

::: PARTICIPATION AGREEMENT

The following terms and conditions govern the provision of Yellowstone Regional Internet Exchange ("YRIX") services ("YRIX Services") to _____ ("Member") as described on the Service Order. The term "YRIX Services" is limited to the equipment, facilities, programming or software provided by YRIX.

WITNESSETH

WHEREAS, YRIX has entered into a Collocation License Agreement with iConnect Montana ("iConnect") to house and operate certain telecommunications and related equipment in iConnect's Billings collocation facility and may in the future locate equipment in other collocation facilities ("Collocation Facility").

WHEREAS, YRIX has made certain facilities ("YRIX Exchange Point") available within the Collocation Facility for the provision of YRIX Services including interconnection and exchange of IP traffic between Members.

WHEREAS, the Member wishes to utilize such facilities to interconnect to and exchange IP traffic with other Members under a Multi Lateral Peering Agreement ("MLPA") or with individual Members under bilateral peering agreements. YRIX is willing to grant Member non-exclusive use of the YRIX facilities for such purpose under the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration, YRIX and Member hereby agree as follows:

1) MEMBER'S & YRIX'S OBLIGATIONS

a) This Agreement is for the provision of an exchange mechanism for the mutual and free exchange of any and all Internet Protocol (IP) units of data between the Members. Member is permitted to block, using packet filters or other means, any traffic which is to the detriment of the Member's business. In the case of such blocking, the Member will notify the blocked Member(s) as soon as reasonably practical. The Member and YRIX acknowledge that they do not intend to monitor the content of IP traffic transiting their networks and systems and cannot be responsible for content of information transferred.

b) YRIX will not monitor or interfere with the content or free exchange of information using the YRIX Services.

c) IP peering between the Member and other YRIX Members will be accomplished via the Border Gateway Protocol (BGP) and/or future recommendations of the Internet Engineering Task Force (IETF). The Member agrees to maintain a current BGP version. All routes and networks exchanged, and the routing policy governing this, will be registered with the proper agency.

d) YRIX and the Member agree to cooperate to ensure what they believe to be an efficient use of the YRIX Exchange Point by their relevant applications. If in the opinion of either YRIX or the Member there are significant breaches of the conditions of this Agreement, either YRIX or the Member may unilaterally terminate this Agreement in accordance with Section 2 below. In practice, however, YRIX and the Member would expect to resolve any such issues through discussion prior to considering such unilateral termination.

e) The Member is to bear its own costs for the provision of routing capacity and hardware systems at their own end of the link and for collocation services, private lines or cross connects, if any, within the Collocation Facility. The costs of each Member's connection to the YRIX Exchange Point, including set up and ongoing costs are to be born by the Member.

f) Members are bound by the terms of the YRIX Acceptable Use Policy attached Hereto as [Exhibit A](#).

2) TERM

For purposes of this Agreement, the Commencement Date shall be considered to be _____ ("Commencement Date"). The term of this Agreement shall commence on the Commencement Date and shall continue for a period of one (1) year. Unless terminated, this Agreement will automatically renew for successive terms of one (1) year at the expiration of this initial term.

- a) Either party may terminate this Agreement without penalty at any time for any reason or no reason by providing the other party with thirty (30) days prior written notice of such termination.
- b) YRIX may terminate this Agreement or suspend service hereunder at any time upon:
 - i) any failure of Member to pay any undisputed amounts as provided in this Agreement;
 - ii) any breach by Member of any material provision of this Agreement continuing for thirty (30) days after receipt of notice thereof;
 - iii) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Member; or
 - iv) any government prohibition or required alteration of services to be provided hereunder or any violation of applicable law, rules or regulations. The Members' rights and obligations, which by their nature would extend beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, cancellation or expiration.
- c) In the event that Member cancels or terminates YRIX Exchange Service for any reason, Member agrees to pay YRIX:
 - i) all outstanding non-recurring and recurring charges; and
 - ii) any disconnection, early cancellation or termination charges reasonably incurred by YRIX.

3) FEES AND BILLING

Member will be charged installation fees, other non-recurring and monthly recurring fees as identified in the YRIX Exchange Service Fee Schedule, attached hereto as [Exhibit B](#). Member's selected Peering Arrangement, Port Type, Cross Connect and Bandwidth Traffic will determine the total charges invoiced monthly.

- a) The 95th Percentile Rule will be used to determine bandwidth usage under Metered and Unspecified Bit Rate (UBR) plans. Usage is measured by sampling the Member's connection every five minutes. Each five-minute sample represents the greater average level of inbound or outbound bandwidth in use during that period. Over the billing period, the top 5% of traffic data point samples are discarded. The highest remaining data point is designated as the 95th percentile usage value and the Member is billed accordingly with fractional megabits rounded up.
- b) Full and Constant Bit Rate (CBR) ports will be billed at exactly the bandwidth subscribed.
- c) Member will pay a port surcharge and other applicable charges as specified in Exhibit B.
- d) Member will be billed monthly via email, in arrears, for recurring and non-recurring fees, and payment of such fees and charges will be due within thirty (30) days of the date of each YRIX invoice. Late payments hereunder will accrue interest at a rate of one and one-half percent (1 1/2%) per month.
- e) YRIX will suspend service forty-five (45) days after billing has gone out or fifteen (15) days after the

collection period.

f) YRIX may adjust fees identified in the YRIX Exchange Service Fee Schedule by providing Members with sixty (60) days prior written notice of such adjustment.

4) YRIX SUPPORT

At Member's request, YRIX will respond to reports of service interruption and shall use reasonable care in resolving all problems regarding the YRIX Services in conformance with industry standards.

5) SERVICE CHANGES

YRIX may substitute, change or rearrange any equipment or facilities as necessary to maintain or improve the technical parameters of the services provided.

6) SERVICE INTERRUPTION AND CREDITS

a) YRIX will grant a credit allowance for service interruption in excess of 24 hours; such allowance shall be calculated and credited in one (1) day increments. A service interruption will be deemed to have occurred only if service becomes unusable to Member as a result of failure of the YRIX Exchange Point equipment, or human error and where such interruption is not the result of:

- i) the negligence or acts of Member or its agents;
- ii) the failure or malfunction of equipment or systems not provided by YRIX;
- iii) circumstances or causes beyond the control of YRIX; or
- iv) a service interruption caused by scheduled service maintenance, alteration, or implementation.

b) Each request for credit in any calendar month must be received by YRIX within five (5) days of the occurrence giving rise to the credit claim. The total amount credited to Member in connection with service interruptions in any calendar month will not exceed the total monthly fees payable by Member for YRIX Services for such month. Credit(s) shall not be granted to Member if its account is delinquent on the date(s) of such service interruption for which credit is requested. The foregoing states Member's sole remedy for service interruption under the Agreement.

7) CONFIDENTIALITY

Member and YRIX agree to maintain in strict confidence all plans, designs, drawings, trade secrets, and other proprietary information of the other which is disclosed pursuant to this Agreement. No obligation of confidentiality shall apply to disclosed information which the recipient:

- a) already possessed without obligation of confidentiality;
- b) develops independently; or
- c) rightfully receives without obligation from a third party.

8) REPRESENTATION AND WARRANTIES

Each Party represents and warrants that its services, products, materials, data, information and equipment used in connection with this Agreement does not as of the Commencement Date, and will not during the term of this Agreement operate in any manner that would violate any applicable law or regulation.

9) YRIX INTERNET EXCHANGE POLICY

a) Member has read the YRIX Internet Exchange Policy attached hereto as [Exhibit C](#). Member represents and warrants that it will comply with the YRIX Internet Exchange Policy at all times.

b) **Actions of Third Party.** Without limiting the foregoing disclaimer, Member specifically acknowledges that YRIX Exchange Services beyond its facilities within the Collocation Facility are in part provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which YRIX Exchange Service (or portions thereof) may be impaired or disrupted. Although YRIX will use commercially reasonable efforts to take any actions it deems appropriate to remedy and avoid such events, YRIX cannot guarantee that they will not occur. Accordingly, so long as YRIX acts in a commercially reasonable manner as described above, YRIX will have no liability whatsoever resulting from or related to such events.

10) LIMITATION OF LIABILITY

a) Neither the partners (direct or indirect) comprising YRIX, nor the shareholders of YRIX (nor any of the partners comprising same), nor any of the partners, shareholders, directors or officers of any of the foregoing, nor any employee, agent or person acting on YRIX's or such person's behalf (collectively, YRIX's Parties") shall be personally liable for the performance of YRIX's obligations under this Agreement. Member shall look solely to YRIX to enforce YRIX's obligations hereunder and shall not seek any damages against any of YRIX's Parties or (without limitation and including, but not limited to), YRIX's principals, partners, shareholders, officers, directors, members, agents, employees, or others related to the YRIX. Notwithstanding anything contained in this Agreement to the contrary, Member acknowledges and agrees that Member shall look solely to the estate and interest of YRIX, its successors and assigns, for the collection of any judgment recovered against, or liability of, YRIX by reason of YRIX's breach of this Agreement or otherwise, and no other property or assets of YRIX or any of YRIX's Parties shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Member's remedies under or with respect to either this Agreement or the relationship of YRIX and Member hereunder.

b) In no event shall either party be liable for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, interruption in or loss of use of service or any Member business, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

c) Member shall be liable for any damages to YRIX equipment, facilities, and systems which is caused by:

i) negligent or willful acts or omissions of Members or

ii) malfunction or failure of any equipment or facilities provided by Member or its agents, employees or suppliers.

11) INDEMNIFICATION

Each party shall defend, indemnify, save and hold harmless the other party, the other party's affiliates and their officers, directors, agents and employees from and against any and all lawsuits, claims (including but not limited to claims for bodily injury or property) demands, penalties, losses, fines, liabilities, damages, and expenses (including reasonable

attorney's fees) (collectively "Claims") resulting from the indemnifying party's acts, omissions or breach of this Agreement; provided, however, that neither party shall have the obligation to indemnify from and against Claims caused by the negligence or intentional misconduct of the other party. Each party agrees to:

- a) promptly notify the indemnifying party in writing of any indemnifiable claim,
- b) give the indemnifying party the opportunity to defend or negotiate a settlement of any such claim at the indemnifying party's expense, and
- c) cooperate fully with the indemnifying party in defending or settling such claim. Each party reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification by the other party.

12) DEFAULT

- a) In the event Member fails to pay monthly or other fees within fifteen (15) days of YRIX's written notice to Member of its failure to pay when due and demand for the immediate payment thereof, YRIX may at its sole discretion take any or all of the following actions:
 - i) prohibit Member access to and use of the YRIX Exchange Point;
 - ii) restrict vendor access to work on Member's equipment and/or circuits and
 - iii) terminate this Agreement.
- b) In the event Member fails to perform or comply with any other provision of this Agreement within ten (10) days of YRIX's written notice to Member of its failure to so perform or comply, YRIX may terminate this Agreement. Member shall in any event remain fully liable for damages as provided by law and for all costs and expense incurred by YRIX on account of such default, including reasonable attorney's fees. Member obligation to pay all fees and charges, which have been accrued, shall survive any termination of this Agreement.

13) OTHER PROVISIONS

- a) **Multi-Lateral Peering Agreement.** The MLPA is attached hereto as [Exhibit D](#).
- b) **Non-Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other. Any assignment in violation of this Section shall be void; provided however, that either party may assign this Agreement to the purchaser of all or substantially all of the assets of the parties or to an affiliate of the parties. This Agreement shall be binding upon the parties and their respective successors and assigns.
- c) **Independent Contractors.** No license, joint venture or partnership, express or implied is granted by YRIX pursuant to this Agreement. The parties will have the status of independent contractors.
- d) **Publicity and Publication.** YRIX shall have the right to publish information about the YRIX Exchange Point and shall have the right to disclose Member's participation.
- e) **Severability.** If any provision of the Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed deleted from this Agreement and replaced by a valid enforceable provision which, to the maximum extent possible, achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.
- f) **Force Majeure.** Either party will be excused from any delay or failure in performance hereunder

caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, terrorism and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

g) **Governing Law.** The construction, interpretation and performance of this Agreement shall be in accordance with the laws of the State of Montana. The parties agree that in the event of any dispute under this Agreement that the proper venue for any litigation shall be the State or Federal courts located in Billings, Montana.

h) **Attorney's Fees.** In the event of any dispute in relation to this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney's fees and other reasonable court costs.

i) **Integration.** This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings related thereto. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both parties.

j) **Exhibits Incorporated.** All Exhibits to this Agreement are incorporated herein and made a part hereof as if fully set forth herein.

k) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, including facsimile counterparts, each of which shall be deemed an original.

l) **Execution Authority.** The undersigned hereby covenant and specifically acknowledge that they have full and complete legal authority to sign on behalf of the Corporation or other legal entity that is a party to this Agreement. Signature and execution authority has been properly and adequately obtained by resolution or other appropriate means, and the agent, employee, or officer signing hereunder is vested with full and complete authority to bind the legal entity for which it is signing.

m) **Notices.**

i) All notices or other instruments or communications provided for under this Agreement will be in writing, signed by the party giving the same, and will be deemed properly given and received:

(1) on the next business day after deposit for overnight delivery by an overnight courier service such as Federal Express or

(2) three (3) business days after mailing, by registered or certified mail, return receipt requested or

(3) on the next business day after posting to recipients' E-mail address.

ii) All such notices or other instruments will be furnished with delivery or postage charges prepaid addressed to the party at the address set forth below or such other address as such party may designate by notice to the other party.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement in multiple original counterparts as of the day and year first above written.

YRIX

MEMBER

Name: _____ By: _____
Printed: _____ Name: _____
Title: _____ Printed: _____
Title: _____

:: EXHIBIT A

YRIX ACCEPTABLE USE POLICY

YRIX Services and YRIX Exchange Point may only be used for lawful purposes. Transmission of any material in violation of any state or federal regulation is prohibited. Member shall not use, nor shall it permit others to use YRIX's services or facilities:

- a. to send unsolicited email of any kind, regardless of the content or nature of such messages or post the same or similar message to one or more newsgroups;
- b. to send any virus, worm, Trojan horse or harmful code or attachment;
- c. to alter, steal, corrupt, disable, destroy, trespass or violate any security or encryption of any computer file, database or network;
- d. so as to interfere with the use of the YRIX Exchange Point by other Members or authorized users; and e. in a manner which, in YRIX's opinion, is inconsistent with the generally accepted rules of Internet etiquette and conduct.

Member further agrees that it shall not, nor shall it permit others to:

- a. alter, tamper with, adjust, repair or circumvent any aspect of YRIX's Services or facilities ; or
- b. resell, sublicense, rent, lease, timeshare or rebrand YRIX Services or otherwise provide the services to any party not within Member's enterprise and related personnel.

If Member, or a third party through Member, violates any of the foregoing prohibitions, YRIX may immediately suspend services to Member and/or terminate the Agreement without further liability or obligation to Member. Member's rights to use YRIX's Services and facilities are non-exclusive, non-transferable and subject to compliance with these terms and conditions. As between YRIX and Member, all intellectual property and proprietary rights relating to YRIX's Services and facilities, including but not limited to any specifications, protocols, IP addresses, configurations and routing, belong solely and exclusively to YRIX.

This Acceptable Use Policy may be revised from time to time by YRIX and upon revision will be provided to Member.

:: EXHIBIT B

FEES AND BILLING

Non-Recurring Charges	Scheduled Price	Comments
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Port Installation	\$250.00	
BGP Session Change	\$125.00	Change of Peer Router IP or ASN
MLPA Setup	\$75.00	If ordered after Initial Port
Prefix or AS-Path Change	\$50.00	Change of Filtered Routes

Monthly Recurring Charges

Flat usage \$40/mo

Individual Case Basis

Pricing for Special Circumstances may be implemented with prior approval by the YRIX Board.

Prices May Change

Prices may be modified periodically with YRIX Board approval.

:: EXHIBIT C

YRIX INTERNET EXCHANGE POLICY

Mission

The Yellowstone Regional Internet Exchange (YRIX) was created to aid, support, and assist the efficient transmission of educational, scientific and other information and communications in the multi-state Yellowstone region by creating and maintaining direct communications interconnections between and among Members and other Internet service providers. YRIX is committed to increasing the participation in the YRIX Exchange Point in order to obtain the critical mass necessary to generate significant traffic and be of real benefit to all the Members.

1) Neutrality.

- a) The YRIX Exchange Point is a NEUTRAL facility.
- b) YRIX is not and will not become an Internet Service Provider.
- c) YRIX will not interfere in any peering agreements made between Members.

2) Non-Discrimination.

- a) YRIX will not discriminate against Members. YRIX will not decline any Members in good standing within the guidelines of the Participation Agreement wishing to participate in the YRIX Exchange Point.

b) High Quality Platform.

YRIX commits itself to provide a high quality platform for the YRIX Exchange Point. The platform can change as the requirements of the Members change, to insure seamless peering. YRIX does not adhere to a particular hardware vendor due to the nature of its neutrality in order to provide the best solution available for its services.

3) Monitoring.

YRIX reserves the right to monitor and/or analyze traffic at the exchange point for the exchange point management, statistics, or troubleshooting purposes.

4) Confidentiality.

YRIX reserves the right to disclose the YRIX Exchange Point traffic statistics as a whole to the public. However, YRIX will not disclose any traffic information of an individual Member to the public for any reason.

5) Settlement.

YRIX will endeavor to solve any disagreements among Members with respect to their use of the YRIX Exchange Point. Should any Member violate any YRIX rule, policy or agreement, a written notice will be sent to the violating Member disclosing the violation. In such cases, if no settlement can be made after intensive effort, the Member's Agreement and participation in the YRIX Exchange Point may be terminated.

6) Collocation Facility Rules of Conduct.

- a) Members are required to adhere to iConnect Montana's physical security procedures and other guidelines when entering or exiting the Collocation Facility.
- b) Members are required to keep YRIX notified of an up to date list of authorized contacts for their company.
- c) By accessing YRIX facilities, Member members and their authorized staff automatically agree to these "Rules of Conduct".
- d) Failure to comply with these rules will result in a review of the Member's access.

:: EXHIBIT D

YRIX MULTI-LATERAL PEERING AGREEMENT

Version 1.0 October 22, 2002
The Multi-Lateral Peering Agreement.

This Multi-Lateral Peering Agreement ("MLPA") governs peering at the YRIX Exchange Point between all Members. Peering for the purposes of this Agreement will be defined as the advertising of routes via BGP4. The transit of packets from the YRIX Exchange Point to other meet points is not covered under this agreement.

1) A YRIX Exchange Point MLPA Member is:

- a) Obligated to advertise all its (participating) customers' routes to all the other MLPA Members and accept the routes advertised by the other MLPA Members;
- b) Obligated to exchange traffic among the customers of all the MLPA Members;
- c) Entitled to select routing paths among the MLPA Members;
- d) Entitled to make Bi-Lateral Peering Agreements with any YRIX Exchange

Point Member.

2) A YRIX Exchange Point MLPA Member shall NOT:

- a) Advertise full or transit routes to other MLPA Members;
- b) Advertise the routes obtained from its Bi-Lateral Peering Agreement partners to the MLPA Members;
- c) Advertise routes learned from any other peering partners (other than clients of the Member) to the MLPA Members;
- d) Advertise networks with prefixes shorter than /24.

3) Exchange of routes will be performed using BGP4.

4) All MLPA Members agree to report to YRIX all ASNs and Prefixes that they intend to advertise and understand that any routes not reported may be filtered.

Implementation of this Agreement. Initial Establishment of MPLA:

- 1) An MLPA Member gains connectivity to the YRIX Exchange Point;
- 2) The MLPA Member signs this YRIX MLPA;
- 3) The MLPA Member sends a confirmation of consent with the YRIX MLPA to YRIX;
- 4) The MLPA Member sends a copy of this Multi-Lateral Peering Agreement along with contact information (administrative and technical contacts) to YRIX.
- 5) The MLPA Member establishes a BGP session with the YRIX MLPA route server and begins to advertise routes.

Maintenance of the MLPA.

- 1) When a MLPA Member withdraws from the YRIX MLPA, the withdrawing Member will notify YRIX about the changes;
- 2) If administrative or technical contacts for the MLPA Member change, the Member will notify YRIX.
- 3) If the ASNs or IP address space of the MLPA Member change, the Member will notify YRIX about the changes.

The Management of This Agreement

The YRIX Designated Coordinator will serve as a common point of contact for all MLPA Members.

Regulation of This Agreement

- 1) For the purpose of regulation this agreement, the YRIX coordinator (YRIX) will maintain a list of authorized representatives from each YRIX Member.
- 2) A Member may withdraw at any time by providing the YRIX Designated Coordinator with sixty (60) days prior written notice.

- 3) This MLPA is an optional service provided by the YRIX. Any Member participating in multilateral peering shall be bound to the terms of this Agreement.
- 4) YRIX shall charge a fee for participation as specified in Exhibit B to the YRIX Internet Exchange Participation Agreement.
- 5) This Agreement is subject to the terms of the YRIX Internet Exchange Participation Agreement.
- 6) All Members must be members of the YRIX and must have signed the YRIX Internet Exchange Participation Agreement.