

MASTER AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
ENVOY DATA CORPORATION

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 ENVOY DATA CORPORATION, (hereinafter ENVOY or Supplier) located at 1310 W. Boxwood Ave Gilbert AZ 85233. For purposes of this Master Agreement MHEC and ENVOY 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, ENVOY offers certain quality technology related products and 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 ENVOY received an award; and

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

1. Definitions

Resellers: refers to marketing agents, agents or order fulfillers authorized by ENVOY to provide Products and Services under this Master Agreement. ENVOY will list Resellers on an internet site accessible to MHEC, its Member States and Eligible Organizations. ENVOY will provide to MHEC the general criteria used to authorize agents. ENVOY shall notify MHEC when there are additions and/or deletions made to the list of Resellers. At any time during the term of this Master Agreement should MHEC protest the inclusion of a firm on this list pursuant to commercially justifiable cause, ENVOY may require that firm to undergo re-approval.

Documentation: refers to the any documentation made available by ENVOY to Procuring Eligible Organization relating to any Equipment or Software purchased as well as any manuals relating to the Equipment or Software.

Deliverables: refers to the tangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that ENVOY 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 ENVOY. Eligible Organizations within MHEC member states 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).

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 Products or 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 ENVOY makes available under this Master Agreement. ENVOY 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 ENVOY'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 ENVOY 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. ENVOY 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.

Software: Software shall mean software, library, utility, tool, or other computer or program code, each in object (binary) code form, as well as the related media, printed materials, online and electronic documentation and any copies thereof. Software shall include updates, upgrades, maintenance releases, revisions, and enhancements to the licensed software. Software may include Software accessed by Eligible Organization through the Internet or other remote means (such as websites, portals, "hosted" and "cloud-based" solutions). ENVOY may incorporate changes to their Software offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award.

System Software: means Software that provides basic hardware functionality and provides a platform for applications to run (e.g., firmware and BIOS software), and any Software specifically designated by ENVOY as System Software the purpose of which is to operate and manage the Products in which it is embedded.

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

Supplier: refers to ENVOY or a Reseller.

Third Party Services: refers to any Services performed by someone other than ENVOY 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 Exhibit A at the prices stated therein. 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. ENVOY 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 products and solutions as described in for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020. The category awarded under this Master Agreement is:

Security awareness training: LUCY Security Cyber Security Awareness Training

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 Products and/or 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 ENVOY or manufacturer commences performance.
- 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 Supplier and that MHEC does not guarantee or warrant the products or services of ENVOY; 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 ENVOY 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 ENVOY 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 ENVOY.

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. License terms applicable to the software license or software service purchased hereunder
- C. Executed addendum, not to include Purchase Orders, between Eligible Organization and ENVOY
- D. The terms and conditions of this Master Agreement or any MHEC- ENVOY addenda to this Master Agreement and its Exhibits
- E. The list of Products and Services contained in the Order

8. Payment Provisions

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all Products and Services delivered meet manufacturer's published specifications. Unless otherwise agreed upon between the Eligible Organization and ENVOY, 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 Supplier 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 Supplier’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

9. Product Delivery

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization within five (5) business days following Order placement, and Procuring Eligible Organization, as its exclusive remedy, can cancel the order by written, electronic, or facsimile notification. Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace defective product shall render the Supplier liable for all costs in excess of the contract price when alternate procurement is necessary. Suppliers acknowledge that all locations of any particular Eligible Organization may not be within the MHEC region.
- B. Suppliers may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

10. 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.

11. 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, ENVOY 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.

12. Services Pricing

ENVOY 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 pricing will be as described in Exhibit A. Except as set forth in Section 10, "Price Guarantees" or Section 37 "Administrative Reporting and Fees," the discount percentage set forth in Exhibit A shall remain firm for the term of the Master Agreement.
- 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 ENVOY and Procuring Eligible Organization and as set forth in a ENVOY 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.

13. 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. Supplier 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.

14. 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. Unless different terms have been agreed between the parties, the terms attached to this agreement as Exhibit B, EULA, and Exhibit C, Terms and Conditions shall apply. Notwithstanding anything to the contrary in the EULA, as between Eligible Organization and Supplier, this EULA shall be governed and construed in accordance with the laws of the state where the Eligible Organization resides. ENVOY will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment. If a separate license agreement exists between Procuring Eligible Organization and the manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

15. 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.

16. Warranties

- A. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE PRODUCT OR SERVICE DOCUMENTATION, ENVOY (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 "ENVOY 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 ENVOY (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 ENVOY'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 ELIGIBLE ORGANIZATION'S JURISDICTION WILL APPLY TO PROCURING ELIGIBLE ORGANIZATION, AND ENVOY'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- D. **HIGH-RISK DISCLAIMER:** ENVOY 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 ENVOY KNOWS OF SUCH USE, AND ENVOY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.
- E. **Services:** ENVOY 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 ENVOY 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.

17. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving ENVOY ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after the order has been accepted by Supplier. At any time, ENVOY may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve ENVOY 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 ENVOY 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 17 E shall have no effect on any other Order made by any other Eligible Organization.

18. 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 ENVOY 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 ENVOY 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 ENVOY will be paid by the Procuring Eligible Organization.

19. Records and Audit

ENVOY 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 maybe 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.

20. 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.

21. Insurance

ENVOY 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. 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.
- D. 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.

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

- E. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the ENVOY.
- F. 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.
- G. 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.
- H. 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 ENVOY.
- I. A Waiver of Subrogation" waiving any right to recovery the insurance company may have against the Eligible Organization.

- J. ENVOY 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.
- K. ENVOY 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. ENVOY 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.

22. Independent Contractor

ENVOY, its agents, and employees are independent contractors and are not employees of MHEC or any Eligible Organization. ENVOY 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.

23. Debarment & Suspension

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

24. Patent, Copyright, Trademark and Trade Secret Indemnification

ENVOY will indemnify, defend and hold MHEC and Eligible Organization harmless from any third party claim that any 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. ENVOY 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 ENVOY 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, ENVOY 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 ENVOY from its obligations to defend and indemnify MHEC and Eligible Organizations.

25. Indemnification

ENVOY 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 ENVOY, ENVOY's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give ENVOY written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder. For state entities, ENVOY will coordinate with state's attorney general as required by state law. ENVOY will control the defense of any such claim or action at ENVOY's own expense. MHEC and/or

Eligible Organization agree that ENVOY 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 ENVOY with all reasonable assistance that ENVOY may require.

26. Limitation of Liability

ENVOY 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 ENVOY's negligence or willful misconduct. NEITHER ENVOY, 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. ENVOY 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 ENVOY 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.

27. Spoliation

ENVOY shall promptly notify MHEC and/or Eligible Organization of all potential claims that arise or result from this Master Agreement. ENVOY 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.

28. Confidentiality

- A. While ENVOY is providing Services hereunder, Eligible Organization or ENVOY 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 26 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 ENVOY 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, 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 Discloser (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 ENVOY 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 ENVOY and the third party.
- D. If a separate, written nondisclosure agreement exists between Eligible Organization and ENVOY, 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 ENVOY agree to comply with the data practices or similar type laws of the State in which Eligible Organization is located or founded, to the extent applicable to the scope of services performed by Supplier.

29. FERPA (and Other Privacy Laws)

Where applicable to the scope of services ENVOY is providing, and only to the extent directly applicable to ENVOY and its Services, ENVOY 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 ENVOY subject to aforementioned privacy laws, Eligible Organization agrees to advise ENVOY of the disclosure of such information; and Eligible Organization represents and warrants to ENVOY that it has obtained any required consents to disclose such information. In addition, to the extent that ENVOY 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, ENVOY 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 ENVOY with access to those particular education records in which ENVOY 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.

30. 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 **Organization** 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>).

31. Amendments

Except as provided for in Section 6 "Order of Preference"; Section 12 "Product Pricing"; and Section 13 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

32. 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.

33. 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.

34. 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.

35. Equal Opportunity Compliance

ENVOY 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, ENVOY agrees that it does not discriminate, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap. If ENVOY is found to be not in compliance with applicable Federal or state requirements during the life of this Master Agreement, ENVOY agrees to take appropriate steps to correct these deficiencies.

36. Compliance with Law

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

37. Applicable Law

- A. As between Eligible Organization and ENVOY, 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 ENVOY 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 ENVOY 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.

38. Conflict of Interest

ENVOY 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. ENVOY 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 ENVOY 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 ENVOY MHEC may, at its sole discretion, cancel this Master Agreement.

39. 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 ENVOY from employing a subcontractor in carrying out its obligations under this Master Agreement. ENVOY's use of such subcontractors will not release ENVOY from its obligations under this Master Agreement.

40. 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.

41. 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 ENVOY:
MHEC	ENVOY
105 Fifth Avenue South	1310 W. Boxwood Ave
Suite 450	
Minneapolis, Minnesota 55401	Gilbert AZ 85233
Attn: Rob Trembath, Chief Operating Officer and General Counsel Cc: Deb Kidwell	Attn: Jeff Ciraulo, President
Facsimile: 612-767-3353	Facsimile: 480-829-9045

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.

42. 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), ENVOY 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 ENVOY 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.

43. MHEC Not Liable For Eligible Organizations

MHEC is not liable to ENVOY 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. ENVOY, 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.

44. 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. ENVOY 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.

45. Marketing

ENVOY 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. ENVOY 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.

46. Oversight Committee

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

47. Force Majeure.

Neither ENVOY 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.

48. 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 an 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.

49. Compliance with Laws and Export.

- A. **Compliance with Laws. Procuring Eligible Organization** and ENVOY 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 ENVOY with all of the information needed for ENVOY to obtain export licenses from the U.S. Government or any other applicable national government and to provide ENVOY 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. ENVOY also may require export certifications from Procuring Eligible Organization for Procuring Eligible Organization-provided software. ENVOY'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. ENVOY 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.** ENVOY is not responsible for determining whether any Services satisfy the local regulatory requirements of the country to which such Products, Software and Services are to be delivered or performed, and ENVOY shall not be obligated to provide any Services where the resulting Services are prohibited by law or do 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 31, 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 ENVOY (or to which ENVOY will have access) to ensure that it does not contain Excluded Data.

50. 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. ENVOY 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.

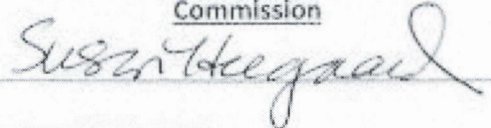

<u>Midwestern Higher Education Commission</u>	<u>ENVOY DATA CORPORATION</u>
Signature: <u></u>	<u></u>
Name: <u>Susan Heegaard</u>	<u>Jeff Ciraulo</u>
Title: <u>President</u>	<u>President</u>
Address: <u>105 Fifth Avenue South Suite 450</u>	<u>1310 W. Boxwood Ave</u>
<u>Minneapolis, Minnesota, 55401</u>	<u>Gilbert, AZ 85233</u>
Date: <u>9/20/21</u>	<u>9. 8. 21</u>

Exhibit A –Category Pricing

LUCY Cyber Security Awareness Training

Edition vs Term Matrix

Edition vs Term Matrix	12 months	24 months	36 months
Professional	\$2,850.00	\$4,940.00	\$6,270.00
Premium	\$5,700.00	\$9,880.00	\$12,540.00
Ultra	\$15,000.00	\$26,000.00	\$33,000.00

Exhibit B –End User License Agreement

Exhibit C –Terms and Conditions

Exhibit D – LUCY Security EULA Amendment

IMPORTANT – READ CAREFULLY: BY DOWNLOADING, INSTALLING, AND/OR USING THE SOFTWARE (DEFINED BELOW), YOU (DEFINED BELOW) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT (DEFINED BELOW). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE.

**LUCY SECURITY
END USER LICENSE AGREEMENT**

This End User License Agreement (the “Agreement”) is hereby entered into and agreed upon by you, either an individual or an entity, and its Affiliates (“You” or “Company”) and LUCY Security AG (“LUCY Security”) for the Software.

1. DEFINITIONS.

- 1.1 “Affiliates”** means an entity controlled by, under common control with, or controlling such party, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Affiliates may use the license granted hereunder. All references to LUCY Security shall be deemed to be references to LUCY Security and its Affiliates, and all references to Company, You, or Your shall be deemed to be references to Company and its Affiliate(s).
- 1.2 “Computer”** means the hardware, if the hardware is a single computer system, whether physical or virtual, or means the computer system with which the hardware operates, if the hardware is a computer system component.
- 1.3 “Server”** means any physical or virtual computer system that holds the program and provides data and services to end users of the Software via a browser or other program.
- 1.4 “Documentation”** means the official user documentation prepared and provided by LUCY Security to You on the use of the Software. For the avoidance of doubt, any online community site; unofficial documentation, videos, white papers, or related media; or feedback does not constitute Documentation.
- 1.5 “Software”** means the object code versions of the product, together with the updates, new releases or versions, modifications or enhancements, and Awareness media, owned and provided by LUCY Security to You pursuant to this Agreement.

2. GRANT OF LICENSE.

- 2.1 Production License.** Upon payment of the applicable annual subscription fees for the Software and continuous compliance with the terms and conditions of this Agreement and the Documentation, LUCY Security hereby grants You a limited, worldwide, annual, nonexclusive, nontransferable license to use the object code of the Software and Documentation subject to the terms contained herein:
- a) For each Software license key that You purchase from LUCY Security, You may: (i) install the Software on any Server; and (ii) copy the Software for back-up and archival purposes, provided any copy must contain all of the original Software's proprietary notices and a notice that it will not be used for transfer, distribution or sale.
 - b) The Software is in use on a Server when it is loaded into temporary memory or installed in permanent memory (hard drive, CD-ROM or other storage device). You agree to use Your reasonable efforts to prevent and protect the contents of the Software and Documentation from unauthorized use or disclosure, with at least the same degree of care that You use to protect Your own confidential and proprietary information, but in no event less than a reasonable degree of care under the circumstances. You agree that You will register this Software only with LUCY Security
- 2.2 Software Evaluation License.** If the Software is provided to You for evaluation purposes, LUCY Security grants to You a nonexclusive, limited, royalty-free, nontransferable evaluation license to use the Software solely for evaluation prior to purchase (an “Evaluation License”). The Evaluation License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from LUCY Security at its sole discretion. Notwithstanding any other provision contained herein, Software provided pursuant to an Evaluation License is provided to You “AS IS” without indemnification, support, or warranty of any kind, express or implied. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this End User License shall apply to Software licensed under an Evaluation License.

2.3 High Availability and/or Disaster Recovery Purpose License. If You are obtaining a redundant version of the Software solely for high availability and/or disaster recovery purposes for use on Your disaster recovery Server, You represent and warrant that (i) You may actively run the redundant version of the Software on a Server, provided it is not running on a primary production Server, unless (a) the primary production Server related to the primary production version of the Software fails, (b) the Software or Server associated with the primary production license is being upgraded or replaced, or (c) other temporary reasons that disrupt all or a material part of Your business operations; (ii) You will not utilize the redundant version of the Software to monitor any items not being monitored by the primary production Server; and (iii) You will promptly get the primary production Server hosting the primary production license operating correctly in order to support Your daily activities.

3. LICENSE RESTRICTIONS.

3.1 You may not: (i) provide, make available to, or permit other individuals to use the Software or Documentation, except under the terms listed above, either in whole or part; (ii) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to derive the source code based upon the Software or Documentation; (iii) copy, reproduce, republish, upload, post, or transmit the Software or Documentation (except for back-up or archival purposes, which will not be used for transfer, distribution, or sale); (iv) license, sell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Software or Documentation; (v) remove any proprietary notices or labels on the Software or Documentation; or (vi) license the Software if You are a direct competitor of LUCY Security for the purposes of monitoring the Software's availability, performance, or functionality or for any other benchmarking or competitive purposes. Any such forbidden use shall immediately terminate Your license to the Software. The Software is intended only for use with public domain or properly licensed third party materials. All responsibility for obtaining such a license is Yours, and LUCY Security shall not be responsible for Your failure to do so.

3.2 LUCY Security Trademarks. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of LUCY Security, any derivation thereof, or any icon, image, or text that is likely to be confused with the same, except where allowed under the Whitelabel menu of the Software and as described in the Documentation. All representations of the company name or mark "LUCY Security" or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice. Exceptions can be made for customizing templates or videos (see

https://wiki.lucysecurity.com/doku.php?id=create_a_custom_e-learning_video).

3.3 Export Restrictions. The Software and Documentation delivered to You under this Agreement are subject to U.S. export control laws and regulations and may also be subject to import and export laws of the jurisdiction in which it was obtained, if outside the U.S. You shall abide by all applicable export control laws, rules and regulations applicable to the Software and Documentation. You agree that You will not export, re-export, or transfer the Software or Documentation, in whole or in part, to any country, person, or entity subject to U.S. export restrictions. You specifically agree not to export, re-export, or transfer the Software or Documentation (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any person or entity who You know or have reason to know will utilize the Software or portion thereof in the design, development, production or use of nuclear, chemical or biological materials, facilities, or weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

3.4 Compliance with Applicable Laws. The Software and Documentation are protected by the intellectual property laws and other laws of Switzerland and international laws and treaties, including intellectual property laws. You agree that You shall use the Software and Documentation solely in a manner that complies with all applicable laws in the jurisdictions in which You use the Software and Documentation, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

4. RIGHTS RESERVED. THE SOFTWARE IS LICENSED, NOT SOLD.

Use herein of the word "purchase" in conjunction with licenses, license keys, or the Software shall not imply a transfer of ownership. Unless as conveyed herein, this Agreement does not grant You any rights, title, or interest in or to Software, Documentation, trademarks, service marks, or trade secrets, or corresponding intellectual property (including without limitation any images, photographs, animations, video, audio, music, and text incorporated into the Software, the accompanying printed materials, and any copies of the Software) of LUCY Security or its suppliers, and all rights, title, and interest in and to the Software, Documentation, and corresponding intellectual property shall remain the property of LUCY Security, its suppliers, or are publicly available. All rights not expressly granted under this Agreement are reserved by LUCY Security, its suppliers, or third parties. All title, rights, and interest in and to content, which may be accessed through the Software, is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same. LUCY Security agrees that the data and information (including without limitation, computer software, computer database, computer software documentation, specifications, design drawings, reports, blueprints, and the like) generated by the Software from Your proprietary data and information shall be and remain Your sole property.

5. CONFIDENTIALITY

Lucy Security AG warrants that (i) it complies with Swiss Data Protection laws, and (ii) it will not transfer any data outside of Switzerland****, except with the buyer's prior written consent and subject to a Purchase Order in writing with the recipient of the data outside of Switzerland.

****Excluded is all communication named in this article:

https://wiki.lucysecurity.com/doku.php?id=network_communication_-_lucy_-_internet.

To comply with Swiss data protection law, the client is responsible for selecting the appropriate LUCY setting:

https://wiki.lucysecurity.com/doku.php?id=confidentiality_of_campaign_data&s%5B%5D=confidentiality&s%5B%5D=campaign&s%5B%5D=data

5.1 "Confidential Information" means any nonpublic or proprietary information, in tangible or intangible form, that a party to this Agreement ("Disclosing Party") designates as being confidential by legends or other markings or in a separate writing provided contemporaneous with the disclosure to the party that receives such information ("Receiving Party"). Confidential Information includes the Software, Documentation and any other intellectual property or proprietary rights thereto. Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality; or (iv) is independently developed by Receiving Party without reference to or use of the Confidential Information.

5.2 Protection. Receiving Party may use Confidential Information of Disclosing Party; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Receiving Party will not use any Confidential Information of Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of Disclosing Party only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Receiving Party's duty hereunder. Receiving Party will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Receiving Party protects its own confidential or proprietary information of a similar nature but with no less than reasonable care. The parties will each be responsible for any breach of this Agreement by their consultants or agents and each party agrees to take all reasonable measures to restrain its consultants or agents from disclosure or improper use of the other party's Confidential Information. Confidential Information shall remain at all times the property of the Disclosing Party. No rights to use, license or otherwise exploit the Confidential Information are granted to the Receiving Party or its agents,

by implication or otherwise.

5.3 Data Rights. You agree that LUCY Security will collect and track technical and related information about You and Your use of the Software, which may include Your internet protocol address, hardware identifying information, operating system, application software, peripheral hardware, and Software usage statistics, to assist with the operation and function of the Software, the provision of updates, support, invoicing, marketing by LUCY Security or its agents and research and development.

6. LIMITED WARRANTY.

LUCY Security warrants to You that for a period of thirty (30) days following the initial purchase and delivery of the Software to You that the Software will perform substantially in conformance with the Documentation. LUCY Security does not warrant that the Software will meet all of Your requirements or that the use of the Software will be uninterrupted or error-free. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by You or any third party that is not authorized by LUCY Security; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the Documentation; or (iii) failures that are caused by other software or hardware products. To the maximum extent permitted under applicable law, as LUCY Security' and its suppliers' entire liability, and as Your exclusive remedy for any breach of the foregoing warranty, LUCY Security will, at its sole option and expense, promptly repair or replace any Software that fails to meet this limited warranty or, if LUCY Security is unable to repair or replace the Software, refund to You the applicable license fees paid upon return, if applicable, of the nonconforming item to LUCY Security. The warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software under this limited warranty will be warranted for thirty (30) days.

EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LUCY SECURITY IS PROVIDING AND LICENSING THE SOFTWARE TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Lucy Security AG warrants that during the use of the Software by the buyer the Software (i) is free from any virus, malware, spyware or any other software code* that may pose a danger to the buyer and its affiliates' IT infrastructure, and (ii) is free from any defects and errors** (except for minor errors that have no impact on the functionality of the Software), and (iii) does not create any safety risk to the buyer and its affiliates' IT environment, and (iv) does not violate any third party rights, and (v) does not violate any laws.

**Minor errors (so-called bugs) are generally fixed as fast as reasonably possible but usually within a period of 1 month after reporting.

*The software contains a feature which can simulate the functionality and behavior of a virus. The buyer is responsible to use this and all other features of the Software in accordance of local laws (e.g. data privacy for collected results).

In the event of breach of any of the warranties, Lucy Security AG shall fully defend, indemnify and hold the buyer and its affiliates harmless from any against any loss, liabilities, damages, claims, costs and expenses. Lucy Security AG warrants that all necessary measures*** have been implemented to avoid any abuse of the Software by any third party which would pose a safety risk to the buyer's IT infrastructure

***It is the buyer's responsibility to set a secure password to secure the access to LUCY ([https://wiki.lucysecurity.com/doku.php?id=user_management&s\[\]=user&s\[\]=management&s\[\]=password](https://wiki.lucysecurity.com/doku.php?id=user_management&s[]=user&s[]=management&s[]=password))

7. INTELLECTUAL PROPERTY INDEMNIFICATION.

LUCY Security will indemnify and hold You harmless from any third party claim brought against

You that the Software, as provided by LUCY Security to You under this Agreement and used within the scope of this Agreement, infringes or misappropriates any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, provided (i) use of the Software by You is in conformity with the Agreement and Documentation; (ii) the infringement is not caused by modification or alteration of the Software or Documentation; and/or (iii) the infringement was not caused by a combination or use of the Software with products not supplied by LUCY Security. LUCY Security's indemnification obligations are contingent upon You: (i) promptly notifying LUCY Security in writing of the claim; (ii) granting LUCY Security sole control of the selection of counsel, defense, and settlement of the claim; and (iii) providing LUCY Security with reasonable assistance, information and authority required for the defense and settlement of the claim. This Section states LUCY Security' entire liability (and shall be Company's sole and exclusive remedy) with respect to indemnification to Company.

8. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LUCY SECURITY, ITS DIRECTORS, OFFICERS, AGENTS, SUPPLIERS AND LICENSORS, BE LIABLE TO YOU (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) (I) FOR MORE THAN THE AMOUNT OF LICENSE FEES THAT YOU HAVE PAID TO LUCY SECURITY IN THE PRECEDING (12) TWELVE MONTHS FOR THE APPLICABLE SOFTWARE OR (II) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS, OR OTHER ECONOMIC DAMAGE, ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF LUCY SECURITY OR A DEALER AUTHORIZED BY LUCY SECURITY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Third Party Programs.

To the extent the Software is bundled with third party software programs; these third party software programs are governed by their own license terms, which may include open source or free software licenses. Nothing in this Agreement limits an end user's rights under, or grants the end user rights that supersede, the terms of any such third party software.

10. CHOICE OF LAW AND VENUE.

This Agreement shall be governed by the laws of Texas, without regard to any conflict of laws provisions, except that the United Nations Convention on the International Sale of Goods shall not apply. The parties agree that the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to jurisdiction of the courts of Texas.

11. COUNTERPARTS AND FACSIMILE SIGNATURE.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties may exchange signature pages by facsimile and such signatures shall be effective to bind the Parties.

12. COMPLETE AGREEMENT.

This Agreement along with the attached LUCY Sales Terms and Conditions constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof including without limitation the terms of any party or any purchase order issued in connection with this Agreement. If any provision of this Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. This Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

13. GOVERNMENT USE.

LUCY Security' Software and Documentation was developed exclusively at private expense and is a "commercial item" as defined in FAR 2.101, and any supplement is provided with no greater than RESTRICTED RIGHTS. Such Software and related items consist of "commercial computer software," "commercial computer software documentation," and commercial technical data as defined in the applicable acquisition regulations, including FAR 2.101 and FAR Part 12. Use, duplication, release, modification, transfer, or disclosure ("Use") of the Software and Documentation is restricted by this Agreement and in accordance with DFARS Section 227.7202

and FAR Section 12.212, and the Software and Documentation are licensed (i) only as commercial items; and (ii) with only the rights granted to commercial end users pursuant to this Agreement. Such Use is further restricted by FAR 52.227-14, 252.227-7015, or similar acquisition regulations, as applicable and amended. Except as described herein, all other Use is prohibited. This section is in lieu of, and supersedes, any other FAR, DFARS, or other clause addressing Government rights under this Agreement or any other contract which the Software or Documentation is acquired or licensed. Manufacturer is LUCY Security AG, Lucy Security AG, Chamerstrasse 44, 6300 Zug, Switzerland.

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Exhibit C to Master Agreement between the Midwestern Higher Education Commission and Envoy Data Corporation - LUCY SECURITY TERMS AND CONDITIONS (TOS)

This document applies to LUCY Cyber Security Awareness Training provided per the referenced Master Agreement

Own use of the software

The software allows an unlimited number of recipients for testing and training during the contractual period. There are no restrictions within the software regarding the number of campaigns, domains and reports created. Access and use of the LUCY products, services, documentation, and related materials are solely authorized for the internal business purposes of the organization in which you are a representative of and only for the duration of the term of your subscription period.

Use of the software for third parties

The software can be used during the contract period for your own organization. This also includes companies in which the customer has a majority shareholding or legally belongs to the parent company. The use of LUCY for third parties requires an MSP (Managed Security Provider) license, which is the subject of another contract.

Delivery of Service/Software

The creation of a license key requires an existing installation. The customer can download the software from our website at any time free of charge. **Lucy Security AG** grants access to the licensed functions within a maximum of 5 days after receipt of the order. The customer needs the workstation ID to be delivered to us. This ID is located in the administration area under support/license.

License period

Each software is licensed for the period specified in the particular order. Unless otherwise specified in the order, the Software License will not be extended beyond the initial term of the Software License. Software support services will be provided for the period specified in each order, or, if no period for support services is specified, support services will be provided for a period of one (1) year from the date of delivery of the software to the Customer Customers provided.

Professional services

The period of performance for Professional Services begins with the date specified in the applicable order or, as otherwise agreed between the parties in writing, and remains in effect for the duration specified in the applicable order. If the applicable order does not specify a time limit for Professional Services, then professional services commence upon the entry into force of SOW and continue until completed unless otherwise stated herein.

Data Protection & GDPR

Lucy Security AG undertakes to comply with applicable data protection rules according to a separate Data Processing Addendum (the "Addendum") to be entered into by the parties. The communication named below is excluded from this Addendum.

IP	Function	Port	Protocol
176.9.154.150 (update.phishing-server.com)	Lucy Update/License Server/HTTP proxy	80/443 (HTTP/HTTPS)	TCP
176.9.154.150 (gta-update.does-it.net)	Linux repository	80 (HTTP)	TCP
8.8.8.8 (or any other DNS Server)	Your DNS Server	53 (DNS)	UDP
nvd.nist.gov	NIST CVE database (Optional)	443 (HTTPS)	TCP
0.0.0.0 (Any)	Mail Communication (Optional)	25 (SMTP)	TCP
193.25.101.87 (news.gtt.net)	Fetch LUCY Update News (Optional)	80 (HTTP)	TCP
is.gd	URL Shortening service (Optional)	443 (HTTPS)	TCP
api-ssl.bitly.com	URL Shortening service (Optional)	443 (HTTPS)	TCP
api.authy.com	Two-factor authentication service (Optional)	443 (HTTPS)	TCP

To comply with local data protection law, the client is responsible selecting the according LUCY settings. LUCY Security has committed itself to comply with the GDPR guidelines applicable in the EU. Inquiries and requests regarding the customer's data protection rights should be sent to dpo@lucy-security.com.

Within ten (10) business days of the termination of this Agreement or upon Discloser's written request, LUCY will promptly destroy or return all of Discloser's Confidential Information in LUCY's possession or in the possession of any representative of LUCY.

Support

Contract No.: MHEC-09202021-EN

All support activities related to software bugs are free of charge. The hourly price for support services is 90 USD. Support bills will be created monthly or yearly. All invoices issued hereunder are due and payable within forty- five (45) days of the invoice date. Other exceptions: If a WIKI article is not clearly formulated or is outdated, the customer will not be charged for the resulting questions. All other issues will be charged once the support budget included in the according license model is used up.

Please ensure that the LUCY software is always up to date with the latest patch before contacting our customer service. Having said all that, the LUCY team aims to be helpful and accommodating at all times, and will do its absolute best to assist the client wherever possible. Examples of issues that are not considered LUCY bugs:

- Application or system problems caused by changing anything within the Linux operating system on which LUCY runs.
- Third party SPAM filters blocking mails from LUCY.
- External Mail relays that do not work as expected.
- Proxy settings preventing LUCY to receive updates.
- DNS configuration issues caused by DNS entries not made by LUCY.

Security and Monitoring on LUCY VPS

The following information describes the process of installing and supporting a new LUCY server when it is hosted by LUCY Security. All LUCY servers have a firewall to restrict access. Access is only possible for the system administrator and the support team. Zabbix agents run in 24×7 mode on all LUCY servers. They are used to monitor processes and daemons that are necessary for the successful operation of LUCY.

Zabbix agents maintain the connection to the central, standalone Zabbix server and report all important events. Based on the monitoring of alarms, the system administrator or support team responds immediately to any problems found, e.g. server failure, network interruption, insufficient disk space, etc. If LUCY is installed on a dedicated server with RAID, the Zabbix Agent also monitors the status of the RAID array to prevent possible data loss due to disk failure. We back up all our LUCY servers daily with our backup script on an external, standalone backup server in encrypted form.



Lucy Security Inc 13785 Research Blvd | Suite 125 | Austin, TX | 78750 512-696-1522

September 3, 2021

Midwest Higher Education Compact (MHEC)
Deb Kidwell
105 Fifth Avenue South, Suite 450
Minneapolis, MN 55401
debk@mhec.org
573-864-2024

RE: LUCY Security EULA amendment

To Whomever It May Concern:

LUCY Security agrees that for entities owned or controlled by a state government, we will waive the requirement in the LUCY Security End User License Agreement that requires LUCY Security to be provided with the sole control and defense of any legal matters that are subject to indemnification by LUCY Security and we will coordinate with the state's attorney general as required by applicable state law.

Thank you for the opportunity to clarify our commitment to working with you and with your state attorney general

Sincerely,

2021.09.04

10:46:06

-05'00'

Colin Bastable
Chief Executive Officer.
LUCY Security Inc.
colin@lucysecurity.com
/blr