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## 1. General Overview

### 1.1 Description of Cooperative

Educational & Institutional Cooperative Services, Inc. (E&I) is a member owned New York non-profit corporation established in 1934 and is governed by a Board of Directors. The Board of Directors is a group of professionals who are elected by the E&I Membership. The Board provides oversight to ensure the Members' needs are addressed and met. Our Membership is comprised of public and private universities and colleges, community colleges, other affiliated members, K-12, and teaching healthcare facilities throughout the United States.

Our mission is to assist our members in creating supply-chain efficiencies, lowering costs and reducing risks by collaborating with our members, suppliers and strategic partners. We deliver exceptional value to higher education, K-12 and related communities by making it easy for them to access high-quality contracts, strategic sourcing expertise, insights and unrivaled customer service.

### 1.2 Purpose and Intent of the Request for Proposal (RFP)

The purpose of this RFP is to establish a cost-effective Master Agreement ("Agreement") for Cloud Solutions and Services Distributor which complies with our Member procurement requirements and will provide E&I Members a procurement vehicle to acquire the products and/or services outlined within this RFP. All E&I Members will be eligible to participate in the resulting agreement.

Products and/or services considered for award shall equal or exceed the quality level of industry standards as defined within this RFP and shall comply with all applicable federal, state, and local technical, environmental, and performance standards and specifications.

The awarded Respondent(s) is/are expected to be a fully authorized distributor for any of the providers it proposes. The Respondent must be able to provide service and timely deliveries to all Members and campuses. Direct involvement by the awarded Respondent may be necessary to assist Members in understanding the different types of products/services available and in selecting the best solution to fit their needs.

E&I is committed to utilizing purchasing and business practices in accordance with the National Association of Educational Procurement Code of Ethics. The primary goals and objectives of E&I are to: (1) assist our Members to obtain the absolute lowest cost and best value that exceeds other public sector consortia agreements, (2) establish a strategic sourcing partnership with any selected manufacturer(s) and authorized dealers, and (3) enhance our position as the premier Procurement Cooperative for Education.

### 1.3 Market Opportunity

By satisfying the above Member needs, the Cooperative anticipates significant Member purchases to be recorded against the resulting Agreement(s). The Cooperative currently has more than 5,000 Members, comprised of roughly 50% public and 50% private. K-12 school districts, academic healthcare and research institutions are eligible for membership in E&I. The Cooperative's expectations are a substantial opportunity for growth (in terms of Member purchases) with competitively awarded Agreement(s) in these markets. There is also interest in utilizing the potential contract by the Participating Oregon Community Colleges (POCC).

### 1.4 Member Participation

Once the awarded Respondent has been established and the Agreement finalized, individual E&I Members (in some situations Member departments) will review the awarded Respondent's program and determine their individual participation. See Section B43 of E&I's Master Agreement Template General Terms and Conditions for specific details on how members participate in awarded Respondent's program. The awarded Respondent's program includes the Agreement along with additional supporting materials (if any) developed by the awarded Respondent.

Upon award of a Master Agreement from this RFP, the Respondent shall be provided an electronic file listing of E&I Members. Updated versions will be sent as needed. E&I will post the awarded Respondent's program on the E&I internal web site which is password protected and only available to E&I Members.

## 2. Standard RFP Provisions

### 2.1 Definitions

The following are the definitions of general terms used in this RFP.

**DAYS:** All days specified are based on calendar days unless otherwise noted.

**EDUCATION:** The combination of Higher Education and K-12.

**GO TO MARKET:** Strategy or action plan specifying how the Respondent will utilize its inside and outside resources (e.g. sales force and distributors, marketing initiatives, etc.) to deliver its products and/or services to the Education market through an E&I contract.

#### Contract Region Key

Northeast  
Mid-Atlantic  
Southeast  
Central  
Great Lakes  
Western

#### States

CT, MA, ME, NH, NY, RI, VT  
DC, DE, MD, NJ, PA, VA, WV  
AL, FL, GA, KY, MS, NC, SC, TN  
AR, IA, KS, LA, MN, MO, ND, NE, OK, SD, TX  
IL, IN, MI, OH, WI  
AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY

**GREATEST BENEFIT:** The decision for award will be based on an overall combination of variables such as quality, price and various elements of required service that in total are optimal relative to the needs of the E&I Membership.

**HIGHER EDUCATION:** All Universities, Colleges, Healthcare Facilities (private and public), i.e., Associate, Bachelor, Master, and/or PhD in the United States, that provide for advanced learning and/or grant degrees. These Universities, Colleges and Healthcare Facilities may or may not be members of E&I.

**HUBS:** Historically Underutilized Businesses e.g., minority, women-owned businesses (for the State of Texas, Certified HUBS within the State of Texas).

**K-12:** All School Systems and Districts (private and public) in the United States that provide education for students in Kindergarten through 12th Grade. These School Systems and Districts may or may not be members of E&I.

**MANUFACTURER:** Indicates an entity that makes the products from raw materials outlined in this RFP, all of its agents, and employees.

**MAY:** Indicates something that is not mandatory but permissible/desirable.

**MEMBERS:** Includes Institutions, Universities, Colleges (private and public) and K-12 schools that are listed in the E&I record.

**MONTH END:** Shall mean the last calendar day of each month.

**MOST RESPONSIBLE:** A Respondent whose reputation, past performance, and business and financial capabilities are such that the Respondent would be deemed most capable of satisfying Member needs for a specific contract.

**MUST, SHALL, WILL:** The words “shall,” “must,” or “will” are equivalent and indicate mandatory requirements or conditions. E&I will not waive Responder’s material deviation from any of the mandatory requirements.

**MWBE:** Minority, Woman-owned Business Enterprises.

**NATIONAL AGREEMENT:** E&I awards an Agreement which is available throughout the United States (including Alaska and Hawaii).

**REGIONAL AGREEMENT:** E&I may elect to award an Agreement by Geographical Areas of the United States. See table below for geographic breakdown:

**RESPONDENT:** Entity who submits a proposal to an RFP.

**RESPONSIBLE:** A Respondent is responsible if they are capable or qualified to perform the work.

**RESPONSIVE:** A proposal is responsive if it meets all of the requirements of the RFP.

**SHALL, MUST, WILL:** Indicates a mandatory requirement(s) that must be addressed. Failure to address these mandatory requirements will result in rejection of your proposal as non-responsive. E&I may, but is not required to, reserve the right to request additional information.

**SHOULD:** Indicates something that is recommended but not mandatory. If the Respondent fails to provide recommended information, E&I may, at its sole option, ask the Respondent to provide the information or evaluate the proposal without the information.

**SOLE POINT OF CONTACT:** The Contract Manager or designee to whom Respondents shall address any questions regarding the solicitation or award process. The sole point of contact shall be the arbitrator of any dispute concerning performance of the Contract.

**SUCCESSFUL RESPONDENT:** The Respondent(s) or individual(s) who are the recommended recipient(s) of the award of a contract under this RFP (also synonymous with “Payee,” “Offeror,” “Contractor,” “Vendor,” “Supplier,” and “Business Partner”). If a Respondent is a manufacturer, its certified dealers and resellers may also furnish products under the Contract; in choosing to do so, the dealers and resellers agree to honor the Contract and the term “contractor” shall be deemed to refer to them. Unless awarded the Contract as a direct Respondent, however, dealers and resellers are not parties to the Contract, and the Respondent that certifies them shall be responsible for their actions and omissions.

**SUPPLIER:** Indicates an entity that distributes/furnishes the products and or services of a company, all of its agents, and employees. For the purposes of this RFP, the terms Supplier and Respondent may be used interchangeably.

## 2.2 Term

The Agreement term will be for five (5) years with the option of one five (5)-year renewal. Exercise of any renewal will require formal written notification and mutual agreement between E&I and Respondent at least one (1) year prior to Agreement expiration.

If this RFP results in an Agreement, a hold-over clause may be invoked by the E&I member on a month by month or year by year basis as per the agreement between the member and Respondent utilizing the same terms and conditions as listed in Agreement between the awarded Respondent and E&I.

## 2.3 Sole Point of Contact

### **Cathy Goglia**

Contract Manager, Technology  
Educational and Institutional Cooperative Services, Inc.  
2 Jericho Plaza, Suite 309  
Jericho, New York, 11753-1671  
Voice: 631.630.8318  
E-Mail: [cgoglia@eandi.org](mailto:cgoglia@eandi.org)

**Respondents to this RFP or persons acting on their behalf shall not contact any E&I employee, officer, or agent; any E&I Board of Directors; or any E&I Member concerning any aspect of this RFP, except in writing to the Sole Point of Contact or the Vice President, Strategic Sourcing & Contract Management, from the date of release of this RFP through the official award date.** Violation of this provision may be grounds for rejecting a proposal response. See Section 3.4 on how to submit questions.

## 2.4 Evaluation Process

Any contract(s) resulting from this Request for Proposal will be awarded in writing to responsive and responsible Respondents whose proposal, in the opinion of the evaluation team, offers the greatest benefit to our members when considering the total value including the quality, service levels, customer service and total cost (including any trade, prompt payment discounts, and other miscellaneous charges).

All proposals should be complete to be considered responsive. If the proposal fails to conform to the requirements of the RFP, E&I and/or the RFP evaluation team will determine whether the variance is significant enough to consider the proposal.

The evaluation team conducts its evaluation in two stages: 1.) Technical Evaluation (all evaluation criteria excluding pricing) 2.) Pricing Evaluation. Each stage is independent of the other, and the evaluation team will not evaluate the pricing nor will they be privy to the pricing until the technical evaluation is complete.

As part of the evaluation process, E&I may require a demonstration/presentation before the award is made and the demonstration/presentation may be considered as an additional factor in award. Selected Respondent(s) shall be given a script and/or instruction for the presentation in order to provide the evaluation team further insight regarding their proposal and to clarify any issues. Failure of a Respondent to conduct a presentation on the date scheduled may result in rejection of the Respondent's proposal. In addition, E&I may decide to make site visits, as needed, during the evaluation process which shall be coordinated with the respective Respondent(s).

## 2.5 Evaluation Criteria

The RFP evaluation team will review and evaluate RFP responses according to the following weighted criteria based on a total of 100 points.

CRITERIA	Points
<b>TECHNICAL EVALUATION</b>	
<b>Adherence to Terms &amp; Conditions/RFP Specifications</b> <ul style="list-style-type: none"> <li>RFP closely aligns with Members' institutional policies, federal, state, and local legal and regulatory requirements and policies <ul style="list-style-type: none"> <li>Form Certifications</li> </ul> </li> <li>Acknowledgment and acceptance of Terms and Conditions <ul style="list-style-type: none"> <li>RFP – Standard Provisions / Proposal Response Requirements</li> <li>Execution of Offer</li> <li>Master Agreement Template</li> </ul> </li> <li>Response to Specifications <ul style="list-style-type: none"> <li>Scope of Products and Services</li> <li>Supplier Performance Expectations</li> </ul> </li> </ul>	<b>20</b>
<b>Respondent's Capabilities</b> <ul style="list-style-type: none"> <li>Order Placement/Payment</li> <li>Delivery/Installation</li> <li>Service, Support, Product Warranty and Maintenance</li> <li>Administration, i.e. Reporting Capabilities</li> <li>On-Line/Technological Capabilities, including electronic ordering, E-commerce, procurement cards, billing and access to Respondent's electronic catalogs</li> <li>Environmentally sustainable products and solutions</li> <li>Supplier Diversity, including Historically Underutilized Businesses (HUBs), Minority and Woman-Owned Business Enterprises (MWBs) and Small Business Enterprises as defined by the Small Business Administration (SBA)</li> </ul>	<b>20</b>
<b>Breadth and Quality of Products/Services</b>	<b>15</b>
<b>Respondent's Qualifications</b> <ul style="list-style-type: none"> <li>Financial Stability</li> <li>References</li> <li>Experience and Past Performance</li> </ul>	<b>5</b>
<b>Added Value Solutions/Incentives and other information as deemed relevant by E&amp;I</b>	<b>5</b>
<b>PRICING EVALUATION</b>	
<b>Pricing</b> <ul style="list-style-type: none"> <li>Pricing and Terms that provide for increased discounts and lower overall cost</li> </ul>	<b>35</b>

## 2.6 Terms and Conditions of Agreement

As a result of this RFP process, it is our expectation that an Agreement will be established between E&I and one or more of the Respondents. The Agreement will incorporate the relevant terms and conditions of this RFP and Respondent's proposal.

## 2.7 Protest Procedures

Any actual or prospective Respondent ("Protesting Party") who is aggrieved in connection with a solicitation or selection for award may file a written protest up to seven (7) calendar days after issuance of a Non-Award Letter in accordance with the procedures described herein and pursuant to the Protest Rules in the Execution of Offer.

### 2.7.1 Filing of Protest

1. The Protesting Party shall send its written protest to:  
Vice President of Strategic Sourcing & Contract Management  
E&I Cooperative Services, Inc  
Attention: Solicitation Protest  
2 Jericho Plaza, Suite 309  
Jericho, NY 11753
2. The written protest shall contain the following:
  - a. Name, address, telephone number, fax number, and email address of the Protesting Party.
  - b. The signature of the Protesting Party or their representative.
    - i. The signature of an attorney or Protesting Party on a protest or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement. If a protest or other document is signed in violation of this subsection before or after appeal to the Chief Business Development Officer, the Protesting Party shall be liable to pay E&I the amount of the reasonable expenses incurred because of the filing of the protest, including E&I's reasonable attorneys' fees.
  - c. Identification of the solicitation and award that is being protested.
  - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents.
  - e. The form of relief requested.
3. E&I shall be entitled to payment of its reasonable expenses incurred because of the filing of the protest, including E&I's reasonable attorneys' fees, in the event of a decision by the Chief Business Development Officer that:
  - a. A protest or other document was signed, before or after appeal to the Chief Business Development Officer, in violation of subsection 2.b.(i) above;
  - b. The protest has been brought or pursued in bad faith; or
  - c. The protest does not state on its face a valid basis for protest.
4. The Protesting Party shall post a bond in an amount of \$10,000 at the time of filing the written protest payable to E&I Cooperative Services, Inc. Such protest bond shall be in form and substance acceptable to E&I and shall be immediately payable to E&I to secure payment under section 3 above. E&I does not waive any right to seek payment of additional amounts if the bond is not adequate to reimburse E&I the full amount of its reasonable expenses caused by the protest.
5. E&I shall hold such protest bond for at least fourteen (14) calendar days after the date of the final determination by E&I. If the Protesting Party appeals the determination in accordance with the procedures herein, E&I shall hold such protest bond until instructed by the Chief Business Development Officer to either keep the bond or return it to the Protesting Party.
6. The Vice President of Strategic Sourcing & Contract Management shall have the authority to resolve the protest. If deemed necessary, the Vice President of Strategic Sourcing & Contract Management may request a meeting with the Protesting Party to seek clarification of the protest issues.

7. The Vice President of Strategic Sourcing & Contract Management shall promptly issue a decision in writing within seven (7) calendar days of receipt of the written protest. E&I will mail a copy of the decision or otherwise furnish a copy to the Protesting Party which will include the reasons for the action taken.

#### 2.7.2 Waiver of Protest

Any of following actions shall constitute a Protesting Party's waiver of protest proceedings and litigation.

- If the Protesting Party does not adhere to the Protest procedures as outlined herein to include filing a written protest within seven (7) calendar days after issuance of a Non-Award Letter in conjunction with an E&I competitive solicitation, or in the case of an appeal within five (5) calendar days of the protest decision.
- If the subject matter of the Protest was known or should have been known to the Protesting Party before the Deadline for Submission of RFP-Related Written Questions and the Protesting Party did not raise the issue in a written comment.
- If the Protesting Party fails to post a bond at the time of filing the written protest payable to E&I Cooperative Services, Inc. in an amount equal to \$10,000. The bond shall be conditioned upon the payment of all costs which may be adjudged against the Protesting Party filing the protest action.

#### 2.7.3 Appeals

1. The Protesting Party may file an appeal of the decision made by the Vice President of Strategic Sourcing & Contract Management with the Chief Business Development Officer, within five (5) calendar days of the written protest decision.
2. The Protesting Party shall send Appeals to:  
Chief Business Development Officer  
E&I Cooperative Services, Inc  
Attention: Protest Appeals  
2 Jericho Plaza, Suite 309  
Jericho, NY 11753
3. The decision by the Chief Business Development Officer is final and shall be given in writing and submitted to the Protesting Party within five (5) calendar days of receipt of the written appeal.
4. No further appeal of E&I decision on the protest is authorized, and Respondent expressly waives any right to invoke any other authority or dispute resolution mechanism concerning matters addressed by these Protest Procedures.



### 3. Proposal Response Requirements

All proposals are subject to the conditions specified herein. E&I, in its sole discretion, may reject a Proposal as non-responsive if Respondent fails to follow these instructions and requirements.

#### 3.1 Tentative Schedule of Events

The following is a tentative schedule of events for this RFP:

Activity	Due Date
Request for Proposal issued ("Open Date")	June 23, 2020
<b>5 PM ET Deadline</b> for submission of RFP-related written questions ("Q&A Submission Close Date")	July 21, 2020
E&I Response to RFP-related questions	July 24, 2020
<b>1 PM ET Deadline for Receipt of Proposals ("Close Date")</b>	<b>August 7, 2020</b>
Technical Evaluation, Clarifications	August 21, 2020
Receipt of Pricing, Pricing Evaluation	September 4, 2020
Best and Final Offers on or about	September 11, 2020
Negotiations Begin on or about	September 18, 2020
Anticipated Award(s)/Letter of Intent (LOI)	September 25, 2020
Acceptance and Execution of Agreement	October 23, 2020
Implementation	November 15, 2020

#### 3.2 Proposal Submission

- 3.2.1 Proposal responses must be submitted via E&I's Electronic Sourcing Solution via the link below and clicking on the "Respond Now" button.  
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=EandICooperative>
- 3.2.2 Hard copy submissions or submissions through any other medium other than through [E&I's Electronic Sourcing Solution](#) are not permitted.
- 3.2.3 Proposal responses shall be submitted exactly as outlined, and the required information shall be provided in the section under which it is requested. Respondents may not combine or reorganize headings and/or requests for information or indicate the information will be included in another section. Proposal responses shall not refer E&I to any location outside the requested sections noted within the required format below (i.e. links to external website).
  - **Prerequisites** – Review the following prerequisites and certify acknowledgment where indicated.
    - RFP Provisions and Specifications
    - Execution of Offer and Certifications
  - **Supplier Attachments** – Upload additional files relevant to proposal response. NOTE: Information submitted that is not requested by E&I may be considered to be supplemental and not subject to evaluation.
  - **Questions** – Review and respond to each question group.
    - Response to Specifications
    - Respondent's Capabilities
    - Respondent's Qualifications
    - Added Value Solutions
    - RFP Exceptions
  - **DO NOT INCLUDE ANY PRICING INFORMATION OF ANY KIND WITHIN YOUR INITIAL SUBMISSION. E&I will request pricing from all Respondents AFTER the technical evaluation of all proposals is complete.**
  - **Q&A Board** – Ask sourcing event-related questions, receive responses, read other public questions and answers, and respond to buyer-submitted questions. See additional information in section 3.4.
- 3.2.4 Proposals must be received by the RFP Close Date/Time Deadline.



- 3.2.5 Each Respondent is solely responsible for the timely delivery of its proposal. Failure to meet the proposed date and time shall be grounds for rejection.
- 3.2.6 DO NOT ALTER THE RFP document IN ANY WAY. The only acceptable changes or alterations to the RFP will be made in the form of addenda issued only by E&I.
- 3.2.7 A Supplier may withdraw or modify its proposal prior to the Close Date/Time Deadline.
- 3.2.8 Elaborate proposals (e.g. expensive artwork) beyond that sufficient to present a complete and effective proposal are not necessary or desired. E&I will not pay for any information requested nor is it liable for costs incurred by the Respondent in responding to this RFP.
- 3.2.9 All submitted proposals constitute an offer by each respective Respondent and shall remain irrevocable for a period of 180 days following the Submission Deadline.
- 3.2.10 If Respondent's proposal deviates from these instructions, such proposal may, at E&I's sole discretion, be rejected.

### 3.3 Upload Instructions and Recommendations

- 3.3.1 Submissions are to be uploaded prior to the Close Date/Time Deadline as indicated in Section 3.1 Tentative Schedule of Events. It is strongly recommended to allow sufficient time and at least ONE (1) hour before the Close Time to begin the uploading process and to finalize submission.
- 3.3.2 Each item of Requested Information is instantly sealed (no one from E&I can review) and will only be visible after the Close Date/Time. Submissions may be edited as needed up until the Close Date/Time.
- 3.3.3 Responders may elect to utilize the import/export feature to export questions into Excel in order to work on responses offline and import into the system upon completion.
- 3.3.4 Keep in mind that when answering questions in the provided text box within the system (if applicable) there is a limit to the number of characters you can use in your response. The dynamic character limit counter at the bottom of each text box will display the remaining characters available.
- 3.3.5 Uploading large documents may take significant time, depending on the size of the file(s) and your Internet connection speed. The maximum upload file size is 50 MB. If your file is greater than 50 MB, you can either break it up into multiple files as there is no limit to the number of files less than 50 MB. Alternatively, you could also provide a link to an online file share location (i.e. Dropbox, Box, Google Drive, Microsoft OneDrive/SharePoint etc.).
- 3.3.6 Do not embed any documents within your uploaded files, as they will not be accessible or evaluated.
- 3.3.7 Information submitted that is not requested by E&I may be considered to be supplemental and not subject to evaluation.
- 3.3.8 Any questions relating to log-in issues or technical issues, including attachments, can be submitted to our third-party software host, Jaggaer via a Support Form:

<https://go.jaggaer.com/SupplierSupportRequest.html> or via (800) 233-1121, option 2 then option 2.

### 3.4 Respondent Questions

All sourcing event-related communications between Respondents and E&I is managed and tracked in [E&I's Electronic Sourcing Solution](#) through the RFP Event's Q&A Board.

- 3.4.1 Use the Question & Answer (Q&A) Board within the RFP event of [E&I's Electronic Sourcing Solution](#) to ask any questions. Refer to the Tentative Schedule of Events for the last day to submit questions. At all times it shall remain the responsibility of the Respondent participating in the RFP to check the RFP event for any addenda, notices or award decisions and the Q&A Board for updates. No further notice will be given.
- 3.4.2 Respondents are expected to raise any questions or concerns they have regarding the RFP. If Respondent discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in this RFP, Respondent should immediately notify the Sole Point of Contact of the deficiency and request modification or clarification of the RFP document using the Q&A Board.

- 3.4.3 Any questions and responses specific to the terms and conditions, process, procedures, language, specifications and other parts of the RFP may be made public and may be shared with other Respondents. Do not provide any proprietary information in a question or in a response to an answer to a question.
- 3.4.4 Only those communications that are in writing from E&I shall be considered as a duly authorized expression on behalf of E&I. Respondents may not consider any verbal instructions as an official expression on E&I's behalf. **QUESTIONS DIRECTED TO, OR ANY PROPOSALS RECEIVED FROM ANY OTHER PERSON, AGENT, OR REPRESENTATIVE OF E&I WILL NOT BE CONSIDERED VALID OR BINDING.** Also, E&I will recognize only communications from Respondents that are either signed and in writing or submitted directly within E&I's Electronic Sourcing System as duly authorized expressions on behalf of the Respondent.

### 3.5 Rights Reserved by E&I and Restrictions on RFP Process

- 3.5.1 E&I reserves the right to issue Addenda to the RFP at any time prior to the Close Date/Time.
- 3.5.2 E&I reserves the right to reject any or all proposals or any part thereof.
- 3.5.3 E&I reserves the right to make an award and/or multiple awards by section, in whole, or to make no award as determined to best meet the needs of the membership.
- 3.5.4 E&I recommends that a Respondent's initial proposal reflect its most favorable terms. E&I reserves the right to negotiate with any Respondent(s) and to arrive at its final decision and/or to request additional information or clarification on any matter included in the proposal.
- 3.5.5 If this RFP is regional in scope, E&I, upon mutual agreement of the Respondent, may expand the Agreement to additional regions or nationally.
- 3.5.6 E&I, in its sole discretion, reserves the right to waive any irregularity or minor variance in any proposal received, including but not limited to obvious mathematical errors in extension of pricing, failure to date the proposal, or failing to execute any certification not considered salient to price, delivery or acceptance of an agreement award.
- 3.5.7 E&I reserves the right to select the most responsible Respondent(s) without further discussion, negotiation, or prior notice.
- 3.5.8 E&I may presume that any proposal is a final proposal revision (otherwise known as a "Best-and-Final Offer").
- 3.5.9 E&I reserves the right to delete specific line items in order to provide a basis for an evaluation of the prices quoted by all Respondents.
- 3.5.10 **Any discussion with E&I personnel, other than the Vice President, Strategic Sourcing and Contract Management or the Contract Manager listed as the Sole Point of Contact regarding this RFP while the RFP is in progress (from the time Respondent receives this RFP until final award is made) is strictly prohibited. Such contact and discussion may result in disqualification of Respondent's proposal.**
- 3.5.11 E&I is the sole owner of all data and information contained within the RFP document and accompanying attachments. Respondent shall use this information exclusively to prepare a proposal. Respondent should not disclose this information to any other firm or use it for any other purpose unless required by law or legal process.
- 3.5.12 Respondent proposals will be opened and reviewed at the convenience of E&I.
- 3.5.13 All proposals and related information submitted become the property of E&I; they will not be returned and may be subject to disclosure under the Freedom of Information Act, Open Records laws or other laws existing in E&I Members' states. As such, proposal(s) may be released to third parties, without prior notice to Respondent(s), as required to comply with legal requirements.
- 3.5.14 Respondents must clearly indicate which portions of their response are "Confidential" – considered to contain confidential or proprietary information.

## 4. Scope of Products and Services

The Respondent is expected to be a direct distributor (not a value-added reseller) of innovative Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS) and Infrastructure-as-a-Service (IaaS) solutions at the best price with the best service as required by members. E&I serves many types of non-profit research and education institutions such as higher-ed, K-12 schools, health care, and libraries. The resulting awarded Agreement shall be made available to all E&I member institutions.

### 4.1 Cloud Solutions

At a minimum, proposals offering products from the following software providers must be proposed:

- Amazon Web Services (AWS)
- Red Hat
- VEEAM

The following is a list of additional preferred providers to be considered in the evaluation but not required:

- Acquia
- DocuSign (and/or other e-signature cloud solutions)
- Solarwinds
- Tableau
- Qualtrics

### 4.2 Related Services

Services shall include, but not be limited to:

- Order fulfillment from order placement through delivery of license
- Product expertise and technical consultation on proposed solutions
- Pre-sales engineering and design support
- Implementation guidance and support
- Product and sales training
- Multi-year support contract purchases
- License tracking and reporting activity

### 4.3 No Exclusions

E&I recognizes that any one Respondent may not provide all product lines. No systems, products, or services have been excluded from this RFP. All product, supplies and accessories carried in a Respondent's catalog(s), price book(s) or otherwise available by special order are part of this solicitation.

## 5. Supplier Performance Expectations

### 5.1 Report of Sales

The Supplier is required to file a monthly report of sales (in U.S. Dollars) to E&I by Member institution to include its divisions, subsidiaries and affiliates (the "Report of Sales"). The Report of Sales shall include all of the required fields in the Vendor Reporting File ("VRF"). The report from the Supplier shall include all sales to E&I members which the supplier invoiced during the prior month. The Report of Sales is due no later than ten ([ Number of Days VRF Due Past Period End ]) days following Month End. All reports shall be sent via e-mail in the required format to [vrf@eandi.org](mailto:vrf@eandi.org) and [[ Contract Managers ]] (Insert Contract Manager email address). The Supplier shall notify E&I when a change in personnel is made and provide updated contact information using the same email addresses.

All sales, regardless of method, shall be included in the total report of total U.S. dollar sales to Education by institution. Any and all cash discounts/rebates shall have no effect on the reporting and payment of the CAF. All cash discount/rebate activity shall be reported to E&I. If Supplier proposes that E&I distribute rebate payments directly to its Members, Supplier shall provide E&I with a rebate activity report that separates member rebate payments from CAF payments.

### 5.2 Contract Administrative Fee (CAF)

The Supplier shall provide to E&I a Contract Administrative and Marketing Fee (CAF) of 2% (to be negotiated) of total invoice price for all orders placed by E&I members, including their divisions, subsidiaries and affiliates. The CAF shall be calculated monthly and, include all sales invoiced during the prior month, as per the corresponding Report of Sales. The CAF rate shall remain constant regardless of any and all pricing methods utilized by the member, special quotes pricing, all services including value added services and/or use of Supplier Diversity programs.

The CAF shall be transmitted via EFT or by check to E&I on a monthly basis no later than ten ([ Number of Days CAF Due Past Period End ]) days following Month End. Failure to submit the CAF as specified shall result an interest charge of 1½% per month levied upon Supplier until the CAF is paid in full.

Supplier's failure to submit the CAF and/or Report of Sales when due shall constitute grounds for E&I's termination of the Agreement.

As per the Holdover Clause described in Section B37 of the General Terms and Conditions of the Master Agreement, Supplier shall continue to submit the CAF and supporting Report of Sales for the duration of the holdover period.

### 5.3 Effect on Termination

If either party hereto should terminate the Master Agreement for any reason other than the other Party's breach of that Agreement or this Supplemental Agreement, Supplier shall remain liable to E&I for all CAF owing up to and including the effective termination date of the Master Agreement. If Supplier agreed to an annual minimum sales volume commitment/guarantee and the CAF on actual sales up to and including the effective termination date of the Master Agreement is less than the guaranteed CAF, Supplier shall be liable to pay E&I the guaranteed CAF on a prorated basis from the beginning of the annual period specified herein up to and including the effective termination date of the Master Agreement.

### 5.4 Agreement Audit

E&I may, at any time during the term of this Agreement and for a period of three (3) years after the receipt of the last Report of Sales and payment of CAF covering the period through the date of termination, audit the Supplier's records pertaining to its compliance with the terms of this Agreement. An audit may be scheduled or announced by providing the Supplier a minimum of five (5) business days' advance written notice. Every effort will be made to arrange a mutually convenient time for the audit but in no event shall an audit be delayed more than twenty (20) business days from the date of notice, unless agreed to by E&I in its sole discretion. The audit will be conducted by E&I and/or its designee. Supplier will provide E&I with access to records, sufficient workspace and staff support to facilitate an audit. E&I's audit may include, but is not limited to, product compliance, member pricing, order processing, order fulfillment, delivery, terms and conditions, invoicing, rebate calculations where applicable, accuracy and timeliness of submitted Reports of Sales and the related CAF, and any other reports or payments required under the terms of this Agreement. Any deficiencies or errors shall be corrected within ten (10) business days of E&I notification to the Supplier. If the discrepancy is greater than 5% from amounts reported, the cost of the audit shall be paid by the Supplier.

### 5.5 Marketing and Sales Responsibilities – E&I

- E&I will create ongoing member awareness of the E&I Portfolio of Products and Services via online and direct marketing, marketing communications, and face-to-face interactions with members, social media and other venues as appropriate.
- Upon commencement of Master Agreement, E&I will notify all members and make specific contract information available online.
- E&I's field team of Member Relations Executives will identify and share sales leads as appropriate and assist with Supplier sales activities when possible and in a variety of ways.
- E&I will make a Business Development Executive (BDM) available to Supplier to facilitate the execution of the business development plan, including sales training about E&I.
- E&I will share relevant market intelligence it gathers through surveys, etc.

### 5.6 Marketing and Sales Responsibilities – Supplier and E&I

Joint Responsibilities – Supplier in collaboration with E&I shall jointly:

- Develop, approve and implement a business development plan to include Contract Performance, Marketing & Communications, Sales, Accounting Reporting and Contract Management related initiatives to be reviewed on a scheduled basis
- Establish and maintain member relations
- Collaborate to identify leads and opportunities, develop key target lists and leverage existing relationships to build membership and business
- Make sales calls to members, as appropriate

### 5.7 Marketing and Sales Responsibilities – Supplier

- A. Education Sales Activities – Supplier is responsible for Education sales activities which may include:
  - Understanding Education buying procedures and practices
  - Providing manufacturer specific marketing materials as necessary
  - Guiding and assisting the member in the purchasing, receipt and use of the manufacturer's product and/or services
- B. Additional Business Services – Supplier shall, at its own expense, provide to E&I:
  - A comprehensive "go-to-market" plan, detailing the role of Master Agreement in Supplier's Education market strategy and how Supplier intends to leverage the E&I Agreement to build and expand Education business.
  - A dedicated Education Agreement Administrator able to act with full authority. The Education Agreement Administrator shall meet with appropriate E&I representatives on a scheduled basis to discuss and measure marketing strategies, performance, Report of Sales, CAF and other Agreement related issues.
  - A contact list of dealers, agents, account representatives and service assistants with experience and knowledge Master Agreement. Supplier will provide initial and ongoing training and awareness of the E&I Agreement to all inside and outside sales representatives as well as to its distribution chain, including quarterly meetings at corporate headquarters, call centers, regional offices, etc.
  - Initial and continuing member-based customer service and order problem resolution.
  - Descriptive product marketing literature, catalogs, and product price schedules, links to Supplier's website, content for "micro-site" on E&I website, e-mail communications, articles for inclusion in the electronic monthly newsletters, and on the E&I website.
  - E&I staff contract rollout training and follow-up training sessions as required, to include training webinars, conference calls and on-site training as appropriate to educate E&I employees of Supplier's member offerings.
- C. Marketing Opportunities
  - E&I encourages participation, annually and throughout the term of Master Agreement as an exhibitor at the annual NAEP Meeting and Product Exhibition. For additional information on the conference, please visit the NAEP website at [www.naepnet.org](http://www.naepnet.org).
  - E&I encourages participation, annually and throughout the term of Master Agreement upon notification, at NAEP regional meetings, member town meetings, member regional meetings, member on-campus supplier fairs and member presentations.
  - E&I encourages participation, annually and throughout the term of Master Agreement at applicable product exhibitions and conferences.

### 5.8 Supplier Commitment

- A. Corporate Commitment – Supplier commits that Master Agreement with E&I:
  - Shall be the Supplier’s primary (go to market) offering for Education
  - Has the support of the Supplier’s senior management
  - Has the support of Supplier’s sales team
  - Shall be promoted to Supplier’s existing Education clients
- B. Pricing and Product Commitment – Supplier commits that Master Agreement with E&I:
  - Shall be the lowest available pricing (net to buyer) to Education
  - Shall provide products and services that meet or exceed member requirements
- C. Sales Commitment – Supplier commits that Master Agreement with E&I:
  - Shall be marketed by Supplier as their go to market offering
  - Shall be enhanced by Supplier’s sales force which is trained, engaged, and committed to the success of the program
- D. Legal Commitment – The Supplier will commit that its awarded Agreement with E&I:
  - Shall comply with all federal laws and regulations
  - Shall comply with all state and local laws and regulations



## 6. Master Agreement Template

Upon award each successful Respondent will sign an Agreement with E&I to sell products and/or services. The Agreement will incorporate all the terms and conditions indicated in the following template, pricing, specifications, and requirements of the RFP.

### *Master Agreement*

This Master Agreement (the “Agreement”) is effective as of [[ Start Date ]] by and between [[ Name (Primary Second Party) ]], a corporation with offices located at [[ Street Line 1 (Primary Second Party) ]], [[ City/Town (Primary Second Party) ]], [[ State/Province (Primary Second Party) ]] [[ Postal Code (Primary Second Party) ]] (hereinafter referenced as the “Supplier”), and Educational and Institutional Cooperative Services, Inc., a New York non-profit corporation with offices located at 2 Jericho Plaza, Suite 309, Jericho, NY 11753 (hereinafter referenced as “E&I”).

This Agreement has been established based on RFP#<insert #> for <insert RFP Name>, all addenda, Supplier response, best and final offer, and negotiations.

#### **I. Scope**

This <insert Regional and/or National> agreement shall apply to all E&I member institutions <Insert if Regional: the following States; <insert applicable States>> (as listed in the Official Member List, as updated from time to time, to be provided to the Supplier), its divisions, subsidiaries and affiliates. In addition, if E&I elects to participate in the Agreement, they shall be considered a member.

This Agreement does not constitute a purchase order or a commitment to purchase products and/or services by E&I or its members. Any purchases made under this Agreement shall be made by the individual participating member institutions and any resulting contract shall be between the member and the Supplier.

#### **II. Term of Agreement**

The Agreement term will be for <insert number of years> (x) years, effective [[ Start Date ]] through [[ End Date ]], with <insert number of renewals> (x) <insert number of years> (x) year renewal(s). Prior to the end of the initial term, and for each successive term, the program will be evaluated in overall context and performance. Exercise of any renewal will require formal written notification and mutual agreement between E&I and Supplier at least one (1) year prior to Agreement expiration.

#### **III. Pricing**

The pricing/discount percentage for the products and/or services as listed on Attachment A shall be applicable to all purchases made under this Agreement. Price changes are <insert how often, # of day of advance notice, etc.> as identified in Attachment A. Percentage discounts off Supplier’s list price shall remain firm for the life of the Agreement unless improved for the benefit of the membership. Supplier is authorized to offer members enhanced pricing on a case-by-case basis or under a Member Specific Agreement (“MSA”) and both shall be considered part of this Agreement.

#### **IV. EDGAR Provisions**

Supplier certifies compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances as acknowledged in Attachment C, EDGAR Certifications.

#### **V. Terms and Conditions**

Unless otherwise superseded by the terms and conditions of the contracting member institution, the terms and conditions contained herein shall apply to all purchases made under this Agreement. Any terms and conditions of any Supplier invoice or acknowledgment form which are inconsistent with the terms and conditions of this Agreement shall have no effect.

#### **VI. Entire Agreement**

This Agreement together with the Attachments annexed hereto, constitutes the entire agreement between the parties and except as set forth in paragraph B37 hereof supersedes all prior agreements whether written or oral between the parties. Documents subject to Freedom of Information Act may only be released after execution of this Agreement.



**VII. Member List**

The Official list of E&I member institutions will be sent to the Supplier via an electronic file from E&I Member Relations upon execution of this Agreement is signed.

**VIII. Signatures**

In witness whereof, the parties have executed this Agreement and do hereby warrant and represent that their respective signatories whose signatures appear below have been and are on the date of this Agreement duly authorized to execute this Agreement.

Each Party agrees that the electronic signatures whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

\_\_\_\_\_  
[[ Name (Primary Second Party) ]]  
Supplier

\_\_\_\_\_  
E&I Cooperative Services, Inc

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Attachment A

### <Pricing/Discount> Schedule

<Insert pricing language, price lists or reference as separate exhibits, Include applicable relevant terms>

## Relevant Terms

### A1. Customer Support

Supplier shall provide a single point of contact plus a backup for each member. This individual may support multiple members. Members shall have access to their corresponding customer service representative during normal business hours of every business day (8am to 5pm ET).

### A2. Orders

All terms and conditions of an individual member's standard procurement terms for ordering may apply. With each ordering occurrence, it is mutually agreed that the Supplier's notice of acceptance shall create an agreement between the parties thereto containing all specifications, terms and conditions of the Agreement, to the extent that the terms and conditions are not inconsistent with the Members' terms and conditions

### A3. Invoices and Payment

Invoices shall be directed to the appropriate location(s) specified by the member. Invoices and payment terms must comply with the requirements of each member. The member placing the order with the Supplier shall alone be liable or responsible for payment for products and/or services ordered and will be invoiced direct by the Supplier. Neither E&I nor its other members shall be liable for the indebtedness of any one member.

If a member does not specify payment terms, the default payment term for members shall include invoicing at time of billing or delivery completion, whichever is later. Payments would then be made within thirty (30) days after receipt of a valid invoice or delivery, whichever is later.

Cash discounts for prompt payment may be offered to any member from the date of receipt and acceptance of products or the invoices, whichever is later. Supplier is encouraged to offer/propose cash discounts for expedited payment of invoices rendered under this Agreement. Negotiated cash discounts with member institutions for aggregated billing (monthly/bi-weekly, etc.) may be negotiated on an individual basis.

### A4. Order Fulfillment, Distribution and Installation Agreements

Order Accuracy rate shall be maintained at 98% or greater. Order Accuracy rate is defined as "the number of items delivered as ordered divided by the total number of items ordered."

Order Fill rate shall be maintained at 95% or greater. Order Fill rate is defined as "the number of items on an order filled completely as ordered divided by the total number of lines on an order."

Supplier, within twenty-four (24) hours after receiving a purchase order, shall notify the member of any potential delivery delays. The following information regarding backorder(s) shall be provided to the member:

- PO Number, if applicable
- Item ID
- Item Name & Description
- Reason for shortage
- Plan of action (when delivery may be expected or suggested replacement)

Members may have their own order fulfillment/distribution/installation agreements with a third party agent or distributor. The terms and pricing of this Agreement are passed through to the member and separate from any additional distributor terms and conditions, fees or markups resulting from members' separate fulfillment/distribution/installation agreements.

#### **A5. Delivery**

Deliveries to members range from, but are not limited to: (1) one central receiving location, (2) multi-campus locations, (3) campus building(s), or (4) department(s). Frequency of delivery may range from: (1) daily, (2) weekly, (3) monthly, or (4) as needed to assure that institutions' needs are met. Delivery may be based on storeroom delivery, Just-in-Time agreements, drop shipments, and delivered and installed.

Normal delivery of orders must be accomplished at established times as set by the member. On-time delivery shall be maintained at 95% or greater. On-time delivery is defined as delivery of order within the specified delivery time frame after the placement of order. Orders will be defined as late without approved notification. The Supplier shall have the capability of expediting the delivery of orders to assure no shortage of product during installation.

Title and risk of loss shall pass to the member at the F.O.B. destination point or after installation by authorized dealer/representative. The title and risk of loss of the products shall not pass to a given member until receipt and acceptance of the products at the point of delivery and or installation. The products furnished shall be delivered:

##### ***F.O.B. Destination, Full Freight Allowed (Supplier pays freight)***

Selection of a carrier for shipment will be at the Supplier's option unless otherwise specified by the member. If special delivery or handling charges are applicable, they shall be pre-approved by the order initiator.

The Supplier shall maintain records evidencing the delivery of products and upon request by the member provide such proof of delivery.

#### **A6. Member Specific Agreement (MSA)**

Member and Supplier may enter into a separate member specific agreement to further define the level of service requirements over and above the minimum defined in this Agreement, e.g., invoice requirements, ordering requirements, on campus service, specialized delivery, etc. Any member specific agreement developed is exclusively between the member and Supplier. E&I, its agents, and employees shall not be made a party or parties to any claim for breach of such agreement.

#### **A7. Third Party Subcontractors**

In the event that Supplier chooses to subcontract any service or delivery of the products under the terms herein, Supplier shall fully warrant prompt performance of the subcontractor in a fully complete, workmanlike manner customary to the trade. Failure by the subcontractor to perform in a timely manner as specified above shall not relieve Supplier of its obligations to make complete timely delivery of products, supplies or service at no additional cost to the member.

#### **A8. Substitutions**

No substitutions of alternate items for products ordered are permitted without the express prior written approval of the member. Any and all remanufactured or refurbished products are not acceptable, in lieu of a new product, unless authorized in writing by the member.

#### **A9. Minimum Orders**

Supplier shall specify any minimum order charge or conditions under which the established price will be adjusted. It is preferred there not be a minimum order quantity or charge.

#### **A10. Supplemental Charges**

Supplier shall be required to state all supplemental charges that may be assessed in addition to the pricing for the products and/or services provided including additional shipping charges, cost of products, delivery, freight fuel surcharges, installation or any other charges incurred by the member. If Supplier offers multiple pricing options (i.e. drop ship, inside delivery, delivered and installed) they shall be specified herein. Notwithstanding the foregoing, Supplier shall not assess any type of transaction/convenience fee for the acceptance of a credit card as a method of payment.

#### **A11. Emergency Purchases**

Members reserve the right to make purchases of items included under this Agreement when emergency conditions exist. All emergency purchases shall be reported as regular sales to E&I.

#### **A12. Tracking Lost and Damaged Shipments**

If Supplier fails to deliver, or erroneously delivers products, Supplier shall take immediate corrective action to make the correct delivery at no cost to member.

Should any action on the part of the Supplier or a subcontractor cause visible damage to the facilities during transport, the Supplier shall immediately contact member and forward a confirming damage report detailing the damages. Supplier shall track all shipments and provide order status to members.

#### **A13. Returns – Defective and Non-Conforming Products or Services**

If any products or services furnished under the Agreement are defective or non-conforming, or fail to meet warranties, specifications or any other provisions of the Agreement or member's purchase order, any of the following remedies shall be available to the member:

- Repair and Replacement: Supplier shall promptly repair, replace, or correct non-conforming or defective products and services at the Supplier's own expense.
- Cancellation: member may cancel an order or any part thereof or any undelivered portion thereof without incurring any liability to Supplier and any payments made by member for products or services purchased shall be refunded by the Supplier and/or its agents.
- Like-for-Like: Like-for-like equipment throughout the entire term of the contract maintenance or warranty shall be provided at no cost to the member in the event that the equipment experiences excessive down-time or fails to maintain acceptable quality standards.
- Removal: Supplier shall remove such products at its own expense and if the Supplier fails to remove such products, member may return all or any portion of such products at the expense of Supplier.
- Risk of Loss and Storage: All products shall be held at Supplier's risk and the Supplier shall pay all expenses incurred including storage costs.
- Supplier Liability: The Supplier shall be liable for any and all losses, claims, expenses, (including reasonable attorney's fees and court costs) and other incidental and consequential damages resulting from such failure to meet all the requirements of this Agreement and/or a member order.
- Products under warranty. The decision to replace such products or accept warranty repair shall be at the sole discretion of the member except in the event the member fails to provide timely notice of product failure to the Supplier.
- After the Warranty Period: After the warranty period, the Supplier is responsible to make sure that service agreements are available to the member. The Supplier, the manufacturer or an authorized third party may provide the maintenance.

#### **A14. Reasons for Return or Credit**

The Supplier shall accept the following as reasons for return or credit:

- The product is defective or nonconforming.
- The product is incorrectly ordered or shipped. The product is received as an overage or the order is duplicated and shipped in error and the overage is noted on the shipping document(s).
- The product receipt is late or delayed and because of the late or delayed delivery is deemed in good faith by the member to be unusable or no longer needed.

Supplier and/or its agents will issue credit with waiver of any claims against member.

#### **A15. Restocking Policy**

Supplier shall not impose a restocking fee on member under the following circumstances:

- Item is returned due to damage, incorrect product shipped, or Supplier customer service order entry error.
- Inventory is returned within 24 hours of delivery.
- Inventory is returned, but exchanged for other inventory.

Re-stocking fees for all other reasons can be no greater than 10% of the value of the items needing re-stocking.

#### **A16. Warranty and Product Condition of Sale**

At a minimum, there shall be a three (3) year warranty from the date of delivery to include parts, labor and travel. For third party providers, the manufacturer's standard warranty shall apply. Lifetime warranties shall remain in force regardless of whether the resulting agreement is still in place.

Supplier may offer a warranty that clearly illustrates an improvement to the manufacturer's standard warranty and benefit to the member. Supplier shall track the product warranty for all products sold to member. Loaner products shall be made available while member's equipment is out for warranty repair.

Supplier certifies and warrants that all products sold to members shall be:

- New and genuine
- Free from defects in content and materials
- Provided as per manufacturer's requirements
- Sold or manufactured via legal and reputable channels
- Not misbranded

**A17. New and Discontinued Products**

The Supplier shall, at least thirty (30) days prior to their introduction or discontinuance, notify E&I and the membership of any new or discontinued products. Unless noted otherwise the discount and pricing established for new products will be equal to the pricing structure proposed. If the Supplier offers a different discount structure for new products then a separate category of "New Products" pricing should be added to the proposed discount structure on appropriate attachment. In such a case, the Supplier shall clearly indicate the number of months products are considered as "new products."

**A18. Business Review Meetings**

In order to maintain a partnership between the member and the Supplier, members may require business review meetings. These meeting shall be held on a quarterly basis, if not more frequently. The business review meeting shall include, but not be limited to, the following:

- Review of Supplier performance
- Review of minimum required reports (as described in the following section)

**A19. Reporting**

At a minimum, the following reports shall be provided to members, as requested, in an electronic format on a quarterly basis:

- Total orders year to date, including item ID, item description, unit of measure, total quantity ordered, total quantity shipped, sales price, list price, total sales price (total quantity shipped x sales price), method of payment, department
- Overall order accuracy and fill rates
- Number of orders returned due to Customer error
- Total re-stocking charges (\$) applied
- Number of orders returned due to Supplier error
- Total dollar value of surcharges, transaction fees, delivery charges, and other misc. charges
- Current market updates, i.e. company news, systems failures, product recalls, etc.

**A20. Employee Purchase Program**

Supplier may offer discounted products to members' students, faculty and staff for personal purchases. If offering an Employee Purchase Program, Supplier shall describe how it intends to protect members from liability from personal purchases made by students and employees.

**A21. Samples**

If requested, Supplier shall provide samples of the products for evaluation free of charge. The quantity of any sample requested will be reasonable but sufficient to undertake an appropriate evaluation.

## **Attachment B**

### **E&I General Terms and Conditions**

#### **B1. Interpretation, Enforcement and Forum of Laws**

For disputes between the member and Supplier, this Agreement shall be governed by, construed, interpreted, and enforced solely in accordance with the laws of the state in which the member resides and the venue of any action shall lie in such state.

For disputes between E&I and Supplier, this Agreement shall be governed by, construed and interpreted solely in accordance with the laws of the State of New York, and the venue of any action shall lie in the appropriate federal or state courts located in the State of New York.

#### **B2. Compliance with Laws**

Supplier warrants and certifies that in the performance of this Agreement, it has complied with and will comply with all applicable federal, state, and local laws, statutes, rules, regulations and orders, including but not limited to, laws and regulations pertaining to labor, wages, hours and other conditions of employment.

#### **B3. Funding Provided by Federal Contracts or Grants**

Where Federal Contracts or Grants provide funding to members, it is the responsibility of the Supplier and the member to comply with all Federal Acquisition Regulations (FAR) and Educational Department General Administrative Regulations (EDGAR) applicable laws and regulations by completing any certifications and disclosures and any other requirements.

#### **B4. Insolvency**

In the event of any proceedings in bankruptcy or insolvency by or against Supplier, or in the event of the appointment (with or without its consent) of an assignee for the benefit of creditors, or a receiver, E&I may cancel this Agreement without prior notice and without incurring any liability whatsoever to Supplier.

#### **B5. Assignments**

Supplier shall not assign this agreement or any of Supplier's rights or obligations hereunder, without E&I's prior written consent. Any purported assignment made without E&I's prior written consent shall be void and of no effect.

#### **B6. Resale**

If E&I and/or member purchase any products for resale, the customer shall have the benefit of every right, warranty, and interest enjoyed by E&I and/or member.

#### **B7. Patent Trademark and Copyright Infringement**

The Supplier warrants that the products/services hereby sold, either alone or in combination with other materials, do not infringe upon or violate any patent, copyright, trademark, trade secret, application or any other proprietary right of any third party existing under laws of the United States or any foreign country. The Supplier agrees, at its own expense, to defend any and all actions or suits alleging such infringements and will hold E&I, its officers, agents, servants, employees and members harmless from any and all losses, expenses, claims or judgments, including reasonable legal fees, arising out of cases of such infringement.

#### **B8. Use of Name, Logos, etc. in Advertising**

Supplier agrees not to make reference to this Agreement or use the logo of E&I or any of its members in any advertising material of any kind without the expressed written permission of the party involved. E&I agrees not to make reference to this Agreement or use the logo of Supplier in any advertising and marketing materials of any kind without the expressed written permission of the Supplier.

#### **B9. Transactions between Supplier and E&I Member**

The purchase of products and/or services by a member from Supplier is a transaction solely between member and Supplier. Supplier acknowledges that E&I makes no representation or commitment that any quantities will be purchased or services utilized and agrees that E&I shall have no liability relating to member decisions to purchase or not purchase Supplier products or to use or not use Supplier services. It is understood and agreed that if any litigation arises between Supplier and any E&I member, Supplier shall not make E&I a party to that litigation. A violation of this provision shall be deemed a material breach of this Agreement warranting termination by E&I, and Supplier agrees to indemnify E&I against and hold it harmless from all costs associated with such litigation, including reasonable legal fees.

**B10. Education Pricing/Pricing Parity**

The Education pricing, terms and conditions established under this Agreement are to be equal to or better than those offered to other cooperatives or comparable consortiums serving higher education. If, during the term of this Agreement, Supplier offers more overall favorable terms and conditions or prices to other cooperatives or comparable consortiums, Supplier agrees to notify E&I in writing. Supplier agrees to immediately amend the agreement to reflect the more overall favorable terms, conditions or prices. E&I must be notified of any proposed changes thirty (30) days prior to their implementation.

**B11. Responsibility for Damage Claims**

The Supplier shall hold harmless E&I and the member from all suits, actions or claims brought on account of any injuries or damages sustained by any person or property as a consequence of any neglect in safeguarding the work by the Supplier; or from claims or amounts arising or recovered under the "Workman's Compensation Law" or any other laws. Supplier shall be responsible for all damage or injury to property occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on its part or on the part of any of its employees, in the manner or method of executing the work; or from its failure to execute the work properly; until all claims have been settled and suitable evidence to that effect furnished to E&I and the member.

**B12. Protection of Property and Liability**

The Supplier shall take care not to damage the premises or the property of others, and in case such damage occurs as the result of operations under this contract, Supplier shall make appropriate restitution. If the Supplier fails to pay for damage, the amount of such damage may be deducted from any remaining balance due to the Supplier or may be processed as a breach of contract to the full extent the law allows.

**B13. Indemnification of E&I and Member**

Supplier agrees to indemnify and hold harmless E&I and its members from and against all liability, to the extent of and in proportion to, losses, damages, claims, liens, and expenses (including reasonable legal fees) arising out of or connected with the products purchased, work or services performed, or resulting from property damage or injuries incurred by or to any third party, the member or its officers, agents, servants and employees by reason of any defect in manufacture, construction, inspection, delivery, material, workmanship, and/or design of any products and services furnished hereunder, excepting only such liability as may result solely from the acts of negligence of the member, E&I or its employees. Supplier, at the request of the Member and/or E&I, shall undertake to participate fully in the defense of the Member (in accordance with the statutes of the State where the Member resides) and/or E&I against any and all suits and to investigate and participate fully in the defense of the Member (in accordance with the statutes of the State where the Member resides) and/or E&I against any and all claims whether justified or not, if such claim or suit is commenced against Member or E&I, or their respective officers, agents, servants, and employees.

**B14. Insurance**

If fabrication, construction, installation, service or other work is specified to be conducted on member's premises, Supplier shall maintain in force during the period of such work the following coverages: (a) worker's compensation, as required by the laws of the State of member; (b) commercial general liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence; (c) automobile liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence. Supplier shall provide a certificate of insurance naming E&I and member as additional insureds. Upon request, Supplier shall furnish to E&I satisfactory proof of such insurance coverage.

Individual members may require coverage in addition to the above limits. If the need for additional coverage develops, it will be the responsibility of the member to arrange for such coverage with the Supplier. Supplier shall furnish to member satisfactory proof of such insurance coverage prior to commencement of the work.

**B15. Licenses/Permits/Taxes and Tax Exempt Status**

Supplier shall be responsible for obtaining all permits, licenses and bonding, to comply with the rules and regulations of any state, federal, municipal or county laws or any city government, bureau or department applicable and assume all liability for all applicable taxes.

E&I is a non-profit corporation. Members are 501(c)(3) corporations but have varying requirements to either pay or are exempt from state sales tax.

All prices listed and discounts offered are exclusive of all taxes. Supplier shall collect all taxes in connection with the sale, delivery or use of any items, products or services included herein from member or from E&I (if for the purpose of resale), at the taxable rate in



effect at the time of invoicing. Supplier shall comply with the state sales tax requirements of each member. If sales to member are exempt from such taxes, member shall furnish to Supplier a certificate of exemption in form and timeliness acceptable to the applicable taxing authority.

**B16. Americans With Disabilities Act and Rehabilitation Act**

Supplier shall comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973 and applicable federal regulations. All electronic and information technology and products and services to be used by E&I member institutions' faculty/staff, students program participants or other constituencies must be compliant with the Americans With Disabilities Act and Section 508 of the Rehabilitation Act of 1973, as amended from time to time. Compliance means that a disabled person can acquire the same information, engage in the same interactions and enjoy the same services as a nondisabled person, in an equally effective manner, with substantially equivalent ease of use.

**B17. Compliance with Immigration Reform and Control Act of 1986**

Supplier is aware of, is fully informed, and in full compliance with its obligations under the Immigration Reform and Control Act of 1986. Supplier shall be responsible for assuring that all persons engaged in the performance of work hereunder are authorized to work as required by the Act in both its present form and any future requirements passed under said Act.

**B18. Alcohol, Tobacco & Drug Rules and Regulations**

Employees of the Supplier and its subcontractors shall comply with all instructions, pertaining to conduct and building regulations of the members. The member reserves the right to request the removal or replacement of any undesirable employee at any time.

All buildings on the member's grounds are tobacco-free. Use of tobacco products is not permitted in any area inside member's buildings. The Supplier shall comply with this tobacco-free policy. The Supplier agrees that in the performance of this Agreement, neither the Supplier nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including alcohol, in conducting any activity covered by this Agreement. E&I and the member reserve the right to request a copy of the Drug Free Workplace Policy. The Supplier further agrees to insert a provision similar to this statement in all subcontracts for services required.

**B19. Non-Appropriation of Funds**

An order by a member may be cancelled due to non-appropriation of funds. This funding out clause is required by several states and can be for non-appropriation of State and Federal funds.

**B20. Weapons, Explosive Devices and Fireworks**

Supplier agrees that neither its employees or agents nor its subcontractors, their employees or agents shall use, possess, display or store any weapon, explosive device or fireworks on all land and buildings owned, leased or under the control of E&I member institutions or their affiliated or related entities, unless written permission is given by the commanding officer of the member's police department or a designated representative. Notification by Supplier to all persons or entities who are employees, agents, officers, subcontractors, consultants, guests, invitees or licensees of Supplier ("Supplier Notification Parties") is a requirement of this Agreement. Supplier further agrees to enforce this requirement against all Supplier Notification Parties.

**B21. Equal Opportunity and Non-Discrimination**

The parties will comply with all applicable federal and state laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and non-discrimination, including but not limited to the Americans with Disabilities Act.

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The provisions of Section 202 of Executive Order 11246.41 CFR 60-1.1 CFR 60-250.4 and 41 CFR 60-741.4 are incorporated herein by reference and shall be applicable to this Agreement unless this Agreement is exempted under the rules, regulations, or orders of the U.S. Secretary of Labor.

If applicable, the parties will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that

covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**B22. Sexual Harassment**

Title IX protects individuals from discrimination based on sex, including sexual harassment. E&I fosters an environment that is built on respect and free of sexual harassment. Federal law and the policies of E&I prohibit sexual harassment. Supplier is required to exercise control over its employees so as to prohibit acts of sexual harassment. If a member in its reasonable judgment determines that any employee of Supplier has committed an act of sexual harassment, Supplier agrees as a term and condition of this Agreement to cause such person to be removed from member's facility and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

**B23. Employee Documentation**

At any time during the term of the Agreement, a member may require Supplier to provide a complete dossier of each employee who has been given an assignment at the member institution. This may include employment history, education, job references, certificates and licenses, conviction records and documentation of random drug testing.

**B24. Expropriation**

Suppliers should indicate if, by any existing agreement with any party, its operations, delivery vehicles and or personnel can be in any way expropriated or annexed. If such an agreement exists, supplier should indicate when this agreement or those terms will expire.

**B25. Hazardous Materials and OSHA Communication Standards**

The Supplier shall be responsible for providing Material Safety Data Sheets (MSDS) to the appropriate user(s). The Supplier shall retain title and/or ownership and responsibility for hazardous materials delivered in error. Within three working days of notification, the Supplier shall retrieve hazardous materials that are delivered in error. The Supplier shall safely and legally dispose of all hazardous materials generated in the performance of this Agreement. In addition, the Supplier shall provide its employees with chemical safety training mandated by OSHA Hazard Communication Standard. The Supplier shall provide E&I and its members with safety/recall updates for any equipment/products provided.

**B26. Compliance with Specifications**

The Supplier warrants that all products supplied under this Agreement shall conform to specifications, drawings, samples, or other descriptions contained or referenced herein, shall be merchantable of good quality and workmanship and free from defect. The Supplier also warrants that all products covered by this Agreement which are the product of the Supplier or are in accordance with its specifications, will be fit and subject to the member's inspection before acceptance, and also to later rejection if use reveals defects not apparent upon receipt; and if rejected will be held at Supplier's risk and expense for storage and other charges; after 60 days of storage, products may be disposed of without cost to member, at Supplier's expense. Neither receipt of products nor payment therefor shall constitute a waiver of this provision.

Supplier also warrants that all of the services to be performed under this Agreement shall be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform, that Supplier owns or has sufficient rights in all products and services to be delivered by Supplier, that the products and services delivered by Supplier will not infringe upon or violate any intellectual property of any third parties, and that any code or software developed or delivered by Supplier under this Agreement will not contain any viruses, worms or other disabling devices or codes.

**B27. Gratuities**

E&I may, by written notice to Supplier, cancel the Agreement if it discovers that gratuities, in the form of entertainment, gifts or the like, were offered or given by Supplier to any officer or employee of E&I or any member with a view toward securing an agreement or securing favorable treatment with respect to the awarding of this Agreement.

**B28. Covenant Against Contingency Fees**

Supplier certifies that it has neither offered nor paid a contingency fee to any individual, agent, employee of E&I, or employee of any member to secure or influence the decision to award this Agreement to Supplier.

**B29. Suspension or Debarment**

Supplier certifies that it is presently not debarred, suspended, proposed for debarment, declared ineligible, is not in the process of being debarred, nor is voluntarily excluded from covered transactions by any federal department or agency.

E&I may, by written notice to the Supplier, immediately terminate the Agreement if it is determined that the Supplier has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor by any public procurement unit or other governmental body.

Supplier certifies that the Supplier and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, that Supplier is in compliance with all applicable State statutes and rules relating to procurement, and that Supplier is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

**B30. Conflict of Interest**

In order to avoid even the appearance of any conflict of interest, neither E&I nor Supplier shall employ any officer or employee of the other party for a period of one year from the date hereof.

**B31. Strikes or Lockouts**

In the event Supplier should become involved in a labor dispute, strike or lockout, Supplier will be required to make whatever arrangements that may be necessary to ensure that the conditions of this Agreement are met in their entirety. Should the Supplier be unable to fulfill its obligations under this Agreement, E&I and/or member shall have the right to make alternative arrangements to ensure the satisfactory performance of the Agreement during the time Supplier is unable to perform the required duties. Any costs incurred by E&I and/or any member, as a result of such job action, shall be reimbursed by the Supplier.

**B32. Force Majeure**

Neither party shall be held responsible for delays, failures or any losses resulting from the performance of the terms of this Agreement where such performance is outside of the performing party's control by exercising reasonable diligence and which such party is unable to prevent. Such delays, failures or loss may include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, riot, war, act of terrorism, freight embargo, or failure of a public regulated utility or governmental statutes or regulations superimposed after the fact (Force Majeure). The performing party shall be released without any liability on its part from the performance of its obligations under this Agreement, but only to the extent and only for the period of time that its performance of such obligations is prevented by circumstances of Force Majeure and provided that such party shall have given notice to the other party within forty-eight (48) hours of the commencement of the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause, and its possible consequences. The party claiming circumstances of Force Majeure shall promptly notify the other party of the conclusion of the event.

**B33. Modification of Terms**

No waiver or modification of any of the provisions hereof shall be binding unless mutually agreed upon by E&I and the Supplier, in writing, with signatures of authorized representatives of all parties authorizing said modification.

**B34. Termination for Convenience**

E&I may terminate this Agreement for any reason (convenience) without penalty or liability of any kind by delivering not less than one hundred eighty (180) calendar days prior written notice thereof to the Supplier.

**B35. Termination for Default**

E&I will notify the Supplier upon discovery of a breach of this Agreement. E&I may terminate this Agreement immediately upon the breach of this Agreement by Supplier by delivering written notice to Supplier, or if such breach is capable of being cured, E&I shall notify the Supplier in writing of such breach and demand that the same be cured within fourteen (14) calendar days. Should the Supplier fail to cure the same within said period, E&I shall then have the right to terminate this Agreement at the end of the fourteenth (14<sup>th</sup>) day. A notice will be sent to the Supplier to confirm the termination.

The failure of E&I on behalf of its members to exercise its rights of termination for cause due to Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights in any other instance.

**B36. Continuation of Performance Through Termination**

Supplier shall continue to perform, in accordance with the requirements of this Agreement, up to the date of termination, as directed in the termination notice.

**B37. Holdover Clause**

This holdover clause authorizes Supplier to continue to provide products and services pursuant to any quotation, purchase order, or MSA executed prior to the expiration or termination of this Agreement. The term of this Agreement shall then automatically extend through the final invoice date or expiration of the MSA. The terms and conditions specified herein shall remain in effect for the duration of the holdover period.

**B38. Independent Audit**

Members may, for a period of three years after expiration of this Agreement, audit the Supplier's records pertaining to its compliance with the terms of this Agreement. The audit will be conducted by member and/or its designee. Supplier shall provide member with access to records. The audit may address any or all of the following conditions and may not be limited to the stated conditions: product compliance, pricing, order processing, order fulfillment, delivery records, invoicing, and receipt of payment.

**B39. Open Records**

All information, documentation, and other materials submitted by Supplier in response to the solicitation or under this Agreement may be subject to public disclosure under the Freedom of Information Act and/or Open Records laws of the members.

**B40. Student Educational Records.**

Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Supplier will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from Member or as otherwise provided by law.

**B41. Strict Compliance**

The parties may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.

**B42. Limitation of Liability**

Supplier agrees that E&I shall have no liability for any lost profits, loss of revenue, loss of opportunity, loss of use, indirect damages, special damages, consequential damages, incidental damages, punitive damages or multiple damages arising out of or in connection with this agreement, regardless of any notice of the possibility of such damages and regardless of whether such liability arises in contract, tort (including negligence), or otherwise.

**B43. Letter of Participation**

E&I Members will complete an online form ("Letter of Participation") indicating their desire to purchase products and/or services offered under this Agreement. The content and format of the Letter of Participation is at the sole discretion of E&I. At a minimum, the Letter of Participation will contain the following fields: First Name, Last Name, Title, Institution Name, Business Unit, Primary Role, Phone, E-mail, and Supplier.

The Letter of Participation shall supersede any previous Member declaration for the purchase of product and services, unless otherwise specified, and will remain in effect during the term of this Agreement, including any renewals and extensions. Supplier shall provide E&I an email address and point of contact for the receipt of Letters of Participation prior to Contract Launch.

Upon receipt of the Letter of Participation, Supplier shall enroll E&I Member in its E&I program within 4 to 7 business days; credit all future purchases to E&I Member and E&I whether an existing or new client of Supplier (the effective date for this action is the date the Member submits the Letter of Participation); provide E&I Member a confirmation email message within 24 hours of its receipt of the Letter of Participation; and send E&I Member a final confirmation email message once the new or existing account(s) is/are linked to its E&I Agreement.

Notwithstanding the forgoing, Any E&I Members who are existing customers of Supplier will automatically be converted to this Agreement (unless the E&I Member elects to opt out through written notification). The effective date of this automatic conversion shall be the effective date of this Agreement.

**B44. Confidentiality**

In the course of the performance of this Agreement, either party (the “Recipient”) acknowledges that its employees may, in the performance of the Contract come into the possession of proprietary or confidential information owned by or in the possession of the other party (“Owner”). Neither party will use any such information for its own benefit or make such information available to any person, firm, corporation, or other organizations, whether or not directly or indirectly affiliated with either party without the written consent of owner or unless required by law, regulation, or accounting oversight body. “Confidential Information” means information, including hard copy or electronic form, written or oral, which a reasonable person would consider to be confidential in nature. Confidential Information does not include information that (1) becomes public through no breach of Recipient; (2) Recipient rightfully receives from a third party without restriction; (3) Recipient develops it independently or already had knowledge of such information prior to disclosure by Owner; and (4) Owner gives to any third party without confidentiality limitations. All Confidential Information will be considered trade secrets and will be entitled to all protections under the law for trade secrets. The parties’ obligations under this section will survive the termination of this Agreement.

**B45. Price Gouging Prohibited**

Supplier shall not sell goods or services which are vital and necessary for the health, safety and welfare of consumers to a member during a declared state of emergency at a price that is in excess of ten percent (10%) above the price that existed immediately prior to the declaration. A violation of this paragraph shall constitute a material breach of this Agreement and Supplier shall make prompt restitution to member of the excessive amount charged.

**B46. Notices**

Any notice to be given by any party hereunder shall be in writing, mailed by certified mail, return receipt requested, or by delivery to a reputable overnight courier with a copy thereof furnished by email to the recipient’s email address set forth below and shall be effective the earlier of (a) actual receipt or (b) five days after mailing or one day after delivery to overnight courier and shall be addressed as follows:

If to E&I:            Ian R. Robbins  
                         Vice President, Strategic Sourcing & Contract Management  
                         E&I Cooperative Services, Inc.  
                         2 Jericho Plaza, Suite 309  
                         Jericho, NY 11753  
                         irobbins@eandi.org

If to Supplier:    <contact name>  
                         <street address>  
                         <city, state, zip>  
                         <phone number>  
                         <e-mail address>



## Attachment C

### Data Security Terms

#### C1 Purpose and Scope of Application

Supplier acknowledges that, in the course of providing products and services under this Agreement, it may gain access to Member's Institutional Information and/or IT Resources (both defined below). The terms contained in this section specify Supplier's cybersecurity and risk management responsibilities when Supplier has access to Institutional Information and/or IT Resources.

Supplier agrees to be bound by the obligations set forth herein. To the extent applicable, Supplier also agrees to impose, by written contract, these same terms and conditions on any third-party retained by Supplier to provide or assist in providing the products and services to Member.

If Supplier engages in transactions with Member affiliated individuals (including but not limited to: students, staff, faculty, customers, patients, guests, volunteers, visitors, research subjects, etc.), as a benefit and result of the Agreement, Supplier must treat any data about Member affiliated individuals that Supplier creates, receives, and/or collects in the course of those transactions with the same level of privacy and security protections and standards as required of Institutional Information by the terms contained herein.

#### C2 Defined Terms

- **BREACH:** (a) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (b) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or (c) The acquisition, access, use, or disclosure of protected health information (PHI) or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA).
- **ILLCIT CODE:** (a) Any code Member would not reasonably expect to be present or operating; (b) Hidden software or functionality with adverse or undesired actions or consequences; (c) Code that replicates or transmits Institutional Information or activates operating systems or other similar services without the express knowledge and approval of Member; (d) Code that alters, damages, or erases any Institutional Information or software without the express knowledge and approval of Member; or (e) Code or apparatus that functions in any way as a: key lock, node lock, time-out, "back door," "trap door," "booby trap," "dead drop device," "data scrambling device," or other function, regardless of how it is implemented, which is intended to alter or restrict the use of or access to any Institutional Information and/or IT Resources.
- **INSTITUTIONAL INFORMATION:** Any information or data created, received, and/or collected by Member or on its behalf, as well as data and information provided to, or managed by Supplier on behalf of Member, including but not limited to: application logs, metadata, and data relating to, derived from, or generated from such data pursuant to this Agreement.
- **IT RESOURCE:** IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed or Member-owned, or a personally owned device that stores Institutional Information, is connected to Member systems, is connected to Member networks, or is used for Member business. IT Resources include, but are not limited to: personal and mobile computing systems and devices, mobile phones, printers, network devices, industrial control systems (including but not limited to: SCADA, PLCs, DPC, Operational Technology, etc.), access control systems, digital video monitoring systems, data storage systems, data processing systems, backup systems, electronic and physical media, biometric and access tokens, Internet of Things (IoT), or any other device that connects to any Member network.
- **MAJOR CHANGE:** The implementation of a change that could influence the security of an IT Resource or Institutional Information. The scope includes changes to architectures, processes, tools, metrics, and documentation, as well as changes to IT services and other configuration items. These include changes related to:
  - technology upgrades or migrations
  - responses to Security Incidents
  - modifications of scope (data elements, features, location of Institutional Information, etc.)
  - regulatory guidance
  - law and legal regulations
  - responses to risk assessments
  - addressing vulnerabilities
  - material updates or shifts in technologies used by Supplier

- **SECURITY INCIDENT:** (a) A material compromise of the confidentiality, integrity, or availability of Institutional Information; (b) A single event or a series of unwanted or unexpected events that has a significant probability of compromising Member business operations or threatening Institutional Information and/or IT Resources; (c) Any event involving a cyber intrusion; or (d) A material failure of Supplier's administrative, technical, or physical controls that resulted or could have resulted in an adverse impact to the confidentiality, integrity, or availability of Institutional Information or IT Resources.

### **C3 Access to Institutional Information and IT Resources**

Supplier must limit its access to, use of, and disclosure of Institutional Information and IT Resources to the least invasive degree necessary required to provide products and services. For the avoidance of doubt, Supplier may not access, use, or disclose Institutional Information and IT Resources outside the scope of this Agreement for purposes of, including but not limited to: product development, marketing, advertising, research, product demonstration, sale, or licensing unless expressly approved in writing by Member.

If products and/or services include the review of a specific Security Incident or a threat to or anomaly in Institutional Information or IT Resources, Supplier must limit inspection to the least invasive degree necessary required to perform the investigation.

### **C4 Supplier's Information Security Plan and Responsibilities**

Supplier acknowledges that Member is required to comply with information security standards for the protection of Institutional Information and IT Resources as required by law, regulation and regulatory guidance. Supplier must provide commercially acceptable cybersecurity and cyber risk management to protect Institutional Information and/or IT Resources. This includes implementing commercially acceptable security policies, procedures, and practices. Supplier's approach must conform to a recognized cybersecurity framework designed for that purpose. Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, ISO 27002, NIST SP 800-53 and NIST SP 800-171.

Subject to the review and approval of Member, Supplier must establish, maintain, comply with, and responsibly execute an information security plan designed to:

- ensure the security (including but not limited to confidentiality, integrity, and availability) of Institutional Information and IT Resources through the use and maintenance of appropriate administrative, technical, and physical controls;
- protect against any reasonably anticipated threats or hazards to Institutional Information and IT Resources;
- address the risks associated with Supplier having access to Institutional Information and IT Resources;
- comply with all applicable legal and regulatory requirements for data protection, security, and privacy;
- clearly document the cybersecurity responsibilities of each party;
- prevent the sharing of passwords or authentication secrets that provide access to Institutional Information and/or IT Resources;
- prevent unauthorized access to Institutional Information and IT Resources;
- prevent unauthorized changes to IT Resources;
- prevent the reduction, removal, or turning off any security control without express written approval from Member;
- prevent the creation of new Supplier accounts to access Institutional Information and IT Resources without express written approval from Member;
- prevent the storing, harvesting, or passing through of Member credentials (username, password, authentication secret, or another factor); and
- prevent the use or copying of Institutional Information for any purpose not authorized under the Agreement or any associated Statement of Work (SOW).

On at least an annual basis, Supplier will review its information security plan, update and revise it as needed, and submit it to Member upon request. At Member's request, Supplier will make modifications to its information security plan or to the procedures and practices thereunder to conform to Member's security requirements as they exist from time to time.

If Supplier makes any material modifications to its information security plan that will affect the security of Institutional Information and IT Resources, Supplier must notify Member within seventy-two (72) calendar hours and identify the changes.

### **C5 Evidence of Compliance and Requests from Member**

Supplier must provide Member with evidence that demonstrates Supplier's adherence to its information security plan (including but not limited to: third-party report, attestation signed by an authorized individual, attestation of compliance by a qualified assessor, or a mutually agreed upon equivalent) upon reasonable request (including but not limited to: annually, after Major Changes, and/or as a result of a Security Incident), or as required by any applicable regulatory or governmental authority.



Supplier must respond to Member's reasonable questions related to cybersecurity controls, Security Incidents, or Major Changes, newly published vulnerabilities, and/or risk assessments within ten (10) business days.

Member may request and perform a security audit using a qualified third party or a mutually agreed upon alternative annually or as a result of a Breach.

**C6 Notification of Major Changes and Vulnerability Disclosures**

Within twenty (20) business days, Supplier must notify Member regarding changes in Supplier's security posture or IT infrastructure. Such notices must occur when:

- Major Changes happen.
- Supplier becomes aware of a vulnerability that warrants a CVE rating of "High" or "Critical," based on the latest CVE version (<http://cve.mitre.org/>), for which a patch is not yet available or for which Supplier will delay application of an available patch.

Supplier must use commercially acceptable efforts to remediate, within twenty (20) business days, any vulnerability rated as CVE High or Critical.

In response to Major Changes, Supplier must update its information security plan no later than fifteen (15) days into the next calendar quarter and must provide updated evidence of compliance with the information security plan.

**C7 Return and Disposal of Institutional Information**

Within thirty (30) calendar days of termination, cancellation, expiration, or other conclusion of the MSA, Supplier must return all Institutional Information to Member and then dispose of the Institutional Information in possession of Supplier as detailed herein. This provision also applies to all Institutional Information that is in the possession of third-parties or agents of Supplier.

Such disposal will be accomplished using the methods approved by Member. Supplier will certify in writing to Member that such return and/or disposal has been completed. If Supplier believes that return and/or disposal of Institutional Information is technically impossible or impractical, Supplier must provide Member with a written statement explaining the reason for this conclusion. If Member determines that return and/or disposal is technically impossible or impractical, Supplier will continue to protect the Institutional Information in accordance with the terms of this Agreement for as long as the Institutional Information is in Supplier's possession.

**C8 Notification of Correspondence Concerning Institutional Information**

Supplier agrees to notify Member promptly, both orally and in writing, but in no event more than seventy-two (72) calendar hours after Supplier receives correspondence or a complaint that relates to a regulation, contractual obligation, Breach, or material risk concerning Institutional Information. For purposes of this provision, a correspondence or complaint may include, but is not limited to, any communication that originates from law enforcement, regulatory or governmental agencies, government investigators, corporations, or an individual, but excludes normal customer service correspondence or inquiries.

**C9 Reporting of Breach or Security Incident**

If Supplier reasonably suspects or confirms a Breach and/or a Security Incident impacting Institutional Information and/or IT Resources, Supplier must promptly notify Member both orally and in writing. Supplier must provide such notifications no later than (a) seventy-two (72) calendar hours (or as otherwise required by Member's statutory requirements) after the initial suspicion of a Security Incident and/or Breach and (b) seventy-two (72) calendar hours (or as otherwise required by Member's statutory requirements) after the initial confirmation of a Security Incident and/or Breach, if Supplier is able to make such a confirmation. Supplier's notification must identify:

- contacts for both technical and management coordination;
- escalation and identifying information, such as ticket numbers, system identifiers, etc.;
- the nature of the Breach and/or Security Incident;
- the Institutional Information and/or IT Resources affected;
- what Supplier has done or will do to mitigate any deleterious effect; and
- what corrective action Supplier has taken or will take to prevent future Security Incidents.

Supplier will provide other information as reasonably requested by Member.

In the event of a suspected Breach and/or Security Incident, Supplier will keep Member informed regularly of the progress of its investigation until the incident is resolved.

**C10 Coordination of Breach Response or Security Incident Activities**

Supplier will fully cooperate with Member's investigation of any Breach and/or Security Incident involving Supplier and/or products and/or services. Supplier's full cooperation will include, but not be limited to, Supplier:

- promptly preserving any potential forensic evidence relating to the Breach and/or Security Incident;
- remedying the Breach and/or Security Incident as quickly as circumstances permit;
- promptly, but no more than seventy-two (72) calendar hours after the discovery of Breach and/or Security Incident, designating a contact person to whom Member will direct inquiries and who will communicate Supplier responses to Member inquiries;
- as rapidly as circumstances permit, assigning/using appropriate resources to remedy, investigate, and document the Breach and/or Security Incident, to restore Member service(s) as directed by Member, and undertake appropriate response activities;
- providing status reports to Member regarding Breach and Security Incident response activities, either on a daily basis or a frequency approved by Member;
- coordinating all media, law enforcement, or other Breach and/or Security Incident notifications with Member in advance of such notification(s), unless expressly prohibited by law;
- ensuring that knowledgeable Supplier employees are available on short notice, if needed, to participate in Member and Supplier initiated meetings and/or conference calls regarding the Breach and/or Security Incident; and
- ensuring that knowledgeable Supplier employees and agents participate in after-action analysis, including root cause analysis and preventive action planning.

**C11 Breaches and Security Incidents – Corrective and Preventive Action**

As a result of a Breach and/or Security Incident impacting Institutional Information and/or IT Resources, and upon Member's request, Supplier must prepare a report detailing corrective and preventive actions. The report must include:

- a mutually agreed upon timeline for the corrective and preventive actions based on the nature of the Breach and/or Security Incident;
- identification and description of the root causes; and
- precise steps Supplier will take to address the failures in the underlying administrative, technical, and/or physical controls to mitigate damages and future cyber risk.

Supplier must reimburse Member for reasonable costs related to responding to Breaches impacting Institutional Information and IT Resources caused by Supplier. This includes all costs associated with notice and/or remediation of the Breach.

Any Breach may be grounds for termination of the MSA by Member. Obligations to secure, dispose, and report continue through the resolution of the Breach and/or Security Incident.

**C12 Illicit Code Warranty**

Supplier represents and warrants that the products and/or services do not contain Illicit Code. To the extent that any products and/or services have Illicit Code written into them, Supplier will be in breach of the MSA with Member, and no cure period will apply. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide Member with written notice explaining the scope and associated risk. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.

Supplier agrees, in order to protect Member from damages that may be intentionally or unintentionally caused by the introduction of Illicit Code, to promptly isolate or otherwise secure and then return Institutional Information and/or IT Resources. Supplier represents and warrants that even if Illicit Code is unintentionally installed via any method, Supplier will never utilize the Illicit Code.

Supplier acknowledges that it does not have any right to electronically hold Institutional Information or assert any claim against Member by withholding the products and/or services using Illicit Code.

This provision does not relate to malware or viruses that attack the running IT Resource

**C13 Background Checks**

Before Supplier's employee, third-party, or agent may access Institutional Information and/or IT Resources, Supplier must conduct a thorough and pertinent background check. Supplier must evaluate the results prior to granting access in order to assure that there is no indication that the employee, third-party, or agent presents a risk to Institutional Information and IT Resources.

Supplier must retain each employee's, third-party's, or agent's background check documentation for a period of three (3) years following the termination of the MSA.