

**IDENTITY MANAGEMENT SERVICES PROGRAM
PARTICIPATION AGREEMENT**

THIS IDENTITY MANAGEMENT SERVICES PROGRAM PARTICIPATION AGREEMENT (“AGREEMENT”) FOR PARTICIPATION IN THE EDUCAUSE IDENTITY MANAGEMENT SERVICES PROGRAM (“PROGRAM”) IS MADE AND ENTERED INTO BY EDUCAUSE (“EDUCAUSE”), A DISTRICT OF COLUMBIA NONPROFIT CORPORATION, AND THE PARTICIPANT (REFERRED TO AS “PARTICIPANT”). THIS AGREEMENT IS EFFECTIVE AS OF THE DATE ACCEPTED BY PARTICIPANT BY CLICKING THE “I AGREE” OR SIMILARLY WORDED BUTTON ON THE [HTTP://WWW.EDUCAUSE.EDU/IMSP/SUBSCRIBE/7504](http://www.educause.edu/imsp/subscribe/7504) (THE “EFFECTIVE DATE”). PARTICIPANT BY CLICKING THE “I AGREE” OR SIMILARLY WORDED BUTTON HAS ACKNOWLEDGED AND AGREED THAT PARTICIPANT HAS CAREFULLY READ AND ACCEPTS THE TERMS AND CONDITION OF THIS AGREEMENT, AND FURTHER ACKNOWLEDGES CLICKING THE “I AGREE” OR SIMILARLY WORDED BUTTON IS THE EQUIVALENT OF MANUALLY SIGNING THIS AGREEMENT AND THAT PARTICIPANT WILL BE LEGALLY BOUND BY ITS TERMS AND CONDITIONS.

RECITALS

WHEREAS, EDUCAUSE, an Internal Revenue Code section 501(c)(3) organization, has as a charitable purpose the advancement of higher education by supporting, among other things, the intelligent use of information technology;

WHEREAS, to further the foregoing charitable purposes, EDUCAUSE expects to enter into various agreements with one or more vendors (“Vendors”) to create a centrally administered contractual structure to help enable its membership to purchase various products and services (“Products & Services”) from such Vendors, subject to a definitive written agreement (the “Definitive Agreement”) being executed between such Vendor and Participant for the purchase of such Products & Services; and

WHEREAS, Participant desires to, subject to the terms of this Agreement, to participate in the Program and requests the assistance of EDUCAUSE to refer Participant’s contact information as provided by Participant to EDUCAUSE to such Vendors.

NOW, THEREFORE, in consideration of the premises and mutual promises and representations contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties intending to be legally bound hereto agree as follow.

1. Fees. Participant agrees to pay EDUCAUSE U.S. \$2,000.00 ("Annual Participation Fee").
2. Term. This Agreement comes into force on the Effective Date and remains in force for a period of one-year beginning as of the Effective Date, and from year-to-year thereafter only if EDUCAUSE provides an invoice to Participant notifying Participant of the Annual Participation Fee, as may be adjusted by EDUCAUSE, for the following year and Participant fails to give notice of its termination of this Agreement by the due date of such invoice.
3. No Refund of Fees. Except with the written consent of EDUCAUSE, in no event shall EDUCAUSE be required to refund, rebate, prorate or credit any portion of any fee paid by Participant under Section 1 of this Agreement, even if any such Vendor fails to enter into a Definitive Agreement with Participant for the purchase of Products & Services.
4. EDUCAUSE Referral. EDUCAUSE shall, within a reasonable time following the Effective Date of this Agreement, provide Participant's contact information to Vendors. Referral by EDUCAUSE does not guarantee that any Vendor will sell the Products & Services to Participant, and Participant agrees that it shall not bring any claim or cause of action against EDUCAUSE, whether arising out of this Agreement or otherwise, if any Vendor fails to enter into a Definitive Agreement with Participant for the purchase of Products & Services.
5. Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto, and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto, any legal or equitable rights hereunder.
6. Limitation of Liability. Participant agrees that in no event shall EDUCAUSE be liable to the Participant or any third party under this Agreement or any other agreement executed between any Vendor and Participant for any damages whether incidental, indirect, special, consequential, exemplary, or punitive, arising out of or relating to this Agreement or any of the services provided pursuant hereto or any Definitive Agreement, regardless of whether the Participant had been advised or could have foreseen the possibility of such damages.
7. No Warranties. ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE RELATING TO THE PRODUCTS & SERVICES OR OTHERWISE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY EDUCAUSE.
8. Press Releases. Participant agrees that it shall not issue a press release or public announcement pertaining to the matters contemplated by this Agreement at any time, unless the EDUCAUSE agrees otherwise in writing and agrees to the form and content of such press release or announcement. All such press releases or public announcements shall be approved within ten (10) business days of submission.

9. Assignment. This Agreement is personal to the parties hereto and may not be assigned or transferred by either party without the prior written consent of the other party hereto.

10. Entire Agreement. This Agreement represents the entire understanding between the parties in relation to the matters dealt with herein and supersedes all previous covenants and representations made between the parties in relation to the Agreement, whether oral or written. This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each party hereto. Any modification to this Agreement may be executed by facsimile and the facsimile execution pages will be binding upon the executing party to the same extent as the original executed pages. The executing party shall provide originals of the facsimile execution pages for insertion into the Agreement, as modified, in place of the facsimile pages.

11. Miscellaneous.

a. PARTICIPANT AGREES THAT PARTICIPANT'S SOLE AND EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT, WHETHER BY BREACH OF CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO U.S. \$ 1,000.00.

b. Participant represents and warrants to EDUCAUSE that this Agreement has been duly authorized, executed and delivered by Participant, and constitutes the legal, valid and binding obligation of Participant, and that under applicable law, no approval, authorization, consent, clearance, order or other action of, or filing (other than notice) with, any person, firm or corporation, or any court, administrative agency or other governmental authority, is required in connection with the execution and delivery by Participant of this Agreement or the performance by it of the transactions described herein. Participant further represents and warrants that Participant is an Institutional Member of EDUCAUSE.

c. Participant agrees to abide by the terms and conditions set forth the Definitive Agreements and, as may be described therein, additional Vendor policies relating to the Products & Services.

d. Participant shall indemnify, defend and hold harmless EDUCAUSE, and its directors, members, officers, agents, employees, successors and assigns from any and all third party claims, suits, proceedings, judgments, damages, costs (including reasonable attorneys' fees and expenses) and other liabilities arising from, in connection with or related in any way to, directly or indirectly, the Participant's actual or alleged breach of any duty, obligation, representation, or warranty of the Participant specified in this Agreement or in any Definitive Agreement; provided, however, that the terms of this Section 11d. shall apply with respect to Participant only to the extent that Participant is not precluded from such application under applicable law.

12. Severability. If a provision of this Agreement is rendered invalid or unenforceable, the remaining provisions shall remain in full force and effect.

13. Governing Law and Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the District of Columbia.

14. Waivers. Any waiver of any breach of this Agreement shall not constitute a waiver of any other breach hereof and any failure to enforce any provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision at any time hereunder.

15. Relationship of the Parties. The relationship of the parties is that of independent contractors and nothing herein shall be construed as creating a partnership, employment or agency relationship between the parties or as authorizing any party to act as agent for any other party.

16. Attorneys' Fees. In the event of any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recovery of its attorneys' fees from any non-prevailing parties.

17. Notices. All notices which either party is required or may desire to serve upon any other party shall be in writing and addressed to the party to be served at the respective addresses set forth below. Any such notice may be served personally or by certified mail (postage prepaid), internationally commercially recognized overnight delivery service (such as Federal Express or DHL), or courier. Notice shall be deemed served upon personal delivery or delivery by courier, upon the second business day after the date sent for notices sent via overnight delivery, or upon the third business day after the date sent for notices sent via certified mail. Either party may change the address to which notices are to be delivered by written notice to the other party served as provided in this Section.

[REMAINDER OF AGREEMENT INTENTIONALLY LEFT BLANK]