

MASTER AGREEMENT  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
PONDURANCE LLC

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and PONDURANCE LLC, (hereinafter PONDURANCE or Supplier) located at 500 N. Meridian St. Suite 500, Indianapolis, IN 46204. For purposes of this Master Agreement MHEC and PONDURANCE are referred to collectively as the “Parties” or individually as “Party”.

**Whereas**, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Procuring Eligible Organization 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**, PONDURANCE 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 PONDURANCE received an award; and

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

## 1. Definitions

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

**Documentation:** refers to the any documentation made available by PONDURANCE 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 PONDURANCE 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 PONDURANCE. Eligible Organizations shall include:

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

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

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

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

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

**Order:** refers to an Eligible Organization’s purchase order or other ordering document evidencing its intent to procure 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 PONDURANCE makes available under this Master Agreement. PONDURANCE 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 PONDURANCE'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 PONDURANCE 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. PONDURANCE 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 Orders, service level agreements (SLA) and/or statements of work (SOW).

**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). PONDURANCE 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 PONDURANCE 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 PONDURANCE as Application Software.

**Supplier:** refers to PONDURANCE.

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

**Third Party Services:** refers to any Services performed by someone other than PONDURANCE 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 and PONDURANCE's Order, SLA or SOW, as determined by PONDURANCE. 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 (as defined above), service level agreement (SLA) or statement of work (SOW), such as those attached hereto as Exhibit C. Orders, SLAs and SOWs may be issued to purchase any Products or any Services listed on the Retail Price List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in PONDURANCE's Retail Price List at the prices stated herein, provided such Procuring Eligible Organization executes PONDURANCE's Order, SLA or SOW. For Large Order Negotiated Pricing, Supplier and Eligible Organization may negotiate quantity discounts below the Products and Services Pricing for a given Order, SLA or SOW. 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. PONDURANCE is solely responsible for fulfillment of its responsibilities under the terms and conditions of this Master Agreement, and each Procuring Eligible Organization is solely responsible for fulfillment of its responsibilities under its Order, SLA or SOW with PONDURANCE. Notwithstanding anything to the contrary contained in this Master Agreement or Order, SLA or SOW under the Master Agreement, MHEC shall not be liable for any Eligible Organization that executes an Order, SLA or SOW under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order, SLA or SOW under this Master Agreement.

This Master Agreement covers those products and solutions as described in for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020. The categories awarded under this Master Agreement are:

A. Security Threat Intelligence Products and Services

"Threat intelligence" (TI) is evidence-based knowledge — including context, mechanisms, indicators, implications and actionable advice — about an existing or emerging menace or hazard to IT or information assets. It can be used to inform decisions regarding the subject's response to that menace or hazard.

B. Security Information and Event Management (SIEM)

Security information and event management (SIEM) is defined by the customer's need to analyze event data in real time for early detection of targeted attacks and data breaches, and to collect, store, investigate and report on log data for incident response, forensics and regulatory compliance. SIEM technology aggregates event data produced by security devices, network infrastructure, systems and applications. The primary data source is log data, but SIEM technology can also process other forms of data, such as network telemetry. Event data is combined with contextual information about users, assets, threats and vulnerabilities. The data may be normalized, so that events, data and contextual information from disparate sources can be analyzed for specific purposes, such as network security event monitoring, user activity monitoring and compliance reporting. The technology provides real-time analysis of events for security monitoring, query and long-range analytics for historical analysis.

C. Managed Security Services

Managed security services (MSSs) are defined as the remote monitoring or management of IT security functions delivered via shared services from remote security operations centers, not through personnel on-site. Therefore, it doesn't include staff augmentation, consulting, or development and integration services. MSSs include monitored/managed firewalls or intrusion prevention/detection systems; managed multifunction firewalls; unified threat management technology; managed security gateways for messaging or Web traffic; security analysis and reporting of events collected from IT infrastructure logs; reporting associated with monitored/managed devices and incident response; managed vulnerability scanning of networks, servers, databases or applications; distributed denial of service protection; monitoring/management of customer-deployed security information, event management technologies;

and monitoring/management of advanced threat defense technologies, or the provision of those capabilities as a service.

D. Security Awareness Training

The market for end-user-focused security education and training is growing rapidly. Security and risk management leaders' need to influence the security behaviors of people --employees, citizens and consumers --is fueling demand for these products.

E. Security Consulting Services

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

**3. Purchasing Under Master Agreement**

- A. **Products:** Procuring Eligible Organization shall purchase from Supplier the Products listed on the Retail Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order, SLA or SOW. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; (viii) reference to this Master Agreement; and (ix) Supplier's standard terms and conditions, to the extent they do not conflict with this Master Agreement. Supplier must notify Procuring Eligible Organization if it intends to substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract; the Procuring Eligible Organization will then have the option to cancel the Order, SLA or SOW if such substitute item is not acceptable.
- B. **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; (vii) reference to this Master Agreement; and (ix) Supplier's standard terms and conditions, to the extent they do not conflict with 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 Supplier, including, as applicable, Orders, SLAs and SOWs.
- C. Each Order, SLA or SOW that is accepted by Supplier will become a part of the Agreement as to the Products and/or Services listed on the Order, SLA or SOW only; no additional terms or conditions will be added to this Master Agreement as a result of the acceptance of the Order, SLA, or SOW, nor will such terms affect any purchase, provided the Order, SLA or SOW may contain Supplier's standard terms and conditions to the extent they do not conflict with this Master Agreement. An Order, SLA or SOW from an Eligible Organization accepted by Supplier is binding.
- D. Procuring Eligible Organization may request in writing a change or cancellation of an Order that Supplier has previously accepted up until the time PONDURANCE has begun manufacturing the Products or performing the Services.

- E. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order, provided that purchases made with a purchasing card also are subject to Supplier's standard terms and conditions to the extent they do not conflict with this Master Agreement.
- F. When Equipment purchased under this Master Agreement requires installation, the Supplier must provide the cost of installation as a separate line item on their quotation unless installation is included in the price. The installation cost must include all packing, freight, insurance, set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Procuring Eligible Organization personnel, demonstrated to be in operating condition, and approved by Procuring Eligible Organization personnel. Upon request, PONDURANCE will provide a Services quote with a Statement of Work to remove any and all debris from the Procuring Eligible Organization's site. Upon installation, all operating instructions will be provided either physically or electronically to Procuring Eligible Organization's personnel identified on the 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 PONDURANCE; 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 Organizations 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, subject to Supplier's Order, SLA and SOW terms and conditions.

#### **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 PONDURANCE 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 PONDURANCE 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 PONDURANCE.

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

- A. Mutually agreed upon Order, SLA or SOW
- B. License terms applicable to the Software license or Software service purchased hereunder
- C. Executed addendum, not to include Orders (covered above), between Eligible Organization and PONDURANCE
- D. The terms and conditions of this Master Agreement or any MHEC- PONDURANCE 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 the PONDURANCE's published specifications. Unless otherwise agreed upon between the Eligible Organization and PONDURANCE, the Eligible Organization shall within fifteen (15) calendar days from the date of delivery, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise the Products or Services shall be deemed accepted.
- B. **Prepayment:** Eligible Organization will not be required to make any advance payments to Contractor for any task deliverable or time-and-materials based orders under this Master Agreement. This clause does not apply to subscriptions for which payment is commonly expected prior to activation of coverage, such as periodical subscriptions, memberships, or annual maintenance agreements.
- C. **Return Policy.** Subject to Section 8A. of this Master Agreement, all Products and Third Party Products will be deemed to be accepted upon delivery. The correction of the non-conformity by Supplier or a refund of the pro rata cost of the non-conforming Product(s) or Service(s) for the duration of the non-conformity shall be the Procuring Eligible Organization's sole and exclusive remedies for failure to meet this warranty.
- D. **Fees, Expenses, Payment of Invoice.** In consideration of the performance of Supplier's duties and obligations as set forth in the Order, SLA or SOW, the Procuring Eligible Organization shall pay to Supplier the fees set forth on the Order, SLA or SOW, in accordance with the terms thereof and the terms of this Master Agreement. Procuring Eligible Organization shall also pay Supplier reasonable out of pocket travel related expenses as set forth on the Order, SLA or SOW, in accordance with the terms thereof. Payments shall be delivered to Supplier at the address shown on Supplier's 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.
- E. **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.

- F. **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 Order, SLA or SOW.
- G. **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. Shipping

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

## 10. Product Delivery

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



### 11. Purchase of Open Market Items

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

### 12. Price Guarantees

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

### 13. Product Pricing

PONDURANCE agrees to maintain Product Pricing in accordance with the following provisions:

- A. Discount Percentage Pricing: The prices for Products are the Retail Price List less applicable discount as specified in Exhibit A. Except as set forth in Section 12 "Price Guarantees" or Section 44 "Administrative Reporting and Fees," the discount percentages set forth in Exhibit A shall remain firm during the term of this Master Agreement. PONDURANCE shall add new Product(s) to Retail Price List as new Product(s) become available for sale. The pricing for all new Products shall be at the price discount levels provided herein, or as agreed to by the Parties. A more detailed pricing list for Supplier can be provided to Eligible Organization(s) by MHEC upon request.
- B. PONDURANCE may revise or discontinue Product offerings at any time without prior notice to MHEC. A change in a Product may occur between the time that Procuring Eligible Organization orders a Product and the time that PONDURANCE ships the Product. As a result, Products shipped may display minor differences from the Products Procuring Eligible Organization ordered, but they will meet or exceed all material specifications of the Products Procuring Eligible Organization ordered.
- C. Products purchased shall be new, current models manufactured with 100% new OEM parts. All Products should be offered in current production as of the date of the award. For purpose of this contract, "current production" shall mean that the equipment model is being manufactured as new equipment for the United States market. PONDURANCE will delete obsolete and discontinued Products from the Retail Price List on a timely basis.
- D. Prices will be F.O.B. destination (interior/ground floor or inside dock), and freight pre-paid and allowed, to any and all locations of the Procuring Eligible Organization. Prices must include all packing, freight, insurance charges and installation/operation manuals.

### 14. Services Pricing

PONDURANCE 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 the Products Section for Discount Percentage Pricing, and the applicable discount percentage as noted in Exhibit A will apply. Except as set forth in Section 12, "Price Guarantees" or Section 44 "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 PONDURANCE and Procuring Eligible Organization and as set forth in a PONDURANCE 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.
- D. Any purchase by Procuring Eligible Organizations of IT-as-a-Service is pursuant to the terms of the PONDURANCE Services Description accompanying the Services and the negotiated Addendums set forth on the attached Exhibit B between Eligible Organization and PONDURANCE.

#### 15. 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, SLA or SOW 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.

#### 16. 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. For PONDURANCE -branded System Software, Procuring Eligible Organization's rights to use the Software delivered by Supplier are governed by the terms of the applicable Software License Addendum included in the attached Exhibit B. Notwithstanding anything to the contrary in the Software License Addendum, as between Eligible Organization and Supplier, the Software License Addendum shall be governed and construed in accordance with the laws of the state identified in the Order, SLA or SOW. 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 a third party manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

#### 17. 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.

#### 18. Warranties

- A. **Equipment:** PONDURANCE warrants that any PONDURANCE branded Products shall be free from defects in material and workmanship under normal use, will conform to the specifications within the Product documentation accompanying the product, and that the Equipment shall remain in good working order for the applicable warranty period from the date of Invoice. The applicable warranty

period will be determined by such factors as the type of Warranty or Product purchased. If any Equipment is not as warranted in this Section, then PONDURANCE shall repair or replace the Equipment in accordance with the applicable warranty. In repairing or replacing any Equipment or part of any Equipment under this warranty, PONDURANCE may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment or parts of Equipment. For any Equipment or parts thereof repaired, replaced or corrected under this Section, the warranty period applicable to the Equipment will continue for the remainder of the original warranty period. If, PONDURANCE determines that it cannot, in a commercially reasonable manner repair or replace any Equipment, then PONDURANCE may, in its sole discretion, refund to Procuring Eligible Organization the price of the Equipment.

- B. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE PRODUCT OR SERVICE DOCUMENTATION, PONDURANCE (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 "PONDURANCE 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.
- C. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY PONDURANCE (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 PRODUCTS OR SERVICES. WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.
- D. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT PONDURANCE'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 ELGIBLE ORGANIZATIONS'S JURISDICTION WILL APPLY TO PROCURING ELIGIBLE ORGANIZATION, AND PONDURANCE'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- E. **HIGH-RISK DISCLAIMER:** PONDURANCE SHALL NOT BE LIABLE TO THE PROCURING ELIGIBLE ORGANIZATION FOR USE OF THE PRODUCTS OR SERVICES IN HAZARDOUS OR HIGH-RISK ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, IN WHICH THE FAILURE OR MALFUNCTION OF THE PRODUCTS OR SERVICES 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 PONDURANCE KNOWS OF SUCH USE, AND PONDURANCE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.
- F. **Services:** PONDURANCE 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 PONDURANCE 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.

- G. **Third-Party Products and Services Warranties:** PONDURANCE does not warrant Third-Party Products or Services. Any warranty provided on Third-Party Product(s) or Service(s) is provided by the publisher, original manufacturer, or service provider and may vary from product to product or service to service. Such warranties shall be provided to the Procuring Eligible Organization with the Third Party Products and Services.
- H. **Transfer of Title.** PONDURANCE warrants that Procuring Eligible Organization shall acquire good and clear title to PONDURANCE -branded Products being purchased under this Master Agreement, free and clear of all liens and encumbrances. For any non- PONDURANCE branded Products, PONDURANCE warrants that it has the right to provide such Products to the Procuring Eligible Organization.

## 19. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving PONDURANCE ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after the Product has begun production or been shipped for such Products that don't require production. At any time, PONDURANCE may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve PONDURANCE 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 PONDURANCE may terminate an Order under this Master Agreement for cause based upon material breach of the Order or Master Agreement by the other, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within 30 days after receipt of a written notice the breaching party has not corrected the breach, or in the

case of a breach that cannot be corrected in 30 days, begun and proceeded in good faith to correct the breach, the non-breaching party may terminate the Order effective immediately. The non-breaching party shall retain any and all remedies available to it under the law. A breach and any resulting termination of an Order under this Section 19 E shall have no effect on any other Order made by any other Eligible Organization.

## **20. 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 PONDURANCE 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 PONDURANCE 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 PONDURANCE will be paid by the Procuring Eligible Organization.

## **21. Records and Audit**

PONDURANCE 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.

**22. 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.

## **23. Insurance**

The Supplier 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 Products and/or Services to Eligible Organization.

- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. If applicable, Professional Errors and Omissions insurance with limits of one million dollars (\$1,000,000) per occurrence.
- E. Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- F. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- G. Cyber Insurance In the event Supplier will host data, or provide for the hosting of data through a third-party entity, Supplier shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the Supplier or Eligible Organization, an immediate response in the event of a data breach, including meeting all notification obligations of Supplier and Eligible Organization and in the event the data breach involves personal information, available free credit monitoring for any affected individual for a minimum period of one year.

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

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



SOW with Supplier. Supplier shall provide on an ongoing basis, updated certificates of insurance during the term of the Master Agreement, as needed. A renewal certificate will be provided 10 days prior to coverage expiration.

#### **24. Independent Contractor**

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

#### **25. Debarment & Suspension**

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

#### **26. Patent, Copyright, Trademark and Trade Secret Indemnification**

PONDURANCE will indemnify, defend and hold MHEC and Eligible Organization harmless from any third party claim that any PONDURANCE -branded Product or Service provided to Eligible Organization pursuant to this Master Agreement infringes on another person's or entity's United States patent, copyright, trade secret or any other proprietary right of a third party. PONDURANCE 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 PONDURANCE 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, PONDURANCE 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 PONDURANCE from its obligations to defend and indemnify MHEC and Eligible Organizations.

#### **27. Indemnification**

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

Any obligation by the individual Eligible Organization to indemnify PONDURANCE shall be negotiated and set forth in the applicable Order, SLA or SOW between Eligible Organization and PONDURANCE.

## **28. Limitation of Liability**

PONDURANCE 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, SLA or SOW 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 PONDURANCE's negligence or willful misconduct. NEITHER PONDURANCE, 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 TORTIOUS CONDUCT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. PONDURANCE 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.

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 PONDURANCE 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.

## **29. Spoliation**

Each Party shall promptly notify the other Party (and PONDURANCE shall promptly notify the applicable Eligible Organization) of all potential claims that arise or result from this Master Agreement. Each Party 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 the other Party and/or Eligible Organization the opportunity to review and inspect the evidence, including the scene of an accident.

## **30. Confidentiality**

A. While PONDURANCE is providing Services hereunder, Eligible Organization or PONDURANCE may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this Section 30 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient. Both Eligible Organization and PONDURANCE 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, SLA or SOW 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 Recipient; (ii) was rightfully in the Recipient's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the Recipient's employees or agents independently of and without reference to any of the Discloser'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 PONDURANCE 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 a separate non-disclosure agreement between PONDURANCE and the third party.
- D. If a separate, written nondisclosure agreement exists between Eligible Organization and PONDURANCE, 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 Master Agreement or amendment to this Master Agreement, both Eligible Organization and PONDURANCE agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded, to the extent applicable to the scope of services performed by Supplier.

### **31. FERPA (and Other Privacy Laws)**

Where applicable to the scope of services PONDURANCE is providing, and only to the extent directly applicable to PONDURANCE and its Services, PONDURANCE 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 PONDURANCE subject to aforementioned privacy laws, Eligible Organization agrees to advise PONDURANCE of the disclosure of such information; and Eligible Organization represents and warrants to PONDURANCE that it has obtained any required consents to disclose such information. In addition, to the extent that PONDURANCE 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 Master Agreement, PONDURANCE 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 Master Agreement, is a school official with a legitimate educational interest in obtaining access to education records and will only provide PONDURANCE with access to those particular education

records in which PONDURANCE 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 Master 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 Supplier requires access to education records in order to fulfill its responsibilities under this Master 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. Supplier 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.

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

### **33. Amendments**

Except as provided for in Section 7 "Order of Precedence"; Section 13 "Product Pricing"; and Section 14 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

### **34. 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.

### **35. 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.

**36. 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.

**37. Equal Opportunity Compliance**

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

**38. Compliance with Law**

PONDURANCE shall comply with all applicable laws and governmental regulations, which by their terms, apply to PONDURANCE's performance under an Order, SLA or SOW 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.

**39. Applicable Law**

- A. As between Eligible Organization and PONDURANCE, the Order, SLA or SOW shall identify the governing applicable law and forum under which this Master Agreement, the Addendum(s), and Order(s), SLA(s) or SOW(s) shall be construed.
- B. As between MHEC and PONDURANCE 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 PONDURANCE 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.

**40. Conflict of Interest**

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

**41. 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 PONDURANCE from employing a subcontractor in carrying out its obligations under this Master Agreement. PONDURANCE’s use of such subcontractors will not release PONDURANCE from its obligations under this Master Agreement.

**42. 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.

**43. 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 PONDURANCE:
MHEC	PONDURANCE LLC
105 Fifth Avenue South	500 N. Meridian St.
Suite 450	Suite 500
Minneapolis, Minnesota 55401	Indianapolis, Indiana 46204
Attn: Rob Trembath, Chief Operating Officer and General Counsel	Attn: Kristina Bouckaert
Facsimile: 612-767-3353	

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.

**44. 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), PONDURANCE 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 PONDURANCE 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.



**45. MHEC Not Liable For Eligible Organizations**

MHEC is not liable to PONDURANCE 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. PONDURANCE, 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, Order, SLA or SOW, and in such event PONDURANCE may pursue all remedies available at law against such Eligible Organization.

**46. 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. PONDURANCE 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, as applicable), which shall not be unreasonably withheld.

**47. Marketing**

PONDURANCE 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. Supplier 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, as applicable.

**48. Oversight Committee**

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

**49. Force Majeure.**

Neither PONDURANCE 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.

**50. Sovereign Immunity.**

Notwithstanding anything to the contrary in this Master Agreement, license, or Order, SLA or SOW 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.

## 51. Compliance with Laws and Export.

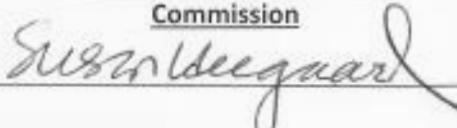
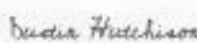
- A. **Compliance with Laws. Procuring Eligible Organization** and PONDURANCE agree to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring **Eligible Organization** acknowledges that the Products, Software and Services 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 PONDURANCE with all of the information needed for PONDURANCE to obtain export licenses from the U.S. Government or any other applicable national government and to provide PONDURANCE 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. PONDURANCE also may require export certifications from Procuring Eligible Organization for Procuring Eligible Organization-provided software. PONDURANCE'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. PONDURANCE 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.** PONDURANCE is not responsible for determining whether any Third-Party Product to be used in the Products, Software and Services satisfies the local regulatory requirements of the country to which such Products, Software and Services are to be delivered or performed, and PONDURANCE shall not be obligated to provide any Products, Software and Services where the resulting Products, Software and Services is prohibited by law or does not satisfy the local regulatory requirements.
- C. **Excluded Data.** Procuring Eligible Organization acknowledges that no part of the Products, Software and Services is designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) except for personally identifiable information referenced in to Section 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 PONDURANCE (or to which PONDURANCE will have access) to ensure that it does not contain Excluded Data.

**52. Non-Solicitation.** To the extent permitted by law, during the period that Supplier is providing Services or Products under an applicable Order, SLA or SOW, neither MHEC nor any Eligible Organization shall directly solicit an employee of Supplier for employment during the term of the applicable Order, SLA or SOW and for a period of twelve (12) months after termination or expiration thereof, under which that directly-solicited employee performed Services.

**53. 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. PONDURANCE may accept this Master Agreement either by its authorized signature or a signed Order, SLA or SOW. Except as provided for in this Master Agreement, and except for negotiated terms between Supplier and a Procuring Eligible Organization as part of an Order, SLA or SOW, as permitted by this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties.

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>PONDURANCE LLC</u>
Signature:	<u></u>	<u></u>
Name:	<u>Susan Heegaard</u>	<u>Dustin Hutchison</u>
Title:	<u>President</u>	<u>VP Services &amp; CISO</u>
Address:	<u>105 Fifth Avenue South Suite 450</u>	<u>500 N Meridian St. Suite 500</u>
	<u>Minneapolis, Minnesota, 554401</u>	<u>Indianapolis, IN 46204</u>
Date:	<u>9/20/21</u>	<u>Sep 2, 2021</u>

**Exhibit A – Discount Category Pricing Examples**

**Security Threat Intelligence / Network Monitoring**

The first 3 Organizations represent the education industry. Companies A, B, C, D reflect companies that we work with ranging from small to enterprise in order to demonstrate scale and pricing associated with scaling for Network and Log monitoring services.

Organization	University
Network Tier	1,000-2,500 mbps
Annual Cost	\$67,920
Number of Students	16,440

Organization	Public School District
Network Tier	5,000-10,000mbps
Annual Cost	\$92,560
SIEM/Log Tier	50GB/day
Annual Cost	\$40,000
Number of Students	31,855

Organization	University
Threat Intelligence/Network Tier	1,000-2,500 mbps
Annual Cost	\$67,920
SIEM/Log Tier	50GB/day
Annual Cost	\$40,000
Number of Students	8,265

Company	A
Threat Intelligence/Network Tier	100-250mbps
Annual Cost	\$42,960
SIEM/Log Tier	20GB/day
Annual Cost	\$15,000
Number of Employees	38

Company	B
Threat Intelligence/Network Tier	250-500mbps
Annual Cost	\$49,280
SIEM/Log Tier	50GB/day

Annual Cost	\$40,000
Number of Employees	600

Company	C
Threat Intelligence/Network Tier	250-500 mbps
Annual Cost	\$49,280
SIEM/Log Tier	100GB/day
Annual Cost	\$75,000
Number of Employees	5,000

Company	D
Threat Intelligence/Network Tier	5,000mbps-10,000mbps
Annual Cost	\$92,560
SIEM/Log Tier	1,500GB/day
Annual Cost	\$800,000
Number of Employees	30,000

*Pondurance offers a 10% annual discount on Security Threat Intelligence /Network Monitoring cost for multi-year agreements. That discount is not reflected in the table, but will be noted in the member statement of work, if the member commits for two or more years.*

#### Cost for Hardware

Sensor Size	Cost per Sensor
Small Sensor	\$3,600
Medium Sensor	\$7,600
Large Sensor	\$15,000

## Managed Security Services

### Vulnerability Management Program Pricing

Description	Total IPs in scope (up to 500)	Total IPs in scope (up to 1500)	Total IPs in scope (up to 5000)
Weekly threat report, monthly external scan, quarterly internal scan, annual penetration test	\$23,000.00	\$27,000.00	\$34,000.00

### Security Awareness Training

Price Per Seat Per Year

Seats	Silver	Gold	Platinum	Diamond	PhishER
25-50	\$17.00	\$20.75	\$24.50	\$29.50	N/A
51-100	\$15.00	\$18.25	\$21.50	\$26.50	N/A
101-500	\$12.00	\$14.50	\$17.00	\$22.00	\$9.00
501-1000	\$11.00	\$13.25	\$15.50	\$20.50	\$6.00
1001-2000	\$10.00	\$12.00	\$14.00	\$19.00	\$5.00
2001-3000	\$9.00	\$10.75	\$12.50	\$17.50	\$4.00
3001-5000	\$8	\$9.50	\$11.00	\$16.00	\$3.50

*\*if an organization has more than 5,000 users, we can provide pricing upon request*

### Security Consulting Services

Hourly Rate ranges from \$150-300 depending on the role and expertise required.

*Pondurance also has the ability to create fixed fee proposals for specific engagements. It is mutually beneficial to scope specific engagements with each entity as fixed fee vs. hourly pricing.*

*A more detailed pricing list for Pondurance can be provided to Eligible Organization(s) by MHEC upon request.*



**Exhibit B – Form Addendums**

## Schedule of Form Addendums

1. Consulting Services Addendum
2. Managed Services Addendum
3. Software License Addendum

**Exhibit C - Examples of Statements of Work**

## Schedule of Examples

1. Consulting Services Service Contract
2. Managed Services Service Contract

## CONSULTING SERVICES ADDENDUM

This Consulting Services Addendum (“Addendum”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the (“Effective Date”), by and between Pondurance LLC, a Delaware limited liability company (“Pondurance”) and \_\_\_\_\_, an \_\_\_\_\_ (“Client”).

WHEREAS, this Addendum hereby supplements the existing Master Agreement (“Agreement”) between Pondurance and Midwestern Higher Education Commission (“MHEC”).

WHEREAS, Client has agreed to be bound by the terms and conditions of the Agreement and this Addendum in order to procure the Consulting Services (defined below). The Parties agree that except as set forth herein all terms in the existing Agreement remain in full force and effect as long as this Addendum is in place.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Consulting Services

Pondurance agrees to provide Client with consulting services (“Consulting Services”) as agreed upon in the service contract (“Service Contract”). Consulting Services means and includes but is not limited to services provided by Pondurance to Client including IT security program development and management; IT security control assessment; business continuity and disaster recovery; provision of virtual chief information security officer; and risk management and compliance solutions.

### 2. Compensation and Payment.

In consideration of the performance of the Consulting Services and the performance of Pondurance’s other duties and obligations, Client shall pay to Pondurance the fees (the “Fees”) set forth on each Service Contract (“Service Contract”) in the manner and time as set forth in the Agreement. Pondurance shall invoice Client in accordance with the payment schedule set forth in the applicable Services Contract. Interest shall accrue and be due and payable on accounts past due as set forth in the Agreement. In the event of default in payment, Client shall pay Pondurance all reasonable costs and expenses, including reasonable attorney’s fees and costs, incurred in any efforts to enforce any of the terms or conditions of this Section.

### 3. Term and Termination.

(a) Term. This Addendum shall commence as of the Effective Date and shall continue until terminated as set forth herein or as set forth in any applicable Service Contract, Addendum, or other applicable agreement, pursuant to the terms thereof. Client agrees to be bound on behalf of itself by the obligations with respect to Eligible Organizations (as defined therein) contained in the Agreement as if it were a party thereto. Client expressly agrees and acknowledges that the Agreement, this Addendum and any other applicable Addendum(s), and Service Contract, shall govern the provision of the Consulting Services during the term of any applicable Service Contract irrespective of the termination of the Agreement as between Pondurance and MHEC.

#### (b) Termination of Addendum Related to Consulting Services.

(i) Either party may terminate this Addendum without penalty at any time and for any reason upon not less than thirty-five (35) days prior notice to the other party; provided that this Addendum shall remain in effect with respect to each then-uncompleted Service Contract or other agreement until each such Service Contract or other agreement is completed or is terminated as provided herein or therein.

(ii) Either party may terminate this Addendum immediately if the other party breaches or is in default of any material obligation hereunder or in the corresponding Agreement or Service Contract which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) business days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize).

(iii) Either party may immediately terminate this Addendum, at any time and without penalty, upon either party 1) being adjudicated bankrupt, 2) being appointed a receiver or trustee for such party's property or affairs, 3) making a general assignment for the benefit of creditors, 4) voluntarily filing a petition in bankruptcy, or insolvency or for reorganization, or 5) making application for the appointment of a receiver; or a third party filing a petition for an involuntary adjudication of bankruptcy or insolvency or for a reorganization of the appointment of a receiver and such third party petition shall not be dismissed, set aside, vacated or discharged without action thereon within sixty (60) days after the issuance of the same.

4. Limitation of Warranty and Limitations of Liability.

(a) THE FEES CHARGED BY PONDURANCE HEREUNDER ARE BASED SOLELY ON THE VALUE OF THE SERVICES PROVIDED AND THE SCOPE OF THE LIMITED LIABILITIES SET FORTH HEREIN. PONDURANCE'S FEES DO NOT PROVIDE FOR THE RISK OF ANY OTHER DAMAGES, INCLUDING INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, AND LOST PROFITS, AND THE PARTIES AGREE THAT THIS ALLOCATION OF RISK AND LIABILITY IS FAIR AND REASONABLE. ACCORDINGLY, PONDURANCE SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR BUSINESS INTERRUPTION, LOSS OF USE OF NETWORKS OR COMPUTER SYSTEMS, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS ADDENDUM, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF PONDURANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **PONDURANCE'S CUMULATIVE MAXIMUM LIABILITY IS LIMITED TO THE AMOUNT OF THE TOTAL FEES PAID OR PAYABLE HEREUNDER FOR THE PARTICULAR SERVICE TO WHICH THE CLAIM DIRECTLY RELATES, EXCEPT WHERE PROHIBITED BY APPLICABLE LAW.**

(b) Testing Services. If the Services include a scan; ethical penetration or intrusion test; or information system, network, or enterprise vulnerability assessment (collectively, the "Testing Services" and individually, a "Testing Service"), Client hereby releases Pondurance and its members, officers, managers, employees, consultants, agents, and independent contractors from any liability arising out of or relating to: (i) system or software security or configuration vulnerabilities not discovered during the performance of such Testing Service, (ii) Client's failure to provide adequate protection or backup of data or equipment used, accessed, scanned, or tested in connection with the performance of such Testing Service, (iii) the security or performance of Client's information systems or networks after the performance of such Testing Service, or (iv) the following consequences resulting from the performance of such Testing Service: (A) system or network down time or loss, (B) loss of business, (C) loss of Internet connectivity, (D) degradation of bandwidth, (E) loss of data or access to data, and (F) service interruptions. The limitation of liability herein shall not apply where such consequences are caused by acts or omissions of Pondurance that are 1. knowingly outside the scope of the Testing Service, as specified in the applicable Service Contract or other agreement or 2. illegal or otherwise involving gross negligence, bad faith or willful misconduct of Pondurance or its personnel. If the Services include a Testing Service Pondurance may request that Client provide a written list of where Pondurance has permission to scan, penetrate, or test within Client's information system, network, or enterprise, and/or where Pondurance does not have permission to scan, penetrate or test within Client's information system, network, or enterprise. In such event that Pondurance requests Client produce a written list, Client agrees that Pondurance may rely on Client's representations, as written by Client, regarding where Pondurance has permission to scan, penetrate, or test. Client agrees that Pondurance's reasonable reliance on Client's written representations as described in this subsection does not violate any applicable standard of care.

[Signature Page Follows]

IN WITNESS WHEREOF, Client and Pondurance certify by their undersigned authorized representatives that they have read this Addendum and agree to be bound by its terms and conditions as of the Effective Date shown above.

**Pondurance**

**Client:**

By: Dustin Hutchison  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: Dustin Hutchison  
(Printed Name)

Name: \_\_\_\_\_  
(Printed Name)

Title: VP Services & CISO

Title: \_\_\_\_\_

Dated: Sep 2, 2021

Dated: \_\_\_\_\_

## MANAGED SERVICES ADDENDUM

This Managed Services Addendum (“Addendum”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the (“Effective Date”), by and between Pondurance LLC, a Delaware limited liability company (“Pondurance”) and \_\_\_\_\_, an \_\_\_\_\_ (“Client”) (collectively, the “Parties”).

WHEREAS, this Addendum hereby supplements the existing Master Agreement (“Agreement”) between Pondurance and Midwestern Higher Education Commission (“MHEC”).

WHEREAS, Client has agreed to be bound by the terms and conditions of the Agreement and this Addendum in order to procure the Managed Services (defined below). The Parties agree that except as set forth herein all terms in the existing Agreement remain in full force and effect as long as this Addendum is in place.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Managed Services

Pondurance agrees to provide Client with managed services (“Managed Services”) as agreed upon in the Service Contract. Managed Services includes but is not limited to services provided by Pondurance to Client for the purposes of monitoring, managing and/or problem resolution for Client’s IT systems, including but not limited to software production and maintenance; system authentication, testing, and management; data backup, storage, recovery, and management; and network monitoring, testing, management, and security.

2. Compensation and Payment.

In consideration of the performance of the Managed Services and the performance of Pondurance’s other duties and obligations, Client shall pay to Pondurance the fees (the “Fees”) set forth on each Service Contract (“Service Contract”) in the manner and time as set forth in the Agreement. Pondurance shall invoice Client in accordance with the payment schedule set forth in the applicable Services Contract. Interest shall accrue and be due and payable on accounts past due as set forth in the Agreement. In the event of default in payment, Client shall pay Pondurance all reasonable costs and expenses, including reasonable attorney’s fees and costs, incurred in any efforts to enforce any of the terms or conditions of this Section.

3. The License; Ownership.

(a) License to Managed Services. In the event any Service Contract is for provision of Managed Services, and pursuant to the terms and conditions of this Addendum or other applicable agreement, Pondurance hereby grants to Client, for the term of the Addendum, Service Contract or other applicable agreement, a non-exclusive, non-transferable, non-sublicensable right and license to access and use the Managed Services solely for the purposes contained in this Addendum and any applicable Service Contract. No other access or use of the Managed Services shall be made by Client except as expressly granted hereunder, without the prior written consent of Pondurance.

(b) Ownership and License. Pondurance software, hardware, documentation and training materials, as applicable, are licensed only (collectively, “Licensed Product(s)”). No title to, or ownership of, Licensed Products provided to Client in the course of performing the Managed Services is transferred by Pondurance to Client, unless expressly agreed to in writing. The parties expressly understand and agree that the Managed Services, the Licensed Product(s), Pondurance’s Confidential Information, and all intellectual property with respect to the foregoing are and shall remain the sole and exclusive property of Pondurance. Upon Pondurance’s request, Client agrees to execute any license agreement (“Software License Agreement”), which Software License Agreement shall control the rights of Pondurance and Client with respect to Pondurance’s proprietary software.

(c) Sublicenses. Pondurance may deploy the services of third party vendor(s) in conjunction with the Managed Services provided under the terms of this Addendum, Service Contract, or the Agreement. In such event that Pondurance deploys security software and services owned or provided by a third-party vendor in conjunction with Pondurance Managed Services, Client agrees to and understands that it shall execute any applicable sublicense agreements. Any sublicense agreement controls the rights and responsibilities of Pondurance and Client with respect to a third-party vendor’s software. Client shall execute a sublicense



agreement upon request by Pondurance. Client understands that Pondurance may not deploy or utilize a third-party vendor's security software in conjunction with Pondurance services unless and until Client executes a sublicense agreement.

(d) Pondurance's Proprietary Software. In conjunction with the Managed Services provided under the terms of this Addendum, Agreement, or Service Contract, Pondurance will employ its proprietary software. As explained in Section 3(b), no title to, or ownership of, documentation, training materials, or other materials provided to Client is transferred to Client. However, Pondurance may license, at its sole discretion, its proprietary software to Client pursuant to a Software License Agreement. Client understands that Pondurance may not grant license of its proprietary software to Client unless the Parties have executed a Software License Agreement.

(e) Reservation of Rights. All rights not expressly granted herein with respect to the Managed Services or the Licensed Products are reserved to Pondurance. Nothing contained herein shall limit Pondurance's right to license or otherwise distribute or make available to any third party, develop, use, create derivative works of, or otherwise exploit the Licensed Products or the Managed Services (and the Licensed Products underlying those services), in whole or in part.

#### 4. Hardware.

(a) Hardware. In conjunction with the provision of Managed Services referenced herein or in any applicable Service Contract or other applicable agreement, Pondurance may install hardware at a service site that contains Pondurance's proprietary software (the "Network Security Appliance"). Title to the Network Security Appliance may or may not pass to Client upon termination of the Managed Services. Title to any Network Security Appliance shall be governed by any applicable bill of sale, Service Contract, or purchase order by or between Pondurance and Client. If title does not pass to Client upon termination of the managed services, Client shall promptly return the Network Security Appliance to Pondurance no later than thirty (30) days from Pondurance's request to return such Network Security Appliance. If title to the Network Security Appliance passes to Client, Client agrees that it will not engage in any activities prohibited by any license agreement the Client executes with Pondurance, including but not limited to reverse engineering, in connection with both the hardware and the software contained within the Network Security Appliance.

(b) Duty to Destroy upon Termination. Client agrees that it will remove any proprietary software Pondurance installs on the Network Security Appliance in accordance with removal instructions provided by Pondurance. In the event that Pondurance does not provide such removal instructions, Client acknowledges its duty, and Client agrees, to remove, destroy, delete, wipe clean, or otherwise eliminate any proprietary software that is contained in the Network Security Appliance. An officer or other responsible party for Client shall verify in writing to Pondurance that such removal actions have been successfully taken. Client agrees to permit and provide Pondurance with requisite network access for Pondurance to remotely wipe or remove Pondurance proprietary software from the Network Security Appliance after the termination of this Agreement. Client agrees to permit Pondurance, pursuant to a mutually agreeable time and scope, to inspect the Network Security Appliance after termination of the managed services, even if title to the Network Security Appliance passes to Client, in order to confirm Client's compliance with this provision.

(c) Testing Services. If the Services include a scan; ethical penetration or intrusion test; or information system, network, or enterprise vulnerability assessment (collectively, the "Testing Services" and individually, a "Testing Service"), Client hereby releases Pondurance and its members, officers, managers, employees, consultants, agents, and independent contractors from any liability arising out of or relating to: (i) system or software security or configuration vulnerabilities not discovered during the performance of such Testing Service, (ii) Client's failure to provide adequate protection or backup of data or equipment used, accessed, scanned, or tested in connection with the performance of such Testing Service, (iii) the security or performance of Client's information systems or networks after the performance of such Testing Service, or (iv) the following consequences resulting from the performance of such Testing Service: (A) system or network down time or loss, (B) loss of business, (C) loss of Internet connectivity, (D) degradation of bandwidth, (E) loss of data or access to data, and (F) service interruptions. The limitation of liability herein shall not apply where such consequences are caused by acts or omissions of Pondurance that are 1. knowingly outside the scope of the Testing Service, as specified in the applicable Service Contract or other agreement or 2. illegal or otherwise involving gross negligence, bad faith or willful misconduct of Pondurance or its personnel. If the Services include a Testing Service Pondurance may request that Client provide a written list of where Pondurance has

permission to scan, penetrate, or test within Client's information system, network, or enterprise, and/or where Pondurance does not have permission to scan, penetrate or test within Client's information system, network, or enterprise. In such event that Pondurance requests Client produce a written list, Client agrees that Pondurance may rely on Client's representations, as written by Client, regarding where Pondurance has permission to scan, penetrate, or test. Client agrees that Pondurance's reasonable reliance on Client's written representations as described in this subsection does not violate any applicable standard of care.

5. Term and Termination.

(a) Term. This Addendum shall commence as of the Effective Date and shall continue until terminated as set forth herein or as set forth in any applicable Service Contract, Addendum, or other applicable agreement. Client agrees to be bound on behalf of itself by the obligations with respect to Eligible Organizations (as defined therein) contained in the Agreement as if it were a party thereto. Client expressly agrees and acknowledges that the Agreement, this Addendum and any other applicable Addendum(s), and Service Contract, shall govern the provision of the Managed Services during the term of any applicable Service Contract irrespective of the termination of the Agreement as between Pondurance and MHEC.

(b) Termination of Agreement Related to Managed Services.

(i) Pondurance may terminate this Addendum if Client fails to make payment when due of any amount which is not subject to a bona fide payment dispute (as substantiated in correspondence between the parties) and Client fails to cure such default within thirty (30) business days of receiving notice in writing of such default.

(ii) Either party may terminate this Addendum immediately if the other party breaches or is in default of any material obligation hereunder or in the corresponding Agreement or Service Contract which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) business days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize).

(iii) Either party may immediately terminate this Addendum, at any time and without penalty, upon either party 1) being adjudicated bankrupt, 2) being appointed a receiver or trustee for such party's property or affairs, 3) making a general assignment for the benefit of creditors, 4) voluntarily filing a petition in bankruptcy, or insolvency or for reorganization, or 5) making application for the appointment of a receiver; or a third party filing a petition for an involuntary adjudication of bankruptcy or insolvency or for a reorganization of the appointment of a receiver and such third party petition is not dismissed, set aside, vacated or discharged without action thereon within sixty (60) days after the issuance of the same.

(c) Service Contracts for Managed Services. As to Service Contracts for Managed Services provided by Pondurance, the termination of this Addendum shall not discharge the obligation of Client to pay Pondurance for the future periodic payments owed to Pondurance for the remaining term of any applicable Service Contract or other agreements, unless termination of this Addendum occurs because of the uncured material breach of this Addendum by Pondurance, where Pondurance has been given thirty (30) days to cure such breach after written notice by Client. By way of example, should Client terminate a two (2) year monthly engagement in the third month of such engagement (and not because of an uncured material breach by Pondurance), Client shall pay Pondurance the remaining twenty-one (21) month payments either in a lump sum or on a monthly basis for the remainder of the term. Termination of this Addendum shall not entitle Client to a refund of any amounts previously paid to Pondurance.

6. Warranties and Limitation of Liabilities

(a) Pondurance warrants that the Managed Services shall operate substantially in accordance with any applicable Service Contract. Any failure to so operate that results solely from the actions or omissions within the control of Pondurance shall be corrected by Pondurance. This Warranty shall not apply in the event where: 1) such failure results from a correction, alteration or modification of the Managed Services not provided or expressly approved by Pondurance; or 2) the use of the Managed Services in a manner not in accordance with this Agreement; 3) the Managed Services are used with software or equipment other than that for which they were designed; or 4) problems relating to or residing in (A) third party items or services with which the Managed Service are used; or (B) implementation not in accordance with Pondurance's

instructions. The correction of the non-conformity by Pondurance or a refund of the cost of six (6) months of the Managed Services shall be Client's sole and exclusive remedies for failure to meet this warranty.

(b) PONDURANCE DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE MANAGED SERVICES WILL MEET THE REQUIREMENTS OF CLIENT OR THAT THE OPERATION OF THE MANAGED SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR FREE FROM OTHER PROGRAM LIMITATIONS, OTHER THAN THOSE WARRANTIES AND REPRESENTATIONS EXPLICITLY TO THIS ADDENDUM OR THE AGREEMENT.

(c) Limitation on Direct Damages. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW, PONDURANCE'S TOTAL LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF A MANAGED SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY PONDURANCE'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE LESSER OF (i) \$25,000.00, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR (ii) THE PRICE PAID BY CLIENT TO PONDURANCE IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM FOR THE SPECIFIC MANAGED SERVICES FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER

(d) No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF PONDURANCE'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CLIENT NOR PONDURANCE SHALL (A) HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (B) BRING ANY CLAIM BASED ON A MANAGED SERVICES PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

IN WITNESS WHEREOF, Client and Pondurance certify by their undersigned authorized representatives that they have read this Addendum and agree to be bound by its terms and conditions as of the Effective Date shown above.

**Pondurance**

**Client:**

By: Dustin Hutchison  
(Authorized Signature)  
Dustin Hutchison

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Printed Name)

Name: \_\_\_\_\_  
(Printed Name)

Title: VP Services & CISO

Title: \_\_\_\_\_

Dated: Sep 2, 2021

Dated: \_\_\_\_\_

## SOFTWARE LICENSE ADDENDUM

This Software License Addendum (“Addendum”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, the (“Effective Date”), by and between Pondurance LLC, a Delaware limited liability company (“Pondurance”) and \_\_\_\_\_, an \_\_\_\_\_ (“Client”).

WHEREAS, this Addendum hereby supplements the existing Master Agreement (“Agreement”) between Pondurance and Midwestern Higher Education Commission (“MHEC”). The Parties agree that except as set forth herein all terms in the existing Agreement remain in full force and effect as long as this Addendum is in place.

WHEREAS, Client has agreed to be bound by the terms and conditions of the Agreement and this Addendum in order to procure the Licensed Software (defined below).

WHEREAS, Pondurance is the owner and licensor of proprietary software/platform/services for use in Threat Hunting and Response (referred to herein as the “Licensed Software”).

WHEREAS, Client has requested a nonexclusive license to use the Licensed Software and Pondurance is willing to grant such a license to Client upon the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Pondurance and Client agree as follows:

### 1. Grant and Scope of License

(a) Grant of License. Subject to the terms and conditions of this Addendum and any Agreement or Services Contracts by and between Pondurance and Client (collectively the “Agreement”), Pondurance hereby grants to Client a nonexclusive, nontransferable license (the “License”) to install and utilize the Licensed Software, together with any related documentation as may be provided by Pondurance, in such version or versions as Pondurance may make available to Client for any use permitted under this Addendum.

(b) Licensed Copies. Client may install and utilize that number of copies of the Licensed Software specified for the purpose of or in connection to Threat Hunting and Response for use in Client’s own operations and in conjunction with other services provided by Pondurance in accordance with the Agreement.

(c) Prohibited Uses. Client will not, directly or through others, (a) install or use any Licensed Software on any computers, work stations or devices other than the permitted locations or permit access to or use of the Licensed Software by any unauthorized persons; (b) market, license, distribute or transfer the Licensed Software or make unauthorized copies of the Licensed Software; (c) disassemble, reverse engineer, or decompile the Licensed Software or otherwise attempt to discover any portion of the source code of any Licensed Software; (d) modify, translate, or create derivative works based on any element of the Licensed Software or any related documentation; (e) publish or disclose to third parties any evaluation of the Licensed Software without Pondurance’s prior written consent; (f) permit any third party to access the Licensed Software; (g) access the Licensed Software in order to build, or provide any assistance in the development of, a competitive product or service; or (g) use the Licensed Software for any purpose other than expressly permitted by the license grant set forth herein and the Agreement.

(d) Compliance with Laws. In performing this Addendum, Client will comply with all applicable laws, regulations, rules, orders, and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction.

### 2. Term

(a) License Term. Unless terminated earlier in accordance with this Addendum, the License herein shall last for as long as Pondurance provides services to Client under an applicable Agreement, Services Contract, or other duly executed agreement, commencing on the Effective Date (“License Term”).

(b) Renewals. The License Term may be extended or renewed for additional periods of time only by written agreement of the parties.

3. Fees and Other Charges.

(a) Charges for Other Products or Services. Any other products or services provided by Pondurance during the License Term, including but not limited to support services for the Licensed Software, shall be chargeable to Client in the amounts or at the rates specified in the Service Contract or, if not so specified, at Pondurance's then-standard charges and rates or upon such other terms as the parties may agree in writing.

(b) Taxes. The License Fee and any other charges contemplated in this Section 3 does not include any duties, taxes, fees or other amounts assessed or imposed by any governmental authority with respect to the License or this Addendum. Client will pay or reimburse Pondurance for all such amounts other than taxes imposed on Pondurance's net income. If any country levies a withholding or similar tax on the license fees payable to Pondurance hereunder, the amount payable by Client will be increased by the amount necessary for Pondurance to receive the same license fee amount Pondurance would have received absent such withholding tax.

4. Delivery and Installation.

(a) Delivery of Licensed Software. Unless the parties agree on an alternative means or time of delivery, Pondurance will deliver electronically the Licensed Software to Client on or before the Effective Date.

(b) System Requirements; Installation. Pondurance will provide Client with information regarding equipment specifications and operating system requirements for the Licensed Software as delivered. Client shall be solely responsible for providing all computer hardware and equipment as well as all third-party operating systems or other software required for its utilization of the Licensed Software other than the Box provided by Pondurance, as applicable. Client shall be solely responsible for installation and integration of the Licensed Software in its IT system/network, including all legacy data extractions and interface connections.

5. Support, Maintenance and Upgrades.

(a) Support Services. Upon and after the delivery of the Licensed Software, and subject to applicable service and support fees set forth in the Agreement (or, if not so specified, then at Pondurance's then-standard fees and rates for such services), Pondurance will make available to Client, during its regular business hours, off-site (telephonic, email and/or online) consultation and support services to assist Client in its installation of the Licensed Software and to address any problems Client encounters in its use of the Licensed Software.

(b) Instructional Resources. Client shall have access, at no additional charge, to any instructional web sites, videos or other media or resources Pondurance may from time to time make generally available to users of Licensed Software.

(c) Software Maintenance. Pondurance will use commercially reasonable efforts to correct material errors identified in the latest version of the Licensed Software and will make available to Client any modification, correction, maintenance release or new version of the Licensed Software that Pondurance makes generally available to its licensed users. In the event Client identifies a suspected error or deficiency in the Licensed Software, Client agrees to promptly report the same to Pondurance in writing.

(d) Upgrades. Pondurance may at its discretion, but shall have no obligation to, develop and release new and/or upgraded versions of the Licensed Software that Pondurance may make available to Client. Following the release of any new or upgraded version of the Licensed Software, Pondurance may at its discretion, upon notice to Client of not less than thirty (30) days, terminate any or all maintenance and support services with respect to any prior version of the Licensed Software without terminating this Addendum or the Agreement.

## 6. Proprietary Rights

- (a) Ownership. Pondurance is and shall remain the sole owner of the Licensed Software, including all copyrights, trade secrets, and other proprietary rights associated with the Licensed Software. No title to, or ownership of, any portion of the Licensed Software, or any copyright, trademark, trade secret, or other proprietary right in, to or associated with the Licensed Software, shall inure or be transferred to Client pursuant to the License or this Addendum. Without limiting the generality of the foregoing, Pondurance reserves all of its patent, copyright, trademark, trade secret, and other proprietary rights in the Licensed Software. Client will not infringe, violate, or contest, and will take appropriate steps and precautions for the protection of, Pondurance's proprietary rights.
- (b) Notification of Infringement. Client agrees to immediately notify Pondurance of any actual or suspected infringement, misuse or other violation of Pondurance's rights or interests in the Licensed Software of which Client becomes aware. Client agrees to cooperate with Pondurance in any legal or equitable action that Pondurance may undertake to protect any of its rights in connection with the Licensed Software.
- (c) Confidentiality. Neither party will disclose or use any confidential information of the other except for the purposes of performing this Addendum. Client acknowledges that the Licensed Software contains and comprises valuable trade secrets and other proprietary, confidential information, data, processes, methodologies and procedures of Pondurance; and Client agrees to take all actions necessary to protect and preserve the confidential, proprietary nature of the Licensed Software. Without limitation to the foregoing, Client agrees not to disclose or make available the Licensed Software in any form to any unauthorized persons or entities. Client further agrees to take reasonable steps to limit access to the Licensed Software to authorized users and other employees of Client who require such access for purposes consistent with this Addendum. Upon reasonable request of Pondurance, Client agrees to secure and provide to Pondurance confidentiality agreements from any of the users or other employees of Client with access to the Licensed Software.

## 7. Termination

- (a) Agreed Termination. The parties may agree to terminate the License at any time during the License Term in a writing signed by both parties.
- (b) Termination Upon Notice. Pondurance may terminate the License immediately upon written notice to Client in the event of Client's breach or threatened breach of any provision of this Addendum. Without limiting the generality of the foregoing, Pondurance may terminate the License immediately upon any breach or threatened breach of Client's obligations under Sections 1(c) or 6(c) of this Addendum with respect to the use or confidentiality of the Licensed Software. Client further acknowledges and agrees that Pondurance's remedies at law for breach of Client's confidentiality obligations are inadequate and that Pondurance will be entitled to equitable relief, including without limitation, immediate injunctive relief, specific performance and/or other remedies in addition to remedies provided at law.
- (c) Automatic Termination. The License and all rights of Client to use the Licensed Software shall terminate automatically upon the occurrence of (i) the filing by Client of a voluntary petition in bankruptcy or an assignment for the benefit of creditors, or (ii) the filing against Client of an involuntary petition in bankruptcy, unless such petition is dismissed within ninety (90) days.
- (d) Duties Upon Termination. Upon termination or expiration of the License for any reason, Client shall discontinue all use of the Licensed Software and, within ten (10) business days of termination, Client shall destroy or delete all copies of the Licensed Software in its possession or control, including, but not limited to, any back-up or archival copies, partial copies or modifications thereof; and an officer of Client shall verify in writing to Pondurance that such actions have been taken. Upon Pondurance's request, Pondurance may inspect Client's computers, computer servers and any related media or storage devices to confirm Client's compliance with this provision.

(e) Other Remedies. The exercise of any right of termination under this Section 7 shall not constitute a waiver of any other rights or remedies available for violation of the terms of the License, this Addendum or applicable law.

8. Warranties and Limitation of Liability.

(a) Limited Warranty. Pondurance warrants that the Licensed Software has been developed in conformity with generally prevailing industry standards. Pondurance further warrants that the Licensed Software shall substantially meet the performance standards and functionality described in Pondurance's published documentation in all material respects; provided, however, that Pondurance DOES NOT WARRANT that the Licensed Software is or shall be free of all defects, errors, inaccuracies or other deficiencies. Client's exclusive remedy for the breach of the above warranties will be either (as determined in Pondurance's sole discretion) the correction of a material deficiency within a commercially reasonable time or the termination of the License and return of a prorated portion of the License Fee paid by Client. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS ADDENDUM. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

(b) Third-Party Materials. Pondurance does not warrant and shall not be responsible for any defect, error, inaccuracy, deficiency or failure with respect to any third-party software or equipment used by Client in conjunction with the Licensed Software, regardless of whether such other software or equipment has been designated or approved by Pondurance for use with the Licensed Software. Client shall be solely responsible for contracting directly with any and all vendors of third-party software or equipment directly and not through Pondurance.

(c) Limitation of Liability. In no event shall Pondurance be liable to Client or any other person or entity for special, indirect or consequential damages of any kind resulting from any use of the Licensed Software pursuant to this Addendum or the License, whether arising in contract, tort or otherwise, even if Pondurance has been advised of the possibility of such loss or damages. Pondurance's total liability under this Addendum with respect to the Licensed Software, regardless of cause or theory of recovery, SHALL BE DETERMINED BY AND CONSISTENT WITH THE APPLICABLE PROVISION(S) OF THE AGREEMENT EXECUTED BY PONDURANCE AND CLIENT.

IN WITNESS WHEREOF, the parties have executed this Addendum by their duly authorized representatives as of the Effective Date, but actually on the dates shown below.

**Pondurance**

**Client:**

By: Dustin Hutchison  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: Dustin Hutchison  
(Printed Name)

Name: \_\_\_\_\_  
(Printed Name)

Title: VP Services & CISO

Title: \_\_\_\_\_

Dated: Sep 2, 2021

Dated: \_\_\_\_\_



**Service Contract:**  
Consulting Services

**Pondurance, LLC**  
and  
**ELIGIBLE ORGANIZATION**

Quantity	Product Name	Description	Price
1.00	EST-Medium-4	Medium Environment (501-1500) Advanced PenTest w/ Adv Exp Techniques (AppSec, Weaponized PoCs, Brute Forcing, etc)	\$18,000.00
<b>Total Contract Price:</b>			\$18,000.00

**Change Management Guidelines:** Pondurance understands that as the engagement proceeds, there may be unexpected factors that necessitate modifications to the Service Contract. In the event that modifications are required, Client must communicate the requested changes to the Pondurance project lead. This will ensure that engagement activities proceed, as Client desires. Pondurance will assess the impacts of the modifications to the schedule and fee established for the engagement. Where the schedule and/or fee are impacted, these elements will be re-negotiated with the appropriate concurrence from both Client and Pondurance before proceeding with the changes.

**Fees and Rates:** The total cost is a fixed price. The fixed cost rate includes in-scope services as described above, as well as project management and status meeting activities. Changes to the scope of effort may impact the duration, resources, and total cost of the project. Pondurance and Client must agree upon any change to the scope in writing.

**Billing:** Pondurance will invoice Client 50% of the of the contract price on upon execution and the remaining 50% will be invoiced upon completion of draft deliverables. Incurred billable expenses will be invoiced monthly.

**Payment Terms:** Terms are Net 45. Mail checks to the following address:  
Pondurance, LLC  
500 N. Meridian St. Suite 500 Indianapolis,  
In 46024  
Contact Pondurance for ACH information at [accounting@pondurance.com](mailto:accounting@pondurance.com)

**Travel Expenses:** Should Pondurance resource(s) be required to travel to a remote office, Client will be responsible for actual and reasonable travel and living expenses billed at cost. Travel by automobile outside the Indianapolis metropolitan area will be billed at the prevailing IRS standard mileage rate. Travel expenses include, but are not limited to:

- Airfare
- Meals
- Lodging
- Rental cars
- Ground transportation (includes taxi, tolls, and mileage)
- Miscellaneous incidental expenses



**Validity Period:** The terms and conditions stated herein (including pricing) are valid for ninety (90) days from the date of submission. If both parties sign this Service Contract before this period has expired, then these terms and conditions will apply for the duration of the engagement.

**Indemnification. By Pondurance.** Pondurance shall indemnify, defend and hold harmless Client and its members, officers, directors, employees and agents from and against (collectively, the "Indemnified Client Parties") any and all losses, claims, penalties, fines, judgments, settlements, damages, liabilities, or expenses (including reasonable attorneys' and paralegal fees, expert witness fees, expenses, and costs of settlement) ("Losses") or threatened Losses arising out of or relating to: (i) any infringement, misappropriation, or violation of any patent, copyright, trademark, trade secret or other intellectual property right asserted by any third party against any of the Indemnified Client Parties in connection with the provision, use or possession of any of the Services; (ii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to the gross negligence, bad faith, or willful misconduct of Pondurance or its personnel in connection with performing Services under this Agreement; and (iii) the failure of Pondurance or its personnel to follow applicable law or regulation. Notwithstanding anything contained herein to the contrary, Pondurance shall have no obligation under Section 6(a) herein to the extent that such claim is based on any modifications to the Services performed by any party other than by or on behalf of Pondurance or any Pondurance affiliate.

By Client. Client shall indemnify, defend and hold harmless Pondurance and its members, officers, managers, employees, and agents (collectively, the "Indemnified Pondurance Parties") from and against any Losses or threatened Losses arising out of or relating to: (i) any infringement, misappropriation or violation of any patent, copyright, trademark, trade secret or other intellectual property right or any privacy right asserted by any third party against any of the Indemnified Pondurance Parties in connection with the receipt, possession, or use of any materials or information provided by Client to Pondurance or accessed, scanned, downloaded, or copied in Pondurance's performance of a scan, ethical penetration or intrusion test, or information system, network, or enterprise vulnerability assessment ("Testing Service"); (ii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to Pondurance's performance of a Testing Service under this Agreement, except where Pondurance was grossly negligent or reckless in performing such Testing Service; or (iii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to the complete or partial disclosure, whether authorized or unauthorized, of any deliverable provided by Pondurance to Client under this Agreement or any third party's use or reliance on such disclosed deliverable. The Client's subdivisions, subsidiaries, parent, and any other affiliate, as applicable, are deemed a third party as that term is used in this section. Client specifically understands and acknowledges that Pondurance shall not be liable to Client for any claims, causes of action, losses, and/or threatened claims, causes of action, losses arising out of or related to any services provided by Pondurance related to validation of Payment Card Industry Data Security Standards (PCI), data monitoring services, threat management, or for its role as a Qualified Security Assessor (QSA) to Client, if applicable. Specifically, Client acknowledges and agrees to indemnify and hold Pondurance harmless from any claims, losses, causes of action arising from a failure by Client to ensure Client has disclosed and/or connected each and every of its systems to Pondurance's monitoring infrastructure. Client waives any cause of action against Pondurance arising from damages caused by an event or threat arising from any system not specifically connected to Pondurance's monitoring infrastructure or project scope. Nothing in this section shall be construed to expand the scope of Pondurance's liability for any claims, losses, causes of action, and/or threatened claims, losses, causes of action beyond that explicitly provided herein.

**Applicable Law.** This engagement and the legal relationships between the parties hereto shall be governed by and construed in accordance with the laws of the state of Indiana without regard to its conflicts of laws rules. Any cause of action, case, or controversy arising out of or connected with this Agreement shall be brought only in a court located in Marion County, Indiana or the United States District Court for the Southern District of Indiana, and each of the parties hereto irrevocably submits to the jurisdiction of such forums and irrevocably waives any objection the party may have based upon improper venue, *forum non conveniens*, or similar doctrines or rules. The parties hereto hereby waive any rights that they may have to a trial by jury of any action, claim, controversy or matter arising out of or in any way related to this Agreement (whether based upon contract, tort, or otherwise).

**Terms and Conditions:** The Master Agreement, Contract No. MHEC-09032021-PO (Master Agreement), executed by and between Pondurance and Midwestern Higher Education Commission (MHEC) shall govern this engagement. The terms and conditions of the Master Agreement are expressly incorporated herein by reference. The undersigned hereby agrees to be bound on behalf of itself by the obligations with respect to Eligible Organizations (as defined therein) contained in the Master Agreement as if it were a party thereto. Capitalized terms used in this Service Contract and not otherwise defined herein shall have the meanings ascribed thereto in the Master Agreement.

**Fees, Expenses, Payment of Invoice.** In consideration of the performance of Pondurance's duties and obligations as set forth in herein, Client shall pay to Pondurance the fees set forth above, in accordance with the terms hereof and the terms of the Master Agreement. Client shall also pay Pondurance reasonable out of pocket travel related expenses as set forth herein. Payments shall be delivered to Pondurance at the address shown on Pondurance's invoice. Payments shall be made within forty-five (45) days from the date of invoice. In the event that Pondurance is required to pursue the collection of past due amounts not subject to a good faith dispute between Pondurance and Client, Pondurance 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 Client.

**Non-Solicitation.** To the extent permitted by law, during the period that Pondurance is providing Services or Products to Client, Client shall not directly solicit an employee of Pondurance for employment during the term of this Service Contract and for a period of twelve (12) months after termination or expiration thereof, under which that directly-solicited employee performed Services.

**Limitation of Warranty and Limitations of Liability.** THE FEES CHARGED BY PONDURANCE HEREUNDER ARE BASED SOLELY ON THE VALUE OF THE SERVICES PROVIDED AND THE SCOPE OF THE LIMITED LIABILITIES SET FORTH HEREIN. PONDURANCE'S FEES DO NOT PROVIDE FOR THE RISK OF ANY OTHER DAMAGES, INCLUDING INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, AND LOST PROFITS, AND THE PARTIES AGREE THAT THIS ALLOCATION OF RISK AND LIABILITY IS FAIR AND REASONABLE. ACCORDINGLY, PONDURANCE SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR BUSINESS INTERRUPTION, LOSS OF USE OF NETWORKS OR COMPUTER SYSTEMS, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS SERVICE CONTRACT, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF PONDURANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PONDURANCE'S CUMULATIVE MAXIMUM LIABILITY IS LIMITED TO THE AMOUNT OF THE TOTAL FEES PAID OR PAYABLE HEREUNDER FOR THE PARTICULAR SERVICE TO WHICH THE CLAIM DIRECTLY RELATES, EXCEPT WHERE PROHIBITED BY APPLICABLE LAW.

**Termination.** If either party commits a material breach of this Service Contract that is not cured after thirty (30) days' written notice of breach from the other party, then such other party may terminate this Service Contract immediately upon written notice to the breaching party.

*[Signature Page Follows]*

**Authorization and Acceptance:**

**Pondurance**

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

**ELIGIBLE ORGANIZATION**

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

**ELIGIBLE ORGANIZATION Billing Information**

**Billing Contact:**

**Billing Email:**

**Billing Address:**

**PO Required?:**

**Confidentiality Statement**

The information contained herein is for the exclusive use of Pondurance, LLC and Client for the purposes listed in this Service Contract. This information is not to be made available to any third party without the express written permission of Pondurance, LLC and should be considered proprietary and confidential.



**Service Contract:**  
Managed Services

**Pondurance, LLC**  
and  
**ELIGIBLE ORGANIZATION**

\_\_\_\_\_

**Contract Duration (in months):** \_\_\_\_\_

**SERVICES:**

Quantity	Product Name	Description	Price
1.00	Network Total BW	Network Total Bandwidth 100-250mbps	\$42,960.00
1.00	LOG Total GB/Day	LOG Total up to 100 GB/Day	\$75,000.00
<b>Total:</b>			\$117,960.00

**Change Management Guidelines:** Pondurance understands that as the engagement proceeds, there may be unexpected factors that necessitate modifications to the Service Contract. In the event that modifications are required, Client must communicate the requested changes to the Pondurance project lead. This will ensure that engagement activities proceed, as Client desires. Pondurance will assess the impacts of the modifications to the schedule and fee established for the engagement. Where the schedule and/or fee are impacted, these elements will be re-negotiated with the appropriate concurrence from both Client and Pondurance before proceeding with the changes.

**Fees and Rates:** This contract term will begin on the date the contract is executed unless otherwise stated. The total cost is a fixed price based on the contract duration and the bandwidth and log volume information provided by the Client. The fixed cost rate includes in-scope services as described above, as well as project management and status meeting activities. Changes to the scope of effort may impact the duration, resources, and total cost of the contract. Pondurance and Client must agree upon any change to the scope in writing. Any excess will require a change order. Should the number of active and deployed (Endgame or Cylance) licenses exceed the contracted amount, Client will be billed the following month for those overages at the agreed upon amount plus an additional \$5 per month, per license. Additional licenses that are anticipated and purchased in advance will be billed at the normal contracted amount.

**Billing:** Pondurance will invoice Client annually upon contract execution. One-time hardware purchases are added to the first invoice and subject to shipping and handling costs. Hardware and Licenses are subject to applicable sales tax. Incurred billable expenses will be invoiced monthly.

**Payment Terms:** Terms are net 45 days. Mail checks to:  
Pondurance, LLC  
500 N. Meridian St. Suite 500 Indianapolis,  
In 46024

Contact Pondurance for ACH information at [accounting@pondurance.com](mailto:accounting@pondurance.com)

**Travel Expenses:** Should Pondurance resource(s) be required to travel to a remote office, Client will be responsible for actual and reasonable travel and living expenses billed at cost. Travel by automobile outside the Indianapolis metropolitan area will be billed at the prevailing IRS standard mileage rate. Travel expenses include, but are not limited to:

- Airfare
- Meals
- Lodging
- Rental cars
- Ground transportation (includes taxi, tolls, and mileage)
- Miscellaneous incidental expenses

**Validity Period:** The terms and conditions stated herein (including pricing) are valid for ninety (90) days from the date of submission. If both parties sign this Service Contract before this period has expired, then these terms and conditions will apply for the duration of the engagement.

**Indemnification. By Pondurance.** Pondurance shall indemnify, defend and hold harmless Client and its members, officers, directors, employees and agents from and against (collectively, the “Indemnified Client Parties”) any and all losses, claims, penalties, fines, judgments, settlements, damages, liabilities, or expenses (including reasonable attorneys’ and paralegal fees, expert witness fees, expenses, and costs of settlement) (“Losses”) or threatened Losses arising out of or relating to: (i) any infringement, misappropriation, or violation of any patent, copyright, trademark, trade secret or other intellectual property right asserted by any third party against any of the Indemnified Client Parties in connection with the provision, use or possession of any of the Services; (ii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to the gross negligence, bad faith, or willful misconduct of Pondurance or its personnel in connection with performing Services under this Agreement; and (iii) the failure of Pondurance or its personnel to follow applicable law or regulation. Notwithstanding anything contained herein to the contrary, Pondurance shall have no obligation under Section 6(a) herein to the extent that such claim is based on any modifications to the Services performed by any party other than by or on behalf of Pondurance or any Pondurance affiliate.

**By Client.** Client shall indemnify, defend and hold harmless Pondurance and its members, officers, managers, employees, and agents (collectively, the “Indemnified Pondurance Parties”) from and against any Losses or threatened Losses arising out of or relating to: (i) any infringement, misappropriation or violation of any patent, copyright, trademark, trade secret or other intellectual property right or any privacy right asserted by any third party against any of the Indemnified Pondurance Parties in connection with the receipt, possession, or use of any materials or information provided by Client to Pondurance or accessed, scanned, downloaded, or copied in Pondurance’s performance of a scan, ethical penetration or intrusion test, or information system, network, or enterprise vulnerability assessment (“Testing Service”); (ii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to Pondurance’s performance of a Testing Service under this Agreement, except where Pondurance was grossly negligent or reckless in performing such Testing Service; or (iii) any claim being asserted by any third party which is, directly or indirectly, caused by or attributable to the complete or partial disclosure, whether authorized or unauthorized, of any deliverable provided by Pondurance to Client under this Agreement or any third party’s use or reliance on such disclosed deliverable. The Client’s subdivisions, subsidiaries, parent, and any other affiliate, as applicable, are deemed a third party as that term is used in this section. Client specifically understands and acknowledges that Pondurance shall not be liable to Client for any claims, causes of action, losses, and/or threatened claims, causes of action, losses arising out of or related to any services provided by Pondurance related to validation of Payment Card Industry Data Security Standards (PCI), data monitoring services, threat management, or for its role as a Qualified Security Assessor (QSA) to Client, if applicable. Specifically, Client acknowledges and agrees to indemnify and hold Pondurance harmless from any claims, losses, causes of action arising from a failure by Client to ensure Client has disclosed and/or connected each and every of its systems to Pondurance’s monitoring infrastructure. Client waives any cause of action against Pondurance arising from damages caused by an event or threat arising from any system not specifically connected to Pondurance’s monitoring infrastructure or project scope. Nothing in this section shall be construed to expand the scope of Pondurance’s liability for any claims, losses, causes of action, and/or threatened claims, losses, causes of action beyond that explicitly provided herein.

**Applicable Law.** This engagement and the legal relationships between the parties hereto shall be governed by and construed in accordance with the laws of the state of Indiana without regard to its conflicts of laws rules. Any cause of action, case, or controversy arising out of or connected with this Agreement shall be brought only in a court located in Marion County, Indiana or the United States District Court for the Southern District of Indiana, and each of the parties hereto irrevocably submits to the jurisdiction of such forums and irrevocably waives any objection the party may have based upon improper venue, *forum non conveniens*, or similar doctrines or rules. The parties hereto hereby waive any rights that they may have to a trial by jury of any action, claim, controversy or matter arising out of or in any way related to this Agreement (whether based upon contract, tort, or otherwise).

**Terms and Conditions:** The Master Agreement, Contract No. MHEC-09032021-PO (Master Agreement), executed by and between Pondurance and Midwestern Higher Education Commission (MHEC) shall govern this engagement. The terms and conditions of the Master Agreement are expressly incorporated herein by reference. The undersigned hereby agrees to be bound on behalf of itself by the obligations with respect to Eligible Organizations (as defined therein) contained in the Master Agreement as if it were a party thereto. Capitalized terms used in this Service Contract and not otherwise defined herein shall have the meanings ascribed thereto in the Master Agreement.

**Fees, Expenses, Payment of Invoice.** In consideration of the performance of Pondurance's duties and obligations as set forth in herein, Client shall pay to Pondurance the fees set forth above, in accordance with the terms hereof and the terms of the Master Agreement. Client shall also pay Pondurance reasonable out of pocket travel related expenses as set forth herein. Payments shall be delivered to Pondurance at the address shown on Pondurance's invoice. Payments shall be made within forty-five (45) days from the date of invoice. In the event that Pondurance is required to pursue the collection of past due amounts not subject to a good faith dispute between Pondurance and Client, Pondurance 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 Client.

**Non-Solicitation.** To the extent permitted by law, during the period that Pondurance is providing Services or Products to Client, Client shall not directly solicit an employee of Pondurance for employment during the term of this Service Contract and for a period of twelve (12) months after termination or expiration thereof, under which that directly-solicited employee performed Services.

**Limitation of Warranty and Limitations of Liability.** THE FEES CHARGED BY PONDURANCE HEREUNDER ARE BASED SOLELY ON THE VALUE OF THE SERVICES PROVIDED AND THE SCOPE OF THE LIMITED LIABILITIES SET FORTH HEREIN. PONDURANCE'S FEES DO NOT PROVIDE FOR THE RISK OF ANY OTHER DAMAGES, INCLUDING INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, AND LOST PROFITS, AND THE PARTIES AGREE THAT THIS ALLOCATION OF RISK AND LIABILITY IS FAIR AND REASONABLE. ACCORDINGLY, PONDURANCE SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR BUSINESS INTERRUPTION, LOSS OF USE OF NETWORKS OR COMPUTER SYSTEMS, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS SERVICE CONTRACT, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF PONDURANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PONDURANCE'S CUMULATIVE MAXIMUM LIABILITY IS LIMITED TO THE AMOUNT OF THE TOTAL FEES PAID OR PAYABLE HEREUNDER FOR THE PARTICULAR SERVICE TO WHICH THE CLAIM DIRECTLY RELATES, EXCEPT WHERE PROHIBITED BY APPLICABLE LAW.

*[Signature Page Follows]*

**Authorization and Acceptance:**

**Pondurance**

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

**ELIGIBLE ORGANIZATION**

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

**ELIGIBLE ORGANIZATION Billing Information**

**Billing Contact:**

**Billing Email:**

**Billing Address:**

**PO Required?:**

**Confidentiality Statement**

The information contained herein is for the exclusive use of Pondurance, LLC and Client for the purposes listed in this Service Contract. This information is not to be made available to any third party without the express written permission of Pondurance, LLC and should be considered proprietary and confidential.