

# PARTICIPATION AGREEMENT



## NETWORK SERVICES PARTICIPATION AGREEMENT By and between ILLINOIS CENTURY NETWORK AND PARTICIPANT

This Network Services Participation Agreement ("Agreement") is effective upon ICN execution by and between the **Illinois Century Network ("ICN")**, an instrumentality of the state of Illinois with its principal office at 120 West Jefferson Street, Suite B, Springfield, Illinois 62702-5172, and

Participant Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

### ("Participant").

WHEREAS, ICN owns, operates and controls a telecommunications backbone network with facilities for the transmission of data and video communications throughout the State of Illinois (the "ICN Network"); and

WHEREAS, ICN operates the ICN Network for the primary purpose of providing network backbone and communications facilities to other instrumentalities such as Illinois schools, institutions of higher education, libraries, museums, research institutions, State agencies, units of local government, and other entities that provide services to Illinois citizens to further the goals of education for the people of the State of Illinois; and

WHEREAS, from time-to-time, in order to more fully accomplish its mission, ICN negotiates individual Participation Agreements to provide network backbone and/or facilities to such instrumentalities and entities involved in educational activities within the State of Illinois; and

WHEREAS, Participant has demonstrated the qualifications required to be a Participant;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICN and Participant hereby agree as follows:

**Purpose.** Participant shall access and use the ICN Network for the delivery of educational programs, advanced training, and access to the growing global wealth of information services to citizens in all parts of this state.

**Eligibility.** To be eligible to participate in and use the ICN Network, Participant represents and warrants that its Tax Classification and Organization Type is:

**Tax Classification**

- Public
- Private Non-Profit (Tax exempt)
- Private Non-Profit (Non tax exempt)
- Private For-Profit

**Organization Type**

- K-12
- Community College
- College/University
- Municipality
- Library
- Museum
- Other (describe) \_\_\_\_\_

**Sharing.** Having established its eligibility, Participant may involve other entities that meet the foregoing eligibility requirements to share in the rights granted Participant by this Agreement. Such sharing may be arranged by allowing such other entities to access Participant's site, its connections, equipment and/or facilities whether provided by the ICN or Participant itself and provided that Participant shall attain advance approval from the ICN and that Participant shall immediately terminate such sharing arrangements upon written notice from the ICN if the ICN determines that such sharing is in violation of this Agreement, ICN policies, or any applicable laws.

**ICN Obligations.** Subject to the terms of this Agreement, ICN shall:

Provide access to the ICN Network for use of the worldwide Internet and statewide Intranet(s). ICN reserves the right to impose appropriate charges for Internet access, Intranet access, or both. Prior to instituting such charges, ICN shall provide prior written notice of the charges and their effective date. Participant may withdraw from its participation in the ICN Network by notifying ICN in writing within 30 days from receipt of the notice without incurring charges from the ICN up to the date of its withdrawal.

Provide a single Network Point of Presence ("POP") strategically located as determined by ICN in its sole and absolute discretion within the Local Access and Transport Area ("LATA") in which Participant's network, premises and/or communications facilities are located ("Participant's Site").

Provide the network interface and related equipment and facilities at ICN's POP for ICN approved access media to connect Participant's access media to the ICN Network.

Identify and order the equipment needed by Participant at its Site to access the ICN Network. Participant's equipment must be purchased with funds provided by Participant directly or through third party funding sources. All Participant equipment at its Site shall be under the exclusive control and management of ICN during the term of this Agreement. Unless otherwise agreed to in advance in writing by the ICN, Participant's equipment shall be dedicated to providing access to the ICN and, shall not be used for expansion of Participant's own Intranet or other communications facilities or systems.

Provide all Internet Protocol ("IP") addresses needed for Participant and its equipment to use the ICN Network to access the Internet, provided that ICN retains sole and absolute administrative control of each IP address provided, including without limitation, determining system requirements and deployment of each IP address, monitoring system use, and denying assignment of or revoking assignments of addresses.

Manage and maintain the ICN Network.

Provide reliable high-speed connections to the Internet and intranets via the ICN Network.

Monitor and support Participant's router, for sites directly connected to the ICN, in accordance with industry standards and without charge, provided Participant maintains at its sole expense a valid maintenance plan with equipment manufacturer. All such maintenance and repair work will be conducted exclusively between the hours of 7 a.m. and 4 p. m. on business days except for emergencies; provided that the ICN reserves the right to assess reasonable charges for emergency maintenance and repair work or any after hours work. Monitor the use of the ICN Network, its services, equipment and facilities to ensure its use by Participant is in compliance with this Agreement, applicable law and Participant's powers and authority and to provide routine maintenance.

**Participant's Obligations.** Subject to the terms of this Agreement, Participant, for itself and for each officer, director, employee, agent, representative, stakeholder, contributor, student, volunteer, user, client, and/or other recipient of the services or products of Participant, shall, to the best of its ability:

Ensure that its use of the ICN Network is in accordance with this Agreement and its purposes.

Disseminate the policies and purposes of this Agreement to its personnel and agents at each of its Sites.

Ensure that its traffic using the ICN Network to access and use other networks meets all criteria of those networks.

Pay the local access charges and charges for equipment located on Site or collocated with the ICN.

Provide a router approved by the ICN for direct connection to the Network and to replace at its expense this router if it reaches the end of its useful life or at the expiration of the manufacture's support period.

Abide by the ICN's rights to manage the equipment interfacing or interconnecting with the ICN Network or equipment.

Manage and control the security, privacy and confidentiality of the content Participant passes over the ICN Network and the Internet and intranets using the ICN Network for access and connectivity, report any breaches or suspected breaches of such security, invasions of privacy or violations of confidentiality, cooperate fully with ICN and agencies or entities with appropriate jurisdiction and/or authority in investigating and policing the use of the ICN.

Assume responsibility for content coming over the Network, it being acknowledged by Participant that the ICN provides unfiltered and uncensored access to the Internet.

Prohibit and prevent any entity not approved for connection by the ICN from accessing, connecting to or interconnecting with the ICN in any manner or by any means.

Prohibit, prevent, and not engage in any resale of the ICN except that a Participant may charge reasonable fees for cost recovery of sharing as authorized under this Agreement.

Provide ICN with the name, address, and contact information for a responsible, knowledgeable and technical-ly qualified contact for Participant, available for contact 24 hours a day, seven days a week to serve as Participant's primary technical point of contact with ICN for purposes of this Agreement and its performance. *(Such information to be provided in Schedule A which is attached hereto and made a part of and to be amended as necessary.)*

Use the ICN Network and related services and facilities provided under this Agreement solely to network and expand the availability of educational opportunities and public service for the direct benefit of the students, faculties, administrators, and citizens of Illinois.

Ensure that all users accessing the Network through this Agreement maintain the highest standards of ethical conduct, Internet etiquette, accountability and responsibility in the use of the ICN and related services and facilities, including strict compliance with the policies of network providers accessed by Participant.

Use the ICN Network and related services and facilities in strict accordance with all copyrights, trademarks, patents and other proprietary rights applicable to such use for the purposes of this Agreement.

Require individual or entity that Participant authorizes, permits or allows to access the ICN to abide by the terms of the ICN Acceptable Use Policy (AUP) and all applicable laws governing such access and use. The ICN AUP is available at <http://www.illinois.net/aup.pdf> and may be updated from time-to-time at the sole discretion of the ICN. A copy of the current AUP is attached as Schedule B.

Prohibit and prevent any use of the ICN Network for any illegal or unlawful purpose.

Prohibit and prevent any use of the ICN Network in such a way as to cause interference with or disruption to

the use of the ICN Network, its equipment and/or facilities in any way or in such a way as to interfere with or disrupt the use of the ICN Network, its equipment and/or its facilities by any other Participant.

Prohibit and prevent the use of the ICN Network for (1) the distribution of any unsolicited advertising such as SPAM; (2) the distribution of any threatening, obscene or harassing content of whatever nature; (3) the propagation of any computer "worms" or "viruses;" (4) enabling the unauthorized entry or "hacking" of other computer and/or communications systems, databases and/or web sites.

Acknowledge and agree that ICN has the right to monitor the ICN Network and related services, equipment and facilities to ensure compliance with this Agreement, applicable law and Participant's powers and authority and to use such monitoring to discover evidence of unlawful activity and to record and make available such evidence to the proper authorities.

**Indemnification.** Subject to the terms and conditions set forth below, Participant agrees to indemnify and hold harmless the ICN, and its affiliates, and their respective officers, directors, employees and agents, from and against any and all liabilities, damages, claims, deficiencies, assessments, losses, suits, proceedings, actions, investigations, penalties, interest, costs and expenses, including without limitation, reasonable fees and expenses of counsel (whether suit is instituted or not and, if instituted, whether at trial or appellate levels) (collectively, the "Liabilities"), arising from or in connection with any breach or violation by Participant of any of the covenants or agreements contained in this Agreement. This Section shall not relieve Participant from any liability it may have for its own negligence, whether by act or omission, and the negligence, whether by act or omission, of its employees, agents, officers, and directors. The obligations and covenants contained in this Section shall survive the expiration or termination of this Agreement.

Subject to the terms and conditions set forth below, ICN agrees to indemnify and hold harmless the Participant, and its affiliates, and their respective officers, directors, employees and agents, from and against any and all liabilities, damages, claims, deficiencies, assessments, losses, suits, proceedings, actions, investigations, penalties, interest, costs and expenses, including without limitation, reasonable fees and expenses of counsel (whether suit is instituted or not and, if instituted, whether at trial or appellate levels) (collectively, the "Liabilities"), arising from or in connection with any breach or violation by ICN of any of the covenants or agreements contained in this Agreement. This Section shall not relieve ICN from any liability it may have for its own negligence, whether by act or omission, and the negligence, whether by act or omission, of its employees, agents, officers, and directors. The obligations and covenants contained in this Section shall survive the expiration or termination of this Agreement.

**Breach.** ICN shall notify Participant of any breaches of the terms of this Agreement by Participant, any Sharing Participant or any individual acting directly or indirectly under color of authority of Participant. Participant shall have such time as ICN, in its sole and absolute discretion specifies in its notice of breach, to cure such breach. In the event such breach is not cured within the notice period, this Agreement may be terminated by the ICN without further notice, obligation or liability to Participant.

**Participant's Representations and Warranties.** Participant represents and warrants as follows:

It has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder and to manage and control and ensure each individual or entity that Participant authorizes, permits or allows to access the ICN or related services and equipment or facilities also complies with the terms of this Agreement in exercising such individual's access.

This Agreement has been duly and validly authorized, executed and delivered by Participant and constitutes its valid and binding obligation.

In performing its obligations hereunder, Participant will comply with all laws, rules and regulations of all governmental bodies having jurisdiction.

Participant holds all required regulatory authorizations and permits to perform this Agreement according to its terms.

Participant's obligations under this Agreement do not conflict with any other agreement.

**ICN's Representations.** ICN represents and warrants as follows:

ICN has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder.

This Agreement has been duly and validly authorized, executed and delivered by ICN and constitutes its valid and binding obligation.

In performing its obligations hereunder, ICN will comply with all laws, rules and regulations of all governmental bodies having jurisdiction.

ICN holds all required regulatory authorizations and permits to provide the Services identified herein.

ICN obligations under this Agreement do not conflict with any other agreement.

**Termination.** This Agreement may be cancelled by either party on ten days (10) prior written notice with or without cause.

**Interpretation.** The construction of this Agreement shall not be construed against the Party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both Parties in consultation with their respective counsel. Should any provision of this Agreement be found for any reason to be illegal or unenforceable, the same shall not affect the validity of the remaining portions and provisions.

**Notice to ICN.** All inquiries and notices shall be addressed to ICN at 120 West Jefferson Street, Suite B, Springfield, Illinois 62702-5172, by telephone at 1-877-844-2724 or 1-217-557-6555 or by email at ICN@Illinois.net.

**Choice of Law.** This Agreement will be governed by the laws of the State of Illinois, without reference to its choice of law rules.

**Right & Authority.** Each of the Parties hereto represents and warrants to the other that this Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective agents, servants, employees, representatives, affiliates, heirs, executors, transferees, successors, and assigns, as the case may be.

**Use of Marks.** Neither ICN nor Participant shall directly or indirectly hold itself out as or otherwise create the impression that it is sponsored, authorized, endorsed by, affiliated with, or an agent of the other Party or affiliate or successor thereof, including but not limited to using the name ICN or the name of Participant, or of any affiliate, or any colorable imitation thereof in, or as part of, any ICN name or trade name (collectively, the "Marks") or in any other confusing or misleading manner without the written consent of the other Party. The Parties acknowledge that all Marks are the exclusive property of the Party that is lawfully registered to hold such Marks. Participant may utilize ICN's Marks in its advertising with ICN's prior consent, and as long as it complies with all policies and procedures pertaining to this use prescribed by ICN from time to time. Participant shall not use the Marks for any other purpose without the express prior written consent of ICN.

**Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree on a substitute provision that is legal and enforceable and is as nearly possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

**Limitation of Liability.** Neither Party shall be liable for loss of revenues, profits, goodwill, or any indirect, incidental, punitive, or consequential damage suffered or incurred by the other Party in connection with or arising from services performed under this contract. Neither Party shall be liable for loss or damage or deemed to be in breach of this Agreement due to such Party's failure or delay of performance, wholly or in part, under this Agreement.

**Force Majeure.** Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable for loss or damage or deemed to be in breach of this Agreement due to such Party's failure or delay of

performance, wholly or in part, under this Agreement if such failure or delay of performance is due to causes beyond such Party's reasonable control ("Force Majeure Event"), including but not limited to: acts of God, fire, flood, explosion, storm or other catastrophic event; strikes or work stoppages; lockouts; acts of any government authority or of any civil or military authority including regulatory mandates; national emergencies, cable cut(s); sabotage; insurrections; riots; wars; and unforeseen acts of third Parties that cannot be avoided by acts of due care. Any delay resulting from a Force Majeure Event shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

**Availability Of Appropriations (30 ILCS 500/20-60).** The ICN receives a significant portion of its funding from the Illinois General Assembly and federal funding sources such as the E-rate program. The terms of this agreement rely upon this funding. The ICN shall use its best efforts to secure sufficient appropriations to fund this Agreement. However, the ICN's obligations hereunder shall cease immediately, without penalty, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. The ICN shall give Participant notice of insufficient funding as soon as practicable. The ICN shall have sole discretion in determining whether appropriations are sufficient for this obligation.

**Modifications.** ICN reserves the right to modify this Agreement at any time. ICN shall provide 30 days prior written notice to Participant of any modification adopted by ICN.

**Assignability.** Participant may not assign this Agreement or any of its obligations hereunder without ICN's prior written consent.

**Remedies.** The rights and remedies of ICN hereunder shall not be mutually exclusive; i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Participant acknowledges, confirms and agrees that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights at law or by statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.

**Entire Agreement.** This Agreement consists of all the terms and conditions contained herein which articulate the full and complete understanding of the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes any prior or subsequent understandings, proposals, representations, discussions, and/or agreements (oral or written), absent a specific reference therein superseding this Agreement.

**Headings.** The section headings in this Agreement are inserted as a matter of convenience and in no way define, limit, or describe the scope of extent of such section, or affect the interpretation of this Agreement

**No Third Party Rights.** This agreement is made only between the Parties hereof and shall not established rights in any third party as a third party beneficiary or otherwise.

**Signatures:**

Illinois Century Network

\_\_\_\_\_  
Participant Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Schedule A**  
**Participant's Primary Contact Information**

Participant Name: \_\_\_\_\_

**Primary Technical Contact:**

Name: \_\_\_\_\_

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

Daytime Phone: ( \_\_ ) \_\_\_\_\_

Off-Hours Phone: ( \_\_ ) \_\_\_\_\_

Email: \_\_\_\_\_

**Secondary Technical Contact:**

Name: \_\_\_\_\_

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

Daytime Phone: ( \_\_ ) \_\_\_\_\_

Off-Hours Phone: ( \_\_ ) \_\_\_\_\_

Email: \_\_\_\_\_

## **Schedule B Acceptable Use Policy**

This Acceptable Use Policy (hereafter referred to as 'AUP') specifies certain actions prohibited by the Illinois Century Network (hereafter referred to as 'ICN' or 'Network') for users of the Network. The ICN reserves the right to modify this Policy at any time to stay in compliance with all known laws, regulations, policies, and security requirements that may be established by appropriate legislative or regulatory authorities or enacted by ICN management. By using ICN services, any customer, employee or third party unconditionally accepts the terms of this policy.

**Authorized Use.** The ICN is a publicly owned private network established by the ICN Act (20 ILCS 3921) and signed into law on June 8, 1999. ICN systems and services are for the use of authorized users only. Authorized users are subject to monitoring of all activities on ICN systems and recorded by ICN staff during routine network monitoring for the purpose of security and network performance audits. Any user of ICN systems expressly consents to such routine monitoring and is advised that if such monitoring reveals possible evidence of criminal activity, ICN staff may provide the evidence of such monitoring to law enforcement officials. Further, if illicit activity of any kind is suspected as a result of the aforementioned routine monitoring, an internal investigation may result and employment may be suspended or terminated pending the outcome of such investigation. The ICN also reserves the right to deny IP addresses or revoke IP addresses.

**Illegal Use.** The ICN may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation coming to or from any unauthorized network or system is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property rights used without proper authorization; government and military data protected by law and applicable national security policies and concerns; ICN data protected by public policy; and material that, in ICN's sole discretion, is obscene, defamatory, constitutes an illegal threat, or violates export control laws or any other laws or applicable regulations. Any violation of the above which compromises the integrity of the ICN or any other network connected to the ICN is strictly prohibited.

**System and Network Security.** Violations of system or network security are prohibited, and may result in criminal and/or civil liability. Use of the ICN network constitutes consent to ICN's routine network monitoring. Should any violations of the law or this AUP be discovered during monitoring, ICN will involve and cooperate with local, Illinois, and Federal law enforcement authorities for resolution. Examples of unlawful acts, system, or network security violations include, but are not limited to, the following:

1. Unauthorized access to or use of data, systems or networks, including any attempt to probe, damage, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network. ICN employees may scan or test the vulnerability of ICN systems or networks that they are responsible for or they manage.
2. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network. ICN employees may monitor data or traffic on any ICN network or system owned and operated by the ICN or for which the ICN is expressly responsible to manage through agreement with the owner. Interference with service to any user, host or network including, without limitation, email "bombing", email "spamming", flooding, deliberate attempts to overload a system, and broadcast or "smurf" attacks.
3. Unauthorized access to any data, system, or network from an unauthorized system or network for any purpose which is not lawful or which is intended to do harm.
4. Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting. Electronic forging of any kind to include but not limited to IP addresses, domains, business names, etc.

## **ICN Definitions.**

Email "bombing" is characterized by abusers repeatedly sending an identical email message to a particular address.

Email "spamming" is a variant of bombing; it refers to sending email to hundreds or thousands of users (or to lists that expand to that many users). It may also occur innocently, as a result of sending a message to mailing lists and not realizing that the list explodes to thousands of users, or as a result of an incorrectly set-up responder message.

Flooding, or SYN floods, occurs when a target machine is flooded with TCP connection requests. The target host becomes extremely slow, crashes or hangs.

Broadcast or "smurf" attacks cause network links to become overloaded. The "smurf" attack sends a stimulus stream of ICMP echo requests ("pings") to the broadcast address of a subnet.

Having read the ICN Acceptable Use Policy, I agree to abide by the provisions herein. By accessing the ICN, I acknowledge that if the provisions of the Policy are violated, I may be subject to referral to the legal authorities. In consideration for the privilege of using the ICN and in consideration for having access to the public networks, I hereby release the ICN, its staff, and any institutions with which they are affiliated from any and all claims and damages of any nature arising from my use of, or inability to use, the system, including, without limitation, the type of damages identified in the ICN's acceptable use policy.