

Master Price Agreement

Between

Presidio Networked Solutions Group, LLC

And

The Midwestern Higher Education Compact

Contract Number: MHEC-08012021

This Master Agreement (“Agreement”) is entered by and between Midwestern Higher Education Compact (“Compact”), whose governing body is the Midwestern Higher Education Commission (“MHEC”) with offices at 105 Fifth Avenue South, Suite 450, Minneapolis, MN 55401 and Presidio Networked Solutions Group, LLC (“Presidio”) with corporate offices located at 3600 Minnesota Drive Suite 150, Edina, MN 55435. The term “Presidio” includes Presidio Networked Solutions Group, LLC, its agents, and subcontractors. For the purposes of this Agreement MHEC and Presidio 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, one of the purposes 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), 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 NEBHE. Current NEBHE Member States are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont; and

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, the Parties acknowledged and agree that MHEC is executing this Agreement to enable Eligible Organizations to purchase products and services offered by Presidio, at the pricing available under this Agreement. No representation is made that any quantities will be purchased or that any services will be utilized. The Parties acknowledge that this Agreement is an award for Hardware, Software, and Services pursuant to Presidio's proposal submitted for the Virtualization and Data Center Modernization MHEC-RFP-03092020 Request for Proposal (RFP), issued by MHEC on March 9, 2020.

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

1. **Definitions**

- A. **Deliverables**: refers to the tangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that Presidio delivers to Procuring Eligible Organization under a Statement of Work (SOW).
- B. **Deliverables Third-Party Software**: refers to all software and documentation that is not owned by Presidio which is incorporated into or used with a Deliverable.
- C. **Eligible Organizations**: This Agreement shall be the framework under which Eligible Organizations can acquire from Presidio (a) Presidio Services and (b) Third-Party Products and Services as defined herein. Eligible Organizations shall include:
 - i. 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 MHEC Member States;
 - ii. All K-12 schools and school districts located in MHEC Member States;
 - iii. All city, county, and other local governments located in MHEC Member States; and
 - iv. All state governments and their departments located in MHEC Member States.

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).

- D. **Financing:** Pursuant to the Virtualization and Data Center Modernization MHEC-RFP-03092020 Request for Proposal (RFP), issued by MHEC on March 9, 2020, Eligible Organizations may elect to finance purchases under a separate finance agreement. Depending upon the particular engagement, Presidio may offer customized finance solutions including a) Traditional Master Lease Agreement; b) Technology Acquisition Leasing Lines; c) Project Finance – “As a Service” Solutions; d) Capacity on Demand; e) Qualifying Tier 1 Minority Business Enterprise (MBE) Credits; f) Payment Agreements; and g) Presidio Access Support System – Asset Management System. Finance agreements are separate and independent agreements between the Procuring Eligible Organization and Presidio, with the terms thereof constituting the entire agreement for financing. Eligible Organizations entering into a Financing agreement shall negotiate the terms and conditions of such Financing with Presidio.
- E. **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 Presidio. Large Order Negotiated Pricing shall apply only to those items that meet the applicable additional terms and conditions negotiated by Presidio and the Eligible Organization.
- F. **Presidio Services:** “Presidio Services” refers to the Services provided by Presidio under this Agreement for a) networks, b) wireless, and c) server and storage and is categorized as either Professional Solutions and Services (as further defined below) or Managed Services (as further defined below). Presidio Services may require additional contract terms and conditions including, as applicable, Service Level Agreements (SLA) or Statements of Work (SOW). Such additional terms and conditions shall be negotiated between Eligible Organizations and Presidio and shall only be applicable between the Eligible Organization that agreed to the additional contract terms and Presidio. Presidio may incorporate changes to their service offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

i. Professional Solutions and Services

Comprehensive Professional Solutions and Services such as consulting services, solution deployment and integration, collaborative maintenance services, Presidio field services, and supplemental engineering services. Including the design and deployment of a) Core Network and Wireless Infrastructure; b) Unified Communication and Collaboration; c) Telepresence/Video Conferencing; d) Data Center and Storage; e) Cloud Solutions / Capacity on Demand; f) Cyber Security; g) Mobility; h) Contact Center; and i) any other directly related technical support, ancillary services tied to program or project scope and support, and/or IT related services required for the effective operation of the hardware, software offered or supplied. Eligible Organizations purchasing custom Professional Solutions and Services shall negotiate the terms and conditions of such purchase with Presidio in, as applicable, Service Level Agreements (SLA) or Statements of Work (SOW).

ii. Managed Services

Managed Services refers to ongoing monitoring, management, provisioning, and optimization of hyper-converged infrastructure systems including a) Network Management and Monitoring; b) Managed Security and Risk Services; c) Data Center Managed Services; d) Storage Management

Services; e) Hosted Collaboration Services; f) Video and Telepresence Management; g) Contact Center Management Service; h) Telephony and Unified Communications Management; i) Telecom Carrier Consulting and Solution; and j) any other directly related technical support, ancillary services tied to program or project scope and support, and/or IT related services required for the effective operation of the hardware, software offered, supplied or managed. Eligible Organizations purchasing custom Managed Services shall negotiate the terms and conditions of such purchase with Presidio, as applicable, Service Level Agreements (SLA) or Statements of Work (SOW).

- G. **Price List:** refers to Presidio Services made available under this Agreement and their respective pricing as set forth in Exhibit A and Third-Party Products and Services made available under this Agreement and their respective pricing and corresponding discount schedule as set forth in Exhibit A.
- H. **Procuring Eligible Organization:** refers to an Eligible Organization which desires to purchase under this Agreement and has executed a valid Order document.
- I. **Order:** refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Presidio Services and/or Third-Party Products and Services. An Order under this Agreement is not considered valid until it is signed by authorized representatives from both the Eligible Organization and Presidio.
- J. **Promotional Prices:** refers to special pricing that may be offered nationally or regionally under this Agreement to a specific category of customers intended to include similarly situated institutional Eligible Organizations for defined time periods and in similar quantities under defined terms and conditions.
- K. **Reseller:** refers to authorized or licensed reseller of Original Equipment Manufacturer ("OEM") or publisher's software, hardware, and services.
- L. **Third-Party Software:** refers to the full line of third-party a) network software, b) wireless software, and c) server software made available for sale by Presidio to Eligible Organizations under this Agreement.
- M. **Third-Party Equipment:** refers to the full line of third-Party a) network and related hardware and components, b) wireless and related hardware and components and c) server and storage and related hardware and components made available for sale by Presidio to Eligible Organizations under this Agreement.
- N. **Third-Party Products:** refers to Third-Party Equipment or Third-Party Software.
- O. **Third-Party Products and Services:** refers collectively to third-party a) network, b) wireless, and c) server and storage equipment, software, and associated IT services offered by Presidio for purchasing under this Agreement, including but not limited to: software, pre-implementation design, installation/de-installation, migration, optimization, maintenance, technical support, training and IT as a Service (services accessible over the internet). Presidio is a certified as an authorized Reseller for all Third-Party Products and Services offered under this Agreement and/or provided under an executed Order.
- P. **Third-Party Services:** refers to all third-party a) network, b) wireless and c) server related services made available for purchase under this Agreement and performed by an entity other than Presidio or its subcontractors.

2. Scope of Offering

This Agreement allows Eligible Organization to obtain from Presidio the full line of Presidio Services and Third-Party Products and Services made available under this Agreement. Additionally, Eligible Organization may obtain financing from Presidio. Presidio may incorporate changes to their offering (including new products and services) subject to the terms of this Agreement; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

Procuring Eligible Organizations shall purchase from Presidio, and Presidio shall provide to Procuring Eligible Organizations (a) Presidio Services and (b) Third-Party Products and Services in accordance with the terms of this Agreement. All Eligible Organizations are qualified to purchase under this Agreement, including those Eligible Organizations currently under a separate agreement with Presidio (to the extent that the arrangements do not conflict and do not create compliance issues with other customers). Accordingly, Presidio shall provide Presidio Services and/or Third-Party Products and Services only upon the issuance and acceptance by Presidio of a valid Order. Orders may be issued to purchase any Presidio Services or Third-Party Products and Services listed on the Price List. A Procuring Eligible Organization may purchase any quantity of Presidio Services or Third Party-Products and Services listed in the Price List at the prices stated herein. For Large Order Negotiated Pricing, Presidio and Eligible Organization may negotiate quantity discounts below the pricing listed on the Price List for a given purchase order. As it sees fit, Presidio may offer under this Agreement Promotional Pricing or discounts that result in prices below those listed in the Price List. Presidio is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement or Order under this Agreement, MHEC shall not be liable for any Eligible Organization that executes an Order under this Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Agreement.

3. 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 this Agreement;
- B. MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of this Agreement for the Eligible Organization specifically;
- C. MHEC has not made any legally binding representations regarding Presidio, Presidio Services or Third-Party Products and Services and that MHEC does not guarantee or warrant the products or services of Presidio or any third party; and
- D. MHEC is not responsible for the actions or omissions of Presidio.

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.

4. Quantity Guarantee

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

5. Contract Term

This Agreement shall be effective on August 1, 2021 and shall remain in effect until July 31, 2024 (Term Ending Date) or unless otherwise terminated pursuant to the terms of the Agreement. The Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Participants may procure products and services from Presidio under the terms of the MHEC Master Agreement at any time during the duration of the Agreement or any renewal thereof. A valid Order's period of performance can extend beyond the last day of the term of this Agreement as long the Order was issued (and executed by mutual parties) on a date within the effective contract term.

6. Order of Precedent

Eligible Organization and Presidio may enter into an addendum to amend the terms and conditions of this Agreement to conform to the Eligible Organization's state and/or institutional laws and regulations or to supplement or modify this Agreement for specific products or services. Likewise, an Eligible Organization and Presidio may enter into a separate supplemental agreement such as a SOW or SLA to further define the level of service requirements over and above the minimum defined in this Agreement. The terms and conditions of the addendum or supplemental agreement will only be applicable between the Eligible Organization that entered into the addendum and Presidio. No addendum or supplemental agreement to this Agreement will be valid unless such addendum or supplemental agreement is made in writing and is signed by the authorized representatives of Eligible Organization and Presidio. In the event of any conflict among these documents, the following order of precedence shall apply:

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

7. Complimentary Agreement

Eligible Organization may have its own order fulfillment/installation agreement(s) with Presidio or original equipment manufacturer (OEM), publisher or licensor ("Complimentary Agreement"). The terms and pricing of this Agreement are in effect and separate from any additional terms and conditions, fees or markups resulting from the Eligible Organization's separate Complimentary Agreement with Presidio or original equipment manufacturer (OEM), publisher or licensor.

Any Complimentary Agreement is exclusively between the Eligible Organization and Presidio or original equipment manufacturer (OEM), publisher or licensor that entered into the Complimentary Agreement.

Presidio (if not a party to the Complimentary Agreement) and MHEC, their agents, and employees shall not be made party to any claim for breach of such Complimentary Agreement.

This Agreement (and its pricing) was awarded to Presidio by MHEC on the basis of full and open competition among qualified firms under Virtualization and Data Center Modernization MHEC-RFP-03092020 Request for Proposal (RFP), issued March 9, 2020. Accordingly, any MHEC contract awards, as evidence by a MHEC contract number on the Price List Exhibit and referenced as a Complimentary Agreement that leverage this Agreement and/or its pricing, where Presidio is certified as an authorized Reseller, shall be considered competitively awarded by MHEC.

8. Purchasing Under this Agreement

- A. Presidio Services: Procuring Eligible Organization shall purchase Presidio Services listed in the Price List from Presidio under the terms and conditions of this Agreement by delivering to Presidio 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 Presidio to perform; (iii) the price of the service in accordance with this Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Agreement. Eligible Organizations purchasing Presidio Services shall negotiate any additional terms and conditions of such purchase with Presidio.
- B. Third-Party Products and Services: Procuring Eligible Organization shall purchase from Presidio the Third-Party Products and Services listed on the Price List under the terms and conditions of this Agreement by delivering to Presidio an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Third-Party Product or Third-Party Service that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Third-Party Product or Third-Party Service in accordance with this Agreement; (iv) the “bill-to” address; (v) if a Third-Party Product, the “ship-to” address and the requested delivery dates and shipping instructions if applicable; (vi) cost of shipping, (vii) if a Third-Party Service, the requested performance dates; (viii) a contact name and telephone number; and (ix) reference to this Agreement. Eligible Organization purchasing Third-Party Products and Services may need to negotiate additional terms and conditions with the Third-Party Products and Services provider. While supplemental terms can be negotiated and agreed-to by Presidio and the Eligible Organizations, this Agreement recognizes that Presidio, as an authorized Reseller, shall often be required to reference and incorporate the Third-Party Products and Services standard commercial terms and conditions.
- C. Each Order that is accepted by Presidio will become a part of the Agreement as to the Presidio Services and/or the Third-Party Products and 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 Presidio constitutes a binding contract.
- D. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization.
- E. Procuring Eligible Organization may request in writing changes to an Order (“Change Request”) that Presidio has previously accepted. In response to a Change Request, Presidio 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 Agreement and Presidio's change order process which requires mutual written agreement of parties before acceptance and fulfillment of the change request.

- F. Presidio will accept a purchasing card for order placement in addition to accepting a purchase order. In addition, nothing in this section precludes any agreements for the use of electronic purchase orders and Presidio will provide electronic commerce assistance to Eligible Organization, if desired, for the electronic submission of purchase orders, purchase order tracking and reporting. The use of any purchasing card or electronic purchase orders may be subject to limitations and/or additional fees set forth by Presidio and agreed to by Procuring Eligible Organization.

9. Payment Provisions

A. Acceptance:

- I. Presidio Services: Procuring Eligible Organization shall determine whether the Presidio Services delivered meet Presidio's published specifications or the applicable SOW. Unless otherwise agreed upon between the Procuring Eligible Organization and Presidio, the Procuring Eligible Organization shall within fifteen (15) days of completion of services, issue a notice of partial acceptance or rejection of the services; otherwise the services shall be deemed accepted. Presidio Services shall be invoiced upon completion unless otherwise established in an applicable, mutually agreed upon SOW or Order.

- II. Third-Party Products and Services: (a) Third-Party Products: Unless otherwise agreed upon by Procuring Eligible Organization and Presidio, within fifteen (15) days from the date of delivery, the Procuring Eligible Organization shall accept or reject the products for which installation is not needed. For products for which installation is required, and unless otherwise agreed upon by Procuring Eligible Organization and Presidio, the Procuring Eligible Organization shall accept or reject the products upon completion of installation and verification tests, and issuance to Procuring Eligible Organization an installation verification certificate. Presidio shall accept return of all products for up to thirty (30) days from date of delivery or installation with Eligible Organization paying only the return shipping. Products shall be invoiced upon delivery when installation is not required or upon installation. (b) Third-Party Services: Acceptance shall be as agreed upon by Procuring Eligible Organization and the third-party providing the services. Third-Party Services shall be invoiced upon completion unless otherwise agreed to between Procuring Eligible Organization and Presidio.

- B. Payment of Invoice: Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be remitted to Presidio at the address shown on the invoice. Payment shall be tendered to Presidio within forty-five (45) days of the date of the invoice unless there exists a good faith dispute. In the absence of a good faith dispute and after the forty-fifth (45) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to Presidio at the rate of one and one-half percent (1½) per month or the maximum rate allowed by the applicable state laws of Procuring Eligible Organization. The Procuring Eligible Organization shall make a good faith effort to pay within forty-five (45) days after the date of the invoice.

- C. Dispute Notice: Procuring Eligible Organization shall make a good faith effort to notify Presidio 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”) 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 Presidio 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 Presidio unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
- E. Payment of Taxes: The price listed under this Agreement do not include, and Procuring Eligible Organization shall reimburse Presidio for, any and all taxes and/or duties assessed against or payable by Presidio in connection with the sale of equipment, licensing of software or documentation, or performance of services except for taxes imposed upon Presidio’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

10. Shipping

The cost of shipping shall be itemized on the Order. Presidio will ship Equipment F.O.B. destination unless (1) different shipping terms are negotiated with the Eligible Organization and/or (2) F.O.B. origin is the standard commercial shipping method and Presidio informs Procuring Eligible Organization in advance that shipping will not be F.O.B. destination. Standard ground freight will be used. Special or inside delivery may require additional charges. Title to Third-Party Products shall pass to Procuring Eligible Organization upon Acceptance unless otherwise specified. Risk of loss or damage to the Third-Party Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Presidio 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 in accordance with standard commercial terms and conditions. All Equipment must be shipped fully configured with the required components unless otherwise specified.

11. Third-Party Product Delivery

Unless otherwise agreed to by Procuring Eligible Organization and Presidio, Presidio agrees to deliver Third-Party 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, or the agreed-upon delivery date, Presidio will notify Procuring Eligible Organization within ten (10) business days following Order placement.

- A. Presidio 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 products or services from this Agreement and/or cancel this Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under this 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 Presidio'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. Presidio may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

12. Installation

When installation is required, unless otherwise negotiated with the Eligible Organization, Presidio must provide the cost of installation as separate line item on their quotation. Installation includes, as applicable, 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. Upon request, Presidio will provide a services quote with a Statement of Work (SOW) to remove any and all debris from the Procuring Eligible Organization site. Upon installation, all operating instructions will be provided either physically or electronically to Procuring Eligible Participant's personnel identified on the purchase order. Unless otherwise stated in the Statement of Work (SOW), Presidio will conduct the manufacturer's standard installation and test procedures to confirm completion.

13. Price and Discount Guarantees

All Presidio Services pricing as set forth in the Price List shall not increase throughout the term of this Agreement. All Third-Party Products and Services discounts as set forth in the Price List shall not decrease throughout the term of this Agreement. If available, promotional prices, higher discounts, and volume discounts may be offered under this Agreement to Procuring Eligible Organization at the time of purchase. Eligible Organizations may inquire from Presidio if such promotions are available.

A. Presidio Services

The pricing for Presidio Services shall be as set forth in Price List Exhibit A. For any custom Presidio Services that are not included in the Price List, the prices for such Presidio Service purchased under this Agreement will be as mutually agreed upon by both Presidio and Procuring Eligible Organization and as set forth in a Presidio quote or an applicable SOW or negotiated agreement.

B. Third-Party Products and Services

The pricing for Third-Party Products and Services shall be as set forth in Price list Exhibit A. The discount listed in Price List Exhibit A shall apply to the Original Equipment Manufacturer (OEM), publisher or licensor published price list.

Presidio may incorporate changes to their offering, in writing to MHEC, of Presidio Services and Third-Party Products and Services; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

14. Ownership Rights and Restriction

Subject to the terms of this Agreement and upon receipt by Presidio of full payment of all fees and charges hereunder, Eligible Organization will own and have all right, title and interest to any items delivered by Presidio pursuant to an SOW ("Deliverables"), excluding Background IP (as defined below). Presidio, or its third-party licensors, as applicable, shall retain exclusive ownership of all Background IP. "Background IP" means all Source Code (as defined below), object code, third-party software, technology, systems,

strategies, processes, methods, techniques, ideas, experience, information, know-how, patents, trademarks, copyrights, designs, developments, or other proprietary rights that are used or delivered by Presidio hereunder, whether pre-existing or conceived, created or developed by Presidio, alone or with Procuring Eligible Organization or others, in the course of its performance under this Agreement, whether embodied or otherwise encompassed in the Deliverables, and including all improvements or derivatives thereof. Subject to the terms of this Agreement and upon full payment of all fees and charges hereunder, Presidio grants Procuring Eligible Organization a limited, non-exclusive, non-transferrable, non-sublicensable license to use the Background IP (excluding Source Code) embodied in the Deliverables solely in connection with Procuring Eligible Organization's internal use of such Deliverables. To the extent a Source Code license is expressly identified as a Deliverable under an applicable SOW, then subject to the terms of this Agreement and upon full payment of all fees and charges hereunder, Presidio grants Procuring Eligible Organization a limited, revocable, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use, modify, or create derivative works from, such Source Code, all for Procuring Eligible Organization's internal business purposes only. Accordingly, Procuring Eligible Organization shall not copy, use, publish, perform, distribute, disseminate or exploit Source Code or any derivatives thereof for any commercial purpose or otherwise share, disclose or transmit Source Code or any derivatives thereof with or to any third party. "Source Code" means a text listing of commands to be compiled or assembled into an executable computer program, which is licensed to Procuring Eligible Organization by Presidio pursuant to an SOW.

15. Presidio Services Warranty

Presidio represents and warrants that Presidio Services provided under this 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. Any additional warranty for Presidio Services shall be decided on a case-by-case basis and shall be mutually agreed upon in a SOW.

16. Third Party Products and Services Warranty

Presidio does not warrant Third-Party Products and Services. Any warranty provided on the Third-Party Products and Services is provided by the original equipment manufacturer (OEM), publisher, 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 Third Party Products and Services.

17. Deliverables Third-Party Software

Certain Deliverables may contain or require the use of third-party software ("Deliverables Third-Party Software"). Presidio makes no representation or warranty of any kind, express or implied, with respect to any Deliverables Third-Party Software. Accordingly, Presidio shall have no liability or responsibility whatsoever on account of the failure, malfunction, or use of any Deliverables Third-Party Software, and same are hereby waived by Procuring Eligible Organization. Any Deliverables Third-Party Software delivered to Procuring Eligible Organization is delivered "AS IS" and with "ALL FAULTS". All Deliverables Third-Party Software will be subject to such third party's software installation package, and/or available

on such third party's website. Procuring Eligible Organization hereby agrees to comply with and be bound by such license terms and conditions. Except with regard to Deliverables Third-Party Software which is identified as a Deliverable under an applicable SOW, Procuring Eligible Organization shall be solely responsible for obtaining and maintaining licenses for all other Third-Party Software. Further, Presidio shall not be responsible for any royalties or other consideration that may become due and payable with respect to Procuring Eligible Organizations use, licensing or integration of Third-Party Software.

18. Third-Party Software

All Third-Party Software will be subject to such third party's applicable license terms and conditions for such software, a copy of which is available to Procuring Eligible Organization upon request from such third party, contained in such third party's software installation package, available on such third party's website, or such other means as provided by the third party. Procuring Eligible Organization shall be solely responsible for obtaining and maintaining licenses for all other Third-Party Software.

19. Transfer of Title

Unless otherwise specified in the Order or addendum, Presidio warrants that Procuring Eligible Organization shall acquire good and clean title to Third-Party Products and Services being purchased under this Agreement, free and clear of all liens and encumbrances. Presidio warrants that it has the right to provide such Third-Party Products and Services to Procuring Eligible Organization.

20. Termination

- A. At any time MHEC may terminate this Agreement, in whole or in part, by giving Presidio 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 or service is ultimately accepted. At any time, Presidio may terminate this Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Presidio of any warranty or other service obligations incurred under the terms of this Agreement.
- B. Either Party may terminate this Agreement for cause based upon material breach of this 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 Agreement may immediately be terminated or cancelled by the other Party hereto.

- D. In the event this Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all products and services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- E. Procuring Eligible Organization or Presidio may terminate an Order under this Agreement for cause based upon material breach of the Order or this 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 thirty (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 20 E shall have no effect on any other Order made by any other Eligible Organization.

21. Non-Appropriations

This provision applies only to publicly funded Eligible Organizations. The terms of this Agreement and any Order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in a purchase order or other document, Procuring Eligible Organization may terminate its obligations under this 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 Presidio and shall be final and binding. In the event of non-appropriations, 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 Presidio a notice of its governing body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal years. 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 applicable cancellation fees as agreed to in advance by Procuring Eligible Organization and outstanding invoices from Presidio for the period up to the date of termination will be paid by the Procuring Eligible Organization.

22. Indemnity, General

Presidio 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 attorney's fees incurred by MHEC and/or Eligible Organizations, arising from intentionally wrongful acts or omissions or the negligent performance of the Agreement by Presidio, Presidio's agents, employees, or subcontractors.

MHEC and/or Eligible Organization shall give Presidio written notice promptly after it becomes aware of any claim to be indemnified hereunder. Subject to any legally required approval, including approval of Eligible Organization's state attorney general, or consistent with applicable law, MHEC and/or Eligible

Organization shall (1) permit Presidio to control such claim or action at Presidio's own expense; (2) agree that Presidio may employ attorneys of its own choice to appear and defend the claim or action; (3) do nothing to compromise the defense of such claim or action or any settlement thereof; and (4) provide Presidio with all reasonable assistance that Presidio may require.

23. Patent, Copyright, Trademark and Trade Secret Indemnification

Presidio will indemnify, defend and hold MHEC and Eligible Organization harmless from a claim that any services or product provided to Eligible Organization pursuant to this Agreement infringes on another person's or entity's patent, copyright, trade secret or any other proprietary right of a third-party. Presidio will have no obligation under this section with respect to any claim of infringement resulting from (a) services performed, or products 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 Presidio 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, Presidio 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 Presidio of its obligations to defend and indemnify MHEC and Eligible Organization.

24. Limitation of Liability

IN NO EVENT SHALL PRESIDIO, MHEC OR ELIGIBLE ORGANIZATION BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, COSTS FOR PROCUREMENT OF SUBSTITUTE SERVICES OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA, USE, OR BUSINESS INTERRUPTION INCURRED BY ANY PARTY TO THIS AGREEMENT OR ANY THIRD PARTY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PRESIDIO'S ENTIRE LIABILITY HEREUNDER AND ELIGIBLE ORGANIZATION'S EXCLUSIVE REMEDY FOR DAMAGES FROM ANY CAUSE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, NONPERFORMANCE OR MISREPRESENTATION, AND REGARDLESS OF THE FORM OF ACTIONS, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO \$500,000 OR THE TOTAL NET PAYMENTS PAID BY ELIGIBLE ORGANIZATION TO PRESIDIO FOR THE APPLICABLE SERVICE UNDER THE APPLICABLE SOW DURING THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED, WHICHEVER IS GREATER. THE FOREGOING LIMITATION DOES NOT APPLY TO ANY INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR TO DAMAGES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY PRESIDIO'S OR ITS SUBCONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT. PRESIDIO SHALL NOT BE LIABLE TO ELIGIBLE ORGANIZATION OR TO ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: (I) INTEROPERABILITY, INTERACTION, ACCESS, OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, PROFESSIONAL SERVICES, CONTENT OR NETWORKS PROVIDED BY THE ELIGIBLE ORGANIZATION OR THIRD PARTIES; (II) SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS, EXCEPT AS OTHERWISE PROVIDED IN THE APPLICABLE SOW; (III) UNAUTHORIZED ACCESS TO, OR THEFT, ALTERATION, LOSS, DEGRADATION,

DAMAGE OR DESTRUCTION OF, ELIGIBLE ORGANIZATION'S, ITS USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS, WHETHER ON-PREMISES OR CLOUD-BASED (ALL OF THE FOREGOING OF ELIGIBLE ORGANIZATION, ITS USERS OR THIRD PARTIES IS COLLECTIVELY REFERRED TO HEREINAFTER AS THE "CLIENT COMPUTER SYSTEMS"), OR LOSS OF ACCESS THERETO, THROUGH ANY MANNER OR METHOD, INCLUDING, WITHOUT LIMITATION, ANY HARMFUL PROGRAM, CODE OR ATTACK, EXCEPT WHEN THE UNAUTHORIZED ACCESS, THEFT, ALTERATION, LOSS, DEGRADATION, DAMAGE OR DESTRUCTION WAS CAUSED BY PRESIDIO'S OR ITS SUBCONTRACTOR'S NEGLIGENCE OR WILLFULL MISCONDUCT; (IV) A BREACH IN THE SECURITY OF ANY OF ELIGIBLE ORGANIZATION COMPUTER SYSTEMS, EXCEPT WHEN THE BREACH IS CAUSED BY PRESIDIO'S OR ITS SUBCONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT; (V) THE INTEGRITY OR AUTHENTICITY OF ELIGIBLE ORGANIZATION'S, ITS USERS' OR THIRD PARTIES' CONENT, DATA, OR INFORMATION, (VI) ELIGIBLE ORGANIZATION'S FAILURE TO COMPLY WITH CLIENT RESPONSIBILITIES AS SET FORTH IN THE APPLICABLE SOW, or (VII) ELIGIBLE ORGANIZATION'S FAILURE TO IMPLEMENT ANY REASONABLE SECURITY RECOMMENDATIONS MADE BY PRESIDIO.

25. Insurance

Presidio, at its own expense, shall maintain appropriate levels of insurance as required by the Procuring Eligible Organization and if requested, certificates of insurance shall be delivered to Procuring Eligible Organization prior to commencement of any work. The insurance company shall be licensed in the applicable state in which work is being conducted or as otherwise required by Procuring Eligible Organization. Presidio shall give the Procuring Eligible Organization a minimum of thirty (30) days' notice prior to any modifications or cancellation of policies. Unless otherwise agreed to between Eligible Organization and Presidio, Presidio will maintain the following insurance limits while performing any services under this Agreement: (a) Workers' Compensation Insurance for Contractor employees, including coverage required under the Eligible Organization's State and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (iii) \$1,000,000 for each employee for bodily injury by disease; (c) General Liability Insurance with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage, (d) Cyber Insurance: In the event Presidio will host data, or provide for the hosting of data through a third-party entity, Presidio 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 Presidio or Eligible Organization, an immediate response in the event of a data breach, including meeting all notification obligations of Presidio 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 and shall provide copies of certificates of insurance to Eligible Participants if requested.

Procuring Eligible Organization is responsible for managing compliance with the requirements of this section 25. Insurance and/or their institutional requirements, and may require additional coverage consistent with applicable law, regulation or policy. Presidio shall require all Subcontractors performing any work to maintain coverage as specified.

26. Confidentiality

- A. While Presidio is providing Presidio Services hereunder, Eligible Organization or Presidio may disclose to the other certain business information identified as confidential (“Confidential Information”). All such information shall be marked or otherwise designated as “Confidential” or “Proprietary”. In order for such information to be considered Confidential Information pursuant to this Section 26 of the 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 Presidio agree that, with respect to Confidential Information it receives (as “Recipient”) from the other (as a “Discloser”) in connection with this Agreement or an Order pursuant to this Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Agreement or an Order placed under this Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- B. Each party will make reasonable efforts not to disclose the other party’s Confidential Information to any third party, except as may be required by law or court order, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party’s possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party’s employees or agents independently of and without reference to any of the other party’s Confidential Information. Confidential Information shall remain the property of and be returned to the Discloser (along with all copies or other embodiments thereof) within fifteen (15) days of (a) a written request from the Discloser, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Organization or Presidio of this Agreement or an Order under this 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 Presidio Services, all disclosure of Confidential Information will be in accordance with the separate non-disclosure agreement between Presidio and the third party.
- D. If a separate, written nondisclosure agreement exists between Eligible Organization and Presidio, that agreement will control and will apply according to its terms and conditions to all Confidential Information the parties exchange with each other.
- E. Notwithstanding anything to the contrary in this Agreement or amendment to this Agreement, both Eligible Organization and Presidio 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 Presidio.

27. 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. Presidio will use Eligible Organization's data only for the purpose of fulfilling its duties under this Agreement or an Order under this 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.

28. Non-Discrimination

Presidio 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 pertaining to equal employment opportunity, Presidio and all its Subcontractors shall agree that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, disability, genetic information, or veteran status. Presidio shall comply with federal and state laws, rules, and regulations applicable to Subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United States Government in such circumstances are incorporated herein by reference.

29. Accessibility

Presidio 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 Presidio shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Organization resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>).

30. FERPA and other privacy laws

Where applicable to the scope of services Presidio is providing, and only to the extent directly applicable to Presidio and its services, Presidio 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 Presidio subject to the aforementioned privacy laws, Eligible Organization agrees to advise Presidio of the disclosure of such information; and Eligible Organization represents and warrants to Presidio that it has obtained any required consents to disclose such information. In addition, to the extent that Presidio becomes a Business Associate as defined in HIPAA, both Presidio and Eligible Organization acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

31. Compliance with Applicable Laws

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

32. Debarment and Suspension

Presidio represents that it is not debarred or suspended from doing business with the federal government or any Eligible Organization's state. Furthermore, Presidio shall provide notice to MHEC if Presidio becomes debarred or suspended at any point during the duration of this Agreement.

33. Records and Audit

Presidio shall retain and maintain all records and documents relating to this Agreement for six (6) years after final payment under an Order made by the Eligible Organization, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MHEC, Eligible Organization, (including the procurement officer or designee), and appropriate governmental authorities with Eligible Organization's state at all reasonable times. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Agreement shall not foreclose the right of Procuring Eligible Organization to recover excessive or illegal payments.

34. Force Majeure

Neither Presidio 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.

35. Export Law

Eligible Organization acknowledges that any software, technical information, products or other Deliverables provided to Eligible Organization via this Agreement may be subject to the U.S. Export Administration Regulations. Eligible Organization agrees to comply with all applicable United States export control laws, and regulations, as from time to time amended, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.

36. Conflict of Interest

Presidio 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. Presidio agrees that if an organizational

conflict of interest is discovered during the term of this Agreement, it will provide disclosure to MHEC that shall include a description of the action Presidio 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 Presidio, MHEC may, at its sole discretion, cancel this Agreement.

37. Subcontractors

Presidio shall have the right to use subcontractors to provide the Presidio Services described in this Agreement. If Presidio elects to use subcontractors in the performance of custom professional services under this Agreement, upon request, Presidio will provide a list of such subcontractors in the associated Statement of Work (SOW). Notwithstanding the foregoing, the use of such subcontractors shall not release Presidio from performing its obligations under this Agreement.

Presidio shall be liable for any damage or loss resulting from personal injury or damage to tangible property arising from the acts or omissions of its subcontractor while performing services pursuant to this Agreement.

38. Assignment

Neither Party will assign its rights or delegate its obligations under this Agreement, in whole or in part, without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation by that party will be null, void and of no effect; provided, however, that either Party may upon written notice assign this Agreement to another successor company pursuant to a corporate merger or reorganization or the sale or transfer of all or substantially all of its stock or assets. This Agreement will be binding upon and inure to the benefit of Presidio and MHEC and their successors and permitted assigns. Nothing in this Section 38. shall preclude Presidio from employing a Subcontractor in carrying out its obligations under this Agreement. Presidio's use of such Subcontractors will not release Presidio from its obligations under this Agreement.

39. MHEC Not Liable for Eligible Organization

MHEC is not liable to Presidio 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 this Agreement. Presidio, in its sole discretion, may discontinue selling products or services to any Eligible Organization who fails to make payments or otherwise fully performs pursuant to the terms and conditions of this Agreement. MHEC does not guarantee that any Eligible Organization will utilize or make any purchase under this Agreement.

40. Independent Contractors

MHEC and Presidio acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement. Presidio and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Presidio 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.

41. Notification

- A. Between the Parties: Whenever under the terms of this 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, email, 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 Presidio:
105 Fifth Avenue South	3600 Minnesota Drive
Suite 450	Suite 150
Minneapolis, Minnesota 55401	Edina, MN 55435
Attn: Nathan Sorensen Email: nathans@mhec.org	Attn: Jackie Arnett Email: jarnett@presidio.com
Fax: 612-767-3353	Fax: 812-342-2702

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

- B. Between 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 to Eligible Organization.

42. Web Site Maintenance

Presidio agrees to ensure that its website includes MHEC contract summary level descriptions, information and aids on its website to promote Eligible Organization awareness and utilization.

43. Marketing

Presidio will assist MHEC in the development and implementation of appropriate marketing strategies. Strategies include, but are not limited to, webinars, printed material, e-mail materials or presentations. Mutual review and evaluation of the marketing plans will be done, upon request.. Presidio 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.

44. Announcements and Publicity

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

45. Oversight Committee

An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC in developing and refining the implementation of this Agreement in the MHEC member states. 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 Presidio on the effectiveness of its implementation progression. In addition, Presidio may be requested to attend on-site or virtual meetings on an ad hoc basis by the contract manager to address any contract performance issues.

46. Contract Administration Fee (CAF)

On a calendar-quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Presidio will, in a timely manner, make available to MHEC utilization reports and information generated by this Agreement, reflecting net Presidio Services and Third-Party Product and Services 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 total net sales for that quarter period (the "Fee"). MHEC, from time to time may provide a written request to Presidio to change the percentage of the Fee it will receive as a result of this Agreement. Any change in the contract administration fee may also require a change in the Price List pricing.

47. Quarterly Report

Presidio must submit business activity reports each quarter in an agreed upon format acceptable by Presidio and MHEC. The Quarterly Reports may include, at the minimum, the following information:

- Quarter number and year
- MHEC contract number
- Vendor name
- Name, phone number and email address of person who may be contacted for questions about the report
- Customer Name
- Customer Type (Higher Education, K-12, state agencies, cities, counties, local subdivisions)
- Address
- City
- State

- Zip Code
- Purchase Order Number
- Product Description
- Final (or Last) Delivery to End User
- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fee shall be submitted by end of the preceding month after the end of March, June, September, and December of each calendar year.

Calendar Quarter 1	(January 1 to March 31)	Due April 30
Calendar Quarter 2	(April 1 to June 30)	Due July 31
Calendar Quarter 3	(July 1 to September 30)	Due October 31
Calendar Quarter 4	(October 1 to December 31)	Due January 31

48. Waiver

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder will not be deemed a waiver of that right.

49. Severability

If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

50. Governing Law

As between MHEC and Presidio, this Agreement shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota; and venue for all legal proceedings arising out of this Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.

As between Eligible Organization and Presidio, this Agreement or any Order placed under this Agreement shall be construed in accordance with, and its performance governed by, the laws of the state in which Eligible Organization resides. Venue for all legal proceedings arising out of this Agreement or any Order placed under this 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.

51. Sovereign Immunity

Notwithstanding anything to the contrary in this Agreement or Order under this Agreement, this 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 Agreement or afforded by Eligible Organizations' state laws applicable to Eligible Organization.

52. Survival

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

53. Scope of Agreement

This 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 Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

54. Miscellaneous:

All parties to this Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement that shall be considered an original and shall be admissible in any action to enforce this Agreement. This Agreement shall become effective upon the signature of both Parties to this Agreement. Except as provided for in this Agreement, all changes to this Agreement must be made in writing signed by both Parties.

[SIGNATURE PAGE FOLLOWS]

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

**Midwestern Higher Education
Commission**

Presidio Networked Solutions Group, LLC

Signature:

Susan Heegaard

[Handwritten Signature]

Name:

Susan Heegaard

Kelth Strohman

Title:

President

Senior Director, Presidio

Address:

105 Fifth Avenue South Suite 450

3600 Minnesota Drive Suite 150

Minneapolis, Minnesota, 554401

Edina, MN 55435

Date:

08/02/2021

08/02/2021

Exhibit A – Price List (Discount Category Pricing)

Presidio is offering the following discounts on the Discount matrix below.

To obtain an Excel copy of the Price List contact nathans@mhec.org or visit <https://www.mhec.org/contracts/technology/computers/presidio>



MHEC Pricing
v07.30.2021.xlsx