

PARTICIPATION AGREEMENT

THIS AGREEMENT IS ENTERED INTO AS OF THE _____ DAY OF _____, 2009.

Between:

The Canadian University Council of Chief Information Officers -
Conseil des dirigeants principaux de l'information des universités canadiennes
("CUCCIO")

- and -

□
(the "Participant")

WHEREAS CUCCIO has established and operates an access federation in Canada for use by research and education institutions and suppliers to those institutions to enable users of one domain to securely access the systems of another domain for research and educational purposes (the "**Canadian Access Federation**");

AND WHEREAS the Canadian Access Federation provides a variety of services, including services to allow Service Providers (as hereinafter defined) to authenticate individuals accessing their services, and services to allow Identity Providers (as hereinafter defined) to assert identities of people within the Identity Provider's organization;

AND WHEREAS the Participant wishes to operate either a Service Provider, Identity Provider or both (as hereinafter described) and wishes to participate in the Canadian Access Federation on the terms and conditions set out in this Agreement;

NOW THEREFORE in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Where used in this Agreement and in any documents contemplated hereby, the following terms shall have the following meanings, respectively:

"**Con-federation**" means an arrangement between two or more national identity management federations that entitles the participants of one federation to act as an Identity Provider within other federations.

"**Educational Institution**" means (i) an accredited post-secondary institution in Canada, (ii) a Canadian public research institution or consortium that is an independent legal entity, or (iii) another institution approved by the CUCCIO board of directors; in its sole discretion.

"**Eduroam**" means the wireless Educational Roaming Internet access program, a registered trademark of the Trans-European Research and Education Networking Association (TERENA).

"**Identity Provider**" means a service provided by a Participant that asserts the identity and attributes of people within that organization.

“**Research Institution**” means an institution identified as a research institution according to the Canadian Access Federation policies.

“**Service Provider**” means a service provided by a Participant to individual users on the basis of identity information asserted by Identity Providers under the terms of a separate subscription agreement between Participants operating the Service Provider and the Identity Provider.

“**Shibboleth**” means a standards-based, open source middleware service that provides web single sign-on across or within organizational boundaries. The Shibboleth name and technology is owned by Internet 2, a non-profit corporation registered in the District of Columbia, USA.

ARTICLE 2 - PARTICIPANT SERVICES

2.1 The Participant hereby agrees to participate in the Canadian Access Federation in one or more of the following capacities, as indicated below by checking and initializing next to the applicable boxes, and subscribes for the following services, if applicable, and agrees to abide by the additional terms and conditions set out in the respective schedules attached hereto, all of which, as applicable, form an integral part hereof: (check and initial all that apply)

Education and Research Institutions:

- Shibboleth Identity Provider - The additional terms set out in Schedule A apply (initials _____)
- Shibboleth Service Provider - The additional terms set out in Schedule B apply (initials _____)
- eduoam.ca Identity and Access Provider - The additional terms set out in Schedule C apply (initials _____)

Organizations other than Education and Research Institutions:

- Shibboleth Service Provider - The additional terms set out in Schedule B apply (initials _____)
- eduoam.ca Access Provider - The additional terms set out in Schedule C apply (initials _____)

ARTICLE 3 - FEES

3.1 CUCCIO shall have sole discretion in setting any fees related to this Agreement, which fees shall be set out in the CUCCIO fee schedule (the “**CUCCIO Fee Schedule**”) and provided to the Participant in advance of entering into this Agreement, a copy of which is attached hereto as Schedule “D” and forms an integral part hereof and are subject to change, at the sole discretion of CUCCIO upon the occurrence of each Renewal Term and from time to time.

3.2 Notwithstanding any other provision hereof, in anticipation of new services being offered by CUCCIO, the parties agree that CUCCIO, in its sole discretion, at any time, and from time to time, may amend the CUCCIO Fee Schedule to include fees for new services without notice to the Participant who shall be under no obligation to subscribe to any additional services.

3.3 Notwithstanding the foregoing, CUCCIO shall provide all Participants with a CUCCIO Fee

Schedule not less than 45 working days before any Renewal Date (as hereinafter defined) which shall contain the fees applicable at the commencement of such renewed term.

3.4 CUCCIO shall deliver annual fee invoices to the Participant, and the Participant shall pay any and all fees invoiced by CUCCIO within 60 working days of the date of invoice. Any overdue payments owing to CUCCIO shall accrue interest at a rate of 6 percent (6%) per annum.

3.5 Notwithstanding the payment of fees pursuant to this Agreement, the parties acknowledge and agree that CUCCIO shall operate the Canadian Access Federation as a not-for-profit service.

ARTICLE 4 - TERM AND RENEWAL AND AMENDMENT

4.1 This Agreement shall become effective as of the date it is executed by all parties, and shall continue in force and effect until May 31, 2010.

4.2 Unless either party provides 30 days prior written notice to the other party, this Agreement shall be automatically renewed for unlimited one-year terms commencing on June 1 (the "**Renewal Date**") and expiring on May 31 of each year (the "**Renewal Term**").

4.3 Save and except for amendments to the CUCCIO Fee Schedule which shall be made in accordance with Article 3 hereof, CUCCIO has the right, in its sole discretion, to unilaterally amend any of the terms of this Agreement by providing a written copy of the amended terms to the Participant at least 45 days in advance of the Renewal Date, whereby the amended terms shall take effect as of the Renewal Date for any such Renewal Term, or until otherwise further amended.

ARTICLE 5 - TERMINATION

5.1 The Participant may terminate this Agreement at any time by giving 30 days notice in writing to CUCCIO.

5.2 CUCCIO may terminate this Agreement or may suspend one or more of the Participant Services identified in Section 2.1 at any time if CUCCIO determines, in its sole discretion, the Participant has violated the terms of this Agreement including, for certainty, any schedule attached hereto, as applicable, or any of the Canadian Access Federation policies and procedures (which shall be made available to the Participant and posted on the Canadian Access Federation web site) (the "**Policies and Procedures**"), and, such violation remains uncorrected for a period that is more than 30 days after CUCCIO has provided Notice, in accordance with provisions of this Agreement, to the Participant of such violation.

5.3 Upon termination of this Agreement for any reason whatsoever, the Participant shall no longer be eligible to operate as an Identity Provider or as a Service Provider, as applicable, within the Canadian Access Federation, and shall not be entitled to any refund of fees.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES OF THE PARTIES

6.1 The parties warrant that so long as this Agreement is in effect, they shall at all times comply with all applicable laws, rules and regulations, including, without limitation, any applicable federal and provincial privacy laws and any applicable federal and provincial intellectual property laws (including copyright laws and laws relating to the export of information and data) in effect from time to time.

6.2 This Agreement has been duly executed and delivered by the Participant, and CUCCIO, and all necessary corporate action has been taken by each of the Participant and CUCCIO to authorize the execution, delivery and performance by it of this Agreement and this Agreement constitutes a valid and binding obligation of the Participant enforceable against the Participant in accordance with its terms.

ARTICLE 7 - PARTICIPANT RIGHTS AND RESPONSIBILITIES

7.1 The Participant has the right to subscribe for services offered by the Canadian Access Federation subject to payment of fees in accordance with the CUCCIO Fee Schedule then in effect.

7.2 The Participant shall comply with all Canadian Access Federation Policies and Procedures, including, without limitation, those related to shibboleth and eduroam services.

7.3 The Participant acknowledges and agrees that it has the responsibility to protect its own information network, at its own expense. The Participant further agrees that, notwithstanding any other provision hereof, CUCCIO shall not be liable in any way whatsoever for loss (of any kind whatsoever) or damage (of any kind whatsoever) caused by a breach, compromise or malfunction in the Participant's information network, whether caused by CUCCIO or not.

ARTICLE 8 - CUCCIO RIGHTS AND RESPONSIBILITIES

8.1 CUCCIO shall operate the Canadian Access Federation services according to the Policies and Procedures in effect from time to time, for the services offered by it, including, without limitation, the shibboleth and eduroam services.

8.2 CUCCIO shall use commercially reasonable efforts to follow industry best practices in maintaining its **services**.

8.3 CUCCIO, or its designate, in its sole discretion, may from time to time and at any time make determinations that particular services offered by CUCCIO or the Participant are not consistent with the research and education purposes of the Canadian Access Federation, which determinations will be binding on the Participant, and which may result in service suspension or termination.

ARTICLE 9 - DISCLAIMER, NO WARRANTY AND LIMITATION ON LIABILITY

9.1 The Participant acknowledges and agrees that Canadian Access Federation is provided by CUCCIO "as is" and, to the extent permitted by law, without warranty or representation by CUCCIO of any kind whatsoever, express or implied. Without limiting the generality of the foregoing, CUCCIO shall have no liability whatsoever to the Participant or any of its members for: (i) any interruptions or disruptions in access to the services of the Canadian Access Federation or any other damages suffered by the Participant or any of its members which are caused directly or indirectly by any failures in the Canadian Access Federation (ii) any power failures; (iii) any acts or omissions of the Participant or its officers, employees, agents or contractors including, without limitation, defamation or copyright infringement; (iv) any infringement of intellectual property rights arising from or in connection with the Participant's or one of its member's use of the Canadian Access Federation (v) any event of force majeure; or (vi) any suspension or termination of access to services of the Canadian Access Federation pursuant to the terms of this agreement. Further, to the extent permitted by law, CUCCIO does not warrant the performance, availability, uninterrupted use of or operation of the Canadian Access Federation services. CUCCIO does not warrant any data, service or information that is not within the sole control of CUCCIO, whatsoever, including without limitation: (i) that any

databases not maintained by it shall be up to date or accurate or files sent by or to the Participant will be transmitted, transmitted in uncorrupted form, or transmitted within a reasonable period of time; (ii) that Service Providers will accurately display the subscription status of the Participant or any of its members; or (iii) that the identity information provided by Identity Providers is accurate or complete.

9.2 The parties acknowledge that CUCCIO provides the Canadian Access Federation service for the mutual benefit of the Participant and other Participants, and that the Canadian Access Federation acts as a broker allowing Service Providers to provide services to authenticated individuals. The Canadian Access Federation service does not receive any identity information from Identity Providers nor does it deliver any service directly to Identity Providers beyond establishing a data connection. CUCCIO does not conduct its own review or due diligence concerning the qualifications of other Participants, but instead relies on the representations made by other Participants that they will observe and abide by all policies and procedures established by the Canadian Access Federation and their own Participant operating procedures. Except for the negligence or willful misconduct of CUCCIO, the entire liability of the CUCCIO to the Participant or any of its members is limited to the sum of one dollar (\$1.00), and in no event shall CUCCIO be liable for any special, indirect, or consequential loss or damage, whatsoever, including, without limitation, lost revenues, opportunities, or profits of the Participant, downtime costs, defamation or copyright infringement that results from material transmitted or received in connection with the Canadian Access Federation; or infringements of patents arising from combining or using the Canadian Access Federation with the Participant's facilities. No statement, oral or written, given by CUCCIO, any employee of CUCCIO, other person working on behalf of CUCCIO or any other Participant will create a warranty, nor may the Participant or other person rely on any such statement for any purpose.

ARTICLE 10 - DISPUTE RESOLUTION

10.1 Any disputes among the parties or between the Participant and other Participants shall be resolved among the disputing parties to the extent possible, by their commercially reasonable efforts. In the event that a dispute cannot be resolved as aforesaid, the disputing parties may agree to seek mediation by CUCCIO following the Canadian Access Federation dispute resolution policy in effect at such time.

ARTICLE 11 - GENERAL TERMS

11.1 Notices. All notices given under this Agreement must be in writing and delivered by courier or registered mail, return receipt requested, or facsimile, to the contact particulars of the party set out below. Notices will be deemed to have been received on the date of delivery if delivered by courier, on the fifth business day following receipt if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission of the facsimile, if sent by facsimile. The contact particulars are as follows:

To CUCCIO:

c/o Name: Gerry Miller
Telephone: (204) 474-8230
Fax: (204) 477-7515
E-Mail Address:
gerry_milller@umanitoba.ca

To the Participant:

Name:
Telephone:
Fax:
E-Mail Address:

11.2 Remedies. The Participant agrees that damages may not be an adequate remedy for any breach or threatened breach of the Participant's obligations under this Agreement. Accordingly, in addition to any and all other available remedies, CUCCIO will be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement.

11.3. No Waiver. At any time a Party may (a) extend the time for the performance of any of the obligations or other acts of the other Party hereto or (b) waive compliance with any of the agreements of the other Party or with any conditions to its own obligations, in each case only to the extent such obligations, agreements and conditions are intended for its benefit. No waiver of any condition or other provision or of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give such waiver and, unless otherwise provided in such written waiver, shall be limited to the specific condition or other provision or breach waived. No waiver by a party of any conditions or other provisions or of any breach of any term, covenant, representation or warranty contained in this Agreement, in one or more instances, shall be deemed to be or construed as a further or continuing waiver of any other condition or provision (whether or not similar) or of any breach of any other term, covenant, representation or warranty contained in this Agreement.

11.4 Assignment. The Participant may not assign any of its rights or obligations under this Agreement without the prior written consent of CUCCIO. CUCCIO may assign its rights or obligations to another party intent on continuing the operations of the Canadian Access Federation services upon providing at least 30 days notice to the Participant.

11.5 Entire Agreement. This Agreement together with the CUCCIO Fee Schedule in effect from time to time, and all other applicable Schedules attached hereto, shall comprise the entire agreement between the parties with respect to participation in the Canadian Access Federation, and supersedes any previous understandings, commitments or agreements, whether written or oral.

11.6 Severability. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provisions or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic and substantive effect of which shall come as close as possible to that of the invalid or unenforceable provision which it replaces.

11.7 Binding Effect. This Agreement is binding upon and will ensure to the benefits of the parties and their respective successors and permitted assigns.

11.8 Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Counterparts may be executed either in original, electronic mail or faxed form and the Parties adopt any signatures received by electronic mail or a receiving fax machine as original signatures of the Parties and any such original, electronic mail or faxed form shall be legally effective to create a valid and binding agreement between the Parties in accordance with the terms hereof.

11.9 Force Majeure. Any delay or failure of either party to perform its obligations under this Agreement, except for the obligation to make any payments, shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the affected party and without its fault or negligence such as, by way of example and not be by way of limitation, acts of God, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental authority (whether valid or invalid), fires, flood, storms, earthquakes, avalanches, soil

subsidence or other natural disasters, wars, civil unrest, insurrection, explosions, riots, sabotage, labour problems (including lock-outs, strikes and slow downs), embargo, inability to procure or obtain delivery of parts, supplies or power from suppliers, or court injunction or order, or any other events that in accordance to the law or the fixed legislation of the Canadian Courts are regarded as force majeure provided that: (i) written notice of delay (including anticipated duration of the delay) shall be given by the affected party to the other party within 15 days of the affected party first becoming aware of such event and (ii) that the affected party shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed. In the event that such non-performance continues for more than 90 days, thereafter either party may terminate this Agreement by giving the other party 60 days written notice.

11.10 Governing Law. This Agreement will be governed and construed in accordance with the laws of the Province of Manitoba and the laws of Canada and the parties attorn to the exclusive jurisdiction of the courts of the Province of Manitoba. The parties have duly executed this Agreement by their duly authorized representatives as of the Effective Date.

11.11 Third Party Beneficiaries. This Agreement is for the sole benefit of CUCCIO and the Participant, and does not give any legal or equitable rights to any other person or party.

11.12 Expenses. Each of the parties shall bear all expenses incurred by it in connection with this Agreement including the charges of their respective counsel, accountants, financial advisors and agents.

11.13 Joint Venture. Nothing in this Agreement shall be read or construed as creating a partnership, employment or agency relationship between CUCCIO, the Participant or any other Participants, or as authorizing any party to act as agent or representative for any other party or have any authority or power to act for or undertake any obligation on behalf of the other party, nor shall anything herein contained be read or construed to in any way restrict the freedom of either party to conduct any other business or activities whatsoever.

11.14 Further Assurances. Subject to the conditions herein provided, each party agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as is practicable the transactions contemplated by this Agreement, including the execution and delivery of such documents as the other party may reasonably require and shall use its commercially reasonable efforts to obtain all necessary waivers, consents and approvals, and to effect all necessary registrations and filings, including, if applicable, filings under applicable laws and submissions of information requested by governmental entities. Each party, where appropriate, shall reasonably cooperate with the other party in taking such actions.

11.15 Construction. The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party, including the rule or doctrine of *contra proferentum*, shall not be applicable in the interpretation of this Agreement.

11.16 Independent Legal Advice. Each of the parties hereto acknowledges that it has obtained independent legal advice in connection with the negotiation and execution of this Agreement or, having been advised to do so, has declined to obtain independent legal advice, and further acknowledges and agrees that it has read, understands, and agrees to be bound by all of the terms and conditions contained herein.

DATED as of the date above first written.

The Canadian University Council of Chief Information Officers

Per: _____

Name: Rick Bunt

Title: President

_____ **[Print name of Participant]**

Per: _____

Name:

Title:

Schedule A

TERMS FOR PARTICIPANTS OPERATING AN IDENTITY PROVIDER

The parties agree that the following additional terms, in addition to the Participation Agreement, shall govern the Identity Provider operated by the Participant (capitalized terms herein shall have the meanings ascribed thereto in the Participation Agreement unless otherwise defined):

ARTICLE 1 - PARTICIPANT RIGHTS AND RESPONSIBILITIES

1.1 The Identity Provider shall be provided with access to the Canadian Access Federation Shibboleth access management federation.

1.2 The Participant operating the Identity Provider shall comply with all Canadian Access Federation policies and procedures.

1.3 The Participant operating the Identity Provider shall provide the configuration information reasonably requested by CUCCIO in advance of creating the Identity Provider service.

1.4 Any agreement for service provided by a Service Provider to the Identity Provider shall be the responsibility of the Participants operating the Service Provider and the Identity Provider.

ARTICLE 2 - CUCCIO RIGHTS AND RESPONSIBILITIES

2.1. CUCCIO shall operate the Canadian Access Federation core services according to the Canadian Access Federation policies and procedures as amended from time to time.

2.2. CUCCIO may, at its sole discretion, suspend service to an Identity Provider at any time without notice in accordance with CUCCIO policies and procedures.

2.3. Upon suspension, the Participant shall not be entitled to any refund of fees.

2.4 This "Schedule A" may be amended from time to time in the sole discretion of CUCCIO, provided that any amended Schedule A shall be provided to the Participant at least 30 days in advance of the effective date of such amended Schedule A.

CUCCIO (initial)	Participant (Initial)

Schedule B

TERMS FOR PARTICIPANTS OPERATING A SERVICE PROVIDER

The parties agree that the following additional terms, in addition to the Participation Agreement, shall govern the Service Provider operated by the Participant (capitalized terms herein shall have the meanings ascribed thereto in the Participation Agreement unless otherwise defined):

ARTICLE 1 - PARTICIPANT RIGHTS AND RESPONSIBILITIES

1.1 The Participant operating a Service Provider shall be provided with access to the Canadian Access Federation Shibboleth access management federation.

1.2 The Participant operating a Service Provider shall comply with all Canadian Access Federation policies and procedures.

1.3 Any agreement for service provided by a Service Provider to the Identity Provider shall be the responsibility of the Participants operating the Service Provider and the Identity Provider.

1.4 The Participant agrees to coordinate any press release related to the Service Provider with the Canadian Access Federation so that the announcement may be distributed to Canadian Access Federation Participants

1.5 The Participant acknowledges and agrees that if no Participant subscribes to the Service Provider, that service may be suspended, notwithstanding any other term of this Agreement, until CUCCIO is notified of a new subscription for such Service Provider.

1.6 The Participant is solely responsible for securing access to its transmission facilities or equipment, and securing access to or preventing alteration, delay, theft or destruction of its (or its end users') data files, programs, procedures or other information except as caused as a result of the negligence or willful misconduct of another Participant.

1.7 The Participant is solely responsible for any service that is registered or operated by the Participant, provided the Participant shall not under any circumstances register a service provider-type system on behalf of any third party.

1.8 The Participant shall provide its Participant Operating Procedure identifying the standards for its Service Provider systems to CUCCIO and all Participants in the Canadian Access Federation and shall at all times comply with these standards.

ARTICLE 2 - CUCCIO RIGHTS AND RESPONSIBILITIES

2.1. CUCCIO shall operate the Canadian Access Federation core services according to the Canadian Access Federation policies and procedures as amended from time to time.

2.2. CUCCIO may, at its sole discretion, suspend access to a Service Provider at any time without notice in accordance with CUCCIO policies and procedures.

CUCCIO (initial)	Participant (Initial)

2.3. Upon suspension, the Participant shall not be entitled to any refund of fees.

2.4 This "Schedule B" may be amended from time to time in the sole discretion of CUCCIO, provided that any amended Schedule B shall be provided to the Participant at least 30 days in advance of the effective date of such amended Schedule B.

CUCCIO (initial)	Participant (Initial)

Schedule C

TERMS FOR PARTICIPANTS OPERATING AN eduroam SERVICE

The parties agree that the following terms shall, in addition to the Participation Agreement, also govern the eduroam service subscribed for by the Participant (capitalized terms herein shall have the meanings ascribed thereto in the Participation Agreement unless otherwise defined):

ARTICLE 1 - PARTICIPANT RIGHTS AND RESPONSIBILITIES

1.1 The Participant operating an eduroam service shall be provided with access to the wireless eduroam Canada internet access federation.

1.2 The Participant operating an eduroam service has the right to protect its own network.

1.3 Subject to section 1.2, the Participant operating an eduroam service acknowledges and agrees that it must allow external eduroam Participants to authenticate using the eduroam service within six months of registering in the production environment. Failure to do so and to maintain this availability may result in the suspension of eduroam services.

1.4 The Participant operating an eduroam service shall comply with all Canadian Access Federation policies and procedures

1.5 The Participant may terminate its eduroam service without cause at any time by providing written notice to CUCCIO.

ARTICLE 2 - CUCCIO RIGHTS AND RESPONSIBILITIES

2.1 CUCCIO shall operate the eduroam Canada wireless internet access federation core services according to the Canadian Access Federation policies and procedures as amended from time to time.

2.2 CUCCIO may, at its sole discretion, suspend eduroam access by a Participant at any time without notice in accordance with CUCCIO policies and procedures in effect from time to time.

2.2 Upon suspension of its eduroam service by CUCCIO, the Participant shall not be entitled to any refund of fees related thereto.

2.3 This "Schedule C" may be amended from time to time in the sole discretion of CUCCIO, provided that any amended Schedule C shall be provided to the Participant at least 30 days in advance of the effective date of such amended Schedule C.

CUCCIO (initial)	Participant (Initial)

Schedule D

CUCCIO FEE SCHEDULE

	Higher Education / Research Participants	Other Participants
One-Time Setup Fee	\$3,250	\$3,250
Annual CAF Fee*	\$1,200	\$1,200 per Application Service

*Higher Education and Research Institution Participants are entitled to implement Identity Provider services and unlimited Application Services

CUCCIO (initial)	Participant (Initial)