

MHEC/Alcatel-Lucent USA Inc.

Master Price Agreement

Effective March 1, 2009 through December 31, 2011

Alcatel-Lucent USA Inc. (“Alcatel-Lucent”), a Delaware Corporation located at 600 Mountain View Avenue Murray Hill New Jersey 07974, and the Midwestern Higher Education Commission (“MHEC”) located at 1300 South Second Street, Suite 130, Minneapolis, Minnesota, 55454 on behalf of the Eligible Organizations located in the MHEC member states enter into this MHEC/Alcatel-Lucent Master Price Agreement (“Master Agreement”), subject to the terms and conditions herein, effective this first day of March 2009 (“Effective Date”). For purposes of this Master Agreement, Alcatel-Lucent and MHEC are referred to collectively as the Parties or individually as Party.

1. Definitions

Documentation: refers to the license made available by Alcatel-Lucent to Procuring Eligible Organization of documentation relating to any Equipment or Software.

Eligible Organizations: This Master Agreement shall be made available to all Eligible Organizations. Eligible Organizations shall include:

- all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State;
- all K-12 schools and school districts located in a Member State; and
- Eligible Organizations located in a Member State that terminates its association with the Compact will no longer be eligible under this Master Agreement to purchase pursuant to this Master Agreement. Termination by any Member State shall not prohibit or restrict Alcatel-Lucent from negotiating or contracting with such Member State or entity within such Member State outside the Compact. MHEC shall promptly notify Alcatel-Lucent in writing of the termination of any Member States’ membership in the Compact. If any Member State so terminates its membership in the Compact, such termination shall not effect the validity or enforceability of or constitute a default under any purchase order then in effect with any Participant. Similarly, MHEC shall promptly notify Alcatel-Lucent if other states join the Compact after which such states shall be deemed to be Member States for purposes of this Master Agreement.

Equipment: refers to Alcatel-Lucent’s full line of new or refurbished equipment and components made available for sale by Alcatel-Lucent to Eligible Organizations under this Master Agreement.

Large Order Negotiated Prices: refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Alcatel-Lucent. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Alcatel-Lucent and the Eligible Organization.

Member State: refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact. The current Member States are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. MHEC shall

promptly notify Alcatel-Lucent if any other states join the Compact and thereby become a Member State for purposes of this Master Agreement.

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

Price Agreement: refers to an indefinite quantity contract, which requires Alcatel-Lucent to furnish Products or Services to a Procuring Eligible Organization that issues a valid Order document.

Procuring Eligible Organization: refers to an Eligible Organization that desires to purchase under this Master Agreement and has submitted an executed an Order to Alcatel-Lucent.

Products: refers to the full product line of Equipment, Software and Documentation that Alcatel-Lucent makes available under this Master Agreement.

Product List: refers to the complete list of Products and the corresponding prices for those Products made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. The Product List is set forth as Exhibit A and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

Promotion Prices: refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.

Services: refers to the services offered by or through Alcatel-Lucent under this Master Agreement, including pre-sales assessment, installation and implementation assistance, technical support and training.

Services List: refers to the complete list of Services and the corresponding prices for those Services made available for purchase by Eligible Organizations under this Master Agreement. The Services List contains an item number, item description and the maximum price for each service. Where travel is necessary to perform the Services, additional reasonable costs may be levied. The Service List is set forth as Exhibit A and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

Software: refers to Alcatel-Lucent's full offerings of software and firmware (including third-party software and firmware) licenses made available to Procuring Eligible Organizations under this Master Agreement. Software shall include updates, upgrades, maintenance releases, revisions and enhancements to the licensed software. Software does not include source code.

2. Scope of Work

Procuring Eligible Organizations shall purchase from Alcatel-Lucent, and Alcatel-Lucent 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 Alcatel-Lucent. This Master Agreement is a Price Agreement. Accordingly, Alcatel-Lucent shall provide Products or Services only upon the issuance and acceptance by Alcatel-Lucent of a valid Order. Orders may be issued to purchase any Products listed on the Product List or for any Services listed on the Services List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in Alcatel-Lucent's

Product List and Services List at the prices stated therein. For Large Order Negotiated Prices, Alcatel-Lucent and Eligible Organization may negotiate quantity discounts below the Product and Services List price(s) for a given purchase order. As it sees fit, Alcatel-Lucent may offer under this Master Agreement Promotional Price discounts that result in prices below those listed in the Product Price List and the Services Price List.

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 Agreement does not contemplate the provision by Alcatel-Lucent of any work for hire. Orders requesting that Alcatel-Lucent provide a Procuring Eligible Organization with any work for hire will be accepted at the option of Alcatel-Lucent, and if accepted, shall be governed under a separate agreement.

3. Purchasing Under Master Agreement

- A. **Products:** Procuring Eligible Organizations shall purchase from Alcatel-Lucent the Products listed on the Product List under the terms and conditions of this Master Agreement by delivering to Alcatel-Lucent an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the “ship-to” address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement.
- B. **Services:** Procuring Eligible Organizations shall purchase Services from Alcatel-Lucent under the terms and conditions of this Master Agreement by delivering to Alcatel-Lucent an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service(s) that the Procuring Eligible Organization desires Alcatel-Lucent 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.
- C. Each Order that is accepted by Alcatel-Lucent will become a part of the Master Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Master 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 Alcatel-Lucent constitutes a binding contract.
- D. All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 7.A (“Acceptance”) by Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- E. Procuring Eligible Organization may request in writing changes to an Order (“Change Request”) that Alcatel-Lucent has previously accepted. In response to a Change Request, Alcatel-Lucent will provide written quotations to the Procuring Eligible Organization, including any changes to prices, license fees, shipment or completion dates. A Change Request is a separate Order subject to the terms and conditions of this Master Agreement and Alcatel-Lucent’s change order process.

- F. Alcatel-Lucent will accept a purchasing card for order placement in addition to accepting a purchase order.
- G. If Alcatel-Lucent, in its sole discretion from time to time, determines that Procuring Eligible Organization's payment history with Alcatel-Lucent indicates that Procuring Eligible Organization is or may be unable to comply with the payment terms of this Master Agreement, then Alcatel-Lucent may reject any unaccepted Order, delay shipment of any Product and/or delay performance of any Services until Alcatel-Lucent and Procuring Eligible Organization have agreed on revised payment terms. Subject to the terms of this Master Agreement, if Alcatel-Lucent fails to receive Procuring Eligible Organization's timely payment for Services, Alcatel-Lucent may immediately cease performing the Services and selling Products under this Master Agreement.

4. 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 voice and data network products and services from other sources during the term of the Master Agreement.

5. Master Agreement Term

This Master Agreement will be formed upon execution by the Parties, and shall remain in effect, unless otherwise terminated pursuant to the terms of the Master Agreement, for a period of three (3) years from the Effective Date. The Master Agreement may be mutually renewed for four (4) additional one-year terms unless terminated pursuant to the terms of this Master Agreement.

6. 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 Alcatel-Lucent 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 Alcatel-Lucent may enter into an addendum to supplement or modify this Master 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 Alcatel-Lucent.

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

- A. executed addendum between Eligible Organization and Alcatel-Lucent;
- B. the terms and conditions of this Master Agreement;
- C. exhibits to this Master Agreement; and
- D. the list of Products and Services contained in the Order.

7. Payment Provisions

- A. **Acceptance.** (1) Products: Unless otherwise agreed upon in writing by Procuring Eligible Organization and Alcatel-Lucent, within ten (10) business days from the date of delivery, the Procuring Eligible Organization shall accept or reject the Products for which installation by Alcatel-Lucent is not needed. For Products for which installation by Alcatel-Lucent is required, and unless otherwise agreed upon in writing by Procuring Eligible Organization and Alcatel-Lucent, the

Procuring Eligible Organization shall accept or reject the Products within ten (10) business days of Alcatel-Lucent's completion of installation and verification tests, and issuance to Procuring Eligible Organization an installation verification certificate. If (i) Alcatel-Lucent provides engineering and design services under a statement of work or written quote, (ii) unnecessary Products are recommended by Alcatel-Lucent, and (iii) such unnecessary Products are ordered by Procuring Eligible Organization, Procuring Eligible Organization may return said unnecessary Products that are largely in their original, unopened, and undamaged packaging. Alcatel-Lucent must receive these unnecessary Products within thirty (30) days from the date of delivery. Products shall be invoiced upon delivery or installation when Alcatel-Lucent is performing the installation. (2) Services: Unless otherwise agreed to by the Procuring Eligible Organization and Alcatel-Lucent, within ten (10) business days from completion of Services, the Procuring Eligible Organization shall accept or reject the Services. Installation Services shall be invoiced upon completion unless otherwise specified on the Order. Unless prohibited under applicable state or local statutes, other services (e.g. Software Evolution, Remote Technical Support, Repair and Return, etc.) will be invoiced quarterly in advance.

- B. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be submitted to Alcatel-Lucent at the address shown on the invoice. Payment shall be tendered to Alcatel-Lucent within thirty (30) days of the date of the invoice. After the thirtieth (30) day from the date of the invoice, unless mutually agreed to between the Procuring Eligible Organization and Alcatel-Lucent, interest shall be paid on the unpaid balance due to Alcatel-Lucent at the rate of one and one-half percent (1½ %) per month. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.
- C. **Dispute Notice.** The Procuring Eligible Organization shall notify Alcatel-Lucent of any billing discrepancies or disputes about an invoice within ten (10) days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice"). Tender of a Dispute Notice does not relieve the 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 Alcatel-Lucent will be subject to interest charges accruing from the original due date.
- D. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Alcatel-Lucent unless the Procuring Eligible Organization has clearly specified "No Partial Shipment" on each purchase order.
- E. **Payment of Taxes.** The prices listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Alcatel-Lucent for, any and all taxes and/or duties assessed against or payable by Alcatel-Lucent in connection with the sale of Equipment, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Alcatel-Lucent's net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

8. Shipping

- A. Subject to Section 8.B below, Alcatel-Lucent shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon Acceptance. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Alcatel-Lucent shall bear the risk of loss with respect to returned Products except for loss

or damage directly attributable to the negligence of the Eligible Participant. Alcatel-Lucent shall provide to Procuring Eligible Organization the estimated shipping charges prior to acceptance by Alcatel-Lucent of Procuring Eligible Organization's Order.

B. Procuring Eligible Organization shall pay for, or reimburse Alcatel-Lucent if Alcatel-Lucent pays for, the shipment of any Product from Alcatel-Lucent's designated dock to the destination specified by Procuring Eligible Organization. Alcatel-Lucent shall prepay all applicable shipping charges, unless: (a) the Order requests shipment "Collect," identifies the carrier, the Procuring Eligible Organization's account number with that carrier and Alcatel-Lucent agrees to such request (such agreement shall not be unreasonably withheld), and (b) Procuring Eligible Organization or its agent coordinates shipment with Alcatel-Lucent's transportation department in advance of delivery.

9. Product Delivery

A. Unless otherwise agreed to by Procuring Eligible Organization and Alcatel-Lucent, Alcatel-Lucent agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid purchase Order. If delivery cannot be made within thirty (30) calendar days, Alcatel-Lucent will notify Procuring Eligible Organization within ten (10) business days following Order placement, and Procuring Eligible Organization, as its sole remedy, can cancel the order by written, electronic, or facsimile notification.

B. The Product and Services List prices also do not include, and Procuring Eligible Organization shall pay for, or reimburse Alcatel-Lucent if Alcatel-Lucent pays for, any and all costs or charges for or relating to (a) specific or special delivery requirements (e.g., street closure, parking fees, lift gates, cranes, heavy-lifting equipment and other similar charges), (b) site preparation (e.g., obtaining power, telephone lines and other similar charges), and (c) installation, except to the extent that those costs or charges have been specifically included in the related Order. For costs or charges for or relating to specific or special delivery requirements, Alcatel-Lucent shall provide to Procuring Eligible Organization the estimated shipping charges prior to acceptance by Alcatel-Lucent of Procuring Eligible Organization's Order.

10. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Product List or an Announced Promotion Price or Large Order Negotiated Price (provided that, with respect to the applicability of Large Order Negotiated Prices, such Procuring Eligible Organization is a party to the Large Order Negotiated Price negotiations and the purchase is part of the project for which the Large Order Negotiated Price was negotiated).

11. Product List

Alcatel-Lucent agrees to maintain the Product List in accordance with the following provisions:

A. The Product List prices for all Equipment, Software and Documentation will conform to the Product List provided to MHEC and set forth as Exhibit A. Except as set forth in Section 11, "Price Guarantees," the discount percentage set forth in the Product List shall not decrease during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty (30) days prior written notice to MHEC. The year-over-year price increase on the Product List, if

any, will not exceed the year-over-year percentage increase as reflected in Alcatel-Lucent's published academic price list.

- B. Should the list price of a Product on Alcatel-Lucent's academic price list price decrease at any time during this Master Agreement, Alcatel-Lucent agrees to a similar price reduction on this Master Agreement's Product List for the same Product, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.
- C. For all Products on the Product List, any price reductions that occur from the time of submission of an Order by Procuring Eligible Organization to Product delivery must be passed on to the Procuring Eligible Organization that issued the Order.
- D. Alcatel-Lucent shall add new product(s) to the Product List when new product(s) shall become available for sale by Alcatel-Lucent. The pricing for all new Products shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- E. Alcatel-Lucent will delete obsolete and discontinued Products from the Product List on a timely basis.
- F. The Product List shall be maintained by Alcatel-Lucent on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to substantially comply with the requirements in this Paragraph 11, Product List, will be grounds for action to be taken against Alcatel-Lucent, including, when appropriate, termination of the Master Agreement or pending Orders that have not been accepted by the Procuring Eligible Organization.

12. Services List

Alcatel-Lucent agrees to maintain the Service List in accordance with the following provisions:

- A. The Service List prices for all Services will conform to the Service List provided to MHEC and set forth as Exhibit A. Except as set forth in Section 11, "Price Guarantees," the discount percentage set forth in the Service List shall not decrease during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty (30) days prior written notice to MHEC. The year-over-year price increase on the Service List, if any, will not exceed the year-over-year percentage increase as reflected in Alcatel-Lucent's published academic price list.
- B. Should the list price of a Service on Alcatel-Lucent's academic price list price decrease at any time during this Master Agreement, Alcatel-Lucent agrees to a similar price reduction on this Master Agreement's Services List for the same Service, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.
- C. The Service List shall be maintained by Alcatel-Lucent on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to substantially comply with the requirements in this Paragraph 12, Service List, will be grounds for action to be taken against Alcatel-Lucent, including, when appropriate, termination of the Master Agreement or pending Orders that have not been accepted by the Procuring Eligible Organization.
- D. The term of performance for each Service will begin when specified in the Service Quotation and will continue until the earlier of: (a) the expiry date specified therein; (b) the date the Services described therein have been accepted or completed, as the case may be, and all amounts owing with

respect thereto have been paid; or (c) the date it is terminated in accordance with this Master Agreement.

- E. Procuring Eligible Organization understands that Alcatel-Lucent is in the business of providing services drawing upon the knowledge, understanding and expertise Alcatel-Lucent has gained from working with many varied customers. Nothing in this Master Agreement will be deemed to assign rights to or limit Alcatel-Lucent's use of any information, know-how or knowledge to the extent it does not contain Procuring Eligible Organization's Confidential Information.
- F. Procuring Eligible Organization hereby grants to Alcatel-Lucent a non-exclusive, personal, royalty-free and non-transferable license to make, have made, use, execute, perform, copy (as reasonably necessary), display, modify and make derivative works under any and all intellectual property rights owned by Procuring Eligible Organization to the extent necessary for furnishing Services and deliverables under this Master Agreement. Except as expressly set forth in this Master Agreement, no right or license is either granted or implied by either Party to the other with respect to any technical or business information, or with respect to rights in any patents, trademarks, copyrights, trade secrets, mask work protection rights, and other intellectual property. Subject to Procuring Eligible Organization's right, title and interest in Procuring Eligible Organization's Confidential Information, any and all inventions, derivative works, improvements, developments or innovations that Alcatel-Lucent (and its contractors or consultants, as the case may be) may make, conceive or devise in the course of performing Services under this Master Agreement, are the sole and exclusive property of Alcatel-Lucent, including all patents, copyrights, trademarks and trade secrets embodied in them.
- G. Alcatel-Lucent will make reasonable efforts consistent with sound business practices to honor Procuring Eligible Organization's specific request regarding assignment of employees, but Alcatel-Lucent reserves the sole right to determine the assignment of its personnel to perform Services hereunder. Alcatel-Lucent personnel at all times are subject to the employment conditions of Alcatel-Lucent and not those of Procuring Eligible Organization.

13. Procuring Eligible Organization's Responsibilities

- A. At all times during the performance of any Services at Procuring Eligible Organization's site, Procuring Eligible Organization shall (a) ensure that all easements, rights-of-way and other permits necessary to permit the performance of the Services are in effect, (b) ensure that the site is safe and free from actual or potential hazards and equipped with reasonable heat, light, plumbing, working and staging space, electricity and ventilation, (c) provide reasonable on-site storage space for Alcatel-Lucent's equipment and materials, (d) ensure that Alcatel-Lucent's personnel have access to the site and to the applicable Products during the times necessary to perform the Services, and (e) timely comply with Alcatel-Lucent's reasonable requests for information necessary to permit Alcatel-Lucent to perform the Services properly. While performing Services, Alcatel-Lucent personnel shall comply with any and all site security rules provided and agreed to by Alcatel-Lucent in advance.
- B. Procuring Eligible Organization shall cooperate with Alcatel-Lucent in the performance of Services hereunder, and perform Procuring Eligible Organization's responsibilities specified in each Service Quotation. In addition, Procuring Eligible Organization shall: (a) provide experienced, qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent, timely

fashion and assist Alcatel-Lucent in completing the Services; (b) promptly render all reviews, decisions and approvals so as not to delay or impede Alcatel-Lucent's performance of Services; (c) ensure that a Procuring Eligible Organization representative is available during regular business hours to provide information and assistance as Alcatel-Lucent may require in connection with the Services; (d) promptly notify Alcatel-Lucent of any issues or concerns; (e) regularly back up files and all data; (f) conduct any acceptance tests for Services, Licensed Materials and Equipment in accordance with the procedures in any Service Quotation, or as agreed in writing; (g) unless site preparation is specified as a Service to be provided by Alcatel-Lucent, prepare its site for installation of any Products, providing a standard telecommunications environment in accordance with the applicable site and equipment specifications including the removal and proper disposal of all asbestos or other hazardous materials; and (h) furnish to Alcatel-Lucent the appropriate interface specifications necessary to connect Equipment to Procuring Eligible Organization's network infrastructure. Procuring Eligible Organization shall ensure the accuracy and completeness of such interface specifications and Alcatel-Lucent shall not be responsible for any consequences resulting from inaccurate or incomplete interface specifications.

- C. Procuring Eligible Organization understands that Alcatel-Lucent's performance is dependent on Procuring Eligible Organization's timely and effective satisfaction of Procuring Eligible Organization's responsibilities under this Master Agreement, including timely decisions and approvals. If Procuring Eligible Organization fails to meet its responsibilities set forth herein and any others stated in separate Addenda or Service Quotations, Alcatel-Lucent will be excused from performing its obligations until Procuring Eligible Organization provides what Alcatel-Lucent requires Procuring Eligible Organization to perform.

14. License

- A. Procuring Eligible Organization shall use all licensed Software in accordance with this Section. Upon delivery of any licensed Software and subject to Procuring Eligible Organization's payment of the applicable fees for such licensed Software and compliance with the other terms and conditions of this Master Agreement, Alcatel-Lucent grants to Procuring Eligible Organization, and Procuring Eligible Organization accepts, a nonexclusive, nontransferable license to use portions of the licensed Software for which activation has been authorized by Alcatel-Lucent, solely on or with a single unit or arrangement of Equipment for which the licensed Software was delivered, for Procuring Eligible Organization's internal use.
- B. Procuring Eligible Organization acknowledges and agrees that: (i) Alcatel-Lucent may have encoded within the Software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extensions from Alcatel-Lucent at additional cost; and (ii) Procuring Eligible Organization may need to obtain a new or additional application key from Alcatel-Lucent to use such Software.
- C. This Master Agreement applies to all updates, upgrades, maintenance releases, revisions and enhancements for the licensed Software which Alcatel-Lucent may supply to Procuring Eligible Organization from time to time.
- D. Procuring Eligible Organization may make one copy of any licensed Software for backup and archival purposes if the copy contains all of the Alcatel-Lucent proprietary notices contained in the original licensed Software. Subject to applicable law, all copies of all licensed Software are Alcatel-Lucent Confidential Information. All rights, title and interest in and to the licensed

Software, including all intellectual property rights, remain vested in Alcatel-Lucent, its suppliers or licensors, and Procuring Eligible Organization is granted only a limited license to use the licensed Software in conjunction with the Equipment, as set out in this Section.

- E. Procuring Eligible Organization shall not directly or indirectly (i) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any portion of the Software; (ii) encumber, time-share, rent or lease the rights granted herein; (iii) manufacture, adapt, create derivative works of, localize, port or otherwise modify any licensed Software; (iv) disclose or otherwise make available the licensed Software to any third party (other than employees or contractors of Procuring Eligible Organization); or (v) enable any Software features or capacity which Alcatel-Lucent licenses as separate products, without Alcatel-Lucent's prior written notice.
- F. At Alcatel-Lucent's request and upon reasonable prior written notice, Alcatel-Lucent may inspect and audit Procuring Eligible Organization's compliance with this Section during normal business hours. Procuring Eligible Organization shall cooperate with the audit and shall grant assistance and access to applicable records, materials, personnel, and Equipment. In addition, Procuring Eligible Organization shall provide remote access to its systems to Alcatel-Lucent to enable Alcatel-Lucent to electronically audit Procuring Eligible Organization's compliance with this Section. If an audit reveals that Procuring Eligible Organization possesses or at any time possessed unlicensed copies of any licensed Software, or used any licensed Software beyond the licensed features or capacity restrictions or beyond the terms stated herein, then Procuring Eligible Organization shall pay Alcatel-Lucent the applicable license fees (plus interest) and the reasonable costs incurred in the audit.
- G. If the terms set forth in this Section differ from the terms of any license agreement packaged or otherwise provided with the Software ("Additional License"), the terms of the Additional License govern to the extent that the terms of the Additional License are inconsistent with those in this Section. Alcatel-Lucent's licensors are third party beneficiaries with respect to their licensed Software.
- H. If Procuring Eligible Organization's license is canceled or terminated, or when Procuring Eligible Organization no longer uses the Licensed Software, Procuring Eligible Organization shall return or destroy the Licensed Software and all copies and certify to Alcatel-Lucent that it has done so.

15. Warranties

- A. Equipment: Alcatel-Lucent warrants that the Equipment shall be free from defects in material and workmanship under normal use and that the Equipment shall remain in good working order for a period of 12 months from the date of Acceptance by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If any Equipment is not as warranted in this Section, then (a) Procuring Eligible Organization shall obtain from Alcatel-Lucent a return authorization number, and return the Equipment at Alcatel-Lucent's expense, together with the authorization number and a detailed description of the problem, to Alcatel-Lucent's designated repair facility; and (b) Alcatel-Lucent shall repair or replace the Equipment and return it at Alcatel-Lucent's expense to Procuring Eligible Organization's destination point. Alcatel-Lucent shall assume the risk of loss or damage to any Equipment returned to Alcatel-Lucent for repair or replacement from receipt thereof until delivery to Procuring Eligible Organization's destination point. If Alcatel-Lucent ascertains that Equipment is not readily returnable for repair, then at its option, Alcatel-Lucent may elect to repair or replace the Equipment at Procuring Eligible Organization's sight. In such instances, Procuring

Eligible Organization, at its expense, shall make the Equipment accessible for repair or replacement and shall be responsible for restoring the site after Alcatel-Lucent has completed its repair or replacement. In repairing or replacing any Equipment or part of any Equipment under this warranty, Alcatel-Lucent may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment or parts of Equipment. For any Equipment or parts thereof repaired, replaced or corrected under this Section, the warranty period applicable to the Equipment will continue for the longer of (i) the remainder of the original warranty period or (ii) ninety (90) days after the date of shipment of the repaired or replaced Equipment. If, Alcatel-Lucent determines that it cannot, in a commercially reasonable manner repair or replace any Equipment, then Alcatel-Lucent may, in its sole discretion, refund to Procuring Eligible Organization the price of the Equipment, less a reasonable adjustment for beneficial use.

- B. Software: Alcatel-Lucent warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the descriptions contained in the applicable user documentation with respect to the particular Software purchased by Procuring Eligible Organization for a period of ninety (90) days after Acceptance of the Software by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If the media is defective and the Software is still commercially available, Alcatel-Lucent shall repair or replace the defective media. If the Software does not substantially conform to the description contained in the applicable user documentation, Alcatel-Lucent, at its option, shall correct the defects in the Software or refund to Procuring Eligible Organization the purchase amount paid to Alcatel-Lucent for the defective Software, less a reasonable adjustment for beneficial use. In repairing or replacing any Software medium under this warranty, Alcatel-Lucent may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Software medium. The warranty period for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period. The Software warranty shall include free firmware and Software updates for all Software purchased by Procuring Eligible Organization under this Master Agreement, and access to Alcatel-Lucent's technical support web sites, databases, or tools and Documentation updates.
- C. Services: Alcatel-Lucent 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 Alcatel-Lucent 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. The warranty period for Services is thirty (30) days from the date of Acceptance by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If Alcatel-Lucent determines that it cannot, in a commercially reasonable manner correct any Services, then Alcatel-Lucent may, in its sole discretion, refund to Procuring Eligible Organization the price of the Services less a reasonable adjustment for beneficial use.
- D. Notwithstanding any provision of this Master Agreement to the contrary, Alcatel-Lucent has no obligation to repair or replace any Equipment, correct any Software, or correct any Services if (a) the Product or any Software has been modified, repaired or reworked by anyone other than Alcatel-Lucent; or (b) the defect is the result of (i) any improper storage, handling or use by anyone other than Alcatel-Lucent, (ii) failure to provide a suitable climatic environment, (iii) operator error, (iv) improper installation of Equipment by anyone other than Alcatel-Lucent, (v) use in a manner not in accordance with the Documentation, (vi) failure to implement any new releases or update to the Software made available to Procuring Eligible Organization by Alcatel-Lucent, (vii) any use of the

Product in conjunction with another non- standards compliant, product (except to the extent provided in the Documentation), (viii) consumable items, including fuses, light bulbs, motor brushes and the like, (ix) Products which have had their serial numbers or month and year of manufacture removed, altered, defaced, or deleted, or (x) any damage by power failure, fire, explosion or any act of God or other cause beyond Alcatel-Lucent's control. The warranties set forth in this Section may be transferred to other entities under common control with the original Procuring Eligible Organization.

- E. Warranty does not include: Alcatel-Lucent assisting in diagnostic efforts; Product integration; or on-site assistance. These Services are available during and after the warranty period at Alcatel-Lucent's published prices.
- F. The following additional warranty terms apply to Enterprise Solutions Division Products ("ESD Products").
- (i) The Procuring Eligible Organization must provide proof of purchase or the serial number of the failed or DOA Product when requesting a return authorization number.
 - (ii) Expedited Advanced Product Replacement is available for select ESD Products. The Procuring Eligible Organization may purchase this service for an additional fee. If Expedited Advance Product Replacement service is purchased by the Procuring Eligible Organization, replacement Products will be shipped to Procuring Eligible Organization the business day following the issuance of the Procuring Eligible Organization's return authorization. If the defective Product is (i) not received at Alcatel-Lucent's designated repair facility within 30 days of the shipment of the replacement Product, or (ii) subsequently determined by Alcatel-Lucent as not being covered by warranty, Procuring Eligible Organization will be charged the then-current Master Agreement price for the returned Product. If subsequent testing by Alcatel-Lucent fails to find a failure of the returned Product, Alcatel-Lucent may charge the Procuring Eligible Organization a \$500 return and test charge unless the Product was replaced under the advice of Alcatel-Lucent.
 - (iii) Except when Expedited Advance Replacement service is purchased, replacement Products will be shipped within 10 business days following the receipt of the failed Product at Alcatel-Lucent's designated repair facility.
 - (iv) ESD Products designated as having a Limited Lifetime Warranty (LLW ESD Products") receive Advanced Replacement service. Advanced Replacement terms are the same as Expedited Advance Replacement services, provided, however, Alcatel-Lucent will ship the replacement Product via ground shipping within 5 days from the issuance of the return authorization. The warranty period applicable to LLW ESD Products is 5 years from the date Alcatel-Lucent announces the discontinuance of the LLW ESD Product. Beyond the warranties provided in Section 15 A and B, Procuring Eligible Organization may elect to purchase additional maintenance and support services (e.g. technical support, eservice web support, Software updates, bug fixes, etc.).
 - (v) Products that fail to substantially function in accordance with their published specifications due to defects in manufacturing or materials during the first 90 days from the date of purchase will be designated dead on arrival Products ("DOA Products"). DOA Products will receive Expedited Advance Product Replacement services at no additional charge.
- G. THE LIMITED WARRANTY SET FORTH IN THIS SECTION FOR PRODUCTS AND SERVICES IS THE EXCLUSIVE WARRANTY. ALCATEL-LUCENT DISCLAIMS ALL OTHER WARRANTIES IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE REMEDY PROVIDED UNDER THIS SECTION 15 IS PROCURING ELIGIBLE ORGANIZATION'S EXCLUSIVE REMEDY FOR FAILURE OF PRODUCTS OR SERVICES TO CONFORM TO THE WARRANTY.

16. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Alcatel-Lucent ninety (90) days written notice; provided, however, neither MHEC nor Eligible Organization has the right to terminate a specific purchase order/purchase agreement for convenience after it has been issued if the related Order is ultimately accepted. At any time, Alcatel-Lucent may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Alcatel-Lucent 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 Products and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

17. Non-Appropriation

- A. This provision applies only to government and government educational customers. 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, a 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 Alcatel-Lucent and shall be final and binding.
- B. 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 Alcatel-Lucent a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. The notice shall also include a statement that the Procuring

Eligible Organization was unsuccessful in finding another assignee within its own organization to continue the installment sale payments and that the Product or Service will not be replaced by a similar product during the ensuing 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 Alcatel-Lucent will be paid by the Procuring Eligible Organization.

18. Records and Audit

Alcatel-Lucent agrees to maintain detailed records pertaining to the price of Services rendered and Products delivered for a period of six (6) years from the date of Acceptance of each Order. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings 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.

19. Independent Contractor

Alcatel-Lucent and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Alcatel-Lucent 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.

20. Patent, Copyright, Trademark and Trade Secret Indemnification

A. Subject to the exceptions expressly stated in this Master Agreement, Alcatel-Lucent shall defend and hold harmless MHEC and Eligible Organizations against any claim, action or proceeding brought against MHEC or an Eligible Organization alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party by reason of the use, in accordance with Alcatel-Lucent's specifications, of any Product or any Service provided pursuant to this Master Agreement (a "Claim") and shall indemnify MHEC and Eligible Organizations from and against any and all costs and damages assessed against MHEC or an Eligible Organization through settlement (made by Alcatel-Lucent, as provided in Section 20.B) or final judgment arising from a Claim provided that MHEC and/or the Eligible Organization complies with Section 20B of this Master Agreement. Alcatel-Lucent 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) 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 Alcatel-Lucent 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, Alcatel-Lucent 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.

B. MHEC and/or Eligible Organization shall give Alcatel-Lucent written notice, by registered mail, promptly after it becomes aware of any Claim to be indemnified hereunder, and, subject to any legally

required approval, including approval of state's attorney general, or consistent with applicable law, permits Alcatel-Lucent to control the defense and/or settlement of any such Claim or action at Alcatel-Lucent's own expense. MHEC and/or Eligible Organization agree that Alcatel-Lucent may employ attorneys of its own choice to appear and defend and settle any Claim and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such Claim or any settlement thereof and shall provide Alcatel-Lucent with all reasonable assistance that Alcatel-Lucent may require. If, as a matter of law, MHEC or the Eligible Organization cannot allow Alcatel-Lucent to control the defense of any Claim or action, then Alcatel-Lucent will reimburse MHEC or the Eligible Organization for its reasonable attorney's fees and expenses incurred in defense of the Claim.

C. The rights and remedies set forth in this Section are Procuring Eligible Organization's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.

21. Indemnification

Alcatel-Lucent 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 claims or causes of action related to a claim of personal injury or damage to property, including reasonable and necessary attorneys' fees incurred by MHEC and/or Eligible Organizations, arising from the negligence or willful misconduct by Alcatel-Lucent, Alcatel-Lucent's agents, employees, or subcontractors provided that MHEC and/or Eligible Organization shall give Alcatel-Lucent written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law, permits Alcatel-Lucent to control the defense of any such claim or action at Alcatel-Lucent's own expense. MHEC and/or Eligible Organization agree that Alcatel-Lucent 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 Alcatel-Lucent with all reasonable assistance that Alcatel-Lucent may require.

22. Limitation of Liability

Alcatel-Lucent shall not be liable to MHEC or any individual Eligible Organization for any direct damages in excess of \$500,000 or the amounts paid hereunder, 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 property damage caused by Alcatel-Lucent's negligence or willful misconduct. No party under this Master Agreement (including Eligible Organizations) 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 tortious conduct (including negligence) or any other legal theory.

23. Confidentiality

A. While Alcatel-Lucent is providing Products and Services hereunder, Eligible Organization or Alcatel-Lucent 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 23 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 be treated as Confidential Information if it is stated at the time of such oral disclosure that such information is Confidential and the confidentiality of such Confidential Information is confirmed in writing within ten (10) business days. Both Eligible Organization and Alcatel-Lucent 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 so 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, (iii) may only share Confidential Information with its employees, agents and other representatives on an as-needed basis and will advise those parties who receive the Confidential Information of their obligations under this Master Agreement and assume full responsibility for any breach of them of such obligations; 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, 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) the termination or completion of the order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or Alcatel-Lucent 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 Disclosure .
- C. Notwithstanding anything to the contrary in this Master Agreement or amendment to this Master Agreement, both Eligible Participant and Alcatel-Lucent agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

24. FERPA (and Other Privacy Laws)

Where applicable, Alcatel-Lucent agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Eligible Organization.

25. Amendments

Except as provided for in Section 6, "Order of Preference"; Section 11, "Product List"; and Section 12 "Service List"; this Master Agreement shall only be amended by written instrument executed by the Parties.

26. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Master 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.

27. 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.

28. 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.

29. Web Site Maintenance

Alcatel-Lucent agrees to maintain and support Internet website(s) for access to the Product List, Service List, Product descriptions, Product specifications, Service descriptions, Service specifications and other aids in accordance with instructions provided by MHEC. In addition, Alcatel-Lucent will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.

30. Equal Opportunity Compliance

Alcatel-Lucent agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Alcatel-Lucent agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Alcatel-Lucent under this Master Agreement. If Alcatel-Lucent is found to be not in compliance with these requirements during the life of this Master Agreement, Alcatel-Lucent agrees to take appropriate steps to correct these deficiencies.

31. Compliance with Law

Alcatel-Lucent shall comply with all applicable laws and governmental regulations, which by their terms, apply to Alcatel-Lucent'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.

32. Export Control

The Parties acknowledge that Products, Licensed Materials and Confidential Information provided under this Master Agreement may be subject to the export laws and regulations of the United States and/or other countries (cumulatively, "Export Laws"). Procuring Eligible Organization agrees that it will not use, distribute, export, re-export, transfer, or transmit the Products, Licensed Materials or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by Alcatel-Lucent, Procuring Eligible Organization also agrees to sign written assurances and other export-related documents as may be required for Alcatel-Lucent to comply with the Export Laws.

33. Applicable Law

A. As between Eligible Organization and Alcatel-Lucent, 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 Alcatel-Lucent this Master Agreement will be construed in accordance 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 Alcatel-Lucent 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.

34. Conflict of Interest

Alcatel-Lucent warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Master Agreement.

35. 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 Alcatel-Lucent from employing a subcontractor in carrying out its obligations under this Master Agreement. Alcatel-Lucent's use of such subcontractors will not release Alcatel-Lucent from its obligations under this Master Agreement.

36. 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 expiration of this Master Agreement.

37. 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:

<u>To MHEC:</u>	<u>To Alcatel-Lucent:</u>
MHEC	Alcatel-Lucent
1300 South Second Street	3400 West Plano Parkway
Suite 130	Mailstop 660-032
Minneapolis, Minnesota 55454-1079	Plano, Texas 75075
Attn: Grant Crawford	Attn: John Garcia
Facsimile: 612-626-8290	Fax: 972 517-5157

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.

38. Administrative Reporting and Fees

On a quarterly basis, Alcatel-Lucent will, in a timely manner, make available to MHEC reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume and volume savings. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to 0.5 percent (0.5%) of the net Product and Service sales for that quarter period (the “Fee”). MHEC, from time to time and at its sole discretion, may 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 List and Service List price.

39. MHEC Not Liable For Eligible Participants

MHEC is not liable to Alcatel-Lucent 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.

40. 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 the applicable Eligible Organization). Alcatel-Lucent 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).

41. Marketing

Alcatel-Lucent will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on Products, supplies, services and prices and to place orders.

42. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Alcatel-Lucent 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; and to advise Alcatel-Lucent on the effectiveness of its implementation progression. There will be an annual meeting between Alcatel-Lucent and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

43. Force Majeure.

Neither Alcatel-Lucent 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; 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.

44. Sovereign Immunity.

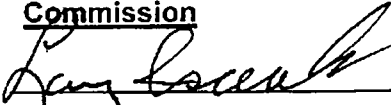
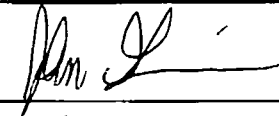
Notwithstanding anything to the contrary in this Master Agreement or purchase order under this Master Agreement, this Master Agreement shall not be construed to deprive an Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State to the Eligible Organization.

45. 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. Alcatel-Lucent may accept this Master Agreement either by its authorized signature or a signed purchase 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 Master Agreement.

	<u>Midwestern Higher Education Commission</u>	<u>Alcatel-Lucent USA Inc.</u>
Signature:		
Name:	Larry Isjak	John Garcia
Title:	President	Director of Contracts
	Midwestern Higher Education	Alcatel-Lucent USA Inc.
Address:	1300 South Second Street, Suite 130	600 Mountain Ave.
	Minneapolis, Minnesota, 55454	Murray Hill, New Jersey 07974
Date:	2-27-2009	

Exhibit

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