InCommon Participation Agreement + Addendum for Stewards

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InCommon Participation Agreement

§ 1 The InCommon Federation – The Federation is an activity of InCommon, governed by a Steering Committee representing the interests of Participants.[1] The purpose and role of the Federation is set forth in more detail in the LLC Agreement and the FOPP. InCommon provides Federation services to Participants under the terms of this Agreement.

§ 2 Legal Form of InCommon – InCommon is a Delaware Limited Liability Corporation and Internet2, a DC not-for-profit organization, is its single member. InCommon operates in accordance with its LLC Agreement and Federation Operating Practices and Procedures (FOPP), both of which Participant may review on the InCommon website.

§ 3 InCommon Participation – Participant agrees to abide by policies and practices established by the Federation; the Parties' rights may be altered by an addendum to the Agreement.

§ 4 Participant Classes and Fees – InCommon defines classes of Participants in the FOPP. Participant classes are Higher Education, Research Organization, Support Consortium, and Sponsored Partner. Participant Fees, including a registration fee and an annual participation fee, shall be paid in accordance with procedures listed on Participant's invoice, within 60 days of receipt of such invoice.

§ 5 Term – the Agreement is effective from date of last signature through December 31 of the current year, with renewal from year-to-year thereafter unless notification is provided otherwise in accordance with the Agreement. Participant may withdraw from the Federation at any time, but will not receive any refund. The Agreement may be terminated for cause by either Party or by a majority vote of the InCommon Steering Committee.

§ 6 Participant Responsibilities –Participant agrees to certain obligations under the Agreement, including with respect to software, support, providing accurate metadata, bearing certain costs and expenses, and documenting certain aspects of its operational and privacy practices.

§ 7 InCommon Federation Services – Participant may register with the Federation any number of Identity Provider systems (IdPs) and Service Provider Systems (SPs) allowed per fee package. The Federation's practices with regard to collection and transfer of Metadata is also described in this section.

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[1] Any capitalized terms used herein shall have the meanings given to them in the InCommon Participation Agreement.

§ 8 Respect for Intellectual Property – Participant agrees to respect the copyright on any content accessed by vitrue of participation in the Federation and to abide by the terms of any copyright applicable to InCommon software, documents, or other materials.

§ 9 Respect for Identity Information – Participant agrees to respect the privacy of and any other constraints placed on identity information that it might receive from other Participants or any Co-Federation Participants. This section also describes InCommon's recommended practices with respect to identity information and temporary storage of credentials.

§ 10   Dispute Resolution Procedures for Participants – Participants agree to attempt to resolve disputes among themselves; if they cannot, they may subit the dispute to the InCommon Steering Committee for resolution. If the dispute involves InCommon or affects the Federation, it must be submitted to the InCommon Steering Committee and will be resolved in the best interest of the Federation, as outlines in the FOPP. All Steering Committee decisions are final, but a Participant may terminate its participation in the Federation if it disagrees with such decision.

§ 11   Disclaimer and Limitation on Liability - Any service provided by InCommon or any of its third party service providers is provided on an as-is basis, without warranties of any kind. InCommon's and Internet2's total aggregate liability under this Agreement shall not exceed the annual participation fee. Participants assume responsibility for the use of their content and Participants agree to be bound by the InCommon Steering Committee's official, approved policies with regard to Federation participation.

§ 12   Insurance – Participant agrees to maintain commercial general liability insurance coverage with a combined single limit of not less than $3,000,000 for each occurrence against claims that may arise out of or result from participation in the Federation.

§ 13   Severability and Assignment – If any provision of the Agreement is held to be invalid, the remaining provisions of the Agreement shall remain in effect. A Participant may not assign the Agreement without InCommon's express written consent.

§ 14   Third Party Beneficiaries – The Agreement is for the sole benefit of InCommon and the Participant, except as provided in the Agreement with respect to Internet2.

§ 15   Governing Law – For Higher Education Participants, governing law shall be the law of the state in which a Participant's main campus is located, and exclusive venue shall lie in the courts of such state.

§ 16   No Joint Venture – No partnership, employment or agency relationship is created between the Parties.

§ 17   Modification – The Agreement may only be modified by written consent of the Parties, except that InCommon may unilaterally amend the Agreement to conform to policy modifications made by InCommon.

§ 18   <u>Authorization of Executive</u> – Participant designates a Participant Executive to represent Participant regarding all decisions and delegations of authority for such Participant's responsibilities.

§ 19   <u>Billing and Notices</u> – Notices and other communications may be delivered to the Parties' addresses specified in this section by postal mail, email, or fax.

§ 20   <u>Entire Agreement</u> – This Agreement sets forth the Parties' entire understanding.

§ 21   <u>Survival of Provisions</u> – Sections 8, 11, 14, 21, and 21 shall survive termination of the Agreement.

§ 22   <u>Execution of this Agreement</u> – The Agreement is effective when the Parties have signed.

§ 23   <u>Counterparts; Signatures</u> – The Agreement may be signed in counterparts; electronic signatures are considered original.

§ 24   <u>Commercial Participants: Indemnification</u> – Entities whose primary purpose is to generate profit shall indemnify, defend, and hold harmless InCommon and Internet2 against losses arising out of such Participants' participation in the Federation.

<u>Addendum to the InCommon Participation Agreement for Stewards</u>

§ 1 <u>Definitions</u> – Definitions relevant to the Stewards Program include "Represented Constituent" or "RC," "Steward," and "Support Consortium."

§ 2 <u>Eligibility</u> – Stewards and RCs must continually meet the definitions of such terms as set forth in Section 1. Participant is responsible for vetting its RCs for eligibility and reviewing such status annually. An entity cannot be a Steward and an RC concurrently and an RC cannot be an InCommon participant.

§ 3 <u>Conflict</u> – To the extent there is a conflict between the Addendum and the Participation Agreement or the FOPP, the terms of the Addendum shall prevail.

§ 4 <u>Participant Representations</u> –Participant must make representations to InCommon, including that the Participant has provided InCommon with certain documents, such as guidelines provided to Participant's RCs and the RC and Metadata Review Process.

§ 5 <u>Participant Responsibilities</u> –Participant will comply, and will require its RCs to comply with all applicable laws and regulations, and the Steward Governance Documents. Participant must submit to InCommon the process by which RC eligibility is determined; indemnify InCommon and Internet2 under certain circumstances; and operate and register IdPs and SPs with InCommon in accordance with the Steward Governance Documents.

§ 6 <u>Fees</u> – Within 30 days of the Effective Date, Participant shall pay to InCommon $19,000 to participate in the Steward Program.

§ 7 <u>Liability</u> – Participant is liable for the negligent acts of its RCs; negligent acts of IdPs and SPs operated or registered by Participant on behalf of its RCs; and third party claims arising out of its RCs negligent use of RC content under this Addendum.

§ 8 <u>Dispute Resolution Procedure</u> – Participant shall act on behalf of its RCs in the event of a dispute between an RC and another participant in accordance with the dispute resolution procedures in the Agreement and the FOPP.

§ 9 <u>Operations</u> – Participant shall make available to its RCs with respect to the InCommon Federation and services offered1) appropriate documentation and training; 2) a help desk; and 3) access to relevant InCommon-provided information.

§ 10 <u>Withdrawal and Suspension of RCs</u> – Participant must submit to InCommon for approval its policies for withdrawal/removal of an RC from the program.

§ 11 <u>Withdrawal of Participant from the Steward Program</u> – Participant may withdraw its Steward designation at any time, which would result in immediate termination of the Addendum.

§ 12 <u>Termination of this Addendum by InCommon</u> – InCommon may terminate the Addendum for cause; either Party may terminate the addendum without cause upon 60 days' notice.

§ 13 <u>Effect of Termination of the Agreement or this Addendum</u> – Termination of the Agreement results in immediate, automatic termination of the Addendum. Termination of the Addendum will not result in termination of the Agreement. InCommon will remove an RC's metadata within 30 after the Addendum is terminated.

§ 14 <u>Miscellaneous</u> – The Agreement is hereby ratified; there are no third party beneficiaries to the Addendum; the Addendum may be signed in any number of counterparts; electronic signatures shall be considered original.

§ 15 <u>InCommon Responsibilities</u> – InCommon will maintain and publish the Steward Governance Documents and documentation of InCommon's operational practices, and will provide from time-to-time reasonable support to Participant in its roles as a Steward.