



**MIDWESTERN  
HIGHER EDUCATION  
COMPACT**

## Data Analytics for Student Success, Institutional Efficiencies, and Integration

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Request for Proposal (RFP)

MHEC-RFP-08152022

Publish Date: August 15, 2022

Proposals Due: September 12, 2022

Contact:

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DISCLAIMER NOTICE: MHEC reserves the right to change the evaluation criteria or any other provision in this RFP by posting notice of the changes on MHEC's public website at <http://www.mhec.org/news>. For this RFP, posting on the captioned website above constitutes written notification to each offeror. Offerors should check the site daily and are expected to review information on the site carefully before submitting a final proposal.

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## OVERVIEW

The Midwestern Higher Education Compact (MHEC) is exploring innovative solutions to advance the use of Data Analytics for Student Success, Institutional Efficiencies, and Integration to assist colleges and universities, university systems, and states interpret and share the vast amounts of data being produced every day in our hyperconnected world. In January 2014, MHEC awarded SAS Institute a contract [SAS MHEC-011014](#) for administrative, teaching, and research licenses for SAS Institute full line of on-premise and cloud bundled business intelligence, data analytics, predictive analytics, and visual analytics solutions. The award fulfills the public sector acquisition requirements of a competitive sourcing event following the model procurement code for state and local governments. As part of the contract lifecycle ending November 2022, MHEC has prepared this request for proposals (RFP) for proposed solutions for Data Analytics for Student Success, Institutional Efficiencies, and Integration in an open market competitive solicitation. The intent of the solicitation will be to enter into a master agreement with a framework to allow providers to write orders which allows institutions to acquire products and services through a defined fulfillment channel, a negotiated enterprise license agreement, and a starting point for price. This framework facilitates a direct relationship between the provider and institution with discounted pricing, as well as terms and conditions that are better than most institutions can negotiate individually. This process is designed to minimize the burden on administrative resources for institutions in the region, saving both time and money. Additionally, it allows both the institution and the provider to focus most of its energy on finding the technology solution that best fits the institutions needs and negotiating the provider's order, instead of creating the contract itself.

## THE MIDWESTERN HIGHER EDUCATION COMPACT

The Midwestern Higher Education Compact (MHEC) is one of four regional education interstate compacts in the United States, with each having its own niche for addressing issues and advocating for postsecondary education. A compact is a statutorily created contract amongst the states to work collaboratively together on issues of common concern and interest. The MHEC legislation that was passed in each state makes the governing body of the Compact (Commission) an instrumentality of state government in each member state. Similarly, the other regional education Compacts have been statutorily created and include the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE). There are three states not covered by any of the compacts: New Jersey, New York, and Pennsylvania. MHEC was established in 1991, the last of the four compacts to be formed. Collectively MHEC works with member states to create solutions that build higher education's capacity to better serve individuals, institutions, and states by leveraging the region's resources, expertise, ideas, and experiences through multi-state: convening, research, programs, and contracts. MHEC's mission is to bring together midwestern states to develop and support best practices, collaborative efforts, and cost-sharing opportunities. Through these efforts it works to ensure strong, equitable postsecondary educational opportunities and outcomes for all. Twelve Midwestern states have enacted legislation to become members of MHEC: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Utilizing the expertise of representative groups of stakeholders from the higher education community, MHEC conducts competitive sourcing processes that leverages the potential purchasing power of the 12 MHEC member states. One of the Compact's top priorities is to establish public-private relationships that allows more flexibility while still maintaining compliance with applicable procurement statutes. MHEC has adopted the public sector acquisition requirements for conducting competitive solicitations following the model procurement code for state and local governments. The primary constituents served by MHEC are the approximately 1,000 public and private not-for-profit higher education institutions in the member states whose combined enrollments total over four million students. In addition, where appropriate, MHEC solutions can be extended nationally throughout all Compact regions including state, local and education entities. MHEC technology contract usage has exceeded \$3.1 billion dollars across all Compacts realizing over \$310 million dollars in savings nationally since 2016.

MHEC is governed by a 60-member commission of legislators, higher education leaders and governors' representatives. Two commissioners are appointed by each state's legislature and each state's governor appoints three. Member state appropriations, foundation grants and program fees finance MHEC's activities. The commission maintains a headquarters office and staff in Minneapolis, Minnesota. MHEC's website <http://www.mhec.org> provides a complete overview of the organization's goals, philosophies, and financials.

## SECTION A – PROPOSAL REQUIREMENTS

### A.1 THE REQUEST FOR PROPOSAL (RFP)

The purpose of this Data Analytics for Student Success, Institutional Efficiencies, and Integration RFP is to minimize the burden on administrative resources for institutions in the 12 MHEC Compact member states, saving both time and money, while expediting technology acquisitions. MHEC's goal is to award competitive solicitations that integrate with the institutions' procurement process resulting in a negotiated Master Agreement terms and conditions, licensing, and pricing. Additionally, it allows an institution to focus most of its energy on finding the technology solution that best fits its needs instead of the contract itself. The end result is a Master Agreement that facilitates a direct relationship between the technology provider and institutions which contains discount pricing as well as terms and conditions that are better than most higher education institutions can negotiate individually, with additional discounts often available for special or large order purchases. Responses must be keyed to the section and paragraph numbers provided in this RFP.

### A.2 CONTACTING MHEC

For further information about the Midwestern Higher Education Compact and its solutions you are referred to the Compact website at: <http://www.mhec.org> or contact:

Mr. Nathan Sorensen  
Director of Government Contracts  
Midwestern Higher Education Compact  
105 Fifth Avenue South, Suite 450,  
Minneapolis, MN 55401  
Phone: (612) 677-2767  
E-mail: [nathans@mhec.org](mailto:nathans@mhec.org)

### A.3 PUBLIC NOTICE

This RFP and any related amendment and notices will be posted on <http://www.mhec.org/news> website. Offerors are responsible for checking this website to obtain all information and documents related to this RFP. In the event MHEC finds it necessary to change any of the dates or events related to this solicitation, it will do so by issuing a written statement or an amendment to the RFP and publicly posted the notice <http://mhec.org/news>.

### A.4 CONFIDENTIALITY

After an award is made and the Master Agreement(s) are executed, all proposals and documents pertaining to the proposals will be open to the public. If the prospective Offeror submits information in response to this RFP that it believes to be trade secret materials as defined by the laws of MHEC member states, the prospective Offeror must:

- A. Clearly mark all trade secret materials in its response at the time the response is submitted;
- B. Include a statement with its response justifying with specificity the trade secret designation for each item; and
- C. Defend any action seeking release of the materials it believes to be a trade secret, and indemnify and hold harmless MHEC, its commissioners, agents, and employees, from any judgments awarded against MHEC in favor of the party requesting the materials, and any and all costs connected with the defense. This indemnification survives MHEC's award of a contract. In submitting a response to this RFP, the prospective Offeror agrees that this indemnification survives as long as the trade secret materials are in possession of MHEC.

In the event a request is made for information which the prospective Offeror has identified as trade secret, MHEC agrees to notify Offeror of said request and provide its determination as to whether disclosure is legally required, in addition to anticipated dates, if any, and to allow the Offeror an opportunity, in its discretion and at its sole expense, to seek a protective order or otherwise protect the confidentiality of the information.

### A.5 CONFLICT OF INTEREST

If any such actual or potential conflict of interest arises during this solicitation, Offeror shall immediately disclose and notify MHEC. In submitting a response to this solicitation, the Offeror represents and certifies that no relationship exists between the Offeror and MHEC or the members of its committees that interferes with fair competition or is a conflict of interest, and that no relationship exists between the Offeror, and other persons or firms that constitutes a conflict of interest that is adverse to the MHEC.

### A.6 COLLUSION

Offerors must prepare proposals independently, without collusion. By submitting a proposal, the Offeror represents and certifies that unless otherwise required by law, the offer proposed by Offeror has not been and will not be knowingly disclosed by the Offeror prior to opening directly or indirectly to any other vendor, and no attempt has been made or will be made by the Offeror to induce another person or firm to submit a proposal for the purpose of restricting competition.

## A.7 ILLEGAL CONDUCT

All responses must include a statement as to whether or not the responding Offeror has been convicted of bribery or attempting to bribe a public official, barred from contracting with a unit of local, state, or federal government as a result of bid rigging, or for any other reason or been convicted of a felony.

## A.8 PROPOSAL TIMELINE

The following section describes the proposal timeline of events related to this multi-stage Request for Proposal (RFP). Due dates are as indicated unless otherwise changed by MHEC. In the event MHEC finds it necessary to change any of the dates or events listed in this table, it will do so by issuing a written statement or an amendment to the RFP and publicly post the notice at <http://www.mhec.org/news>.

| Event                                     | Date   |
|---|--|
| Formal Issuance of RFP                    | Monday, August 15, 2022  |
| Pre-Proposal Questions Due                | Thursday, August 25, 2022, 10:00 A.M. CT   |
| Publish Answers to Pre-Proposal Questions | Thursday, September 1, 2022  |
| Proposals Due                             | Monday, September 12, 2022, 10:00 A.M. CT  |
| Notification of Finalist                  | Friday, September 30, 2022   |
| Respondent's Conference<br>(Virtual)      | Wednesday, October 12, 2022;<br>Thursday, October 13, 2022; or<br>Friday, October 14, 2022 |
| Best and Final Offer (BAFO)               | October 2022   |
| Contract Award                            | November 2022  |
| Execution of Agreement                    | December 2022  |

## A.9 PRE-PROPOSAL QUESTIONS

Questions and requests for clarification regarding the RFP will be conducted by e-mail. If the Offeror discovers a significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the Offeror should immediately notify Mr. Nathan Sorensen [nathans@mhec.org](mailto:nathans@mhec.org) of such error and request modification or clarification of the RFP document. Only information supplied by MHEC in writing through Mr. Nathan Sorensen or this RFP or amended RFP should be used as a basis for the preparation of Offerors response. Pre-proposal questions are to be submitted by email to [nathans@mhec.org](mailto:nathans@mhec.org) no later than Thursday, August 25, 2022, 10:00 A.M. CT. Answers will be provided to all respondents who submitted



questions via email and will be posted online at <http://www.mhec.org/news> on Thursday, September 1, 2022. All notification of changes will be posted at <http://www.mhec.org/news>.

#### **A.10 OFFEROR RESPONSIBLE FOR COST**

Offeror is responsible for all costs associated with the preparation, submittal, presentation, and evaluation of any proposal. MHEC will incur no obligation of liability whatsoever to anyone resulting from issuance of, or activities pertaining to this RFP.

#### **A.11 SUBMISSION REQUIREMENTS AND PROPOSAL DEADLINE**

The deadline for submission of proposals and related information is Monday, September 12, 2022, 10:00 A.M. CT. Two (2) sealed bound original, one (1) identical electronic copy of the response, and an electronic copy emailed to [nathans@mhec.org](mailto:nathans@mhec.org). Email submission is not a replacement for sending a sealed bound original copy. Allowable formats are PDF and Microsoft Office. Spreadsheet data such as product and service price lists may be submitted in Microsoft Office Excel format. Proposals delivered late will be rejected.

Data Analytics for Student Success, Institutional Efficiencies, and Integration  
MHEC-RFP-08152022  
c/o Mr. Nathan Sorensen  
Midwestern Higher Education Compact  
105 Fifth Avenue South, Suite 450,  
Minneapolis, MN 55401

#### **A.12 PROPOSAL FORMAT**

Proposals must be clear and concise. Proposals that are difficult to follow or that do not conform to the RFP format or binding specifications may be deemed non-responsive and will not be further considered. Each proposal must be complete and contain a description of the Offerors qualifications in accordance with this RFP's requirements. Include a cover letter on company letterhead containing a brief introduction of the provider, corporate structure, major business lines, a primary contact and submission date. The letter shall be concise and need not repeat any of the detailed information set forth in the proposal; however, any requirements, terms, or conditions of this RFP to which the Offeror objects and/or does not accept shall be clearly stated in either: the cover letter along with any alternatives or further explanation; inserted at the appropriate place in the proposal; or be attached at the end of the proposal and designated as additional material.

### A.13 EVALUATION CRITERIA

The selection committee will analyze and evaluate all responses to this RFP. The analysis will be based upon the criteria set forth in this RFP. The following criteria and their identified weight will be used to evaluate the responses:

| Factor                   | Weight    |
|--------------------------|-----------|
| 1. Proposal Requirements | Pass/Fail |
| 2. Solution Proposal     | 30%       |
| 3. MHEC Requirements     | 30%       |
| 4. Pricing               | 30%       |
| 5. Innovation            | 10%       |

### A.14 REQUESTS FOR CLARIFICATION

After the initial evaluation of proposals and determination of Offeror's qualification, capabilities and proposed solution, the selection committee may request clarification of an Offeror's response.

### A.15 RESPONDENTS CONFERENCE

The selection committee will select and notify finalists on or about Friday, September 30, 2022. Only finalists will be invited to participate in the subsequent steps of the solicitation. Prospective finalists will be asked to make a presentation to the selection committee virtually during the period of approximately October 12-14, 2022. The Offeror will be responsible for all costs, including any travel, and per diem expenses.

### A.16 BEST AND FINAL OFFER

Cost or price analysis will be conducted as part of the initial evaluation of the proposals. The selection committee may request best and final offers (BAFO) and may restrict the number of Offerors invited to submit a BAFO or may offer the option to all Offeror's. The selection committee may request that Offeror(s) readdress the cost or price, or important aspects of the proposal, or clarification from statements made at the Respondents Conference.

### A.17 CONTRACT AWARD

Award(s) may be granted to the highest ranking responsive and responsible Offeror(s). Upon completion of the evaluation process, the selection committee will recommend one or more prospective Offeror(s) to MHEC's Commission, and the Compact will enter discussions to establish a Master Agreement with the recommended provider(s). Once a Master Agreement(s) is successfully consummated, the Compact will so notify all Offerors who responded to the RFP. The selection committee reserves the right to not recommend any prospective providers, and the Compact reserves the right not to enter into an agreement with a recommended provider at its own discretion.

#### **A.18 EXECUTION OF AGREEMENT**

MHEC may enter into negotiations with one or more Offeror(s) whose proposals received the highest ranking and meets all of the requirements for an award. During negotiations, the MHEC and Offeror(s) may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would not have an effect on the ranking of proposals. MHEC may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other Offerors for award, if the Offeror fails to provide necessary information for negotiation in a timely manner, fails to negotiate in good faith, or is unable to successfully negotiate contract terms that are acceptable to MHEC member states. Contract negotiations will be conducted primarily by e-mail, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held at MHEC headquarters in Minneapolis, MN. The Offeror will be responsible for all costs, including any travel and per diem expenses.

#### **A.19 SIGNATORY AUTHORITY**

The proposal must be signed by an authorized signatory of the Offeror's firm responsible for the decision to offer the proposal; or if not the person in the Offeror's firm responsible for the decision to offer, a person that has been authorized in writing to act as agent to quote for the persons responsible for such decisions.

### **SECTION B: SOLUTION PROPOSAL**

#### **B.1 SCOPE OF SOLICITATION**

Today's higher education institutions of all types from religious, not-for-profit, public, research and big sports; are increasingly seeking the benefits of data analytics by analyzing their student, alumni, operations, and personnel data. These institutions range in size, geographic location, and complexity – from large public multi-campus state university systems with significant research programs and highly complex IT infrastructures to small private and local community colleges. With a desire to modernize their data architecture to integrate with other systems and services within private and public cloud networks to create reliable data streams from student information systems (SIS), learning management systems (LMS), other enterprise resource planning (ERP) systems, and from the ecosystem of partners to capture, maintain, and make accessible through easier data exploration. Institutions are seeing the benefits from the information, reports, and resources that measure student success and achievement. These insights provide the best opportunities for the use of data, statistical algorithms, and machine learning techniques to identify the likelihood of future outcomes based on historical data. Institutional efficiencies benefit as well using dynamic visualization reporting solutions with dashboard tools available across all departments and locations, to improve the performance of various business operations such as administration, human resources, facilities, and finance. Integration allows the institutions to deliver relevant self-service information using the user's platform of choice to create stronger connections. Students want to discover new insights that they can implement to improve their learning strategies. Going beyond knowing what has happened to providing information necessary for faculty and staff to make data-driven decisions on the best policies and practices that affect students. Besides easier data exploration, students, faculty, and

staff want a better comprehension of data analysis through these tools. With the support of data analytics institutions can make informed decisions to navigate today's challenges (e.g., declining state funding, enrollment concerns, questions about the value of a degree, workforce, and job trends) and prepare for the future.

Eligible organizations across the MHEC, NEBHE, SREB, and WICHE Compact regions have benefited from MHEC's cooperative contracts' consistent pricing and terms, purchasing \$3.1 billion dollars of technology products and services since 2016. Eligible organizations utilize Master Agreement's to leverage discounts for applicable hardware, software, support, and maintenance, IT as a Service, professional services, financing, and other associated services related to the scope of the solicitation. Order fulfillment must be widely available, including local suppliers, through the channel by authorized resellers or direct from the manufacturer.

MHEC reserves the right to terminate negotiations or reject a proposal as nonresponsive. Responses must be keyed to the section and paragraph numbers provided.

## **B.2 PROPOSED SOLUTION**

- A. MHEC is seeking to solicit one or more providers to propose data analytic solutions for Student Success, Institutional Efficiencies, and Integration. Proposed solutions shall provide examples of higher education use of advanced business intelligence, data analytics, predictive analytics, visual analytics, artificial intelligence, or other associated product capabilities. And how integration and deployment has evolved to address the most pressing challenges across the institution. The proposed solution may include, but is not limited to: licensing models, flexible pricing models, adaptive pricing, private cloud and public cloud options, separate pricing for storage and compute, IT process automation, and the option for maintenance and support from third parties. In addition to the applicable products and services, any proposed solution needs to have as options implementation costs, consulting fees, maintenance, technical support, security, and training to the extent necessary to fully utilize the solution. Offeror Proposed Solution may meet all or a portion of the Scope of Solicitation for the products and services in which Offeror is the Original Equipment Manufacturer (OEM), publisher, or accredited partner, if not the manufacturer.
- B. Proposed Solution in support of sustainable institutional growth:
  - 1. Describe the new ways to engage current and prospective students, manage student enrollment, improve student retention and completion rates, and how to boost faculty teaching and research.
  - 2. Describe the mechanism on how students are identified as more likely to enroll, less likely to transfer and what mix of incentives can bring about the best outcomes for student enrollment.
  - 3. Describe how the solution identifies students at risk of dropping out based on, for example, their lack of engagement with course materials or university life in general (by using early alert systems, for example).
  - 4. Describe how institutions will benefit using a solution with dashboards to help operations better leverage their source system data to make their institution more efficient, and ultimately more successful.

5. Describe how transforming institution data into useful information improves the performance of various business operations such as administration, human resources, and finance towards greater institutional efficiency and cost containment.
  6. Describe the way this tool would reduce barriers to data democratization with implementing the solution(s) to foster a data culture, increased data sharing, and organizational success.
  7. Describe how the proposed solution fosters teaching, learning, and academic research across a wide variety of disciplines and educational institutions throughout the Midwest.
- C. Proposed Solution in support of implementation and on-going operations:
1. Describe how the solution(s) allows you to access analytics from applications that your users are already familiar with.
  2. Describe how the proposed solution imports, exports, and/or synchronizes data between internal and external instances.
  3. Describe how the analytics solution can combine multiple sources of complex data, and analyze structure semi-structured, and unstructured data.
  4. Describe how the solutions can gather and combine data from different systems onto a single dashboard allowing you to have a complete view of your business performance.
  5. Describe how users are allowed to share, analyze, and interact with data in different content formats to enable smarter, collaborative decision making. Describe how you can quickly distribute insights across your organization whenever you need to make collaborative decisions.
  6. What level of staff experience and staff commitment is needed for the implementation, support, help desk, and on-going training?
  7. Is the proposed solution an enterprise scale solution or focused on a particular line of business?
  8. Describe the security and privacy controls and procedures at all levels including what regulatory compliance the solution provides.

The intent of the solicitation will be to enter into a Master Agreement with a framework to allow providers to write orders and institutions to acquire products and services through a defined fulfillment channel and a starting point for price. This framework facilitates a direct relationship between the technology provider and institutions with discounted pricing as well as terms and conditions that are better than most institutions can negotiate individually. This process is designed to minimize the burden on administrative resources for institutions in the region, saving both time and money. Additionally, it allows both the institution and the provider to focus most of its energy on finding the technology solution that best fits the institutions needs and negotiating the providers order, instead of creating the contract itself.

### B.3 GENERAL CRITERIA

MHEC is seeking proposals from Offeror's who are willing to work with MHEC to provide eligible organizations creative solutions that will be effective within the confines of the purchasing regulations to which eligible organizations are bound. General criteria upon which Section B: Solution Proposal will be evaluated, but not limited to, for the solution will:

- A. Be designed as a renewable multiple year offering with the capability of serving the entire MHEC region and optional NEBHE, SREB, and WICHE Compact regions;
- B. Offer eligible organizations a streamlined and simplified procurement process for a solution that meets Data Analytics for Student Success, Institutional Efficiencies, and Integration;

- C. Make available a comprehensive Data Analytics for Student Success, Institutional Efficiencies, and Integration that is flexible enough to adapt to the specific needs and circumstances of each eligible organization;
- D. Help avoid repeat bids or RFPs from eligible organizations, since the solutions offered are expected to clearly provide the best value in the region;
- E. Assist eligible organizations in the conversion, installation, training, and support of the respondents' products as necessary; and
- F. Be structured to enable institutions, consortia of institutions, and systems in Compact member states to participate as they deem appropriate and in their own best interests.

Depending upon the responses received and the solutions presented, the selection committee may select more than one technology provider to work with in developing and implementing a Data Analytics for Student Success, Institutional Efficiencies, and Integration offering.

#### **B.4 ELIGIBLE ORGANIZATIONS**

At a minimum, the Offerors proposed solution shall be available for all public and private non-profit colleges, universities, community colleges, technical colleges, and higher education agencies in the twelve (12) Midwestern state region of MHEC. Optionally, solution offerings may be proposed to any or all of the following public entities:

- A. K-12 schools and districts, including public libraries;
- B. cities, counties, and local subdivisions;
- C. state agencies; and
- D. faculty, staff, and students for any or all of the above entities

Contract benefits may differ for each of these optional public entities.

MHEC may also entertain proposals to expand proposed offering to states within the other three regional 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); subject to each respective Compacts' approval.

- A. **MHEC** member states are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.
- B. **NEBHE** member states are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.
- C. **SREB** member states are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
- D. **WICHE** member states are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, U.S. Pacific Territories, and Freely Associated States.

#### **B.5 PROPOSED PRODUCTS AND SERVICES**

It shall be the Offeror's responsibility to verify that any Proposed Products and Services will work as specified in the Eligible Organization's environment. This solicitation is seeking technology providers to propose a full line of products and services by Original Equipment Manufacturer (OEM) without limitation that include: A) software licensing models, B) flexible pricing models, C) adaptive pricing, D) private cloud and public cloud options, E) separate pricing for storage and compute, F) IT process automation, and G)

option for maintenance and support from third parties. Offeror must be an accredited OEM partner, if not the manufacturer.

## **B.6 PRODUCT AND SERVICES OFFERING**

- A. Any Proposed Products or Services must detail the offering of: 1) software, 2) services, 3) managed services, 4) financing, 5) third-party products and services, or 6) other proposed associated services to fully implement any Proposed Products and Services solutions.
- B. Proposed Services offering may include: 1) support services, 2) training and certification, 3) professional services, 4) IT as a Service (ITaaS), 5) managed services, or 6) other associated services.
- C. Proposed IT as a Service (ITaaS) and cloud related Services offering may include: 1) Software-as-a-Service (SaaS), 2) Infrastructure-as-a-Service (IaaS), 3) Platform-as-a-Service (PaaS), or 4) other associated services.
- D. Any proposed Products and Service Offering shall have as options: 1) implementation and optional phased approaches, 2) consulting, 3) maintenance, 4) technical support, 5) security, 6) extended warranty options, and 7) training and certification to the extent necessary to allow the Eligible Organization(s) to fully utilize the procured solution.

It shall be the Offeror's responsibility to make certain that the Product and Services Offering or other associated services is included in their proposal to guarantee a fully functional solution.

## **B.7 MAINTENANCE AND SUPPORT**

Offeror must provide warranty and needed on-going services to support products such as help desk, training, maintenance agreements, upgrades, annual updates, patches, and fixes needed to improve functionality and keep products and services in working order after final acceptance by the Eligible Organization. Such services may include providing recommendations on most cost-effective or appropriate long-term maintenance plan. Offeror must provide such support, not only to maintenance purchases under any Master Agreement, but in support of any existing and current agreements.

## **B.8 LICENSING**

Any software End User License Agreement (EULA) or Enterprise License Agreement (ELA) where Eligible Organization is the end user 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 the EULA or ELA, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides. Offeror shall provide applicable software licensing terms and conditions for each licensed product. Offeror must agree to amend or modify software licensing agreement to meet statutory requirements. The software license will be a binding legal document to the Master Agreement.

## **B.9 PRICING**

Offeror must thoroughly explain their pricing structure in their response. Price quoted shall be discount from manufacturer education, academic, and/or commercial list price by category including transportation and delivery charges fully prepaid by the Offeror, F.O.B. destination. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. Offeror must be an accredited OEM partner, if not the manufacturer. Include a Microsoft Excel document, as the Pricing exhibit to the proposal, with the most current product catalog with the manufacturer education and/or commercial list price. Include any Proposed Products and Services and any related Product and Services Offering. The percentage discount for the items shall remain firm for the duration of the contract period. Offeror may propose alternate pricing arrangements. MHEC reserves the right to negotiate this and other pertinent terms with the selected finalist(s).

## **B.10 VOLUME TIER DISCOUNTS**

A volume tier discount structure should be included for larger orders presenting an opportunity for improved pricing. Volume discounts should be tiered and maximized by dollar amount or unit. Volume discounts must be clearly identified in the proposal.

## **B.11 INCENTIVE AND REBATES**

To support Eligible Organizations and to encourage use of the MHEC contract, Offerors are encouraged to propose Eligible Organizations rebates or offer additional programs or incentives that will benefit Eligible Organizations. These rebates or incentives programs are in addition to the Contract Administration Fee (CAF) see section C.45. Any and all rebates and incentive programs shall have no effect on the reporting and payment to MHEC of the Contract Administration Fee. Please describe your Eligible Organization rebate incentive and/or customer loyalty programs, if applicable.

## **B.12 ORDER**

Offeror must thoroughly explain their quote process and fulfillment process in their response. Offeror must be an accredited OEM partner, if not the manufacturer. All order fulfillments will be made directly from provider or indirectly from an OEM authorized distributor or reseller. Offeror will fulfill all OEM maintenance and support contracts directly through/by OEM or authorized OEM support partner. The Offeror shall supply quotes upon request. Each quote shall include the list price, discount percentage, discounted unit price and extended price per item. Quote must clearly indicate the method of delivery, whether via media, download, or some other means. Orders may be placed either by fax, email, or Internet (if available and not to the exclusion of other methods). All Orders must reference the assigned MHEC contract number and the Eligible Organizations purchase order must be referenced on the invoice. Invoices shall have detailed information sufficient to process for a payment.

## **B.13 DOCUMENTATION**

Offeror shall provide user manuals and related materials and/or give access to on-line documentation sufficient to allow full utilization of the products, services, and licensed software in accordance with the specifications. Documentation will include (but is not limited to) overview descriptions of all major functions and detailed step-by-step operating procedures for use of product, services, and licensed software. The documentation to be provided by Offeror is in addition to any on-line help which is part of the products, services, or licensed software user interface.



#### **B.14 ACCESSIBILITY**

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

#### **B.15 INSURANCE**

Offeror shall maintain appropriate levels of insurance as required by the Eligible Organization and certificates of insurances shall be delivered to Eligible Organizations prior to commencement of the work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded Offeror shall give the participating entity a minimum of thirty (30) days' notice prior to any modifications or cancellation of policies. The awarded Offeror shall require all subcontractors performing any work to maintain coverage as specified.

#### **B.16 SUBCONTRACTORS**

Offeror may offer the use of subcontractors in their response to the RFP. However, MHEC will consider the Offeror to be the sole point of contact with regard to contractual matters. Any use of subcontractors will not release the successful Offeror from its obligations under the Master Agreement, and the successful Offeror will be required to indemnify, save, and hold harmless MHEC and the Eligible Organization from any and all acts or omissions of said Subcontractors while performing services pursuant to any agreement resulting from this RFP.

#### **B.17 SMALL BUSINESS MINORITIES, WOMEN AND ECONOMIC DISADVANTAGE**

Many Compact member states and Eligible Organizations have business development plans for small/disadvantaged businesses and spending goals to include businesses owned and controlled by minorities, women, and economic disadvantaged. If Subcontractors are utilized for fulfillment of an order, MHEC encourages the consideration of minorities, women, and economic disadvantaged small businesses. Offerors or Subcontractors that qualify as small/disadvantaged businesses may be required to provide all certifications and/or reports of such upon request by Eligible Organization

#### **B.18 GREEN INITIATIVES**

Many Compact member states and Eligible Organizations want to minimize our impact on the Earth's climate. Where possible, we would like to implement innovative and responsible environmental practices throughout the Compact to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.

## B.19 REFERENCES

Offeror shall provide a list of three (3) current higher education accounts. Information must include university name, primary contact name, title, address, telephone number, email address, full-time equivalent student count, annual spend, and the original start date of the agreement for each reference. List other related references if higher education references are not available. The Offeror shall indicate how long the Offeror has had a contractual relationship with the client and the types of products and services provided to the client. Incorrect information provided will be evaluated negatively. MHEC reserves the right to contact references.

## SECTION C: MHEC REQUIREMENTS

### C.1 MASTER AGREEMENT TERMS

The purpose of this Data Analytics for Student Success, Institutional Efficiencies, and Integration RFP is to minimize the burden on the administrative resources of Eligible Organizations, saving both time and money, while expediting technology acquisitions. Successful responses to Section B: Solution Proposal will address product and service offerings, licensing, pricing, incentives, and fulfillment to Eligible Organizations. A successful Offeror will enter into contract negotiations with MHEC, with the resulting master agreement between MHEC and the Offeror creating a means for Eligible Organizations to enter into a direct relationship with the Offeror for the acquisition of the proposed technology solution. Section C: MHEC Requirements helps establish this direct relationship between the technology solution provider and the Eligible Organizations by meeting public sector acquisition requirements of a competitive sourcing event following the model procurement code for state and local governments. The end result is a competitively sourced and negotiated Master Agreement between MHEC and technology solution provider with terms and conditions, licensing, and pricing suitable for Eligible Organizations to use through simple placement of an order or through the making of a limited number of amendments.

The inability of an Offeror to accept these mandatory requirements of Section C does not automatically remove that Offeror from consideration; however, failure to accept any of the requirements may affect the overall rating of the Offerors proposal. For those terms Offeror fails to accept, please state with clarity the reasons for objection, and any alternatives. MHEC and Offeror may agree to alter or otherwise add and/or modify terms and conditions in the resulting Master Agreement. MHEC reserves the right to terminate negotiations or reject a proposal as nonresponsive. Responses must be keyed to the section and paragraph numbers provided.

### C.2 DEFINITIONS

**Eligible Organizations:** This Master Agreement shall be the framework under which Eligible Organization can acquire Products and Services.

**Master Agreement:** Contract resulting from an award between MHEC and Supplier.

**Offeror:** a business or vendor that has submitted a proposal.

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

**Procuring Eligible Organization:** refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.

**Products:** refers to the Products made available under this Master Agreement.

**Price List:** refers to the Price List of the Products and Services made available for purchase by Eligible Organizations under this Master Agreement and attached as an exhibit.

**Services:** refers to the Services offered under this Master Agreement.

**Supplier:** refers to organization that provides Products and Services.

### C.3 DUE DILIGENCE

Notwithstanding MHEC's role in entering into this Master 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 any Master Agreement;
- B. MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of any Master Agreement for the Eligible Organization specifically;
- C. MHEC has not made any legally binding representations regarding Suppliers Products, or Services and that MHEC does not guarantee or warrant the Products or Services of Supplier; and
- D. MHEC is not responsible for the actions or omissions of Supplier.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Master Agreement.

### C.4 QUANTITY GUARANTEE

Any resulting Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. MHEC is not obligated to make any affirmative efforts to induce any purchases. The quantity of products and services that may be purchased is undetermined. An estimate quantity based on history or other means may be used as a guide but shall not be a representation by MHEC or 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 this Master Agreement.

### C.5 MASTER AGREEMENT TERM

The MHEC Master Agreement shall be effective on the date that the parties to the Master Agreement sign the Master Agreement. It shall remain in effect for an initial three (3) year term from the effective date and renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the anniversary of the effective date. Eligible Organizations may procure Products and Services from the

technology solution Supplier under the terms of the MHEC Master Agreement at any time during the duration of the Master Agreement.

#### C.6 ORDER OF PRECEDENT

Where the terms and conditions of the Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Supplier 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 and regulations. Similarly, the Eligible Organization participating in this Master Agreement may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e., invoice requirements, ordering requirements, specialized delivery, etc. Any addendum or supplemental agreement is exclusively between the participating Eligible Organization and Supplier.

#### C.7 PURCHASING UNDER MASTER AGREEMENT

- A. **Products:** Procuring Eligible Organization shall purchase from Supplier the Products listed on the Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the 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. Supplier must notify Procuring Eligible Organization if it intends to substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract; the Procuring Eligible Organization will then have the option to cancel the order if such substitute item is not acceptable.
- B. **Services:** Procuring Eligible Organization shall purchase from Supplier the Services listed on the Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service(s); (iii) the price of the Service in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement.
- C. Each Order that is accepted by Supplier will become a part of the Master Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Master Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier is binding.
- D. Procuring Eligible Organization may request in writing a change or cancellation of an Order that Supplier has previously accepted up until the time Supplier has begun manufacturing the Products or performing the Services.
- E. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order. In addition, nothing in this section precludes any agreements for the use of electronic purchase orders and Supplier 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 Supplier and agreed to by Procuring Eligible Organization.

## C.8 PAYMENT PROVISIONS

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all Products and Services delivered meet the Suppliers published specifications. No payment shall be made for any Products or Services until the Procuring Eligible Organization has accepted the Products or Services. Unless otherwise agreed upon between the Procuring Eligible Organization and Supplier, the Eligible Organization shall within thirty (30) calendar days from the date of delivery, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise, the Products or Services shall be deemed accepted.
- B. **Return Policy.** Supplier will provide a thirty (30) day “total satisfaction” no question asked return option from the date of delivery for all Products.
- C. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be remitted to Supplier at the address shown on the invoice. Payment shall be tendered to Supplier 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 Supplier 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.
- D. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Supplier of any billing discrepancies or disputes about an invoice within fifteen (15) business days after receiving it, specifying with particularity the basis of any such dispute (“Dispute Notice”) or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of supplier will be subject to interest charges accruing from the original due date.
- E. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
- F. **Payment of Taxes.** The Prices List under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Products and Services except for taxes imposed upon Supplier’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

## C.9 REIMBURSEMENTS

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Supplier in performance of this Master Agreement may be reimbursed with prior written approval from Procuring Eligible Organization’s authorized representative. Provided that Supplier shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount then provided for in the current U. S. General Services Administration “GSA” Per Diem Rates or pursuant to Procuring Eligible Organization reimbursement policies.

## C.10 SHIPPING

Supplier will ship products F.O.B. destination. Title to products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization's destination point. Risk of loss or damage to Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Supplier shall bear the risk of loss with respect to returned products except for loss or damage directly attributable to the negligence of the Procuring Eligible Organization. All Products must be shipped fully configured with the required components unless otherwise specified.

## C.11 PRODUCT DELIVERY

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization within five (5) business days following Order placement, and Procuring Eligible Organization, as its exclusive remedy, can cancel the order by written, electronic, or facsimile notification. Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace defective Product shall render the Supplier liable for all costs in excess of the contract price when alternate procurement is necessary. Suppliers acknowledge that all locations of any particular Eligible Organization may not be within the MHEC region.
- B. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete Product or Services from the Master Agreement and/or cancel Master Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under the agreement for a Procuring Eligible Organization, the Procuring Eligible Organization retains all of its remedies for a default. Failure of MHEC or the Procuring Eligible Organization to exercise its rights of termination for cause or other remedies for default due to a Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- C. Suppliers may choose to deliver Products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

## C.12 INSTALLATION

When installation is required, unless otherwise negotiated with the Eligible Organization, Supplier must provide the cost of installation as a 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, Supplier 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 Organization personnel identified on the purchase Order. Unless otherwise stated in the Statement of Work (SOW), Supplier will conduct the manufacturer's standard installation and test procedures to confirm completion.

## C.13 PRICE LIST AND DISCOUNT GUARANTEES

All Procuring Eligible Organizations shall pay the lowest prices for Products and Services contained in the Suppliers Price List which shall be attached to the Master Agreement as an exhibit. All Products and Services discounts as set forth in the Price List shall not decrease throughout the term of this Agreement.

When Eligible Organizations purchase under this Master Agreement, Supplier shall not sell Products or Services to Eligible Organizations at prices higher than those awarded via this Master Agreement. If available, promotional prices, higher discounts, and volume discounts may be offered under this Master Agreement to Procuring Eligible Organization at the time of purchase. Eligible Organizations may inquire from Supplier if such promotions are available

#### **C.14 WARRANTY**

Unless otherwise expressly provided, Products or Services provided by the Supplier shall be warranted for a minimum period of ninety (90) days after Acceptance.

#### **C.15 TRANSFER OF TITLE**

Unless otherwise specified in the Order or addendum, Supplier warrants that Procuring Eligible Organization shall acquire good and clean title to Products and Services being purchased under this Master Agreement, free and clear of all liens and encumbrances.

#### **C.16 TERMINATION**

This Master Agreement may be canceled by either the Supplier or MHEC at any time without cause during its term upon ninety (90) days written notice to the other party. The inability of the Supplier to provide sufficient Products or Services at the expected service level and/or to perform Services on a timely basis may serve as grounds for and order or contract termination. Deficient performance as demonstrated by slow response time, failure to adhere to safety practices and regulations, failure to pursue the work with diligence, poor productivity, inefficient work, and poor workmanship may, without limitation, constitute grounds for immediate termination of an Order under the Master Agreement by Procuring Eligible Organization or of the Master Agreement by MHEC. MHEC also reserves the right to remove from participation in Services associated with this Master Agreement any Supplier's employee and/or subcontractor whose conduct is deemed unsatisfactory by MHEC. Termination of the Master Agreement shall in no way limit the parties' remedies at law and equity.

#### **C.17 NON-APPROPRIATIONS**

This provision applies only to publicly funded Eligible Organizations. Any resultant Order is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Procuring Eligible Organization may terminate its obligations if sufficient appropriations are not made by the governing entity to pay amounts due. In the event of non-appropriations, the Supplier shall be notified in writing of such non-appropriation at the earliest opportunity.

#### **C.18 INDEMNITY, GENERAL, AND INTELLECTUAL PROPERTY**

The Supplier shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC.

The Supplier shall indemnify, defend and save harmless Eligible Organization and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of Eligible Organization.

With respect to anything provided to MHEC or Procuring Eligible Organization by the Supplier pursuant to this Master Agreement, the Supplier shall indemnify and defend MHEC and Eligible Organization and their respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and authorized use of such by Procuring Eligible Organization.

#### **C.19 LIMITATION OF LIABILITY**

The terms submitted by the Offeror which serve to limit the liability of the Supplier that are not in accordance with the Eligible Organizations state law are rejected and do not become a part of this Master Agreement. Any limitation of liability shall not apply to indemnification obligations under the Master Agreement or to damages resulting from personal injury or tangible property damage.

#### **C.20 BACKGROUND CHECKS**

At the sole discretion of the Eligible Organizations, Supplier may be requested to provide user background checks, depending on the information systems Supplier accesses or types of data Eligible Organization provides. Supplier then must submit the required background check information to Eligible Organization in a timely manner. Supplier will perform background investigations within the scope of the Suppliers current standard policies and practices for any Supplier employees or subcontractors entering upon an Eligible Organization premise, where legally acceptable and culturally permissible.

#### **C.21 INSURANCE**

Supplier, 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. Suppliers 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 Supplier, Supplier will maintain the following insurance limits while performing any services under this Master 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 Supplier will host data, or provide for the hosting of data through a third-party entity, Supplier shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000



and first party limits of not less than \$1,000,000, that will provide, without cost to the Supplier or Eligible Organization, an immediate response in the event of a data breach, including meeting all notification obligations of Supplier and Eligible Organization and in the event the data breach involves personal information, available free credit monitoring for any affected individual for a minimum period of one year and shall provide copies of certificates of insurance to Eligible Organization if requested.

Procuring Eligible Organization is responsible for managing compliance with the requirements of this section 21. Insurance and/or their institutional requirements, and may require additional coverage consistent with applicable law, regulation, or policy. Supplier shall require all subcontractors performing any work to maintain coverage as specified.

#### **C.22 CONFIDENTIALITY**

As an instrumentality of state government, MHEC is subject to Public Record laws. As such, any provision that requires the terms of the contract, or specific information obtained during the term of the contract, to be kept confidential must be removed or modified to include "to the extent permitted by the law of relevant state." At a minimum, similar modifications may be required for public Eligible Organizations.

#### **C.23 USE OF FEDERAL CONTRACTS OR GRANTS**

Where Federal Contracts or Grants provide funding to Eligible Organizations, it is the responsibility of the Supplier and the Eligible Organization to comply with all Federal Acquisition Regulations (FAR) applicable laws and regulations by completing any certifications and disclosures and any other requirements. When Federal Contract or Grant funds are used by Procuring Eligible Organization purchases under this Agreement, which exceed \$25,000, certification must be provided in writing that the Supplier is not debarred, suspended, or proposed for debarment by the Federal Government.

#### **C.24 COMPLIANCE WITH APPLICABLE LAWS**

(a) Supplier warrants that both in submission of its proposal and performance of any resultant contract that Supplier shall comply with federal laws, rules and regulations applicable to Subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order 11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated into any resulting agreement by reference. (b) Supplier warrants and agrees to abide by all applicable Federal and state laws, regulations and Executive Orders pertaining to equal opportunity. In accordance with such laws, regulations, and executive orders, Supplier agrees that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, veteran status, or handicap. If Supplier is found to be not in compliance with applicable Federal or state requirements during the life of the Master Agreement, Supplier agrees to take appropriate steps to correct these deficiencies. (c) Supplier warrants that both in submission of its proposal and performance of any resultant contract that Supplier will comply with all applicable Federal, state, and local laws, regulations, rules, and/or ordinances.

## **C.25 NON-DISCRIMINATION**

Supplier 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, Supplier 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. Supplier 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.

## **C.26 FERPA AND OTHER PRIVACY LAWS**

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

## **C.27 ACCESSIBILITY**

Supplier agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by Supplier 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>).

## **C.28 DATA OWNERSHIP**

Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Supplier will use Eligible Organization's data only for the purpose of fulfilling its duties under the Master Agreement or an Order under the Master Agreement, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.

### **C.29 ARBITRATION**

MHEC shall reject arbitration clauses in any Master Agreement or license. That does not mean MHEC is unwilling to resolve disputes amicably. However, as an instrumentally of state government, if MHEC or Eligible Organization waives a right, such as the right to trail, it is waiving the public's right.

### **C.30 DEBARMENT AND SUSPENSION**

Supplier represents and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (contract), by any government department or agency. If the Supplier cannot certify this statement, such Supplier must submit a written explanation. Furthermore, Supplier shall provide notice to MHEC if it becomes debarred or suspended at any point during the duration of any resulting agreement.

### **C.31 FINANCIAL CAPACITY**

MHEC reserves the right to require a Financial Capacity report consisting of the following:

- A. Sources of financing (shareholders, venture capital, etc.);
- B. Bank references and name of auditing firm;
- C. Last two annual reports and all quarterly reports since the last annual report;
- D. Identification of the Parent Corporation and any subsidiaries; and
- E. List of all current higher education customers in the MHEC region, and all customers for whom similar work was performed during the past two (2) years.

### **C.32 RECORDS AND AUDIT**

Supplier shall retain and maintain all records and documents relating to the Master Agreement for six (6) years after final payment under an Order made by the Procuring 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.

### **C.33 FORCE MAJEURE**

Neither Supplier 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.

### **C.34 EXPORT LAW**

Supplier and Eligible Organization acknowledges that any software, technical information, products, or other deliverables provided to Eligible Organization via this Master Agreement may be subject to the U.S. Export Administration Regulations. Supplier and 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.

#### **C.35 CONFLICT OF INTEREST**

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

#### **C.36 SUBCONTRACTORS**

Supplier shall have the right to use Subcontractors to provide the Services described in this Master Agreement. If Supplier elects to use Subcontractors in the performance of custom professional Services under this Master Agreement, upon request, Supplier 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 Supplier from performing its obligations under this Master Agreement.

Supplier 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 Master Agreement.

#### **C.37 ASSIGNMENT**

Neither party will assign its rights or delegate its obligations under this Master 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 Master 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 Master Agreement will be binding upon and inure to the benefit of Supplier and MHEC and their successors and permitted assigns. Nothing in this Section 37 shall preclude Supplier from employing a Subcontractor in carrying out its obligations under this Master Agreement. Supplier use of such Subcontractors will not release Supplier from its obligations under this Master Agreement.

#### **C.38 MHEC NOT LIABLE FOR ELIGIBLE ORGANIZATION**

MHEC is not liable to Supplier for the failure of any Procuring Eligible Organization to make any payment or to perform otherwise fully pursuant to the terms and conditions of an Order and/or the Master Agreement. Supplier, 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 the Master Agreement. MHEC does not guarantee that any Eligible Organization will utilize or make any purchase under the Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under the Master Agreement.

### C.39 INDEPENDENT CONTRACTORS

MHEC and Supplier acknowledge and agree that the relationship arising from this Master 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 Master Agreement. Supplier and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Supplier 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.

### C.40 VENDOR REPRESENTATIVE

Supplier shall assign a senior level representative who shall be the primary MHEC contact for all matters related to all sales and marketing efforts of this Master Agreement.

### C.41 NOTIFICATION

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, 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 Supplier: |
|--|--------------|
| 105 Fifth Avenue South   |              |
| Suite 450  |              |
| Minneapolis, Minnesota 55401   |              |
| Attn: Nathan Sorensen, Director of government contracts<br>Email: <a href="mailto:nathans@mhec.org">nathans@mhec.org</a> |              |
| Fax: 612-767-3353  | Fax:         |

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

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.

### C.42 MARKETING

Successful Supplier must assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material, and a full service, online MHEC-specific website to receive information on products, supplies, services, and prices, and to place orders. Mutual review and evaluation

of the marketing plans will be done, at a minimum, during annual reviews. The Supplier should exhibit the willingness to develop marketing materials and participate in opportunities that are available.

#### **C.43 ANNOUNCEMENTS AND PUBLICITY**

No Supplier providing services to MHEC, or to the Eligible Organizations, shall appropriate or make use of the name or other identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

#### **C.44 OVERSIGHT COMMITTEE**

An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Supplier in developing and refining the implementation of a Master Agreement in the Compact 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; and to advise the successful Supplier on the effectiveness of its implementation progression. There will be an annual meeting between successful Supplier and MHEC (and perhaps members of the oversight committee) to perform a business review. In addition, Supplier must attend on-site meetings on an ad hoc basis if requested by the contract manager to address contract performance issues.

#### **C.45 CONTRACT ADMINISTRATION FEE (CAF)**

MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration, and marketing of this program. All Suppliers shall include a Contract Administrative Fee (CAF) of one-and-one half percent (1.5%) in their response. The CAF shall not reduce the discount or rebates offered to the Eligible Organizations. The Supplier will be responsible for submitting the CAF with the quarterly report.

#### **C.46 QUARTERLY REPORT**

Supplier must submit business activity reports each quarter. The Quarterly Report must 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
- Date Shipped or Delivered to End User

- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fees 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 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 |

#### C.47 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 under this Master 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.

#### C.48 SEVERABILITY

If any provision of this Master 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 Master 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 Master Agreement invalid or unenforceable whatsoever.

#### C.49 GOVERNING LAW

As between MHEC and Supplier, this Master 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 Master 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 Supplier, this Agreement or any Order placed under this Master 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 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.

As between Eligible Organization, MHEC, and Supplier, this Agreement or any Order placed under this Master 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 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.

#### **C.50 SOVEREIGN IMMUNITY**

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

#### **C.51 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 license, 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.

#### **C.52 AMENDMENTS**

Except as provided in Section C.6 Order of Precedent; this Master Agreement shall only be amended by written instrument executed by the parties.

#### **C.53 SCOPE OF AGREEMENT**

This Master Agreement incorporates all of the agreements of the parties concerning the subject matter of this Master Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.