

EDUCAUSE TERMS AND CONDITIONS FOR CORPORATE PARTICIPATION

The following Terms and Conditions are binding upon you, your company, and you and your company's affiliates, subsidiaries, agents, and assigns, as applicable (together, the "Participant") upon purchase of any and all promotional opportunities through the online EDUCAUSE ("EDUCAUSE") portal, or other method (each a "Purchased Opportunity"). By completing the signature fields below and completing an order for a Purchased Opportunity, Participant acknowledges that it has read, accepts, agrees to be bound by, and creates a binding obligation to comply with, these Terms and Conditions. Acceptance of these Terms and Conditions creates a binding legal agreement between the Participant and EDUCAUSE and EDUCAUSE's obligation to fulfill the Purchased Opportunity is conditioned on Participant's compliance herewith. These Terms and Conditions shall be effective when Participant completes the signature fields below.

1. **Commercial Terms.** EDUCAUSE's obligation to fulfill any Purchased Opportunity, as selected by Participant, is subject to payment in full of the associated purchase price therefore. Absent good faith error, all prices provided through the EDUCAUSE portal are firm, final, and expressed in U.S. dollars. All taxes, if applicable, are included in the Purchased Opportunity order summary. Except as otherwise expressly provided herein, all sales are final and no refund of the purchase price applicable to any Purchased Opportunity shall be given by EDUCAUSE. EDUCAUSE reserves the right to refuse service and cancel orders for any Purchased Opportunity in its sole discretion.

2. **Participant's Promotional Activity.** Provided that such right is expressly granted as part of Participant's applicable Purchased Opportunity, Participant may use and distribute promotional materials during the times, in the manner, and in the locations expressly set forth in Participant's Purchased Opportunity. The materials permitted pursuant to Participant's Purchased Opportunity are subject to EDUCAUSE's approval, which EDUCAUSE may grant or deny at any time in its sole discretion. No electronic distribution of materials or messaging from or on behalf of Participant in connection with the Purchased Opportunity shall be permitted at any time. Use of online event registration lists relating to the Purchased Opportunity, EDUCAUSE listserves, or the general EDUCAUSE membership directory for sending marketing material, harvesting contacts, populating lead or prospect databases, or soliciting of any kind by electronic means is strictly prohibited.

3. **Sales During Purchased Opportunity.** The EDUCAUSE event which surrounds the Purchased Opportunity is a forum for the exchange of information regarding managing information resources in higher education. Participant's activities in connection with the Purchased Opportunity are intended to support this objective. As a result, Participant is responsible for following all state regulations and tax laws for any orders, products sold for private profit, or

otherwise engagement in commercial activity during its on-site participation in the Purchased Opportunity.

4. **Grant of Trademark License.** Participant hereby grants to EDUCAUSE, and EDUCAUSE accepts from Participant, a non-exclusive, royalty-free, worldwide license to use any of Participant's trademarks, service marks, logos, trade dress and any other identifying mark or insignia (collectively "Participant's Trademarks") in any manner reasonably determined by EDUCAUSE, in its sole discretion, in order to facilitate the fulfillment of the Purchased Opportunity. The license granted by Participant hereunder shall automatically terminate upon the conclusion of the applicable Purchased Opportunity. If EDUCAUSE allows, EDUCAUSE hereby grants to Participant, and Participant accepts from EDUCAUSE, a non-exclusive, royalty-free, worldwide license to use any of EDUCAUSE's trademarks, service marks, logos, trade dress and any other identifying mark or insignia (collectively "EDUCAUSE's Trademarks") in a manner that follows these incorporated guidelines: (a) To maintain brand integrity, EDUCAUSE trademarks should not be used on a heavily textured, colored, or patterned background. To keep the trademark's separate from other elements within the design space, a measure of white space should also be maintained around it. These guidelines apply to both the horizontal and vertical formats of the logo, regardless of the medium. (b) EDUCAUSE is all upper case and that the copy does not imply that EDUCAUSE endorses your company's presence or its products and services. The license granted by EDUCAUSE hereunder shall automatically terminate upon the conclusion of the applicable Purchased Opportunity.

5. **No Endorsement, License, or Assumption of Liability.** Unless expressly provided otherwise in writing, nothing in these Terms and Conditions or the Purchased Opportunity shall serve as (i) an endorsement; (ii) a grant of trademark license; (iii) or an assumption of liability or responsibility for Participant, its property (regardless of location), or its products and services, by EDUCAUSE, its employees, agents, volunteers, assigns or successors. Participant understands, acknowledges, and shall not advertise or otherwise represent that it has received such endorsement, shall not use the trademarks of EDUCAUSE, or otherwise assert that EDUCAUSE has assumed liability or responsibility for Participant's property or liabilities, whether in connection with the Purchased Opportunity or otherwise. Participant shall obtain insurance for its property and any liabilities which may be incurred in connection with Participant's products, services, or participation in the Purchased Opportunity.

6. **Ejection of Participant Upon Breach.** Participant's attendance and participation in connection with the Purchased Opportunity is permitted at the sole discretion of EDUCAUSE. In the event EDUCAUSE reasonably determines Participant has breached any term or terms of these Terms and Conditions or the Purchased Opportunity, EDUCAUSE may, in its sole discretion, eject Participant from the event surrounding the Purchased Opportunity and cancel any right or obligations regarding the Purchased Opportunity. In the event of the foregoing, Participant shall not be entitled to a refund of the purchase price applicable to the Purchased Opportunity,

which shall be retained by EDUCAUSE as liquidated damages. In the event sufficient time is available prior to the commencement of the Purchased Opportunity, EDUCAUSE may resell the opportunity and retain all fees received in connection therewith.

7. **Withdrawal by Participant.** Participant may withdraw from the Purchased Opportunity at any time, effective upon delivery of written notice to that effect to EDUCAUSE. Such withdrawal shall not entitle Participant to a refund of the purchase price applicable to the Purchased Opportunity, which shall be retained by EDUCAUSE as liquidated damages.

8. **Force Majeure, and Cancellation or Postponement without Fault of Participant.** Neither party shall be liable for any delay or failure in performance, shall not be considered in breach of this Agreement, or otherwise be liable for any loss or damage suffered by the other, including without limitation any damages for lost profits due to any failure or delay in performance, caused by any act of God, fire, flood, war, terrorism, embargo, governmental action, strike or other labor difficulties or any other cause of like or different kind beyond their reasonable control (a “Force Majeure Event”). In the event EDUCAUSE cancels or postpones the Purchased Opportunity or the event surrounding the same, and such cancellation or postponement is not the result of a Force Majeure Event or breach by Participant, the parties shall mutually amend or terminate any and all agreements and understandings surrounding the Purchased Opportunity, at EDUCAUSE’S’ option. Participant’s sole remedy in the event of such cancellation or postponement shall be a return and refund of the purchase price applicable to the Purchased Opportunity, which shall serve as liquidated damages.

9. **Confidentiality.** In the course of performing pursuant to these Terms and Conditions and the Purchased Opportunity, each party may be exposed to or acquire Confidential Information (as hereinafter defined) of the other party. Each party shall hold such Confidential Information in strict confidence and not to disclose such Confidential Information to third parties, or to use such information for any purpose other than internal business purposes or for the purpose of performing such party's obligations pursuant to the Purchased Opportunity and these Terms and Conditions, without the express written permission of the other party; provided, however, that such obligations shall not apply to information that: (a) at the time of its disclosure is, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) was known to the receiving party at the time of its disclosure from a source other than the providing party; (c) is independently developed by the receiving party; (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party; or (e) is required to be disclosed pursuant to a court order or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure. The parties shall use reasonable efforts to advise each other immediately in the event that either party learns or has reason to believe that a violation of this Section has occurred or is likely to occur, and will reasonably cooperate with the other party in seeking injunctive relief. For purposes of these Terms and Conditions, “Confidential Information” shall include, but is not limited to, unpublished materials or materials otherwise not

released for general circulation to the public, plans, reports, consumer and financial information, and any other material or information so indicated by the providing party as confidential.

10. **Indemnification**. Participant shall defend, indemnify and hold EDUCAUSE and its employees, officers, agents, consultants, contractors, and licensors harmless from and against any and all liabilities, losses and expenses, including without limitation reasonable attorneys' fees, that arise from the Purchased Opportunity, Participant's participation therein, and Participant's violation of these Terms and Conditions. EDUCAUSE reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by Participant, in which event Participant agrees to cooperate with EDUCAUSE in asserting any available defenses.

11. **Miscellaneous**.

a. **Compliance with all Applicable Rules and Laws**. In addition to the provisions of these Terms and Conditions, Participant agrees to abide by all laws, regulations, and rules, including any rules or stipulations of the facility in which the Purchased Opportunity will occur, applicable to the Purchased Opportunity and Participant's participation therein.

b. **Severability**. If any provision or provisions of these Terms and Conditions, or the Purchased Opportunity are held to be invalid, illegal, unenforceable, or otherwise conflict with or violate any law, regulation or rule of any applicable jurisdiction, such part or provision shall be deemed severable from these Terms and Conditions, or the Purchased Opportunity, as applicable, and the remainder hereof and thereof shall remain binding upon the parties. In such event, such part or provision shall be replaced with a part or provision not unenforceable and not in conflict with such laws, regulations, and rules, which most closely approaches the purpose of these Terms and Conditions and the Purchased Opportunity, as applicable.

c. **Governing Law and Jurisdiction**. These Terms and Conditions and the Purchased Opportunity shall be governed by and interpreted in accordance with the laws of the State of Colorado, without regard to its conflict of laws provisions. The parties hereby expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Terms and Conditions and the Purchased Opportunity shall lie with the state and federal courts with jurisdiction over Boulder County, Colorado, and Participant further agrees and submits to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action.

d. **Alternative Dispute Resolution**. In the event of any dispute, controversy, or claim arising out of or relating to these Terms and Conditions and the Purchased Opportunity, or the breach, termination, or validity thereof, the parties shall first attempt to resolve the matter through good faith negotiations over a period of at least thirty (30) days.

In the event such good faith negotiations fail to resolve the applicable dispute, the parties shall submit the dispute for mediation in Boulder County, Colorado. Unless mutually agreed otherwise in writing, such mediation shall be overseen by a mediator listed in the American Arbitration Association's National Roster of Mediators and shall be conducted pursuant to the standards set forth in the American Arbitration Association's Mediators Model Standards of Conduct. Notwithstanding anything to the contrary in the foregoing, the parties shall not be required to engage in negotiation or mediation prior to seeking equitable remedies, including but not limited to injunction.

e. Waiver. Waiver by either party of any provision of these Terms and Conditions or the Purchased Opportunity, or any breach thereof, shall not imply a subsequent waiver of that or any other provision or breach.

f. Entire Agreement. These Terms and Conditions, the Purchased Opportunity, and all documents incorporated by reference herein or therein constitute the entire agreement of the parties and may not be modified or amended in any respect whatsoever without written consent of EDUCAUSE.

g. Assignment. The Purchased Opportunity and these Terms and Conditions may not be assigned by Participant without the express written consent of EDUCAUSE.

h. Authority. Participant hereby represents and warrants that (i) it has all requisite corporate power and authority to enter and perform pursuant to these Terms and Conditions and the Purchased Opportunity; and (ii) the entry into and performance of these Terms and Conditions and the Purchased Opportunity, and the consummation of the transactions contemplated hereby and thereby, have been duly and properly authorized by all requisite organizational action on its part.

i. Remedies. All rights and remedies hereunder are not exclusive of any other rights or remedies provided hereunder or by law, unless expressly stated otherwise.

I understand that our participation must conform to these terms and conditions provided by EDUCAUSE.

Full Name: _____

Company: _____

Signature: _____

Date: _____