

# THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

## ROUTER AGREEMENT

This Router Agreement (the "Agreement") is made by and between the Commercial Internet eXchange Association, a trade association incorporated under the laws of the State of Delaware ("CIX"), having its principal place of business at 1301 Connecticut Ave. N.W., Washington, D.C. 20036 \_\_\_\_\_, a member of CIX (the "Member"), having its principal place of business at \_\_\_\_\_

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### RECITALS

WHEREAS, the purpose of CIX is to further the development of the open system protocol network service providers ("OSPNSP") industry and to assist in the development of legislation and regulations that are beneficial to the industry as a whole. CIX will assist the industry in the development of standards and interconnection protocols that will provide a basis for greater interconnection to the public network for the industry as a whole. It will provide educational opportunities to further the CIX members (the "Members") technical and policy understanding of the industry. CIX will also develop public policies and public positions in the best interest of the industry and will seek legislative and regulatory consideration of issues of general benefit to the Members and the industry;

WHEREAS, CIX, in furtherance of creating greater interconnectivity throughout the industry, has established operational, technical and administrative mechanisms to ensure fair and open communications among OSPNSP's providing a peer relationship for routing packets over their networks;

WHEREAS, the CIX NAP provides network routing services for the benefit of those CIX members electing to utilize and receive such routing services;

WHEREAS, CIX has established specific fees that the participating members are required to pay in eXchange for using the CIX NAP;

WHEREAS, those CIX members participating in the CIX NAP agree to eXchange network traffic will all other participating CIX members without payment of settlements; and

WHEREAS, Member wishes to become a participating CIX member and utilize the CIX NAP.

### **AGREEMENT**

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. CIX will provide Member access to the CIX NAP and Member shall be entitled to use the CIX NAP and receive from CIX the services described in Attachment A hereto.
2. Member agrees that it shall eXchange network traffic freely with all other CIX members that have access to and use of the CIX NAP ("Participating Members") without payment of settlement fees. Notwithstanding anything to the contrary contained in the preceding sentence, if a connectivity or routing problem caused by a Participating Member is adversely affecting the stability of Member's routing system, then, after delivering advance notice to CIX in a commercially reasonable time period of such problem, Member shall have the right to suspend the exchange of data traffic with such Participating Member until such time as the problem is alleviated.
3. Other than as stated in Section 4 below, no Participating Member or CIX shall be liable to any other Participating Member or to CIX for any loss, damage, liability, claim or expense arising out of, or in relation to, this Agreement, however caused, whether grounded in contract, tort (including negligence) or strict liability.
4. Each Participating Member and CIX shall indemnify and hold the nonliable Participating Members harmless from and against any loss, damage, liability, claim or expense which results from a claim or claims arising from the performance of this Agreement asserted by unrelated third parties concerning an action or omission of such member or CIX, respectively, arising out of, or in relation to, this Agreement.
5. Member is responsible for assessing its own need for property, casualty, and liability insurance and shall obtain such insurance as Member sees fit. Member shall bear the risk of loss to its own equipment and agrees not to make any claims against the other Participating Members or CIX for any property loss, except with respect to claims of gross negligence and willful misconduct.
6. This Agreement becomes effective and shall be dated (the "Effective Date") on the last to occur of : (i) the date upon which it is executed by CIX and (ii) the date upon which the Participating Member's router access fee is received by CIX.
7. The initial term of this Agreement shall commence on the Effective Date and end at 11:59 P.M. Eastern Standard Time on December 31 of the year in which it is executed (the "Initial Term"). Unless the Member provides the CIX Board of Directors (the "Board") written notice no later than 45 days prior to the expiration of the Initial Term or a Renewal Term (as hereinafter

defined) of the Member's intent not to renew membership, this Agreement shall automatically renew, on the same terms and conditions as set forth herein, for a one-year term (a "Renewal Term") on January 1 of each year following the year of execution (each one-year term being referred to as a "Renewal Term"). The router access fee for each Renewal Year shall be due and paid in full no later than January 31 (the "Renewal Payment Date") of each Renewal Term. In the event that the Member's Renewal Term router fee or any other fee owed by the Member to CIX, including the applicable CIX membership fee, is not received by CIX by the Renewal Payment Date, the Member's membership shall be terminated immediately, with no opportunity being provided to cure such breach for non-payment. All rights and benefits associated with membership shall be terminated on the date that Member's membership is terminated, and no monies received by CIX shall be refunded to Member. Member shall have the right to terminate this Agreement at will at any time during the term provided that Member delivers notice to CIX no less than 30 days prior to the date of such termination. In the event that Member terminates this Agreement at will pursuant to the preceding sentence, Member shall not be entitled to a refund of any portion of the router access fees paid to CIX.

8. Notwithstanding the provisions of Section 7. above, a Member whose membership has been terminated for non-payment of fees may have its membership reinstated and such terminated Member may be returned to good standing only upon remitting full payment for the entire Renewal Term to CIX.

9. This Agreement shall be governed under the laws of the State of Delaware, except when a member is a state institution, in which case the laws of the member's state shall govern. Other than those contained explicitly in this Agreement, no representations are made by or among the Participating Members, and no agency status is created among the members or CIX.

10. No confidential or proprietary information is protected or implied by this Agreement, and the Members are not responsible to one another for any confidential information which may be inadvertently transmitted over the networks.

11. Notwithstanding section 9 above, Member acknowledges and agrees that the CIX NAP is a private interconnect that has been established for the use and benefit of Participating Members only and that all statistical data derived from the CIX NAP is proprietary in nature. Accordingly, Member agrees such data shall not be disclosed to any party who is not a Participating Member. However, member information about the CIX NAP may be share with the appropriate Network Operations Center ("NOC") for the sole purpose of resolving network troubles.

12. Member may assign its rights, responsibilities and other obligations to another organization, in the event of merger, sale or transfer of its ownership to such organization, provided that, the assignee is a firm duly organized and licensed to conduct business and otherwise meets the conditions of membership established by the Board.

13. The individual undersigned hereby certifies that he or she is legally authorized to execute this Agreement on behalf of the Member organization, and that the execution of this Agreement

will not conflict with or result in a breach of any other agreement to which such Member is a party.

14. In the event any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

16. Member acknowledges and agrees that the terms and conditions of this Agreement and CIX's obligations hereunder are subject to change at the direction and by the affirmative vote of the Board. CIX agrees that it will provide Member with prior written notice of any such changes.

IN WITNESS WHEREOF, the parties have entered into this Agreement and this agreement shall be dated as of the date signed by CIX as indicated below:

**MEMBER**

**COMMERCIAL INTERNET EXCHANGE  
ASSOCIATION**

**Organization Name:**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
[Print]

Name: \_\_\_\_\_  
[Print]

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_