

LETTERHEAD OF THE PARTICIPANT

[DATE]

**Internet2  
1000 Oakbrook Drive, Suite 300  
Ann Arbor, MI 48104**

**ATTN: Andrea Blome**

**Re: MAN LAN Participation Agreement**

We, \_\_\_\_\_ (“Participant”), are a research and education network, or an aggregator of research and education networks, that would like to connect to the Manhattan Landing (MAN LAN) international exchange point operated by Internet2. We understand that MAN LAN is a high-performance international exchange point that is part of the Internet2 project that serves the international research and education community with advanced network technology. We understand that MAN LAN is located in the NYSERNet co-location space at 32 Avenue of the Americas, New York, NY, USA.

We understand that connecting to MAN LAN does not constitute an agreement by Participant with Internet2 to peer with the Internet2 Network and that a separate peering agreement with Internet2 must be executed for this purpose.

We understand that connections to MAN LAN from within the NYSERNet colocation space or from NYSERNet's Fiber Transport Service will require a separate agreement with NYSERNet for the fiber cross-connect.

We agree to abide and be bound by the MAN LAN Terms of Participation (and all Schedules thereto) which is attached hereto and made part of this MAN LAN Participation Agreement (the “Agreement”) once this Agreement is countersigned by Internet2.

We request that the connection(s) be established according to Schedule 1 of the Agreement and agree that the MAN LAN fees, as set forth on Schedule 3 of the Agreement, will be paid within thirty (30) days from the date this Agreement is executed by Internet2.

Any reference to “Abilene” contained in this agreement shall apply to any successor to the original Abilene Network including, without limitation, the Internet2 Network.

**Please indicate your agreement with foregoing by returning a signed copy of this Agreement.**

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**PARTICIPANT**

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**INTERNET2**

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**Street Address**

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**Name - Signature**

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**Date**

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**City/State/Zip/Country**

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**Name - Print**

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**Authorized Signature**

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**Date**

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**Title**

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**Print Name and Title**

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**Connection Date (supplied by Internet2)**

# MAN LAN PARTICIPATION AGREEMENT

The Manhattan Landing (MAN LAN) is an international exchange point facility established in order to facilitate interconnection in New York City, U.S.A. between research and education networks, hereafter called "RENs".

MAN LAN is a project of Internet2 working in partnership with NYSERNet, Inc. to provide co-location of MAN LAN equipment as well as local support of the facility; and with Indiana University to provide the Network Operations Center (NOC) services for MAN LAN (collectively referred to as the "Services").

The following are the terms and conditions governing the use of the MAN LAN Exchange Point by exchange point participants. A "Connector" to MAN LAN is a REN that may exchange traffic through the MAN LAN switch; and has entered into a MAN LAN Participation Agreement as a Connector to MAN LAN. An "Aggregator" is an entity that physically connects to the MAN LAN switch for purposes of interconnecting one or more RENs to MAN LAN for the purpose of exchanging traffic; and has entered into a MAN LAN Participation Agreement as an Aggregator. An Aggregator might be a commercial vendor or a REN. A MAN LAN "Participant" is a Connector or an Aggregator. MAN LAN Connectors are given access to MAN LAN so that they may make bilateral peering agreements with and exchange traffic with other MAN LAN Connectors, herein called the "Service" either directly or through an Aggregator. An Aggregator may not exchange traffic through the MAN LAN switch with other MAN LAN Connectors unless specifically entering into a MAN LAN Participation agreement as a Connector by Internet2.

All Participants must agree to these terms and conditions governing the use of the MAN LAN Exchange Point.

Some provisions of this agreement apply only to a Connector, and some to an Aggregator. In such cases, the applicability is noted in detail, and if not, applies to all Participants.

## **1. General.**

a. All use of MAN LAN by Participants shall be subject to these terms and conditions. In the event that any Participant fails to meet any of the requirements set forth in this document, Internet2 may take reasonable action to correct such failure, including suspension or termination of Participant's use of MAN LAN until Participant complies with all such requirements, as set forth in this MAN LAN Exchange Participation Agreement.

b. Connector will be required to enter into separate agreements with Internet2 if Connector desires to make peering arrangements for use of the Internet2 Network.

c. Each Connector is responsible for pursuing agreements with each other MAN LAN Connector with whom Connector wishes to exchange traffic. Internet2 does not guarantee to any MAN LAN Connector that any other MAN LAN Connector will exchange traffic with such Connector.

d. Each MAN LAN Participation Agreement comes into force on the Date the Participant has connectivity to MAN LAN and remains in force for one year and from year to year thereafter unless either Internet2 or Participant notifies the other to the contrary at least 90 days before the anniversary of the Connection Date.

e. Each MAN LAN Participation Agreement, including the Terms of Participation and Schedules and its remaining attachments, constitutes the entire understanding between a Participant and Internet2 with respect to Participant's connection to MAN LAN and supersedes any prior understanding or agreement, written or oral, between the Participant and Internet2 respecting that subject matter. No other representation or other statement, written or oral, is binding on Participant or Internet2.

f. This MAN LAN Participation Agreement may be terminated for convenience by the Participant, by giving 90 days notice to Internet2 via fax or letter mail. In the event of such termination, the Participant will cooperate in good faith with Internet2 with respect to any transition arrangements requested by Internet2. No fees will be refunded by Internet2 to a Participant in the event of termination for convenience. Internet2 may refuse to renew this Agreement according to Section 2b. This Agreement may be terminated for cause by either party for failure of the other party to comply with the terms of this Agreement. Prior to termination, the party wishing to terminate the Agreement must notify the other party in writing of the reason(s) for termination and the party so notified will have five (5) business days to respond. If the parties concur that termination is appropriate they will execute a termination of this Agreement. If the parties are unable to resolve the reasons satisfactorily to both parties then Section 1h will be used for the purposes of resolution.

g. Internet2 may modify these Terms of Participation at any time and from time to time by giving 30 days notice to any Participant. Internet2 will give this notice by announcing any changes to the Terms of Participation both in email to the Participant's Executive Contact and on the MAN LAN Website. Each Participant's use of its connection to MAN LAN after the change takes effect will constitute its continuing agreement to the Terms of Participation as so modified. Similarly, if specifically approved by the Board of Trustees, Internet2 may modify the Terms of Connection at any time and from time to time with no advanced notice. In any such case, Internet2 will announce any changes to the Terms of Participation both in email to the Participant's Executive Contact and on the MAN LAN Website. Each Participant's use of its connection to MAN LAN

either after the Executive Contact has acknowledged receiving the notice or five (5) days after the changes have been announced, will constitute its continuing agreement to the Terms of Connection as so modified. Subject to the transition provision set forth in Section 1f, each Participant has the right to terminate its connection to MAN LAN at any time if the Terms of Participation are modified in any way that is not acceptable to the Participant.

h. A Participant may not transfer or assign any of its rights or obligations under its MAN LAN Participation Agreement to any other person without Internet2's written consent. MAN LAN Participation Agreements are governed by New York law. In the event of a dispute, the Participant and Internet2 are required to negotiate in good faith for 60 days, and if the dispute is not resolved by such negotiation, to arbitrate the dispute before a single arbitrator in Washington, D.C.

## **2. Internet2 Responsibilities.**

a. On or about the Connection Date specified by Internet2 when countersigning the MAN LAN Participation Agreement, Internet2 will attempt to provide the Participant with access to MAN LAN. Internet2 does not guarantee that any Participants access will begin on the Connection Date.

b. Internet2 reserves the right to interrupt, suspend or reduce service to any Participant, or any other person, when such action is necessary in Internet2's sole judgment. Internet2 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 Internet2 will contact the Participant and any participants in an attempt to resolve any problems and restore service. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF PARTICIPATION, INTERNET2 SHALL NOT BE LIABLE TO ANY PARTICIPANT, OR OTHER PERSON FOR ANY ERROR IN TRANSMISSION 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. MAN LAN 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. INTERNET2 EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT MAN LAN WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED. NO STATEMENT, ORAL OR WRITTEN, GIVEN BY INTERNET2, 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 INTERNET2'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, EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE ANNUAL PARTICIPANT FEE(S) PAID BY THE PARTICIPANT TO INTERNET2 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).

d. Internet2 shall have no responsibility for Participant's use of the Services. In the event Internet2 (i) is advised by a governmental authority with appropriate legal jurisdiction that Participant's use of the Service is a violation of state, national or international law or, (ii) reasonably determines that Participant's use of the Service is or may adversely affect the Service, or interfere with other participant's use of the Service, Internet2 shall notify the Participant and when possible, provide a reasonable period for Participant to correct the problem. However, if in Internet2's sole judgment, Participant's continued use of the service presents a threat of damage or injury to Internet2, or if ordered to do so by a governmental authority with appropriate legal jurisdiction, Internet2 shall have the right to suspend Participant's use of the Service immediately.

## **3. Participant Responsibilities.**

a. Each Participant agrees to cooperate with the management of the MAN LAN and with Internet2 via the MAN LAN Network Operations Center ("NOC").

b. Each Participant is responsible for the contractual and physical arrangements required to connect such Participant to MAN LAN. Internet2 expressly disclaims that connections will or can be made successfully.

c. Each Participant must set forth the expected specific characteristics of each of its connections to MAN LAN on Schedule 1. Schedule 1 requires the following information: the Participants status as a Connector or Aggregator, the name and contact information of the carrier providing connectivity to MAN LAN and the location of the carrier in the Fiber Meet Me Room (FMMR), the starting date of the carrier's connection, the requested date of MAN LAN connection, the bandwidth of the MAN LAN connection. The Participant is responsible for updating this information as needed.

d. Participant Technical Contact and Executive Contact information are to be shown on Schedule

2, which is to be delivered to Internet2. The Participant is responsible for updating this information as needed.

e. Each Participant must pay Internet2 annual Participant Fees as shown in Schedule 3 and in accordance with the connection bandwidth and number of connections requested in Schedule 1. The fee for each subsequent year will be payable before each anniversary of the Participant's connection Date, unless either the Participant or Internet2 has given notice of termination at least 90 days before the anniversary of the connection Date.

f. Each Participant agrees not to violate or tamper with the security of any MAN LAN equipment or program.

g. Each Participant agrees to notify the NOC promptly of any known or suspected breach of or challenge to MAN LAN security or any known or suspected unauthorized use of a Participant's facilities to access MAN LAN. The MAN LAN NOC will notify Participant of any known breach of or challenge to the MAN LAN facility potentially affecting them.

h. Each Participant agrees to operate the Participant router(s) and any other Participant equipment that is attached to MAN LAN in a manner that does not adversely impact MAN LAN switch performance.

i. Each Connector agrees to use Participant supplied IP address(es) whenever possible, and VLAN identifier(s) assigned by the MAN LAN NOC. In cases where using Participant supplied IP address(es) is impracticable, Participants may use non-portable IP addresses assigned by the MAN LAN NOC that the Participant shall return to the MAN LAN NOC upon termination of this Agreement. Each Participant agrees not to announce these MAN LAN addresses to its peers.

j. With the exception of Address Resolution Protocol (ARP) packets, each Participant agrees not to generate any broadcast packets across the MAN LAN switch media from the Participant's attached router interface(s).

k. Participant agrees not to make any unauthorized use of another MAN LAN participant's resources, and to abide by any peering or other agreements between the Participant and MAN LAN participants. In particular, the Participant may not use another MAN LAN participant's facilities for Internet transit without the explicit consent of that participant. In addition, the Participant may not route any of its traffic across MAN LAN to another participant with which it does not have an established peering agreement. The Participant may send traffic to another MAN LAN participant only if that traffic is destined for an Internet address that has been announced to the Participant by the other participant or if the other participant has granted the Participant explicit Internet transit privileges.

l. Each Participant is to provide the MAN LAN NOC an updated list with names, positions, phone numbers, and electronic mail addresses of the Participant's administrative, technical, and operational contacts for issues related to MAN LAN.

Hours of availability must be provided for the operational contacts.

m. Through this Agreement, Internet2 and its suppliers provide interconnection services as well as local support of the facility and NOC services; they do not operate or control any content transported. Internet2 and its suppliers shall have no liability or responsibility for the content of any communication transmitted via the Services hereunder. Participant shall be solely responsible for any and all claims related to such content, and for any and all third-party claims relating to Participant's use of Services hereunder. Customer shall make no claim against Internet2 or its suppliers regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by virtue of the network services accessed through the Services provided through this Agreement.

n. Indemnity.

i. Participant shall, at its own expense, defend, indemnify, and forever hold Internet2 and its affiliates, successors, parent, subsidiaries, assigns and their respective officers, directors, members, employees and agents (each an "Indemnitee"), harmless from and against any and all losses, damages, injuries, costs, liabilities and expenses of any type (including, without limitation, fines, forfeitures, reasonable attorneys' fees, disbursements and administrative or court costs) incurred in connection with any and all claims, proceedings, actions or suits ("Claims") based in whole or in part upon or arising in connection with (i) Participant content, including without limitation, Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name, service mark or other moral or intellectual property right of any person; (ii) the use of Participant equipment or any facilities, equipment, apparatus or systems of Participant not provided by Internet2, including without limitation Claims for infringement of any third party's patent, copyright, trademark, trade secret or other intellectual property right ("Intellectual Property Rights" and individually, an "Intellectual Property Right"); (iii) the use of the Services by any end user of Participant, the inability of any end user of Participant to use the Services or any other Claim by any end user of Participant except to the extent such Claim is based solely on the willful misconduct of Internet2; and (iv) damage to any business or property, or injury to, or death of, any person arising out of any act or omission of Participant, or its agents, employees or end users, in connection with any product, service, facility or equipment provided by Internet2. Provided however, that notwithstanding the foregoing, Participant shall have no indemnification obligation under this Section 3.n.i. unless such Claim was caused, in whole, or part, by the reckless, willful or intentional misconduct of Participant or its employees or agents.

ii. Internet2 agrees to notify Participant in writing within ten (10) days of the assertion of any such Claim, proceeding, action or suit (provided that failure to provide such notice shall not limit Participant's indemnification obligations except to

the extent Participant is materially and irrevocably prejudiced thereby) and agrees not to settle, compromise or otherwise dispose of any such claim, proceeding, action or suit without the prior written consent of Participant which shall not be unreasonably delayed, conditioned or withheld. Participant shall have the right to defend any Claim at its sole cost and expense. Internet2 further

agrees to provide Participant with such information, assistance, and authority (at Participant's sole expense, as applicable) as reasonably necessary or useful for Participant's handling and defense of the Claims.

## SCHEDULE 1

### REQUESTED CONNECTION(S) TO MAN LAN

**1. Participating as Aggregator, Connector, or Both, and if Aggregator, list initial connectors to be connected through the aggregation:**

**2. Means of Connecting to MAN LAN:**

Name of the carrier providing capacity to the FMMR in 32 Ave. of the Americas: \_\_\_\_\_

FDP tie-down information: \_\_\_\_\_

Circuit ID's: \_\_\_\_\_

**3. Actual or anticipated Start date of the connection to the FMMR:**

**4. Requested Date of MAN LAN Connection:**

**5. Connection bandwidth and number:**

**Layer 2 Ethernet Connections:**

i. 1 GigabitEthernet ( )

ii. 10 GigabitEthernet ( )

**Layer 1 Optical Connections:**

i. OC12 ( )

ii. OC48 ( )

iii. OC192 ( )

## **SCHEDULE 2**

### **EXECUTIVE, TECHNICAL, AND BILLING CONTACTS**

**[NAMES AND CONTACT INFORMATION TO BE PROVIDED BY PARTICIPANT]**

## SCHEDULE 3

### 2008 MAN LAN Annual Fees

#### Single Connector or Aggregator Fees:

##### LAYER 2 ETHERNET:

EACH 1 GIGABITETHERNET CONNECTION	\$ 4,800
EACH 10 GIGABITETHERNET CONNECTION	\$14,400

##### LAYER 1 OPTICAL CONNECTIONS:

EACH OC12 CONNECTION	\$ 4,800
EACH OC48 CONNECTION	\$ 9,600
EACH OC192 CONNECTION	\$ 14,400

##### CROSS CONNECT FEES:

EACH CROSS-CONNECT FROM FMMR	\$ 1,200
FMMR CROSS-CONNECT NON-RECURRING CHARGE (NRC)	
- PER PAIR (paid to MAN LAN; passed through to NYSERNet)	\$350

##### CONNECTOR FEES BEHIND AN AGGREGATOR:

EACH 1 GIGABITETHERNET CONNECTION	\$ 0
EACH 10 GIGABITETHERNET CONNECTION	\$ 0
EACH CROSS-CONNECT FROM FMMR	\$ 0

THE INTERNET2 FEDERAL ID # IS 52-2060187