \$1,000,000 b. Products/Completed Operations Aggregate \$2,000,000 c. Personal and Advertising Injury \$1,000,000 d. General Aggregate \$2,000,000
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with minimum liability limits of \$250,000 per person and a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. Required only if Supplier drives on Eligible Organization's premises or transports Eligible Organization's employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to Eligible Organization.
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. If applicable, Professional Errors and Omissions insurance with limits of one million dollars (\$1,000,000) per occurrence.
- E. Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- F. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- G. Cyber Insurance In the event CONTRACTOR will host data, or provide for the hosting of data through a third-party entity, CONTRACTOR shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the CONTRACTOR or Eligible Organization, an immediate response in the event of a data breach, including meeting all notification obligations of CONTRACTOR and Eligible Organization and in the event the data breach involves personal information, available free credit monitoring for any affected individual for a minimum period of one year. CONTRACTOR shall defend, indemnify, save and hold harmless, the Eligible Organization, its officers, agents

and employees from liability of any nature or kind, including costs and expenses, for or on account of any and all suits, claims, or damages of any character whatsoever, resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting from the fault, negligence, wrongful act or omission of the Contractor, or any subcontractor, or their employees or agents.

The insurance coverages listed above must meet the following additional requirements:

- H. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- I. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the Eligible Organization. The policies shall be in form and terms approved by the Eligible Organization.
- J. The duty to defend, indemnify, and hold harmless the Eligible Organization under this agreement shall not be limited by the insurance required in this agreement.
- K. The Eligible Organization and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The Eligible Organization shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.
- L. A Waiver of Subrogation" waiving any right to recovery the insurance company may have against the Eligible Organization. Professional Liability, Workers' Compensation and Cyber Insurance policies are exempt from this requirement.
- M. CONTRACTOR shall furnish a certificate of insurance to the Eligible Organization representative prior to commencement of work under this agreement. All endorsements shall be provided as soon as practicable. Failure to provide insurance as required in this agreement is a material breach of contract entitling Eligible Organization to terminate agreement immediately.
- N. CONTRACTOR shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements to MHEC and any active Eligible Organizations. CONTRACTOR shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

23. Independent Contractor

BerryDunn, its agents, and employees are independent contractors and are not employees of MHEC or any Eligible Organization. BerryDunn has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

24. Debarment & Suspension

BerryDunn represents that it is not debarred or suspended from doing business with the federal government or any MHEC member states. Furthermore, BerryDunn shall provide notice to MHEC if the BerryDunn becomes debarred or suspended at any point during the duration of the Master Agreement.

25. Patent, Copyright, Trademark and Trade Secret Indemnification

BerryDunn will indemnify, defend and hold MHEC and Eligible Organization harmless from any third party claim that any BerryDunn -branded Product or Service provided to Eligible Organization pursuant to this Master Agreement infringes on another person's or entity's United States patent, copyright, trade secret or any other proprietary right of a third party. BerryDunn will have no obligation under this section with respect to any Claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; or (c) any combination, operation, or use of the Product with systems other than those provided by BerryDunn to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product. Following notice of a Claim or a threat of actual suit, BerryDunn will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product or Service; (2) provide a comparable replacement at no cost; or (3) in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use, but in no event shall refund of Product or Service relieve BerryDunn from its obligations to defend and indemnify MHEC and Eligible Organizations.

26. Indemnification

BerryDunn will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all third party claims or causes of action related to a claim of personal injury or damage to tangible property, including all reasonable attorneys' fees incurred by MHEC and/or Eligible Organizations, directly arising from intentionally wrongful actions or omissions or the negligent performance of the Master Agreement by BerryDunn, BerryDunn's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give BerryDunn written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder. For state entities, BerryDunn will coordinate with state's attorney general as required by state law. BerryDunn will control the defense of any such claim or action at BerryDunn's own expense. MHEC and/or Eligible Organization agree that BerryDunn may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide BerryDunn with all reasonable assistance that BerryDunn may require.

27. Limitation of Liability

BerryDunn shall not be liable to MHEC or any individual Eligible Organization for any direct damages in excess of \$500,000 or the price of the Product(s) or Service(s) purchased per Order subject to such claim, whichever is greater. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement or to damages resulting from personal injury or tangible property damage caused by BerryDunn's negligence or willful misconduct. NEITHER BERRYDUNN, MHEC NOR ANY ELIGIBLE ORGANIZATION SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS MASTER AGREEMENT, WHETHER THE CLAIM ALLEGES TORTUOUS CONDUCT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. BERRYDUNN IS NOT RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, OR LOSS OF USE OF SYSTEM(S) OR

NETWORK OR EXCEPT AS SET FORTH IN THIS AGREEMENT, THE PROCUREMENT OF SUBSTITUTE PRODUCTS, SOFTWARE OR SERVICES.

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR BERRYDUNN PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO PROCURING ELIGIBLE ORGANIZATION, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

28. Spoliation

BerryDunn shall promptly notify MHEC and/or Eligible Organization of all potential claims that arise or result from this Master Agreement. BerryDunn shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to MHEC and/or Eligible Organization the opportunity to review and inspect the evidence, including the scene of an accident.

29. Confidentiality

- A. While BerryDunn is providing Services hereunder, Eligible Organization or BerryDunn may disclose to the other certain business information identified as confidential (“Confidential Information”). All such information shall be marked or otherwise designated as “Confidential” or “Proprietary”. In order for such information to be considered Confidential Information pursuant to this Section 30 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient. Both Eligible Organization and BerryDunn agree that, with respect to Confidential Information it receives (as “Recipient”) from the other (as a “Discloser”) in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- B. Each Party will make reasonable efforts not to disclose the other Party’s Confidential Information to any third party, except as may be required by law or court order, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party’s possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party’s employees or agents independently of and without reference to any of the other party’s Confidential Information. Confidential Information shall remain the property of and be returned to the Disclosure (along with all copies or other embodiments thereof) within fifteen (15) days of (a) a written request from the Discloser, or (b) the earlier receipt by the Recipient from the

Discloser of a written demand following a breach by Eligible Organization or BerryDunn of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.

- C. In such cases where Confidential Information is required to be disclosed to a third party for purposes of providing Services, all disclosure of Confidential Information will be in accordance with the separate non-disclosure agreement between BerryDunn and the third party.
- D. If a separate, written nondisclosure agreement exists between Eligible Organization and BerryDunn, that agreement will control and will apply according to its terms and conditions to all Confidential Information the parties exchange with each other.
- E. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Organization and BerryDunn agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded, to the extent applicable to the scope of services performed by Supplier.

30. FERPA (and Other Privacy Laws)

Where applicable to the scope of services BerryDunn is providing, and only to the extent directly applicable to BerryDunn and its Services, BerryDunn agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other applicable state and federal privacy laws. To the extent an Eligible Organization discloses any information to BerryDunn subject to aforementioned privacy laws, Eligible Organization agrees to advise BerryDunn of the disclosure of such information; and Eligible Organization represents and warrants to BerryDunn that it has obtained any required consents to disclose such information. In addition, to the extent that BerryDunn is or becomes a Business Associate as defined in HIPAA, both Parties acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

With regard to FERPA, for purposes of this Agreement, BerryDunn is a contractor or outside service provider with whom the Procuring Eligible Organization has outsourced institutional services or functions that it would otherwise use employees to perform. For purposes of FERPA, the Procuring Eligible Organization has determined that Supplier, and its employees acting in the course of their employment under this Agreement, is a school official with a legitimate educational interest in obtaining access to education records and will only provide BerryDunn with access to those particular education records in which BerryDunn has a legitimate educational interest. Further, the Procuring Eligible Organization represents and warrants that it has obtained any required consents to disclose such records to Supplier and the Procuring Eligible Organization represents and warrants that it has or will make all required notifications required to disclose such records to Supplier. Supplier shall be under the direct control of the Procuring Eligible Organization with respect to its maintenance and use of personally identifiable information from education records provided under this Agreement. Supplier shall not further disclose any personally identifiable information from education records to any third party unless that third party likewise has a legitimate educational interest in obtaining access to education records and unless authorized to so further disclose by the Procuring Eligible Organization. For purposes of this Agreement, the Procuring Eligible Organization has determined that those Supplier contractors performing institutional services or functions that the Procuring Eligible Organization would otherwise use employees to perform shall have such legitimate educational interest in instances where contractor requires access to education records in order to fulfill its responsibilities under this Agreement. Such access shall be limited to the specific educational records necessary for the performance of services and in such instances contractor shall have the same obligations pursuant to this section as Supplier and Supplier shall inform

said contractors of its obligations. Supplier agrees to hold non-public information that is subject to FERPA requirements, which may include personally identifiable information, in strict confidence and agrees to implement and maintain safeguards to protect the security, confidentiality and integrity of any such non-public personal information it receives from Procuring Eligible Organizations. Suppliers shall not disclose such non-public personal information received from or on behalf of Procuring Eligible Organization except as permitted or required by this Agreement or addendum, as required by law, or otherwise authorized in writing by Procuring Eligible Organization.

31. Accessibility. Supplier agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by provider shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Participant resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>).

32. Amendments

Except as provided for in Section 7 "Order of Preference"; and Section 13 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

33. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

34. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

35. Enforcement of Agreement

A Party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

36. Equal Opportunity Compliance

BerryDunn agrees to abide by all applicable Federal and state laws, regulations, and executive orders pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, BerryDunn agrees that it does not discriminate, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap. If BerryDunn is found to be not in compliance with applicable Federal or state requirements during the life of this Master Agreement, BerryDunn agrees to take appropriate steps to correct these deficiencies.

37. Compliance with Law

BerryDunn shall comply with all applicable laws and governmental regulations, which by their terms, apply to BerryDunn's performance under an Order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and governmental regulations in connection with this Master

Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

38. Applicable Law

- A. As between Eligible Organization and BerryDunn, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.
- B. As between MHEC and BerryDunn this Master Agreement will be construed in accordance with, and its performance governed by, the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- C. As between Eligible Organization, MHEC, and BerryDunn this Master Agreement will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

39. Conflict of Interest

BerryDunn warrants to the best of its knowledge and belief that it presently has no interest direct or indirect, which would give rise to organizational conflicts of interest. BerryDunn agrees that if an organizational conflict of interest is discovered during the term of this Master Agreement, it will provide disclosure to MHEC that shall include a description of the action BerryDunn has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and is not timely resolved by BerryDunn MHEC may, at its sole discretion, cancel this Master Agreement.

40. Assignment

Neither Party shall sell, transfer, assign or otherwise dispose of the Master Agreement or any portion thereof or of any right, title, or interest herein without the prior written consent of the other Party. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated corporations. Nothing in this Section shall preclude BerryDunn from employing a subcontractor in carrying out its obligations under this Master Agreement. BerryDunn's use of such subcontractors will not release BerryDunn from its obligations under this Master Agreement.

41. Survival

Certain paragraphs of this Master Agreement including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

42. Notification

- A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage

prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

To MHEC:	To BerryDunn:
MHEC	BerryDunn
105 Fifth Avenue South	2211 Congress Street
Suite 450	
Minneapolis, Minnesota 55401	Portland, ME 04102
Attn: Rob Trembath, Chief Operating Officer and General Counsel cc: Deb Kidwell	Attn: Clinton E. Davies, Principal
Facsimile: 612-767-3353	Facsimile: 207-774-2375

Changes in the above information will be given to the other Party in a timely fashion.

- B. **To Eligible Organization:** Notices shall be sent to Eligible Organization’s business address. The term “business address” shall mean the “Bill to” address set forth in an invoice submitted to Eligible Organization.

43. Administrative Reporting and Fees

On a calendar-quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), BerryDunn will, in a timely manner, make available to MHEC utilization reports and information generated by this Master Agreement, reflecting net Product and Service sales to Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one and a half percent (1.50%) of the net Product and Service sales for that quarter period (the “Fee”). MHEC, from time to time may provide a written request to BerryDunn to change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the Fee may also require a change in the Product or Service pricing.

44. MHEC Not Liable For Eligible Organizations

MHEC is not liable to BerryDunn for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement. BerryDunn, in its sole discretion, may discontinue selling Products or Services to any Eligible Organization who fails to make payments or otherwise fully perform pursuant to the terms and conditions of the Master Agreement.

45. Announcements and Publicity

Any announcements and publicity given to MHEC (or an Eligible Organization) resulting from this Master Agreement must receive the prior approval of MHEC (or Eligible Organization). Such approval shall not be unreasonably withheld. BerryDunn will not make any representations of MHEC’s (or an Eligible Organization’s) opinion or position as to the quality of effectiveness of the Products, supplies and/or Services that are the subject of this Master Agreement without the prior written consent of MHEC (or Eligible Organization), which shall not be unreasonably withheld.

46. Marketing

BerryDunn will assist MHEC in the development and implementation of appropriate marketing strategies. Strategies may include, but are not limited to, webinars, printed material, email materials or presentations. Mutual review and evaluation of the marketing plans will be done during annual reviews, and at other times upon request. Contractor shall not appropriate or make use of names or other identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

47. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and BerryDunn in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services, web presence; and to advise BerryDunn on the effectiveness of its implementation progression. At the very least there will be an annual meeting between BerryDunn and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

48. Force Majeure.

Neither BerryDunn nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; pandemic; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.

49. Sovereign Immunity.

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive a Eligible Organization of its applicable sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State law applicable to the Eligible Organization. Nothing herein will be construed to prevent any breach of contract claim under this Master Agreement.

50. Compliance with Laws and Export.

A. **Compliance with Laws. Procuring Eligible Organization** and BerryDunn agree to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring **Eligible Organization** acknowledges that the Products, Software and Services provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Procuring Eligible Organization or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Products, Software and Services is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring Eligible Organization also may be subject to import or re-export restrictions in the event Procuring Eligible Organization transfers the Products, Software or Deliverables from the country of

delivery and Procuring Eligible Organization is responsible for complying with applicable restrictions. If any software provided by Procuring Eligible Organization and used as part of the Products, Software and/or Services contains encryption, then Procuring Eligible Organization agrees to provide BerryDunn with all of the information needed for BerryDunn to obtain export licenses from the U.S. Government or any other applicable national government and to provide BerryDunn with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Procuring Eligible Organization is solely responsible for obtaining any necessary permissions relating to software that it exports. BerryDunn also may require export certifications from Procuring Eligible Organization for Procuring Eligible Organization-provided software. BerryDunn's acceptance of any order for Products, Software and Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. BerryDunn is not liable for delays or failure to deliver Products, Software or Services resulting from Procuring Eligible Organization's failure to obtain such license or to provide such certification.

- B. **Regulatory Requirements.** BerryDunn is not responsible for determining whether any Third-Party Product to be used in the Products, Software and Services satisfies the local regulatory requirements of the country to which such Products, Software and Services are to be delivered or performed, and BerryDunn shall not be obligated to provide any Products, Software and Services where the resulting Products, Software and Services is prohibited by law or does not satisfy the local regulatory requirements.
- C. **Excluded Data.** Procuring Eligible Organization acknowledges that no part of the Products, Software and Services is designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) except for personally identifiable information referenced in to Section 30, personally identifiable information that is subject to heightened security requirements as a result of Procuring Eligible Organization's internal policies or practices, industry-specific standards or by law (collectively referred to as "Excluded Data"). Procuring Eligible Organization hereby agrees that Procuring Eligible Organization is solely responsible for reviewing data that it will provide to BerryDunn (or to which BerryDunn will have access) to ensure that it does not contain Excluded Data.

remainder of page intentionally left blank



51. Miscellaneous.

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. BerryDunn may accept this Master Agreement either by its authorized signature or a signed Order. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization’s ordering documents shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

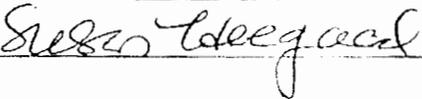
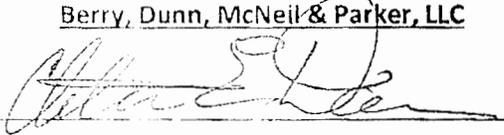
	<u>Midwestern Higher Education Commission</u>	<u>Berry, Dunn, McNeil & Parker, LLC</u>
Signature:		
Name:	<u>Susan Heegaard</u>	<u>Clinton E. Davies</u>
Title:	<u>President</u>	<u>Principal</u>
Address:	<u>105 Fifth Avenue South Suite 450</u>	<u>2211 Congress Street</u>
	<u>Minneapolis, Minnesota, 55401</u>	<u>Portland, ME 04102</u>
Date:	<u>June 4, 2021</u>	<u>June 2, 2021</u>

Exhibit A – Discount Category Pricing

The following are BerryDunn’s offsite and on-site hourly rates by job level to provide services. Our on-site hourly rates include travel expenses. Please note: BerryDunn does not charge for our time spent traveling to and from client sites.

Table 1: BerryDunn’s Offsite and On-site Hourly Rates by Role

Category 5 - Security Consulting Services	Offsite	On-site
BerryDunn Job Level	Hourly Rate	Hourly Rate
Paraprofessional	\$70	\$90
Consultant	\$150	\$180
Senior Consultant	\$200	\$230
Manager/Project Manager	\$235	\$265
Senior Manager/Project Leader	\$270	\$300
Principal	\$350	\$380

Our composite hourly rates typically run between \$175 - \$240 depending on the project’s scope of work, complexity, and staffing.

Our typical pricing/fee structure with higher education clients is fixed-fee pricing, using the rates above. Our fixed fee pricing is determined on a project-by-project basis using a defined scope of work provided by MHEC/the institution.