

**Amendment #2 TO MASTER PRICE AGREEMENT
MHEC-02262015
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
WALKER AND ASSOCIATES INC.**

Whereas, this Amendment #2 ("Amendment #2") is entered into by and between Walker and Associates Inc. and the Midwestern Higher Education Commission (MHEC), contract number MHEC-02262015, effective as of March 31, 2019 (the Effective Date").

Whereas, the parties entered into the Master Price Agreement dated February 26, 2015 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

Now, therefore:

Section 5. Master Agreement Term. Shall be deleted in its entirety and replaced with the following:

This Master Agreement shall be effective on February 26, 2015 and shall remain in effect until March 31, 2020 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #2, this Amendment #2 shall control.

Midwestern Higher Education Commission

Susan Heeggaard
Signature

Susan Heeggaard, President
Name and Title

2/26/19
Date

Walker & Associates, Inc.

Chrystie W. Braun
Signature

Chrystie W. Braun, CEO
Name and Title

Feb. 25, 2019
Date

**Amendment #1 TO MASTER PRICE AGREEMENT
MHEC-011014
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
WALKER AND ASSOCIATES INC.**

Whereas, this Amendment #1 ("Amendment #1") is entered into by and between Walker and Associates Inc. and the Midwestern Higher Education Commission (MHEC), contract number MHEC-02262015, effective as of February 15, 2018 (the Effective Date"),

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

Whereas, the parties entered into the Master Price Agreement dated February 26, 2015 (the "Master Agreement") and the parties now desire to amend the terms of the Master Agreement.

Now, therefore:

Section 1. Definitions, Subsection 1.2. Eligible Organization. Section 1., Subsection 1.2. shall be deleted in its entirety and replaced with the following:

1.2. Eligible Organizations: This Master Agreement shall be the framework under which Eligible Organizations can acquire Products as defined in section 1.9 Products and acquire Services as defined in section 1.12 Services from Vendor. 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) located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
2. All K-12 schools and school districts located in a Member State, NEBHE Member State, SREB Member State or a WICHE Member State;
3. All city, county, and other local governments located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
4. All state governments and their departments of a Member State, NEBHE Member State, SREB Member State or WICHE Member State;
5. Eligible Organizations located in a Member State, NEBHE Member State, SREB Member State or WICHE Member State that terminates its association with MHEC, NEBHE, SREB or WICHE respectively, will no longer be eligible to acquire Products or Services pursuant to this Master Agreement. Termination by any

Member State, NEBHE Member State, SREB Member State or WICHE Member State shall not prohibit or restrict Vendor from negotiating or contracting with such Member State, NEBHE Member State, SREB Member State or WICHE Member State or entities within such states outside of MHEC. MHEC shall promptly notify Vendor in writing of the termination of any membership in MHEC, NEBHE, SREB or WICHE. If any Member State, NEBHE Member State, SREB Member State or WICHE Member State so terminates its membership, such termination shall not effect the validity or enforceability of or constitute a default under any Order then in effect with any Eligible Organization. Similarly, MHEC shall promptly notify Vendor if other states join MHEC, NEBHE, SREB or WICHE after which such states shall be deemed to be a Member State, NEBHE Member State, SREB Member State or WICHE Member State for purposes of this Master Agreement.

Section 1. Definitions, Subsection 1.17. – NEBHE Member State. The following Section 1., Subsection 1.17. is hereby added to the Master Agreement:

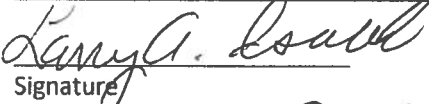
1.17. NEBHE Member State: refers to any state that is a member, or an affiliate member, of the New England Board of Higher Education ("NEBHE"). For purposes of this Master Agreement the current NEBHE Member States are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

Section 5. Master Agreement Term. Shall be deleted in its entirety and replaced with the following:

This Master Agreement shall be effective on February 26, 2015 and shall remain in effect until March 31, 2019 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for three (3) additional one-year terms unless terminated pursuant to the terms of this Agreement.

Except as set forth above, the Master Price Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Master Agreement and this Amendment #1, this Amendment #1 shall control.

Midwestern Higher Education Commission

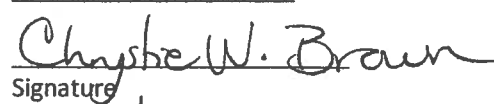

Signature

Larry A. Isaak, President

Name and Title

6/13/18
Date

Walker & Associates, Inc.


Signature

Chryshe W. Brown, CEO

Name and Title

June 7, 2018
Date

**MASTER PRICE AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
WALKER AND ASSOCIATES INC
EFFECTIVE FEBRUARY 26, 2015 THROUGH MARCH 31, 2018**

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, on behalf of the Eligible Organizations located in the MHEC member states, and Walker and Associates, Inc. (hereinafter Vendor) 7129 Old Highway 52 North PO Box 1029 Welcome, NC 27374. For purposes of this Master Agreement MHEC and Vendor are referred to collectively as the “Parties” or individually as “Party”.

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

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

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

Whereas, Vendor is an authorized reseller of Ciena’s quality technology related products and services; and

Whereas, MHEC conducted a competitive sourcing event for Network, Wireless, Voice, and Wavelength Division Multiplexing Hardware and Related Services in April 2014 and upon completion of the competitive process awarded Category 4: Wavelength Division Multiplexing and Services to Vendor; and

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

1. Definitions

1.1. Documentation: refers to the license made available by Vendor to Procuring Eligible Organization of documentation relating to any Equipment or Software as well as any manuals relating to the Equipment or Software.

1.2. Eligible Organizations: This Master Agreement shall be the framework under which Eligible Organizations can acquire Products as defined in section 1.9 Products and acquire Services as defined in section 1.12 Services from Vendor. Eligible Organizations shall include:

- a. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State, SREB Member State or WICHE Member State;
- b. All K-12 schools and school districts located in a Member State, SREB Member State or a WICHE Member State;
- c. All city, county, and other local governments located in a Member State, SREB Member State or WICHE Member State;
- d. All state governments and their departments of a Member State, SREB Member State or WICHE Member State;
- e. Eligible Organizations located in a Member State, SREB Member State or WICHE Member State that terminates its association with MHEC, SREB or WICHE respectively, will no longer be eligible to acquire Products or Services pursuant to this Master Agreement. Termination by any Member State, SREB Member State or WICHE Member State shall not prohibit or restrict Vendor from negotiating or contracting with such Member State, SREB Member State or WICHE Member State or entities within such states outside of MHEC. MHEC shall promptly notify Vendor in writing of the termination of any membership in MHEC, SREB or WICHE. If any Member State, SREB Member State or WICHE Member State so terminates its membership, such termination shall not effect the validity or enforceability of or constitute a default under any Order then in effect with any Eligible Organization. Similarly, MHEC shall promptly notify Vendor if other states join MHEC, SREB or WICHE after which such states shall be deemed to be a Member State, SREB Member State or WICHE Member State for purposes of this Master Agreement.

1.3. Equipment: refers to Vendor's full line of new or refurbished Ciena's Wavelength Division Multiplexing equipment and components made available for sale by Vendor to Eligible Organizations under this Master Agreement. Wavelength Division Multiplex equipment includes: multiplexers, demultiplexers, optical

amplifiers, dense wavelength division multiplexing, coarse wavelength division multiplexing, and transmode solutions.

- 1.4. **Large Order Negotiated Prices:** refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Vendor. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Vendor and the Eligible Organization.
- 1.5. **Member State:** refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact ("MHEC"). For purposes of this Master Agreement the current MHEC Member States are: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
- 1.6. **Order:** refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Vendor under the terms and conditions of this Master Agreement.
- 1.7. **Price Agreement:** refers to an indefinite quantity contract, which requires Vendor to furnish Products or Services to a Procuring Eligible Organization that issues a valid Order document.
- 1.8. **Procuring Eligible Organization:** refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed a valid Order document.
- 1.9. **Products:** refers to Ciena's Wavelength Division Multiplexing full product line of Equipment, Software and Documentation that Vendor makes available.
- 1.10. **Product List:** refers to the complete list of Products and the corresponding prices for those Products made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. The Product List is set forth as Exhibit A and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.
- 1.11. **Promotion Prices:** refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.
- 1.12. **Services:** refers to the services offered by Vendor under this Master Agreement including: pre-sales assessment, installation and implementation assistance, technical support and training. Eligible Organizations purchasing professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such purchase with the Vendor.
- 1.13. **Services List:** refers to the complete list of Services and the corresponding prices for those Services made available for purchase by Eligible Organizations under this

Master Agreement. The Services List contains an item number, item description and the maximum price for each service. Where travel is necessary to perform the Services, additional reasonable costs may mutually be agreed upon by Vendor and Procuring Eligible Organization. The Service List is set forth as Exhibit A and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

- 1.14. Software:** refers to Ciena's full offerings of software and firmware (including third-party software and firmware) licenses made available from Vendor to Procuring Eligible Organization under this Master Agreement. Software shall include updates, upgrades, maintenance releases, revisions and enhancements to the licensed software. Software does not include source code.
- 1.15. SREB Member State:** refers to any state that is a member, or an affiliate member, of the Southern Regional Education Board ("SREB"). For purposes of this Master Agreement the 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.
- 1.16. WICHE Member State:** refers to any state that is a member, or an affiliate member, of the Western Interstate Commission for Higher Education ("WICHE"). For purposes of this Master Agreement the 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.

2. Scope of Offering

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

responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

3. Purchasing Under Master Agreement

- A. Products:** Procuring Eligible Organization shall purchase from Vendor the Products listed on the Product List under the terms and conditions of this Master Agreement by delivering to Vendor an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement.
- B. Services:** Procuring Eligible Organization shall purchase Services from Vendor under the terms and conditions of this Master Agreement by delivering to Vendor an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Supplier to perform; (iii) the price of the Service in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement. Eligible Organizations purchasing services, including professional services, training and/or on-site consultative services, shall negotiate the terms and conditions of such purchase with the Vendor.
- C.** Each Order that is accepted by Vendor will become a part of the Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Vendor constitutes a binding contract.
- D.** All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 7.A ("Acceptance") by Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- E.** Procuring Eligible Organization may request in writing changes to an Order ("Change Request") that Vendor has previously accepted. In response to a Change Request, Vendor will provide written quotations to Procuring Eligible Organization, including any changes to prices, license fees, shipment or completion dates. A Change Request is a separate Order subject to the terms and conditions of this Master Agreement and Vendor's change order process.
- F.** Vendor will accept a purchasing card for order placement in addition to accepting a purchase order.

4. Quantity Guarantee

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

5. Master Agreement Term

This Master Agreement shall be effective on February 26, 2015 and shall remain in effect until March 31, 2018 or unless otherwise terminated pursuant to the terms of the Master Agreement. The Master Agreement may be mutually renewed for four (4) additional one-year terms unless terminated pursuant to the terms of this agreement.

6. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or Institutional laws or regulations, the Eligible Organization and Vendor 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 Vendor 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 Vendor. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed addendum between Eligible Organization and Vendor
- B. The terms and conditions of this Master Agreement
- C. Exhibits to this Master Agreement
- D. The list of Products and Services contained in the Order

7. Payment Provisions

A. Acceptance:

- I. **Products:** Unless otherwise agreed upon by Procuring Eligible Organization and Vendor, within fifteen (15) days from the date of delivery, the Procuring Eligible Organization shall accept or reject the Products for which installation by Vendor is not needed. For Products for which installation by Vendor is required, and unless otherwise agreed upon by Procuring Eligible Organization and Vendor, the Procuring Eligible Organization shall accept or reject the Products upon Vendor's completion of installation and verification tests, and issuance to Procuring Eligible Organization an installation verification certificate. Vendor shall accept return of all Products for up to thirty (30) days from date of delivery or installation when Vendor is performing the installation with Eligible Organization paying only the return shipping. Products shall be invoiced upon delivery or installation when Vendor is performing the installation.

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

8. Shipping

Vendor shall ship the Products F.O.B. destination. Standard ground freight will be used. Special or inside delivery may require additional charges. Title to Products shall pass to Procuring Eligible Organization upon Acceptance. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Vendor shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Participant.

9. Product Delivery

Unless otherwise agreed to by Procuring Eligible Organization and Vendor, Vendor 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, Vendor will notify Procuring Eligible Organization within ten (10) business days following Order placement, and Procuring Eligible Organization, as its sole remedy, can cancel the Order by written, electronic, or facsimile notification.

10. Price Guarantees

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

11. Product List

Vendor agrees to maintain the Product List in accordance with the following provisions:

- A. The Product List prices for all Equipment, Software and Documentation will conform to the Product List provided to MHEC and set forth as Exhibit A. Except as set forth in Section 10, "Price Guarantees", the discount price set forth in the Product List shall not increase during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty (30) days prior written notice to MHEC. The year-over-year price increase on the Product List, if any, will not exceed the year-over-year discount price increase of 3% or the United States All Urban Consumer Price Index (CPI-U), whichever is less, as reflected in Vendor's published price list.
- B. Should the list price of a Product on Vendor's price list price decrease at any time during this Master Agreement, Vendor agrees to a similar price reduction on this Master Agreement's Product List for the same Product, prior to the Administrative Fee set forth in Section 36 of this Master Agreement.
- C. For all Products on the Product List, any price reductions that occur from the time of submission of an Order by Procuring Eligible Organization to Product delivery must be passed on to the Procuring Eligible Organization that issued the Order.
- D. Vendor shall add new Ciena Wavelength Division Multiplexing product(s) to the Product List when new product(s) shall become available for sale by Vendor. The pricing for all new Products shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- E. Vendor will delete obsolete and discontinued Products from the Product List on a timely basis.
- F. The Product List shall be maintained by Vendor on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to comply with the requirements in this Section 11, Product List, will be grounds for action to be taken against Vendor, including termination.

12. Services List

Vendor agrees to maintain the Service List in accordance with the following provisions:

- A. The Service List prices for all Services will conform to the Service List provided to MHEC and set forth as Exhibit A. Except as set forth in Section 10, "Price Guarantees", the discount price set forth in the Service List shall not increase during the initial twelve (12) months of the Master Agreement. Thereafter, prices are subject to change with thirty (30) days prior written notice to MHEC. Vendor will strive to adhere to meet the requirement of limiting the year-over-year price increase on the Service List, if any, so as not to exceed the year-over-year discount price increase of 3% or the United States All Urban Consumer Price Index (CPU-U), whichever is less, as reflected in Vendor's published price list, however, price increases on the Services List are subject to changes as rendered by the manufacturer of the products supplied.
- B. Should the list price of a Service on Vendor's academic price list price decrease at any time during this Master Agreement, Vendor agrees to a similar price reduction on this Master Agreement's Services List for the same Service, prior to the Administrative Fee set forth in Section 36 of this Master Agreement.
- C. The Service List shall be maintained by Vendor on an Internet web site. Notification of specific changes to this list shall be provided to MHEC within thirty (30) days of modification. Failure to substantially comply with the requirements in this Section 12, Service List, will be grounds for action to be taken against Vendor, including termination.

13. Software License

- A. Eligible Organization shall use all software licensed Products in accordance with this Section. All Ciena's software licenses provided by Vendor are subject to Ciena's standard software license and amended in the attached Exhibit B CIENA SOFTWARE LICENSE.
- B. If the terms set forth in any license agreement packaged or otherwise provided with the Product ("Additional License") differ from this Section, the terms of this Section govern to the extent that the terms of this Section are inconsistent with those in the Additional License.
- C. MHEC recognizes that Ciena may change its software and thus changes may be appropriate for its standard software license in the attached Exhibit B CIENA SOFTWARE LICENSE. In such case, Walker will notify MHEC and the parties agree to negotiate in good faith on such changes to attached Exhibit B CIENA SOFTWARE LICENSE. Upon mutual written agreement, if any, the amended Exhibit B CIENA SOFTWARE LICENSE shall be applicable for Eligible Organizations.
- D.

14. Warranties

- A. **Equipment:** Vendor warrants that the Equipment shall be free from defects in material and workmanship under normal use and that the Equipment shall remain in good working order for a period of 12 months from the date of Acceptance by

Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If any Equipment is not as warranted in this Section, then (a) Procuring Eligible Organization shall obtain from Vendor a return authorization number, and return the Equipment at Vendor's expense, together with the authorization number and a detailed description of the problem, to Vendor's designated repair facility; and (b) Vendor shall repair or replace the Equipment and return it at Vendor's expense to Procuring Eligible Organization's destination point. Vendor shall assume the risk of loss or damage to any Equipment returned to Vendor for repair or replacement from receipt thereof until delivery to Procuring Eligible Organization's destination point. If Vendor ascertains that Equipment is not readily returnable for repair, then at its option, Vendor may elect to repair or replace the Equipment at Procuring Eligible Organization's site. In such instances, Procuring Eligible Organization, at its expense, shall make the Equipment accessible for repair or replacement and shall be responsible for restoring the site after Vendor has completed its repair or replacement. In repairing or replacing any Equipment or part of any Equipment under this warranty, Vendor may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment or parts of Equipment. For any Equipment or parts thereof repaired, replaced or corrected under this Section, the warranty period applicable to the Equipment will continue for the longer of (i) the remainder of the original warranty period or (ii) ninety (90) days after the date of shipment of the repaired or replaced Equipment. If, Vendor determines that it cannot, in a commercially reasonable manner repair or replace any Equipment, then Vendor may, in its sole discretion, refund to Procuring Eligible Organization the price of the Equipment, less a reasonable adjustment for beneficial use.

- B. **Software:** Vendor warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the descriptions contained in the applicable user documentation with respect to the particular Software purchased by Procuring Eligible Organization for a period of ninety (90) days after Acceptance of the Software by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If the media is defective and the Software is still commercially available, Vendor shall repair or replace the defective media. If the Software does not substantially conform to the description contained in the applicable user documentation, Vendor, at its option, shall correct the defects in the Software or refund to Procuring Eligible Organization the purchase amount paid to Vendor for the defective Software, less a reasonable adjustment for beneficial use. In repairing or replacing any Software medium under this warranty, Vendor may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Software medium. The warranty period for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period. The Software warranty shall include free firmware and Software updates for all Software purchased by Procuring Eligible Organization under this Master Agreement.
- C. **Services:** Vendor 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 Vendor employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner. The warranty period for Services is thirty (30) days from the date of Acceptance by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If Vendor determines that it cannot, in a commercially reasonable manner correct any Services, then Vendor may, in its sole discretion, refund to Procuring Eligible Organization the price of the Services less a reasonable adjustment for beneficial use.

- D. Vendor warrants that it has obtained the rights that are necessary to market and sell the Products and Services under this Master Agreement.

15. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Vendor ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after it has been issued if the Product is ultimately accepted. At any time, Vendor may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Vendor 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.

16. 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 Vendor 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 Vendor a notice of its Governing Body's decision not to appropriate funds. 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 Vendor will be paid by the Procuring Eligible Organization.

17. Records and Audit

Vendor agrees to maintain detailed records pertaining to the price of Services rendered and Products delivered for a period of six (6) years from the date of Acceptance of each Order. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

18. Independent Contractor

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

19. Patent, Copyright, Trademark and Trade Secret Indemnification

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

20. Indemnification

Vendor will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all claims or causes of action related to a claim of personal injury or damage to tangible property, including all attorneys' fees incurred by MHEC and/or Eligible Organizations, arising from the performance of the Master Agreement by Vendor, Vendor's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give Vendor written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder, and, subject to any legally required approval, including approval of state's attorney general, or consistent with applicable law permits Vendor to control the defense of any such claim or action at Vendor's own expense. MHEC and/or Eligible Organization agree that Vendor 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 Vendor with all reasonable assistance that Vendor may require.

21. Limitation of Liability

Vendor shall not be liable to MHEC or any individual Eligible Organization for any direct damages in excess of \$500,000 or the amounts paid hereunder, whichever is greater. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement or to damages resulting from personal injury or property damage caused by Vendor's negligence or willful misconduct. Vendor, 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.

22. Confidentiality

- A. While Vendor is providing Services hereunder, Eligible Organization or Vendor 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 22 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 within ten (10) days after oral disclosure. Both Eligible Organization and Vendor agree that, with respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.

- B. Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Discloser (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the Order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or Vendor 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. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Participant and Vendor agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

23. FERPA (and Other Privacy Laws)

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

24. Amendments

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

25. 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.

26. 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.

27. 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.

28. Web Site Maintenance

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

29. Equal Opportunity Compliance

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

30. Compliance with Law

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

31. Applicable Law

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

32. Conflict of Interest

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

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

34. 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.

35. 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 Vendor:
Name: Nathan Sorensen	Name: Lorie Loman
Address:	Address:
105 Fifth Avenue South, Suite 450	7129 OLD HWY 52 N.
Minneapolis, Minnesota 55401	WELLSVILLE, NC 27374
Email: Nathans@mhec.org	Email: lorie.loman@walkerfirst.com
Fax: 612-767-3353	Fax: 336 731-3017

- 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.

36. Administrative Reporting and Fees

On a quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Vendor will, in a timely manner, make available to MHEC reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume and volume savings. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to three quarters of one percent (0.75%) of the net Product and Service sales for that quarter period (the "Fee"). MHEC, from time to time and at its sole discretion, may change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the fee may also require a change in the Product List and Service List price. Any resulting change in percentage of the Fee shall be communicated to Vendor by MHEC at least thirty (30) days in advance in writing.

37. MHEC Not Liable For Eligible Participants

MHEC is not liable to Vendor 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.

38. 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). Vendor 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).

39. Marketing

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

40. Oversight Committee

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

41. Force Majeure

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

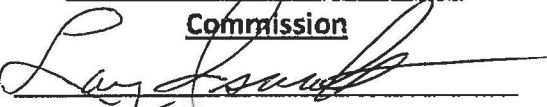
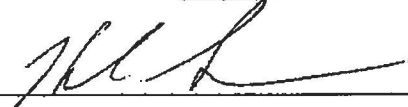
42. Sovereign Immunity

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

43. 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. Vendor may accept this Master Agreement either by its authorized signature or a signed Order. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect.

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

	<u>Midwestern Higher Education Commission</u>	<u>Vendor</u>
Signature:		
Name:	<u>Larry Isaak</u>	<u>HAL STEARN</u>
Title:	<u>President</u>	<u>GM & VP OPERATIONS</u>
	<u>Midwest Higher Education</u>	<u>Vendor: WALKER AND ASSOCIATES, INC</u>
Address:	<u>105 5th Avenue South Suite 450</u>	<u>7129 OLD HWY 52 N.</u>
	<u>Minneapolis, Minnesota, 55401</u>	<u>WELCOME, NC 27374</u>
Date:	<u>3-9-2015</u>	<u>3-5-2015</u>

Please contact Nathans@mhec.org (612-677-2767) or john.lackey@walkerfirst.com (336-731-5474) at Walker and Associates for pricing.

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- v) Issue instructions to your authorized personnel to whom Software is disclosed, advising them of the confidential nature of the Software and provide them with a summary of the requirements of this License.
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