

MAGNOLIA ROAD INTERNET COOPERATIVE INTERNET SERVICE PROVIDER MEMBER AGREEMENT

Last revised: 5/28/02

THIS AGREEMENT, dated _____, is between Magnolia Road Internet Cooperative, ("MRIC"), a Colorado Cooperative Corporation and _____ ("Member").

- A. **WHEREAS**, MRIC provides Internet access services to its members;
- B. **WHEREAS**, Member desires MRIC to provide to Member access to the Internet;
- C. **WHEREAS**, Member shall pay MRIC a monthly fee for providing Internet access services;

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. *Definitions*

- 1.1. **"Agreement"** means this written agreement between MRIC and Member.
- 1.2. **"Electronic Mail" or "Email"** means any communication transmitted via the Internet that is stored in the recipient's email box.
- 1.3. **"Internet"** means the global computer network comprising interconnected networks using standard Protocols.
- 1.4. **"Internet Service Provider" or "ISP"** means an entity that enables the uploading and downloading of data between remote computers and the Internet.
- 1.5. **"Kilobytes per second" or "Kbps"** means 1,000 bytes of data transmitted in one second.
- 1.6. **"Member"** means a household to which MRIC services are provided in accordance with this Agreement, provided however, that a household shall not exceed 8 individuals within the same physical address utilizing MRIC services.
- 1.7. **"World Wide Web," or "WWW,"** is a subset of the Internet, and is a common system for browsing Internet Web sites.

2. *Internet Service Provider Agreement*

2.1. **Internet Account and Access.** MRIC shall provide to Member a user name, email address and link through MRIC's Internet infrastructure. Member shall be permitted unlimited Internet usage, and shall be limited to 100 megabytes of hard disk space for email storage on MRIC's server and no more than 5 email accounts per member.

2.2. **Membership Fee.** Member shall pay to MRIC a one-time membership fee of [fifty dollars (\$50)] in connection with joining the cooperative and the establishment of Member's account. This fee is non-refundable. MRIC reserves the right to charge additional administrative fees from time to time associated with any changes Member may wish to make to his or her account.

2.3. **Monthly Fees.** Member shall pay to MRIC [fifty dollars (\$50.00)] per month in advance for Member's Internet account and access. MRIC reserves the right to change the monthly rate upon [thirty (30)] days' notice. Member shall be liable to pay the full month's fee, even if service is terminated before the end of the month for any reason. If Member fails to pay all outstanding bills more than [seven (7)] days after the due date, Member is liable for a [ten dollar (\$10.00)] administrative surcharge, and Member may have its account and service suspended. If payment is returned or rejected, MRIC can suspend Member's account and Member agrees to pay a [twenty five dollar (\$25.00)] charge. Suspension of its account does not relieve Member from its obligation to pay any and all accrued fees, charges and costs due to MRIC. Suspended service may be resumed by MRIC, at MRIC's sole discretion, after MRIC has received full payment of all amounts due, along with a reconnect charge of [twenty five dollars (\$25.00)]. Past due amounts are subject to an interest rate charge of [one and one-half percent (1.5%)] per month from the date of invoice. Member agrees to pay all costs of collection, including attorney fees and collection agency fees.

2.4. **Member Agrees to Abide by MRIC Operating Policies.** Member agrees that it shall abide by MRIC operating policies, which may be amended from time to time at MRIC's sole discretion, and Member agrees to indemnify, hold harmless and provide a defense for MRIC against any claims arising from Member's failure to abide by the policies:

2.4.1 **Confidentiality.** MRIC disclaims all right, title and interest in and to, and exercises no control over, the content of materials and information transmitted to, posted or stored on its systems and technologies. MRIC acknowledges that said materials and information may constitute or contain confidential or proprietary information of a Member or a third party, and so imposes upon its Members the sole responsibility to insure compliance with all laws and regulations. Accordingly, MRIC assumes no obligation to monitor, filter, modify or alter the content of any materials or information.

2.4.2 **Restrictions on Use.** MRIC's systems shall not be used for unlawful purposes. No Member shall transmit, post or store on or through MRIC's systems any material or information in a manner 1) violative of third party rights; 2) violative of any state, federal or applicable international law or regulation, or 3) which could give rise to civil liability.

2.4.3 **Compliance with Upstream ISP Rules.** Member shall comply with all rules and regulations provided by the Internet Service Provider(s) MRIC uses to provide its service ("Upstream ISP Rules"), which rules and regulations may be amended by such service provider from time to time. Member agrees to keep apprised of such rules and regulations as they may change from time to time. In the event of a conflict between the Upstream ISP Rules and MRIC Operating Policies, the more restrictive of the two shall govern.

2.4.4 **Warranty of Authority.** Member agrees that no material or information protected by copyright, trademark, tradename, trade secret, publicity, privacy or other proprietary rights, shall be transmitted, uploaded, posted, stored or otherwise made available to or through MRIC absent sufficient legal right and authority, with all burdens of proprietary rights determinations to be borne by the Member.

2.4.5 **Limited License.** Member agrees that sufficient legal right and authority exists to grant MRIC a license to use, copy, reproduce and distribute any or all information or materials made available to MRIC.

2.4.6 **Indemnification.** Member agrees to fully indemnify, defend and hold harmless MRIC, and its employees, contractors, officers and directors, from any third party claims resulting from Member breaches of warranty, Member breaches of this Agreement, claims in any manner arising from Member's actions or failures to act or claims, damages or liabilities otherwise relating in any way to Member's use of MRIC services. MRIC reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Member, in which event Member will cooperate with MRIC in asserting any available defenses.

2.4.7 **Third Party Beneficiaries.** All Member agreements are intended for the benefit of MRIC's subsidiaries, divisions, affiliates and licensors and for the further benefit of all lawful owners and other parties in interest with property rights to said information and materials, and each shall have full rights to assert and

enforce such provisions directly or on their own behalf.

2.4.8 **By-Laws.** Member agrees to comply with all of the By-Laws of MRIC as applicable to Members generally.

2.4.9 **Member Equipment.** Member agrees that it shall be solely responsible for providing its own connection to MRIC via a Member's premise equipment, and that it shall be solely responsible for providing a suitable computer, wireless connectively equipment and other hardware or communications equipment necessary to access MRIC's systems. Member also agrees that, if it accesses MRIC's systems through a LAN or WAN, it shall be solely responsible for providing, maintaining and supporting a network and IP router that interface satisfactorily with MRIC's technologies. Member acknowledges that use of certain electronic equipment may interfere with the quality or availability of MRIC services and Members agrees that MRIC shall have no responsibility for such interference. Member further agrees not to operate any equipment that interferes with MRIC's ability to provide service to Member, other Members and potential Members.

2.4.10 **Member Sole User.** Member agrees that its account shall be used solely by Member. Regardless of whether Member has actual control over the acts of third parties, Member agrees that it has the last clear chance to avoid usage by third parties, and Member indemnifies and holds MRIC harmless for their usage.

2.5 **MRIC's Monitoring and Termination Rights.** The parties expressly recognize that MRIC cannot and does not screen content provided by any Internet users of its systems; however, the parties agree that MRIC has the right, but not the obligation, to remove from its server or block access over the Internet to any communications and materials that MRIC believes, in its sole discretion, violate any of the policies enunciated in Paragraph 2.4., above, or any laws of any jurisdiction served by MRIC. The parties also agree that MRIC may, in its sole discretion, terminate Member's account for any violation of the policies enunciated in Paragraph 2.4 above.

2.5.1 **Termination and Removal for Infringement.** In the event MRIC obtains knowledge of any actual property/copyright infringement or becomes aware of facts or circumstances from which infringing activity is apparent, MRIC may, at its discretion, cause such use of its systems and technologies to immediately cease and may, in its discretion, and subject to rights and obligations to back-up, remove any or all infringing information and materials, deny access to same, or, alternatively, suspend or terminate access by the violating Member. In any case, all repeat violators may, at MRIC's sole discretion, be permanently denied use and access to MRIC's systems. In the event MRIC holds a reasonable suspicion of infringement, or is adequately noticed in writing by a third party owner as to a claimed infringement, such notice to include identification of the claimed owner and the copyrighted work allegedly infringed, then MRIC shall promptly remove or disable said information and materials and concurrently advise Member of its actions taken. Any Member so advised may then counter-advise MRIC, such counter-advisal to be in writing and to include Member's statement that removal or disablement was taken by mistake or misidentification. Thereafter, upon receipt of a Member's counter-advisal, MRIC shall forward same to the original complaining party indicating that the information and materials will be replaced or access reinstated within ten (10) business days. Absent notification of pending litigation requesting a restraining order, MRIC may then replace said materials and information and cease denial of access within fourteen (14) business days. All notifications shall be sent to MRIC's designated agent, as follows:

**Scott A. St.Clair, Esq.
St.Clair & Greschler, P.C.
3100 Arapahoe, Suite 503
Boulder, Colorado 80301**

2.6. **MRIC's Duties.** The following (along with Section 2.1) provides the sole and exclusive duties of MRIC with respect to this Agreement. Member acknowledges and agrees that notwithstanding any other provisions of this Agreement, Member's sole and exclusive remedy in the event of the failure of MRIC to fulfill these duties is to terminate this Agreement in accordance with Section 5.2 below.

2.6.1. **Internet Link.** MRIC warrants that it shall exercise commercially reasonable efforts to maintain a consistent link with the Internet, but MRIC cannot and does not warrant that it shall maintain a continuous and uninterrupted link.

2.6.2. **Maintenance.** MRIC may, at its own discretion, temporarily suspend all service for the purpose of repair, maintenance or improvement of any of MRIC's systems. However, MRIC shall provide prior notice where it is reasonably practicable under the circumstances, and MRIC shall restore service as soon "AS IS" reasonably practicable. Member shall not be entitled to any setoff, discount, refund or other credit, in case of any service outage which is beyond MRIC's control or which is reasonable in duration.

3. **Warranties.** MRIC confirms and warrants that:

3.1. **MRIC's Power to Enter Agreement.** MRIC has the right to enter into this Agreement and to grant the rights granted in it.

3.2. **MRIC's Good Faith Performance.** MRIC shall, in good faith, comply with the terms of this Agreement.

4. **Disclaimers**

4.1. **LIABILITY LIMITATIONS.** THE GOODS AND SERVICES PROVIDED BY MRIC ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND TO MEMBER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) QUIET ENJOYMENT; AND 8) TITLE. MEMBER AGREES THAT ANY EFFORTS BY MRIC TO MODIFY ITS GOODS OR SERVICES SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY MRIC WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. MEMBER FURTHER AGREES THAT MRIC SHALL NOT BE LIABLE TO MEMBER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF MRIC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. MODIFICATIONS MADE TO MEMBER'S WEB SITE BY MEMBER OR ANY THIRD PARTY VOIDS ANY REMAINING EXPRESS OR IMPLIED WARRANTIES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, AND, AS SUCH, SOME PORTION OF THE ABOVE LIMITATION MAY NOT APPLY TO MEMBER. IN SUCH JURISDICTIONS, MRIC'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

4.2. **MRIC Not Liable for Delays or Defaults.** MRIC shall not be liable for delays or defaults in furnishing goods or services hereunder, if such delays or defaults on the part of MRIC are due to causes beyond the control of MRIC in furnishing items or services including, but not limited to, breakdown or failure of machinery or equipment, or delay in Member reporting problems or furnishing information or materials.

Acceptance of delivery of goods or services shall constitute a waiver and release of MRIC by Member for any claim for damages, setoff, discount or other liability on account of delay.

4.3. **Third Party Transactions at Member's Peril.** The parties expressly recognize that MRIC does not operate, control or endorse any information, products or services on the Internet, and that any entities that

do offer such information, products or services are not affiliated with MRIC. MRIC does not make any express or implied warranties, representations or endorsements to member or any third party whatsoever with regard to any information, products or services provided through MRIC and obtained or contracted over the internet, including, without limitation, warranties of: 1) merchantability; 2) fitness for a particular purpose; 3) effort to achieve purpose; 4) quality; 5) accuracy; 6) non-infringement; 7) quiet enjoyment; and 8) title. MRIC shall not be liable to member or any third party for any cost or damage arising either directly or indirectly from any transaction involving third parties' information, products or services. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Member. In such jurisdictions, MRIC's liability is limited to the greatest extent permitted by law.

4.4. **Downloading of Data or Files at Member's Peril.** The parties expressly recognize that MRIC cannot and does not guarantee or warrant that files available for downloading through MRIC will be free of infection, viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Member agrees that it shall be solely responsible for implementing sufficient procedures to satisfy Member's particular requirements for accuracy of data input and output, and for maintaining a means external to MRIC for the reconstruction of any lost data. The parties also expressly recognize that the Internet contains unedited materials, some of which are unlawful, indecent, or offensive to Member, and access to such materials by Member is done at Member's sole risk.

5. **Termination.**

5.1. **Termination by MRIC.**

5.1.1. **No Cause.** MRIC reserves the right to, and Member agrees that MRIC may, terminate any and all services to Member for no cause and without any reason upon thirty (30) days' notice.

5.1.2. **Cause.** MRIC reserves the right to, and Member agrees that MRIC may, cancel this Agreement and terminate any and all services to Member immediately, and without prior notice, in the event that Member fails to fulfill any material obligation contained in this Agreement. MRIC RESERVES THE RIGHT TO USE SELF-HELP TO THE GREATEST EXTENT PERMITTED UNDER THE LAW, INCLUDING, BUT NOT LIMITED TO, ELECTRONIC REMEDIES.

5.2. **Termination by Member.** Member may terminate this ISP agreement for any reason upon [thirty (30)] days' notice.

5.3. **Post-Termination Rights.**

5.3.1. **Fees Owed to MRIC.** After termination by any party for any reason, MRIC shall retain the right to recover all accrued charges due and owing by Member to MRIC, and Member agrees that it waives any right it may have against MRIC to offset fees payable by Member to MRIC.

5.3.2. **Member's Continued Indemnification.** Member's indemnification of MRIC under Paragraph 2.3., above, shall survive any termination of this Agreement.

6. **Remedies.** The failure of either party to seek relief for the other party's breach of any duty under this Agreement, shall not waive any right of the non-breaching party's to seek relief for any subsequent breach.

7. **Arbitration.** Any dispute concerning the parties' duties under this Agreement which the parties cannot resolve within [thirty (30)] days shall be directed to binding arbitration administered by, and pursuant to the rules of, the American Arbitration Association ("AAA") in the County of Boulder, in the State of Colorado, with all expenses, including reasonable attorneys' fees, being paid by the losing party as determined by the arbitrator(s). Judgment upon any AAA award may be entered in any court having jurisdiction. Any costs incurred in the enforcement of the arbitration award shall be paid by the party against whom enforcement is sought.

8. Governing Law and Jurisdiction. The construction, validity and performance of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado, and the parties expressly waive its choice of law rules. The parties agree that venue and jurisdiction for any litigation arising out of, related to, or regarding the validity of, this Agreement shall lie in the County of Boulder, State of Colorado.

9. Notice. All notices must be in writing, and must be mailed by U.S. Mail, postage prepaid, and shall be effective [two (2)] days after deposit in the U.S. Mail with proper postage affixed and addressed as follows: all Notices to MRIC shall be addressed and delivered to: Allen Gordon, MRIC, 319 Pine Glade Road, Nederland, CO, 80466; all Notices to Member shall be addressed and delivered to the address of the Member last provided by the Member to MRIC. Member shall be responsible for ensuring that it has provided MRIC with its current address. Notices transmitted orally or by electronic means shall be deemed insufficient notice.

10. Electronic Documents. Members agrees that any rules, regulations or documents to which it shall abide may be provided in electronic form, either on the MRIC web site or via electronic link to another web site containing such rules, regulations or documents and that it is Member's obligation to review such rules, regulations and documents as such may change from time to time.

11. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the matters stated herein, and this Agreement contains all of the covenants and agreements between the parties with respect thereto. This Agreement may be amended or modified only in writing, and shall be effective only after affixation of both parties' signatures.

12. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever, the remaining provisions shall remain valid and unimpaired, and shall continue in full force and effect.

13. Captions. Captions contained in this Agreement are for reference purposes only, and are not intended by either party to describe, interpret, define, broaden or limit the scope, extent or intent of the Agreement or any of its provisions.

14. Knowing Consent and Authority to Consent. The parties knowingly and expressly consent to the foregoing terms and conditions. Each signatory is authorized to enter into this Agreement on behalf of its respective party.

MAGNOLIA ROAD INTERNET COOPERATIVE

Signed: _____
Printed Name: _____
Title: _____

MEMBER

Signed: _____
Printed Name: _____
Title: _____