

A Word on InCommon, this Agreement, and Modifications

If you are considering requesting a modification to the InCommon participation agreement, please read this. It will help you understand our position and ability to consider requested changes. This introductory section is not part of the agreement and should be removed prior to signing the agreement and sending it to InCommon

InCommon is a not-for-profit 501(c)(3) consortial organization whose members are primarily higher education institutions in the United States and is governed by a steering committee comprising CIOs and executive IT leaders of the community it serves. Pricing is based on the costs of operating our services and maintaining an engaged community of organizations. We do not generate revenue that anticipates extensive legal negotiations.

As a consortium that builds common trust policy and technology among its organizations, we cannot offer significant legal modifications and unique liability protections to only selected participants. We are a consortium agreeing to a shared understanding and practice of risk and trust. We cannot ask some participants to shoulder greater risk than others, nor put the financial integrity of the InCommon organization at risk, given that we provide a commonly relied upon set of services. This agreement also spells out the obligations of participants of InCommon to each other, and as such, having one InCommon participant request changes that inequitably ask other participants to shoulder undue burdens is unacceptable.

You will notice that we do allow participants to withdraw from the federation at any time and for any reason. Reviewers of this agreement should examine whether this and other flexibilities provide sufficient protection from concerns about the agreement.

We do understand and consider modifications that are justified due to state law. Some campuses, for example, have prohibitions on automatic renewal of agreements or specific regulations on self-insurance that must be expressed in particular ways. We request that, for such changes, you cite appropriate state law or regulations that justify your request for a change.

We are providing this guidance because, in some instances, attorneys or contract personnel misconstrue the relationship InCommon has with its participants. We are not a vendor. We are a community of organizations creating valuable infrastructure for common benefit.

The official Participation Agreement starts on the next page.

INCOMMON FEDERATION: PARTICIPATION AGREEMENT

v. April 14, 2011

This agreement ("Agreement") for participation in the InCommon Federation services (the "Federation") is made and entered into by InCommon, LLC ("InCommon") and the Participant, _____, (collectively, InCommon and Participant are referred to as "parties"). PARTICIPANT BY EXECUTING THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT PARTICIPANT HAS CAREFULLY READ AND ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND FURTHER ACKNOWLEDGES THAT PARTICIPANT WILL BE BOUND LEGALLY BY ITS TERMS AND CONDITIONS.

1. The InCommon Federation

Internet2 has created InCommon as a service to higher education and research organizations in the U.S. The InCommon Federation is an activity of InCommon and is generally governed by a Steering Committee representing the interests of Participants. The purpose and role of the Federation is set forth in more detail in the Limited Liability Company Agreement ("LLC Agreement") and Federation Operating Practices and Procedures ("FOPP") of the Federation as amended from time to time by the InCommon Steering Committee. InCommon accepts applications from organizations that are potential Participants in the Federation, as defined in the FOPP, and provides the Federation services to Participants ("InCommon Participants") under the terms and conditions of this Agreement.

2. Legal Form of InCommon

InCommon, LLC is organized and operated as a Delaware limited liability company (LLC). InCommon's sole member is University Corporation for Advanced Internet Development, Inc. d/b/a Internet2 ("Internet2"), a District of Columbia not-for-profit Corporation. The InCommon Federation is operated in accordance with its LLC Agreement and FOPP. By entering into this Agreement, Participant (i) agrees that its participation in the Federation shall not provide Participant with any right or interest in InCommon or its assets and (ii) acknowledges that it has the opportunity to review the LLC Agreement and FOPP, available on the InCommon website.

3. InCommon Participation

With respect to its participation in the InCommon Federation, Participant agrees to abide by policies and standards established by the Federation designed to enable trustworthy shared management of access to on-line resources. Participant may register Identity Management systems and Resource Provider Identifiers as defined in section 7 below.

4. Participant Classes and Fees

- a. *Classes of Participants.* InCommon defines, and may change from time to time, different classes of InCommon Participants. Different classes may receive different services, may have different roles in InCommon activities, and may be liable for different fees and/or dues. Currently defined classes are Higher Education Institutions, Sponsored Partners, and Research Organizations (as defined in the FOPP).

Participant is primarily (check only one):

Higher Education [] **Sponsored Partner** [] **Research Organization** []

- b. *Participant Fees.*

Participant fees are assessed on a one-time or annual basis and are not refundable.

- i. Registration Fee. Each InCommon Participant, including Participant, must pay a registration fee ("Registration Fee"), as defined in the attached InCommon Fee Schedule, to cover initial identification and authentication costs and expenses incurred by InCommon.
- ii. Annual Participation Fee. Each InCommon Participant, including Participant, shall be required to pay annual fees ("Annual Participation Fees"), as defined in the attached InCommon Fee Schedule. Participant acknowledges that the Annual Participation Fees may be modified by the InCommon Steering Committee, as necessary, to support the management and operations of InCommon and to respond to the needs of new applications and services. The Annual Participation Fees shall be annually assessed and payable on or before January 1st of each year, unless either the Participant or InCommon has given written notice of termination of this Agreement at least 90 days prior to the renewal date above or within 30 days from the date of notice of Annual Participation Fees, whichever is later.
- iii. Payment of Fees. All Registration fees must be paid by credit card using the secure web interface provided by InCommon. All Annual Participation fees must be paid by any of several methods outlined on the invoice within 60 days of the issuance date of the invoice.

5. Term

- a. *Term.* This Agreement comes into force on the date of acceptance by each party and remains in force through December 31 of the current calendar year (unless terminated sooner) and from year to year thereafter, January 1 through December 31, unless either InCommon or Participant notifies the other to the contrary as provided in Section 4.b.ii, 5.b., or 5.c.

- b. *Participant Withdrawal from InCommon Federation.* Participant shall be permitted to withdraw from participation in the Federation at any time by giving written notice to InCommon of its intent to terminate its participation. If Participant withdraws from the Federation under this Section 5b, Participant shall not be entitled to a refund of its Registration or Annual Participation Fees.
- c. *Termination.* This Agreement may be terminated for cause by either party for failure of the other party to comply with or to perform any term, condition, representation or covenant contained in this Agreement and such failure continues for ten (10) business days after written notice from the other party thereof. Furthermore, Participant's participation in the Federation may be terminated with cause at any time by the majority vote of a quorum of the InCommon Steering Committee. If Participant is terminated from the Federation under this Section 5c, Participant shall not be entitled to a refund of its Registration or Annual Participation Fees.

6. Participant Responsibilities

Participant covenants and agrees to do the following during the term of this Agreement in addition to any other obligations specified herein:

- a. Employ software in conformance with the document, "InCommon Federation Software Guidelines," available on the InCommon website;
- b. Support as defined, and make use of the identity attributes described in the document "InCommon Federation Attribute Overview" available on the InCommon website;
- c. Provide InCommon with accurate metadata: URL trees associated with resources and appropriate corresponding names for user interfaces;
- d. The terms of any agreement for the access of online resources between or among Participants, including terms and conditions related to technical, intellectual property, and other requirements and policies, shall be agreed to by and among such Participants;
- e. Provide technical and administrative contact information as necessary to facilitate contact by other InCommon Participants, and identify to InCommon certain organizational representatives as outlined in section 18 and keep InCommon apprised of any changes to the individuals assigned to these trusted roles;
- f. Bear its own costs and expenses in connection with its participation in InCommon, including without limitation compensation of its employees, and all travel and living expenses associated with the Participant's participation in any meetings and conferences;

- g. Participant agrees not to participate in the Federation in a manner that violates federal, state or local laws and rules, or in a manner that interferes or could interfere with services provided to others;
- h. Participant agrees to make available for distribution to InCommon or any InCommon Participant reliable and trustworthy information about Participant's identity management systems and/or resource management systems by documenting certain specific aspects of its operational and privacy practices in its own Participant Operational Practices ("POP"), a template of which is available on the InCommon website.

7. InCommon Federation Services

a. *System Registrations*

Any participant – Higher Education, Research Organization, or Sponsored Partner – may register with the Federation any number of Identity Provider systems ("IdPs") allowed per Annual Fee Package (see Fee Schedule) that will offer identity assertions to other InCommon Participants. Such an IdP must abide by this Agreement and the rules and policies of InCommon. Participant agrees to be responsible for the actions of all IdPs registered by Participant.

Any participant – Higher Education, Research Organization, or Sponsored Partner – may register with the Federation any number of Service Provider systems ("SPs") allowed per Annual Fee Package that will provide access to on-line resources based at least in part on identity assertions provided by InCommon Participant IdP systems.

All Participant's systems (IdPs and SPs) must be under the management control of Participant. Participant may not register third party systems of any type.

b. *Participant Metadata*

InCommon will use reasonable efforts to provide periodically to Participant composite metadata describing all Higher Education systems and Sponsored Partner systems that have been registered with InCommon. THIS METADATA IS PROVIDED ON A BEST EFFORT BASIS AND IS NOT WARRANTED NOR GUARANTEED TO BE COMPLETE, CORRECT, OR FIT FOR ANY PARTICULAR PURPOSE. PARTICIPANT CONSENTS TO INCOMMON SHARING PARTICIPANT'S METADATA WITH OTHER INCOMMON PARTICIPANTS.

8. Respect for Intellectual Property

Participant agrees, and agrees to advise its end-users as Participant deems appropriate to respect the copyright on any content accessed by virtue of participation in the Federation or through or by other InCommon Participants, in accordance with the terms and conditions established by the InCommon Participant(s) providing access to that

content. Participant also agrees and agrees to advise its end-users as Participant deems appropriate to abide by the terms of any copyrights applicable to the use of InCommon software, documents, or other materials developed by the Federation or Federation Participants.

9. Respect for Privacy of Identity Information

Participant agrees to respect the privacy of and any other constraints placed on identity information that it might receive from other InCommon Participants as agreed upon between Participant and the InCommon Participant(s). In particular, Participant understands that it may not permanently store nor share or disclose or use for any purpose other than its intended purpose any identity information that it receives from another InCommon Participant without express written permission of the other InCommon Participant. Participant understands that the storing and sharing of resources is between the Participant and the InCommon Participant(s) and is not the responsibility of InCommon.

InCommon strongly recommends that Resource provider systems may cache temporarily identity attributes/credentials that are supplied by IdMs for operational efficiency or sequential, repeated authentication purposes within a given session or reasonable length episode. InCommon further recommends that any shared attributes/credentials should not be used for any purpose other than the original purpose or intent, and that such attributes/credentials should be destroyed at the end of the session or episode in which they are needed. This temporary storage of credentials shall not be deemed as permanent storage for the purposes of this Agreement.

10. Dispute Resolution Procedures For Participants

In the event of any dispute or disagreement between two or more InCommon Participants ("Disputing Participants") arising out of or pertaining to their participation in the Federation, the parties agree to make every reasonable attempt to resolve the dispute between or among themselves. In the case that such a dispute cannot be so resolved, the Disputing Participants may choose to submit the dispute to the InCommon Steering Committee. If the dispute is between an InCommon Participant and InCommon and arises out of or pertains to the participation in the Federation, or the dispute is between or among InCommon Participants and affects the Federation, the InCommon Participant(s) shall submit the dispute to the InCommon Steering Committee following procedures defined in the FOPP. The InCommon Steering Committee shall resolve the dispute in the best interests of the Federation. Participant agrees that all decisions by the InCommon Steering Committee concerning disputes between InCommon and Participant shall be final, provided that Participant may terminate its participation in the Federation (per section 5b) if it disagrees with a decision of the Steering Committee and shall not be bound by such decision.

11. Disclaimer and Limitation on Liability

- a. ANY SERVICE PROVIDED FOR HEREIN BY INCOMMON, INCOMMON PARTICIPANTS OR ANY OF INCOMMON'S THIRD

PARTY SERVICE PROVIDERS IS PROVIDED ON AN AS IS, AS AVAILABLE BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. INCOMMON EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ANY SERVICE WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED. NO STATEMENT, ORAL OR WRITTEN, GIVEN BY INCOMMON, ANY OF ITS EMPLOYEES, OR ANY OTHER PERSON WILL CREATE A WARRANTY, NOR MAY ANY PARTICIPANT OR OTHER PERSON RELY ON ANY SUCH STATEMENT FOR ANY PURPOSE. FURTHERMORE, NOTWITHSTANDING ANY CONTRARY PROVISION SET FORTH IN THIS AGREEMENT, PARTICIPANT EXPRESSLY AGREES THAT IN NO EVENT SHALL INCOMMON'S ENTIRE LIABILITY FOR ANY LIABILITIES, LOSSES, CLAIMS, JUDGMENTS, DAMAGES (WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHERWISE), EXPENSES OR COSTS (INCLUDING REASONABLE FEES AND EXPENSES OF COUNSEL) ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEPT FOR DIRECT DAMAGES RESULTING SOLELY FROM INCOMMON'S INTENTIONAL AND WILLFUL ACTIONS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE ANNUAL FEE PAID BY THE PARTICIPANT TO INCOMMON UNDER THIS AGREEMENT DURING ANY CONSECUTIVE TWELVE (12) MONTH PERIOD, MULTIPLIED BY A FRACTION THE NUMERATOR OF WHICH IS THE NUMBER OF MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM IN SUCH CONSECUTIVE TWELVE (12) MONTH PERIOD AND THE DENOMINATOR OF WHICH IS TWELVE (12).

- b. InCommon, its third party services providers, and InCommon Participants reserve the right to interrupt, suspend or reduce the provision of any service to Participant, or any other person, including the Participant's end users, when such action is necessary in InCommon's sole judgment. InCommon will endeavor where reasonably possible, but does not promise, to provide advance notice to Participant of any such interruption, suspension, or reduction. As soon as possible following the interruption, suspension, or reduction InCommon will contact the Participant and any participants in an attempt to resolve any problems and restore service. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, INCOMMON, INCOMMON PARTICIPANTS, AND INCOMMON THIRD PARTY SERVICE PROVIDERS OR THEIR DESIGNEES SHALL NOT BE LIABLE TO PARTICIPANT OR OTHER PERSON FOR ANY ERROR IN TRANSMISSION OR LACK THEREOF OR FOR ANY INTERRUPTION OR TERMINATION OF PARTICIPATION, EITHER PARTIAL OR TOTAL, EITHER INTENTIONAL OR ACCIDENTAL (INCLUDING ANY ERROR, INTERRUPTION OR TERMINATION DUE TO THE

DELIBERATE MISCONDUCT OR NEGLIGENCE OF ANY PERSON), WHETHER OR NOT PRIOR NOTICE OF ANY SUCH INTERRUPTION OR TERMINATION HAS BEEN GIVEN.

- c. InCommon shall not be liable to Participant (or its end-users) for claims or damages caused in whole or part by (i) the fault or negligence of InCommon Participants or by the failure of InCommon Participants to perform their responsibilities; (ii) third party claims against InCommon Participants, except to the extent that such claims arise solely from the intentional and willful actions of InCommon; or (iii) any act or omission of any other party furnishing products or services to InCommon or InCommon Participants. Furthermore, InCommon shall not be liable, either in contract, in tort or otherwise, for unauthorized access to Participant's transmission facilities, its equipment, or unauthorized access to or alteration, delay, theft or destruction of Participant's (or its end users') data files, programs, procedures or other information, except for direct damages arising solely from the intentional and willful actions of InCommon.
- d. Participant is and shall be solely responsible for any or all use of any service or resource obtained as a result of participating in the Federation, including but not limited to audio, video, text, data or other communications originating or transmitted from any site owned or operated by Participant, including any third party content or materials, routed to, passed through and/or stored on or otherwise transmitted or routed to any other InCommon Participant or user ("Participant Content"). InCommon does not intend to review the Participant Content, and Participant assumes all responsibility for use of such Participant Content. Participant shall make no claim against InCommon regarding said Participant Content. The Steering Committee of InCommon or its designees, is responsible for the governing policies of the federation, its purposes and uses, and Participant agrees to be bound by its official, approved policies with regard to federation participation.
- e. Participant acknowledges that InCommon does not conduct its own review or due diligence concerning the qualifications of prospective participants in the Federation, but instead relies on the promises made by InCommon Participants that they will observe and abide by all operating, intellectual property, and other requirements imposed by InCommon or InCommon Participants in connection with their participation in the Federation.

12. Insurance

Participant covenants and agrees to obtain and maintain in force, at its own expense, throughout the term of this Agreement, commercial general liability insurance coverage with a combined single limit of not less than \$3,000,000.00 each occurrence or its equivalent, whether such insurance is maintained through self-insurance or through third party insurance, against claims, regardless of when asserted, that may arise out of, or result from, Participant's participation in the Federation.

13. Severability and Assignment

If any provision of this Agreement or the application thereof in any circumstances, is held to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision(s) in every other respect and the rest of the provisions of this Agreement shall remain in effect, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereto. This Agreement is not assignable without the express written consent of InCommon.

14. Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties hereto, except as provided for in Sections 2, 5.c, 11.a, and 11.b, nothing herein expressed or implied shall give or be construed to give to any person, other than the Parties hereto, any legal or equitable rights hereunder.

15. Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of Delaware, and exclusive venue for any and all disputes under law or jurisprudence hereunder shall lie in the state or federal courts located in the State of Delaware.

16. No Joint Venture

Nothing herein shall be construed as creating a partnership, employment or agency relationship between the Parties or as authorizing any party to act as agent for any other party.

17. Modification

This Agreement may be modified only by written consent of the Parties; provided, however, that InCommon retains the right to amend this Agreement unilaterally to conform to any modifications made by InCommon to its policies if so approved by the InCommon Steering Committee. Any such unilateral changes shall be presented to Participant at least ninety (90) days before they are to take effect, and InCommon will work in good faith with Participant to negotiate and resolve any issues raised by such changes that may be of concern to Participant. Each participant's continued participation in InCommon after the change takes effect will constitute its continuing agreement to this Agreement as so modified. Each participant, including Participant, has the right to terminate this Agreement if it is modified in any way that is not acceptable to the Participant.

18. Authorization of Executive

The following person has been designated as the InCommon Executive for Participant regarding InCommon Participation. This Participant Executive represents Participant regarding all decisions and delegations of authority for the responsibilities of InCommon

Participants, including but not limited to payment of invoices, and assigning any person in the trusted Administrator role who submits Certificate Signing Requests, metadata, or Certificate Revocation Requests, and other administrative duties as described herein.

Participant Executive Contact information

Name _____

Title _____

Postal Address _____

Email Address _____

Telephone _____

Fax _____

19. Notices

All notices and other communications hereunder may be delivered to Participant or InCommon by postal mail, email, or facsimile to the following respective addresses, unless or until otherwise notified by the Participant or InCommon in writing to the other party:

Participant Communication Representative Contact information

Name _____

Postal Address _____

Email Address _____

Telephone _____

Fax _____

InCommon contact information
InCommon, LLC
c/o Internet2
1000 Oakbrook Drive, Suite 300
Ann Arbor, MI 48104

Email address: incommon-admin@incommonfederation.org
Facsimile: 734-913-4255
Telephone: 734-913-4250

20. Entire Agreement

This Agreement sets forth the entire understanding of the Parties with regard to the subject matter hereof and merges and supersedes all prior communications or discussions, oral or written, with regard thereto, and no changes, modifications or amendments to this Agreement shall be binding unless agreed by all Parties in writing as defined in Section 17 above. No party to this Agreement may assign or delegate any rights or interests under this Agreement without each other party's prior written consent.

21. Survival of Provisions

This Section 21 and Sections 8, 11, 12, and 15 shall survive the expiration or termination of this Agreement.

22. Execution of this Agreement

This Agreement becomes effective when signed by an officer of each party empowered to enter into legally binding contracts on behalf of their respective organizations.

Agreed to on behalf of Participant by:

Signature

Date

Print Name

Title

Accepted on behalf of InCommon by:

Signature

Date

Print Name

Title

Attachment: InCommon Federation: Service Fee Schedule

Each participant in the InCommon Federation pays a one-time registration fee and also an annual fee. **The one-time registration fee** covers the costs of vetting your organization, and the identity proofing of your executive and administrator. This fee is paid by credit card when you submit your on-line registration form. **Annual fees** support the ongoing operations of the federation and are prorated in the first year, based on the quarter in which a participant joins the federation. After this first year, annual fees for all participants are not prorated and are due on January 1.

Annual fees include the registration of one identity management system and up to fifty (50) service provider entities. A participant may only register a system over which it has management control. Third-party systems are not permitted as outlined in the participation agreement.

The base annual package allows for up to 50 Service Provider IDs, which are registered individually as needed. With the registration of the 51st SP, InCommon will issue an invoice for another package of 50 as part of the next year's annual fee. Higher Education Participants are strongly encouraged to register only one identity management system, though they may register additional systems. InCommon must approve registration of any additional identity systems. Such a case would require an additional fee package as outlined below.

InCommon fees recover the costs of providing services to federation participants and are determined and reviewed by the InCommon Steering Committee.

Fee Schedules

Fee schedules are available on the InCommon website:
www.incommon.org/fees.html