

## LICENSE AGREEMENT

This agreement ("Agreement") in duplicate is entered into this XX, by and between **Lane Council of Governments (LCOG)** and **X (Tenant)**.

### AGREEMENT

In consideration of the terms and conditions of this Agreement, the parties agree as follows:

1. **Grant of License.** Subject to the terms and conditions of this Agreement, LCOG hereby grants TENANT a revocable license to install, operate and maintain its equipment at and within the LCOG Interconnection Facility located in the basement and on the second floor at **859 Willamette Street, Eugene, Oregon** (the "Premises").
  - a. **Assigned Rack Space.** TENANT's equipment shall be located in equipment cabinets specifically designated for TENANT use (the "Rack Space"). The location and details of the Rack Space is more specifically described in Exhibit "A" which is attached hereto and made a part hereof.
2. **Payment.** TENANT shall pay LCOG, the sum identified in Exhibit A due and payable on or before the 1st of each month. Payment for partial months shall be prorated. LCOG shall send monthly invoice, and TENANT shall deliver payment to the following address, (which address LCOG may change from time to time):

Lane Council of Governments  
Park Place Interconnect  
c/o Interconnect Manager  
859 Willamette Street, Suite 500  
Eugene, Oregon, 97401
3. **Rent Adjustment.** The Monthly Base Rent may be adjusted with each renewed term (every three years) on the anniversary of the commencement date.
4. **Term.** This Agreement shall commence on X,X ("commencement date") and expire on X,X unless sooner terminated as hereinafter provided. This Agreement shall automatically renew at the end of each term for an additional One (1) year, unless earlier terminated by one party giving notice to the other at least one hundred eighty (90) days prior to the end of the then current term. In the event a party breaches this Agreement, the other party may terminate this Agreement for cause by giving the breaching party at least thirty (30) days in advance of the date of termination
5. **Use.** TENANT shall use the equipment and Rack Space only for the purposes of maintaining and operating equipment necessary to support its network facilities and resources. TENANT shall order, deliver, unpack and install its equipment in the Rack Space at its own expense. TENANT shall comply with any other rules and use policies adopted by LCOG.
6. **Confidentiality.** TENANT shall not at any time or in any manner, either directly or indirectly, use for the personal benefit of TENANT, or divulge, disclose, or communicate in any manner any information that is proprietary to LCOG that may be disclosed as part of this Agreement or in the performance thereof, or otherwise, except as may be expressly authorized in writing by LCOG. TENANT shall protect such information and treat it as strictly confidential and, on request by LCOG, return any documents that contain or reflect such information.

All documents, data files, information and other materials made available to LCOG in connection with this Agreement ("Confidential Information") shall be deemed to have been furnished to LCOG in confidence and shall remain the exclusive property of the TENANT Subject to the

Oregon Public Records Law (ORS 192.410-.505), LCOG shall treat such Confidential Information in strict confidence and will not at any time use such Confidential Information for its own benefit or disclose or permit any of its employees, agents, or representatives to disclose such Confidential Information to any person or entity without the written consent of the TENANT.

7. **Utilities.** LCOG shall provide TENANT with sufficient electrical power and HVAC for TENANT to operate its equipment as needed. TENANT shall not pay any additional sum for electricity that is provided by or through LCOG. LCOG will provide a power source (as defined in Exhibit A), protected by separate rectifiers and separate generators, with separate sources as may be required for each TENANT system, or a fused panel for the cabinet, from which DC power can be distributed within the cabinet. In the event additional power is required and equipment must be installed, the cost of construction shall be paid by the party needing the additional power. LCOG has made what it believes are adequate efforts to provide an uninterruptible power supply, and LCOG will maintain that power supply in a condition sufficient to provide short and long-term back-up power to TENANT's equipment. LCOG does not and cannot provide any guarantee or warranty beyond that which is stated in this agreement, to use best efforts to provide satisfactory service.
8. **Access.** Subject to the terms of this Agreement, TENANT, its agents and employees shall have the right to enter the Premises in order to inspect, install, maintain, repair, upgrade or replace its equipment, subject to the Access Regulations set forth in Exhibit B, which hereby incorporated as obligations of this Agreement.
9. **Maintenance.** Each party may take any action it deems necessary, in its sole discretion, to repair and maintain its own equipment. At the request of TENANT, LCOG may assist TENANT in performing light duties or correcting minor problems. Such duties may include rebooting equipment or working cooperatively with TENANT and/or a third-party provider to locate and correct circuit problems. TENANT shall provide training to LCOG employees at its own expense for such purposes. In the event of an emergency that presents a substantial risk of a service outage or damages to equipment, LCOG may take such actions as it deems necessary to respond to the emergency.
10. **Upgrades and Improvements.** TENANT may update, upgrade or replace its equipment from time to time, provided that TENANT shall not increase the number, size or volume of the replacement equipment or make any change to its location on the Premises without the prior consent of LCOG, which consent may be withheld by LCOG in its sole discretion. TENANT shall submit to LCOG a detailed proposal for any such expansion for its evaluation and approval.
11. **Installation Costs.** TENANT shall reimburse LCOG for all costs related to:
  - a. One-time installation costs for wiring and circuit breakers as needed, on a time and materials basis, but not to exceed \$900.00.
  - b. Any work completed by outside parties for the benefit of TENANT (electrical work, racking, etc.) which is invoiced to LCOG.
12. **Property.** Unless otherwise specified in this Agreement, all equipment, wire, cable, panels, jacks, terminal blocks, other equipment and personal property of any kind supplied by either party in connection with performance of this Agreement, whether or not attached or affixed to any building or real or personal property, shall be and remain the property of said party.

All modifications made to the facilities provided by LCOG at the request of the TENANT shall remain the property of LCOG.
13. **Relocation.** LCOG shall not arbitrarily or capriciously require TENANT to relocate its equipment; however, upon ninety (90) days written notice or, immediately in the event of any emergency, LCOG may require TENANT to relocate its equipment; provided however, the site of relocation shall afford comparable environmental conditions for, and comparable accessibility to, TENANT's equipment. In

the event that LCOG requires TENANT to relocate its equipment, all costs of the relocation of TENANT's Rack Space shall be borne by LCOG.

14. **Termination.**

- a. Either party may terminate this Agreement on written notice to the other party ("Termination Notice") in the event : (1) of the insolvency of the other party or the institution of voluntary or involuntary proceedings in bankruptcy or under any other insolvency law, or an arrangement with creditors, or a corporate reorganization, receivership or dissolution of the other party; or (2) that the other party has breached any obligation under this Agreement, or any of its representations or warranties under this Agreement are inaccurate in any material respect, and such breach or inaccuracy is not cured within thirty (30) days after written notice thereof.
- b. Notwithstanding Section 14(a), LCOG may discontinue performance hereunder or terminate this Agreement on written notice to TENANT in the event: (1) that TENANT is in default of its payment obligations under Section 2 on two or more occasions in any six month period.
- c. This Agreement may be terminated for convenience (1) by mutual agreement at any time or (2) by either party upon not less than **ninety** (90) calendar days' advance written notice.

15. **Removal.** TENANT shall remove its equipment within ten (10) business days of the date of termination of this Agreement. In removing the equipment, TENANT shall be responsible for any damage or injury to the Premises caused by such removal.

16. **Compliance with Statutes, Regulations and Approvals.** TENANT warrants and represents to LCOG that TENANT's services shall be provided in full compliance with all federal, state and local laws, rules, regulations and ordinances. LCOG warrants and represents to TENANT that LCOG's services shall be provided in full compliance with all federal, state and local laws, rules, and regulations and ordinances.

17. **Interference.** TENANT's installation, operation, and maintenance of its equipment shall not damage or interfere in any way with LCOG or other tenant's operations or related repair and maintenance activities. TENANT agrees to cease all such actions which materially interfere with LCOG use of the Premises (including leasing to others) immediately upon actual notice of such interference, provided however, in such case, either party shall have the right to terminate the Agreement. The parties agree to reasonably cooperate with each other to carry out any repair, maintenance, upgrades, improvements or relocations so as to cause the least amount of interference with their respective operations.

18. **Limitation of Liability.**

- a. Each TENANT agent or employee visiting LCOG Premises does so at his or her own risk and LCOG shall not be liable for any harm to such persons resulting from any cause other than LCOG gross negligence or willful misconduct resulting in personal injury to such persons during such a visit.
- b. In no event shall LCOG be liable to TENANT, any TENANT agent or employee, or any third party for any claims arising out of or related to TENANT's business, TENANT's customers or clients, the activities of TENANT's agents or employees at the Premises or otherwise, or for any lost revenue, lost profits, replacement goods, loss of technology, rights or service, incidental, punitive, indirect or consequential damages, loss of data, or interruption or loss of use of service or of any of TENANT's business, even if advised of

the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

- c. TENANT shall bear the entire risk of loss, damage or destruction of its own equipment, unless the loss, damage or destruction was caused by or resulted from LCOG gross negligence or willful misconduct, in which case LCOG shall fully compensate TENANT for the replacement cost of its equipment. Attached as Exhibit "D" is a complete list of TENANT equipment.
- d. Except for the obligation to pay money or remove equipment upon termination, and except as provided in this section, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance. If the unanticipated event continues for a period in excess of one week, the damaged party may terminate this Agreement, effective upon written notice of termination.

- 19. **Insurance.** During the term of this Agreement, the parties shall each obtain and maintain adequate insurance to protect its interests and meet its obligations under this agreement.
- 20. **Damage or Destruction.** If the Rack Space, the Premises or any portion of the Premises is destroyed or damaged so as to materially hinder TENANT's effective use of its equipment through no fault or negligence of TENANT, TENANT may elect to terminate this Agreement upon thirty (30) days' written notice to LCOG. In such event, all rights and obligations of the parties shall cease as of the date of the termination.
- 21. **Indemnification.** Both parties agree to indemnify, defend, and hold harmless the other party and its officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, arising out of or related to any grossly negligent activity or willful misconduct by that party or its employees, agents, or subcontractors in the performance of this Agreement or from the installation, operation, use, maintenance, repair, removal, or presence of the equipment and property on the premises. Between LCOG and TENANT, liability shall not exceed recovery from the insurance coverage available. If the responsible party fails or neglects to defend such actions the other party may defend the same and any expenses (including reasonable attorney's fees) which it may pay or incur in defending said actions, as well as the amount of any judgment or settlement which it may be required to pay, shall promptly be reimbursed by the responsible party.
- 22. **Hazardous Substance Indemnification.** TENANT represents and warrants that its use of the Premises, herein, will not generate and it will not store or dispose on TENANT the property nor transport to or over the premises any hazardous substance. TENANT further agrees to hold LCOG harmless from and indemnify LCOG against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorney's fees, costs and penalties incurred as a result thereof except any release caused by the negligence of LCOG, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

23. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given by personal email delivery or mailed, certified mail, return receipt requested, to the following address:

If to LCOG, to:                   LANE COUNCIL OF GOVERNMENTS  
Attn: Willamette Internet Exchange  
859 Willamette Street, Suite 500  
Eugene, OR 97401  
541-682-4114  
jcallister@lcog.org

If to TENANT, to:               X  
Attn: X

24. **Assignment.** TENANT shall not assign this Agreement, or its rights therein, in whole or in part, without the prior written consent of LCOG, which consent may be withheld by LCOG in its sole discretion; provided, however, that either party will have the right to assign this Agreement to an Affiliate without the other party's consent. For purposes of this Agreement, "Affiliate," means any entity, which directly or indirectly controls, or is controlled by, or is under common control with, the party. "Control" means (i) for corporate entities, direct or indirect ownership of twenty percent (20%) or more of the stock or shares entitled to vote for the election of the board of directors or other governing body of the entity; and (ii) for non-corporate entities, direct or indirect ownership of twenty percent (20%) or greater of the equity interest. Notwithstanding the foregoing, TENANT may assign this Agreement, without obtaining the prior consent of LCOG, to any person or entity which succeeds to all or substantially all of TENANT's assets whether by merger, sale or otherwise.

25. **Successors and Assigns.** Subject to the above restriction, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. **Miscellaneous.**

- a. The parties represent that each, respectively, has full right, power, and authority to execute this Agreement.
- b. In the event either party hereto shall institute suit to enforce any rights hereunder, the prevailing party shall be entitled to recover at trial and on appeal court costs and attorney's fees incurred as a result thereof.
- c. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kinds. There are no representations or understandings of any kind not set forth herein. Any modification or amendment to this Agreement must be in writing and executed by both parties.
- d. This Agreement shall be construed in accordance with the laws of the State of Oregon.
- e. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- f. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than an obligation to pay for services rendered by the other party) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party ("Force Majeure"). In the event of such a Force Majeure,

the party shall give the other party prompt written notice within ten (10) days of the Force Majeure. In addition, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months.

This Agreement becomes effective on the commencement date set forth above.

LANE COUNCIL OF GOVERNMENTS                      X (TENANT)

\_\_\_\_\_  
Brendalee Wilson,  
Executive Director

\_\_\_\_\_  
X,  
X

**Exhibit A**

**Lane Council Governments  
Park Place Interconnect  
Service Order Form**

**Customer**

X (TENANT)

Lane Council of Governments agrees to provide to Customer the following services for a \_\_\_X (X)\_\_\_ year term:

**Premises:**

Lane Council of Governments  
859 Willamette Street  
Eugene, OR 97401

**Requested Service Date** June 1, 2021

<u>Service Item Description</u>	<u>Quantity</u>	<u>Service Rate</u>	<u>Service Price</u>
One 19" x 84" APC AR3150 equipment cabinets specifically designated for TENANT use (the "Rack Space"). This will amount to 42U of space. The location of the Rack Spaces is in the ___ interconnection space, more specifically described in Exhibit C which is attached hereto and made a part hereof.	X	Monthly	(\$1,000 per cabinet)
Proximity (Access) Cards	3 Designated Staff		\$0

\*Non-recurring charge

Customer is liable for any Setup Fees related to electrical service from the A&B power plants.

Additional Terms:

- Rack co-location price includes the following
  - DC Power and HVAC costs
  - 2.5 kw of power per full cabinet
  - UPS and generator power protection
  - Climate controlled environment
  
- Proximity card access subject to the terms of Exhibit B

Invoicing:

- All billing to be conducted quarterly

## Exhibit B – Access to the Premises

Customer will designate not more than 3 personnel to be approved for access. Approved Personnel may access the co-location Space on a 24 x 7 x 365-day basis for the purpose of installing, operating, maintaining, repairing or removing the Customer Equipment in accordance with the terms and conditions of the Agreement. Approved Personnel shall at all times, while on the Premises, comply with security and safety procedures as listed below.

Security and safety for the Park Place Interconnect is the responsibility of all parties that are involved in hosting equipment and/or services in the building. Failure of a client, partner, vendor, consultant, or contractor, to follow the regulations below is grounds in termination of agreements and potential legal action.

### Security Access Level Definitions

#### Authorized LCOG Staff Access

- Only staff members with assigned job duties that have immediate business in the interconnection facility.
- These staff are authorized for interconnection facility center work and to escort others.

#### Unescorted Access

- All persons assigned require approval by the interconnection facility manager and will have proximity cards (permanent or temporary) assigned to them.

#### Escorted Access

- Must be admitted access by authorized LCOG staff or authorized tenant
- Must be supervised by authorized LCOG staff or proximity card holder
- Authorized LCOG Staff or authorized tenant are responsible for the actions of those under their escort

*All other access is considered unauthorized*

### Security Access Regulations

#### Access Log

- All non-LCOG staff required to sign in and out for each visit
- Form must have all fields completed

#### Revocation of Access & Periodic Review

- Lane Council of Governments reserves the right to revoke access at any time
- Lane Council of Governments will conduct periodic reviews of access and revoke access if it is determined to be no longer necessary
- All persons assigned an proximity card must forfeit their card immediately upon termination, or retirement from their employer. Employers are responsible for collecting the card and notifying LCOG.

#### Proximity ID Card

If access is approved:

- Each authorized person will be assigned a proximity card
- Each card must include a full name and organization
- Card is not to be loaned to anyone; this will be grounds for having access privileges revoked.
- It is the cardholder's responsibility to contact immediately if card is lost or stolen
- \$20 charge for replacement.
- Must be visibly worn at all times while on LCOG property.



#### Interior Doors

- Must immediately be closed after staff and any needed supplies have passed through.
- May only be propped open only with approval of LCOG Staff.

#### Exterior Doors

- Must immediately be closed after staff and any needed supplies have passed through.

#### Loading Dock, Lift Access, & Deliveries

- Access must be coordinated with LCOG Staff. (Minimum 24-hour notice)

#### Reporting

- All persons must report all issues involving access, safety, health, or fire concerns
- Use contact numbers listed in the interconnection facility

#### Parking

- Do not park in reserved or restricted spaces
- Do not block driveway or loading dock
- For longer term projects Parking Permit or vouchers are available thru City of Eugene.

#### Cleanliness & Box/Garbage Disposal/Recycling

- Please help us keep the facility and surrounding areas clean by utilizing provided garbage bins.
- Cardboard should be broken down and neatly stacked in or near garbage located south of the facility.

#### Emergency Evacuation

- Follow posted directions and signs to exit
- Immediately contact LCOG Staff

#### Food and Drink

- Absolutely no food or drink is allowed in the facility.

#### Tours

- Only permitted when coordinated with Authorized LCOG Staff

#### Video Surveillance

- All LCOG facilities are video monitored & recorded.
- All cabinets will have door sensors.

#### Exception from policy

- Police, fire, and medical personnel responding to an emergency situation.

#### Scheduling

- All access to LCOG and Meet-Me cabinets must be coordinated, confirmed and scheduled at least 24 hours in advance.