

Internet2 eduroam[®] SP-Only service Agreement

This Internet2 eduroam SP-Only Agreement ("Agreement") is entered into by and between the University Corporation for Advanced Internet Development d/b/a Internet2 ("Internet2") and SP-Only Organization ("Organization").

1. TERM. This Agreement is effective as of the date of acceptance of this Agreement or when the Organization first logs into the administrative portal for the eduroam service, whichever is earlier. This Agreement will remain in effect until terminated in accordance with the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, Organization shall be bound by the terms of this Agreement so long as Organization uses the eduroam service.

2. EDUROAM SERVICE.

- 2.1 Organization agrees to comply with the eduroam Terms of Service.
- 2.2 Subject to the terms of this Agreement, Internet2 grants Organization the right to access and use the eduroam service for purposes of offering SP services only. SP services are detailed in the eduroam Terms of Service.
- 2.3 Organization is responsible for maintaining accurate contact information with Internet2, including updating the contact information when needed.
- 2.4 Organization is responsible for all arrangements, both contractual and physical, to establish its connection to the eduroam service. Organization may request support from Internet2 by emailing help@incommon.org, which will be provided on an as available basis. Support is not guaranteed.
- 2.5 As between Internet2 and Organization, Internet2 reserves all rights in the eduroam service (including any associated documentation) not expressly granted under this Agreement, including all proprietary rights in the same.

3. BILLING AND PAYMENTS.

- 3.1 **Service Fees.** Internet2 does not currently charge Organization any service fees under this Agreement. Internet2 reserves the right to change the fee structure at any time, as further detailed in the Terms of Service.

4. DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- 4.1 THE EDUROAM SERVICE IS PROVIDED ON AN AS-IS BASIS, WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR THE COMPLIANCE OF THE EDUROAM SERVICE WITH ANY LEGAL OR OTHER REQUIREMENTS APPLICABLE TO ANY ORGANIZATION OR USER. USE OF THE EDUROAM SERVICE IS AT ORGANIZATION'S OWN RISK, AND INTERNET2 EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE EDUROAM SERVICE WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED.
- 4.2 INTERNET2 SHALL NOT BE LIABLE TO ORGANIZATION OR USER FOR ANY ERROR OR DELAY IN TRANSMISSION OR FOR ANY REDUCTION IN THE CAPACITY OF THE EDUROAM SERVICE, OR FOR INTERRUPTION OR TERMINATION OF THE EDUROAM SERVICE, EITHER PARTIAL OR TOTAL, WHETHER OR NOT PRIOR NOTICE OF ANY SUCH ERROR, REDUCTION, INTERRUPTION OR TERMINATION HAS BEEN GIVEN.
- 4.3 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY TO THE EXTENT PERMITTED BY GOVERNING LAW, INTERNET2 SHALL NOT BE LIABLE TO ORGANIZATION OR USER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF REASONABLY FORESEEABLE OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) INTERNET2'S TOTAL MAXIMUM AGGREGATE LIABILITY (NOT PER CLAIM) TO ORGANIZATION WITH RESPECT TO ALL CAUSES OF ACTION AND CLAIMS ARISING FROM OR RELATED TO THE EDUROAM SERVICE OR OTHERWISE UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE ANNUAL SERVICE FEES PAID BY ORGANIZATION TO INTERNET2 DURING THE 12 MONTH PERIOD IN WHICH THE FIRST CLAIM AROSE. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTIES, OR ANY OTHER LEGAL THEORY. IF ANY OF THE FOREGOING LIMITATIONS OF LIABILITY ARE NOT ENFORCEABLE, THEN UNDER NO CIRCUMSTANCES WILL INTERNET2'S TOTAL MAXIMUM AGGREGATE LIABILITY (NOT PER CLAIM) TO ORGANIZATION EXCEED THE MINIMUM AMOUNT REQUIRED BY APPLICABLE LAW. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION DO NOT APPLY TO PERSONAL INJURY CLAIMS, INCLUDING DEATH, OR CLAIMS FOR DAMAGE TO TANGIBLE PROPERTY.
- 4.4 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL INTERNET2 HAVE ANY LIABILITY (A) IN CONNECTION WITH THE ACTS OR OMISSIONS OF ANY USER, OR (B) TO ANY USER OR TO ANY OTHER PERSON OTHER THAN ORGANIZATION ITSELF (AND, FOR THE AVOIDANCE OF DOUBT, THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT). IN NO EVENT SHALL INTERNET2'S AFFILIATES, INTERNET2'S CONTRACTOR/AGENTS, OR ANY OFFICERS, TRUSTEES, BENEFICIARIES, MEMBERS, OR OTHER PRINCIPALS OR REPRESENTATIVES OF INTERNET2, ITS AFFILIATES, OR ITS CONTRACTOR/AGENTS HAVE ANY LIABILITY TO ORGANIZATION OR USER ARISING FROM OR RELATED TO THE EDUROAM SERVICE OR OTHERWISE UNDER OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT.

5. THIRD PARTY CLAIMS.

- 5.1 Each Party shall be responsible for claims, losses, damages, and expenses proximately caused by the negligent or wrongful acts or omissions of its employees acting within the scope of their employment in the performance of this Agreement. Nothing herein shall preclude either Party from asserting against third parties any defenses to liability it may have under the law or be construed to create a basis for a claim or suit when none would otherwise exist. This provision shall survive the termination of the Agreement.
- 5.2 Organization shall hold Internet2 harmless from and against all claims, losses, damages, and expenses incurred by Internet2 in connection with any third-party claims arising out of or related to the Organization's breach of this Agreement. In the event Organization's breach of this Agreement causes Internet2 to violate any domestic or international law or regulation, Organization shall hold Internet2 harmless from all damages (including, without limitations, regulatory fines) related to such breach. Without limiting the foregoing, neither Party shall enter into any settlement that in any way impacts the other Party without that Party's prior written consent.
- 5.3 Internet2 shall have no responsibilities or liabilities for any service Organization provides related to the eduroam service. Internet2 is not responsible for any of Organization's actions.

6. TERMINATION.

- 6.1 **Termination by Internet2.** Internet2 may terminate this Agreement or suspend Organization's use of the eduroam service at any time. Internet2 will seek to provide reasonable notice to Organization in the event of such termination or suspension.
- 6.2 **Termination by Organization.** Organization may terminate this Agreement at any time by providing notice to Internet2 or by removing its RADIUS information from the eduroam service's administrative portal.
- 6.3 **Post-Termination Obligations.** Upon the termination of this Agreement, Organization's right to access and use the eduroam service will end. Upon termination of this Agreement for any reason, any and all liabilities accrued prior to the effective date of the termination shall survive.

7. MISCELLANEOUS.

- 7.1 **Contractual Relationship.** This Agreement will not be construed to create an association, joint venture or partnership between the Parties or to impose any partnership liability upon either Party.
- 7.2 **Assignment.** Organization shall not have the right to assign this Agreement, whether in whole or in part, to any third party.
- 7.3 **Survival and Severability.** The provisions of this Agreement, which by their nature are continuing, shall continue in full force and effect and shall bind the Parties beyond any termination, cancellation or expiration of this Agreement. If any provisions of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby but shall remain in full force and effect.
- 7.4 **Governing Law.** This Agreement shall be governed by the laws of the state of New York, without reference to choice of law doctrine.
- 7.5 **Authority.** Each person acknowledging and accepting this Agreement represents that they are duly authorized and have legal capacity to execute and deliver this Agreement on behalf of the applicable Party.
- 7.6 **Force Majeure.** In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (other than payment obligations) due to any cause beyond the reasonable control of the Party invoking this provision, the affected Party's performance shall be temporarily excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence.
- 7.7 **Contractors/Agents.** Internet2 shall have the right to use Contractor/Agents to perform any of its obligations or to act on behalf of Internet2, including scheduling system downtime of the eduroam service for maintenance and other purposes. Organization shall have the right to use Contractor/Agents to perform any of its obligations or to act on behalf of Organization. As between Internet2 and Organization, all actions of Internet2's Contractor/Agents when acting on Internet2's behalf in connection with this Agreement are attributable to Internet2 for all purposes under this Agreement, and all actions of Organization's Contractor/Agents when acting on Organization's behalf in connection with this Agreement are attributable to Organization for all purposes under this Agreement.
- 7.8 **Notice.** Notices to Internet2 via mail or email, as permitted, shall be sent to UCAID/Internet2, 1150 18th Street NW, Suite 750, Washington, DC 20036, Attn: General Counsel, or legal@internet2.edu with a copy emailed to help@incommon.org. Notices to Organization shall be emailed to Organization's registered eduroam administrator.
- 7.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes any and all prior agreements between the Parties with regard to the subject matter hereof.
- 7.10 **Modification and Amendment.** Internet2 reserves the right, in its sole discretion, to modify or amend this Agreement. Further, Internet2 reserves the right, in its sole discretion, to modify or amend the eduroam Terms of Service as needed. When possible, in Internet2's sole discretion, Internet2 shall provide Organization with notice of such modification or amendment at least 90 days prior to the change becoming effective. As applicable, in no event shall preprinted terms or conditions found on any purchase order or similar document issued by or on behalf of Organization be considered part of, or an amendment or modification to, this Agreement or the eduroam Terms of Service.

7.11 **Laws.** Organization is responsible for complying with all applicable domestic and international laws and regulations (including, without limitations, data privacy laws) relating to its access and use of the eduroam service. Internet2 shall have no liability to Organization or any other person for Organization's failure to comply with this provision.

8. DEFINITIONS.

- 8.1 "**Affiliate**" means, with respect to any Person, any Person controlling, controlled by or under common control with such Person.
- 8.2 "**Claims**" means, individually and collectively, claims, actions, demands, suits, or proceedings.
- 8.3 "**Contractor/Agents**" means any independent contractors, subcontractors, or other non-employees that perform any of a Party's obligations hereunder or act on behalf of such Party in connection with this Agreement.
- 8.4 "**Damages**" means, individually and collectively, damages, costs, liabilities, fines, penalties, losses and expenses, including court judgments, settlement amounts and reasonable attorneys' fees.
- 8.5 "**eduroam service**" means the roaming network access service based on the RADIUS protocol that is based in, maintained in and operated in the U.S. and uses the global eduroam system to enable Users to use their institutional assigned credentials to access the Internet through an Internet connection provided at any participating organization.
- 8.6 "**eduroam system**" means the integrated network of global RADIUS servers, which integrated network of servers enables the eduroam service. Although certain components of the eduroam system are connected to the Internet2 network for the purpose of receiving and transmitting data, the Internet2 network itself is not part of the eduroam system.
- 8.7 "**eduroam Terms of Service**" means the "eduroam Terms of Service - Internet2," currently found at <https://incommon.org/about/policies/>.
- 8.8 "**Interruption**" when referenced in connection with the eduroam service, means any partial or total interruption, outage or downtime of the eduroam service, or any material degradation to the performance of the eduroam service.
- 8.9 "**Notice**" means any notice, communication, request or reply made by one Party to the other Party, in connection with this Agreement.
- 8.10 "**Party**" means Internet2 or Organization. The plural refers to both Internet2 and Organization, collectively.
- 8.11 "**Person**" means an individual, partnership, corporation, limited liability company, university, trust, decedent's estate, joint venture, joint stock company, association, unincorporated organization, governmental body or agency, or other entity.
- 8.12 "**RADIUS**" means Remote Authentication Dial-In User Service.
- 8.13 "**User(s)**" or "**its Users**" means a Person who uses the eduroam service.