

COLUMBIA COUNTY

Board of Commissioners Office

Commissioners

Margaret Magruder

Henry Heimuller

Alex Tardif

Administration

Jan Greenhalgh

Jacyn Normine



ST. HELENS, OR 97051

230 Strand St., Room 338

Direct (503) 397-4322

Fax (503) 366-7243

www.co.columbia.or.us

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

Wednesday, February 27, 2019

10:00 a.m. – Room 308

BOARD MEETING AGENDA

CALL TO ORDER/FLAG SALUTE

MINUTES:

- 02.20.19 Board Meeting
- 02.20.19 Work Session

VISITOR COMMENTS – 5 MINUTE LIMIT

CONSENT AGENDA:

- A. Ratify the Select to Pay for 02.25.19.
- B. Cancel March 6, 2019 Board and Work Session meetings.
- C. Approve 2019 Liquor License Renewals for: Deer Island Store; Tio's Quincy Market and Scappoose Market.
- D. Reappoint George Dunkel, Jim Tierney and Dennis Kenna to the Elected Officials Compensation Committee for a three (3) year term.
- E. Appoint Stephen Roberts for a 1 year term, Lea Ann Berg for a 2 year term, Bruce Holsey for a 3 year term, Dave Coombs for a 1 year term, Mike Fletcher for a 2 year term, Lara Marzilli for a 3 year term and Anne Parrott for a 3 year term, to the Ambulance Service Advisory Committee.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- F. C26-2019, Contract with LS Networks for Internet Service.

DISCUSSION ITEMS:

COMMISSIONER HEIMULLER COMMENTS:

COMMISSIONER MAGRUDER COMMENTS:

COMMISSIONER TARDIF COMMENTS:

Pursuant to ORS 192.640(1), the Board of County Commissioners reserves the right to consider and discuss, in either open session or Executive Session, additional subjects which may arise after the agenda is published.

PUBLIC PROCUREMENT CONTRACT
(ORS Chapter 279B)

by and between COLUMBIA COUNTY and LS NETWORKS

This Agreement is made and entered into by and between COLUMBIA COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County", and LightsSpeed Networks, Inc., *dba* LS Networks, hereinafter referred to as "Vendor," for internet services.

WITNESSETH:

IT IS HEREBY AGREED by and between the parties above-mentioned, in consideration of the mutual promises hereinafter stated, as follows:

1. Effective Date. This Agreement is effective on the last date signed, below.
2. Completion Date. This Agreement shall remain in effect for thirty-six (36) months from the effective date, unless sooner terminated as provided herein.
3. Goods and Services Procured. Vendor agrees to provide the goods and/or equipment for internet services described in the Service Order, Master Services Agreement, and Service Level Agreement, all of which are attached hereto as Exhibit A and incorporated herein by this reference. Vendor shall be responsible for the proper installation of the goods and/or equipment as set forth in Exhibit A. In case of conflict between this Agreement and Exhibit A, this Agreement shall control, except for Section 6. Limitation of Liability, and Section 9, Indemnity, of the Master Services Agreement, which shall control.
4. Consideration. County shall pay Vendor for the goods and/or equipment, and for the installation of the goods and/or equipment, an amount not to exceed \$500 per month for a total of \$18,000.00 over the term of this Agreement, said amount to be the complete compensation to Vendor for the services performed under this Agreement. This fee shall include all expenses. Unless otherwise agreed to in writing by the parties, payment shall be made monthly based on invoices submitted by Contractor. This Agreement is subject to the appropriation of funds by County, and/or the receipt of funds from state and federal sources. In the event sufficient funds shall not be appropriated, and/or received, by County for the payment of consideration required to be paid under this Agreement, then County may terminate this Agreement in accordance with Section 17 of this Agreement.
5. Contract Representatives. Contract representatives for this Agreement shall be:

VENDOR: LS Networks 921 SW Washington St., Ste. 370 Portland, OR 97205 Attn. Contracts Management (503) 294-5300	COUNTY Holly Miller, Director Columbia County IT Department 230 Strand Street St. Helens, OR 97051 (503) 397-7240
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All correspondence shall be sent to the above addressees in accordance with Section 25 of the Master Services Agreement, attached as Exhibit A, when written notification is necessary. Contract representatives can be changed by providing written notice to the other party at the address listed.

6. Permits - Licenses. Unless otherwise specified, Vendor shall procure all permits and licenses, pay

all charges and fees and give all notices necessary for performance of this Agreement prior to commencement of work.

7. Compliance with Codes and Standards. It shall be the Vendor's responsibility to demonstrate compliance with all applicable building, health and sanitation laws and codes, and with all other applicable Federal, State and local acts, statutes, ordinances, regulations, provisions and rules. Vendor shall engage in no activity which creates an actual conflict of interest or violates the Code of Ethics as provided by ORS Chapter 244, or which would create a conflict or violation if Vendor were a public official as defined in ORS 244.020.
8. Reports. Vendor shall provide County with periodic reports about the progress of the project at the frequency and with the information as prescribed by the County.
9. Independent Contractor. Vendor is engaged hereby as an independent contractor and shall not be considered an employee, agent, partner, joint venturer or representative of County for any purpose whatsoever. County does not have the right of direction or control over the manner in which Vendor delivers services under this Agreement and does not exercise any control over the activities of the Vendor, except the services must be performed in a manner that is consistent with the terms of this Agreement. County shall have no obligation with respect to Vendor's debts or any other liabilities of Vendor. Vendor shall be responsible for furnishing all equipment necessary for the performance of the services required herein. In addition:
 - A. Vendor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
 - B. This Agreement is not intended to entitle Vendor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement to the Vendor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Vendor is presently a member of the Public Employees Retirement System).
 - C. The Vendor is an independent contractor for purposes of the Oregon workers' compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Agreement. If the Vendor has the assistance of other persons in the performance of the Agreement, the Vendor shall qualify and remain qualified for the term of this Agreement as a carrier-insured or self-insured employer under ORS 656.407. If the Vendor performs this Agreement without the assistance of any other person, unless otherwise agreed to by the parties, Vendor shall apply for and obtain workers' compensation insurance for himself or herself as a sole proprietor under ORS 656.128.
10. Statutory Provisions. Pursuant to the requirements of ORS 279B.220 through 279B.235 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:
 - A. Vendor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Vendor labor or material for the performance of the work provided for in this Agreement. [ORS 279B.220 (1)]

- (2) Pay all contributions or amounts due the Industrial Accident Fund from the Vendor or any subcontractor incurred in the performance of this Agreement. [ORS 279B.220 (2)]
 - (3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished. [ORS 279B.220 (3)]
 - (4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279.220 (4)]
- B. Vendor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness and injury, to the employees of Vendor, of all sums that Vendor agrees to pay for the services and all moneys and sums that Vendor collects or deducts from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [ORS 279B.230 (1)]
- C. Vendor shall pay employees at least time and a half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. [ORS 279B.235 (5)(a)]
- D. Vendor shall notify employees in writing, who work under this Agreement, either at the time of hire or before work begins on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the vendor may require the employees to work. [ORS 279A.235 (5)(b)]
- E. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [ORS 279B.230 (2)]
- F. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
11. Non-Discrimination. Vendor agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, handicap or age, suffer discrimination in the performance of this Agreement when employed by Vendor. Vendor certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise that is certified under ORS 200.055 in awarding a subcontract.
12. Tax Compliance. As required by ORS 279B.045, Vendor represents and warrants that Vendor has complied with the tax laws of this state and all political subdivisions of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. Vendor shall continue to comply with the tax laws of this state and all political subdivisions of this state during the term of the public contract. Vendor's failure to comply with the tax laws of this state or a political subdivision of this state before the Vendor executes this Agreement or during the term of this Agreement is a default for which County may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law. Vendor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to Vendor's knowledge, Vendor is not in violation of any of the

tax laws of this state or political subdivision of this state, including but not limited to ORS 305.380(4).

13. Nonassignment; Subcontracts. Vendor shall not assign, subcontract or delegate the responsibility for providing services hereunder to any other person, firm or corporation without the express written permission of the County, except as provided in the Specifications.
14. Nonwaiver. The failure of the County to enforce any provision of this Agreement shall not constitute a waiver by the County of that or any other provision of the Agreement.
15. Indemnity. Vendor shall indemnify, defend, save, and hold harmless the County, its officers, agents and employees, from any and all claims, suits or actions of any nature, including claims of injury to any person or persons or of damage to property, caused directly or indirectly by reason any error, omission, negligence, or wrongful act by Vendor, its officers, agents and/or employees arising out the performance of this agreement. This indemnity does not apply to claims, suits or actions arising solely out of the negligent acts or omissions of the County, its officers, agents or employees.
16. Insurance. Vendor shall maintain commercial general liability and property damage insurance in an amount of not less than \$2,000,000 each occurrence to protect County, its officers, agents, and employees. Vendor shall provide County a certificate or certificates of insurance in the amounts described above which names County, its officers, agents and employees as additional insureds. Such certificate or certificates shall be accompanied by an additional insured endorsement. Vendor agrees to notify County immediately upon notification to Vendor that any insurance coverage required by this paragraph will be canceled, not renewed or modified in any material way, or changed to make the coverage no longer meet the minimum requirements of this Contract.
17. Termination. This Agreement may be terminated at any time in whole or in part by mutual consent of both parties. The County may terminate this Agreement, with or without cause, upon 30 days written notice to Vendor. The County may terminate this Agreement, effective upon delivery of written notice to Vendor, or at such later date as may be established by the County under the following conditions:
 - A. If Vendor fails to perform the work in a manner satisfactory to County.
 - B. If any license or certificate required by law or regulation to be held by Vendor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
 - C. If funding becomes inadequate to allow the work to continue in accordance with the project schedule.

In case of termination, Vendor shall be required to repay to County the amount of any funds advanced to Vendor which Vendor has not earned or expended through the provision of goods and/or equipment and/or services in accordance with this Agreement. However, Vendor shall be entitled to retain all costs incurred and fees earned by Vendor prior to that termination date, and any amounts remaining due shall be paid by County not to exceed the maximum amount stated above and decreased by any additional costs incurred by County to correct the work performed.

The rights and remedies of the County related to any breach of this Agreement by Vendor shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued before such termination.

18. Time of the Essence. The parties agree that time is of the essence in this Agreement.
19. Ownership of Documents. All documents of any nature and/or electronic data including, but not limited to, working papers, reports, material necessary to understand the documents and/or data, drawings, works of art and photographs, produced, prepared and/or compiled by Vendor pursuant to this Agreement are the property of County, and it is agreed by the parties that such documents are works made for hire. Vendor hereby conveys, transfers, and grants to County all rights of reproduction and the copyright to all such documents.
20. Mediation. In the event of a dispute between the parties arising out of or relating to this Contract, the parties agree to submit such dispute to a mediator agreed to by both parties as soon as practicable after the dispute arises, and preferably before commencement of litigation of any permitted arbitration. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.
21. Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.
22. Venue. Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Columbia County, located in St. Helens, Oregon.
23. Attorneys Fees. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for its own attorneys fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
24. Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof.
25. No Third-Party Rights. This Agreement is solely for the benefit of the parties to this Agreement. Rights and obligations established under this Agreement are not intended to benefit any person or entity not a signatory hereto.
26. Warranty. Vendor warrants the goods and/or equipment delivered and installed, and the services provided, under this Agreement to be free from defects in design, material, and workmanship for a minimum of one year from the date installation of the goods and/or equipment is complete and accepted by County. Should any of the goods and/or equipment, or the services provided, be found defective, Vendor shall furnish the necessary parts and labor to correct such defect. If Vendor or the manufacturer provides a warranty which differs or exceeds that required by this paragraph, the warranty which provides the greatest protection to County shall control. This warranty is in addition to warranties of merchantability and fitness for a particular purpose as provided by law.
27. ENTIRE AGREEMENT. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. VENDOR, BY THE SIGNATURE OF ITS AUTHORIZED

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REPRESENTATIVE(S) BELOW, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

VENDOR

OWNER

DocuSigned by:
Trent Anderson
By: EB9A801BFC01485...
Name: Trent Anderson
Date: 2/21/2019

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON
By: _____
Henry Heimuller, Chair
By: _____
Margaret Magruder, Commissioner
By: _____
Alex Tardif, Commissioner
Date: _____

Approved as to form
By: _____
Office of County Counsel



Service Order

921 SW Washington St., Ste. 370
Portland OR 97205

Order #	SO7127
Date	11/5/2018

Billing Address
Columbia County 230 Strand St St Helens OR 97051

Customer PO #	Account Manager
	Schmitz, Bob

Site Name	Service Address	Service Description	Term (months)	Rate
Columbia County Courthouse	230 Strand Street St. Helens, OR 97051	100 MB Internet Access	36	500.00
		Provisioning & Installation (waived)		0.00

Service contingent upon pending build project to courthouse. LS Networks to deliver to OJD dmarc and Columbia County is responsible for any required fiber/cabling extensions.

I, the undersigned Customer, have read, understand, accept, and agree to the terms of this Service Order. This Service Order is subject to the Master Services Agreement. In the event that LS Networks and Customer have not executed a Master Services Agreement with respect to this Service, then the LS Networks Master Services Agreement posted to the LS Networks website at www.LSNetworks.net shall govern, and is herein incorporated by reference. I understand that all changes to this Service Order must be in writing and any changes to this Service Order may result in a revised installation date and additional charges may be imposed. Additionally, I understand the installation date is dependent upon Customer's timely completion of the Technical Sheet associated with this Service Order, and Customer's failure to provide accurate and complete information to LS Networks may result in a revised installation date. The above rates do not include any taxes, fees, or surcharges applicable to this service.

Name: _____

Title: _____

Signature: _____ Date: _____

On behalf of LS Networks, the undersigned authorized LS Networks representative hereby accepts this Service Order. The contract becomes effective when accepted, signed, and returned to the Customer by LS Networks.

Name: Trent Anderson

Title: VP of sales

Signature: *Trent Anderson*

Date: 2/21/2019

EXHIBIT A



COMMERCIAL MASTER SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between Columbia County (hereinafter called "Customer," and LightSpeed Networks, Inc dba LS Networks (and dba LSN, and Quantum Communications.

RECITAL

Customer desires to obtain communication transport services ("Services") on LS Networks' fiber optic cable system; and LS Networks desires to provide Service to Customer.

NOW, THEREFORE, in consideration of mutual conditions and covenants hereinafter described Customer and LightSpeed Networks, Inc. dba LS Networks (and dba LS Networks, and Quantum Communications) do agree as follows:

1. Overview: This Agreement states the general terms and conditions by which LightSpeed Networks will deliver and Customer will receive any or all of the Services provided by LS Networks. The specific Services and/or products to be provided and the procedure for obtaining Services shall be detailed in an associated Service Order. This Agreement is intended to cover any and all Services ordered by Customer and provided by LS Networks. Customer may use services only for authorized and lawful purposes.

2. Delivery of Services: By submitting a Service Order, Customer agrees to take and pay for, and, by accepting the Service Order, LS Networks agrees to provide, the Services during the term described on the Service Order. LS Networks has the right in its sole discretion to limit the manner in which any portion of its network, equipment and facilities ("Network") is used to protect the technical integrity of the Network. LS Networks is not liable or responsible for content, errors in transmission, or failure to establish connection.

3. Installation and Interconnection of Services: Other than the facilities, termination equipment or other devices provided by Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, LS Networks will pay for, provide, install, maintain, operate, control and own any equipment, cable or facilities connected to the Network ("System Equipment"), which equipment at all times remains LS Networks' exclusive personal property, regardless of where located or attached, including common space. Said System Equipment is not a fixture. LS Networks may change, replace or remove the System Equipment, regardless of where located, so long as the basic technical parameters of the service are not altered, and this Agreement constitutes Customer's consent to such change, replacement or removal. Customer may not rearrange or move or disconnect the System Equipment, or allow anyone access to the System Equipment, and is responsible for any damage to or loss of System Equipment caused by Customer's negligence or willful misconduct or that of its end users. LS Networks has no obligation to install, maintain or repair any equipment owned or provided by Customer, except as may be specifically provided herein. If Customer's or an end user's equipment is incompatible with the Services, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. Customer is responsible to ensure that its equipment does not

interfere with the provision of or functionality of services to Customer or other parties with whom LS Networks contracts. If, in responding to a Customer initiated service call, LS Networks reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment or software, Customer will pay LS Networks for such service call at LS Networks' then prevailing rates.

Customer will provide LS Networks entrance facilities from the Premise property line to the Point of Demarcation. Entrance facilities can be dedicated conduit, shared conduit or aerial entry. The entrance facility must meet industry standards for type of entry as well as relevant safety standards. It is the Customer's responsibility to ensure adequate and timely access to the entrance facility. Customer grants LS Networks permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with LS Networks' assistance, appropriate right of access. If such right of access for LS Networks is not obtained by either party, then LS Networks' obligations with respect to such Service Location shall be considered null and void.

LS Networks may reconfigure, reprogram, substitute, rearrange or otherwise change any part of the Network or the System Equipment, whether any such part of the Network or the System Equipment is on Customer's premises or otherwise, at any time and from time to time, but shall not thereby alter the technical parameters of the service provided Customer without Customer's knowledge or consent. Although no specific advance notification period is applicable, LS Networks will use its best efforts to notify Customer of the planned timing of such activities and will use reasonable efforts to perform such activities at a time that is agreeable to Customer (except where emergency conditions exist or where such change is required by a governmental agency or other authority to take place immediately).

4. Term: Subject to the provisions of Sections 10 and 11, the initial term for each subscribed Service will commence and end on the dates indicated in the applicable Service Order. Thereafter, the term of such Service shall automatically renew and be extended for successive one-month terms until terminated by either party upon not less than 30 days written notice prior to the end of the expiring term, or unless otherwise specified in the Service Order. In the event of any inconsistency between the terms contained in this Agreement and any specific provisions of the Service Order, the terms of the Service Order shall prevail. References herein to attachments mean attachments to this Agreement unless the context indicates otherwise.

5. Fees and Payment Terms: Customer shall pay all fees due for Services according to the prices and terms set forth in the Service Order. Upon completion of provisioning, installation and testing of the System Equipment needed to provide the Services ordered by Customer, LS Networks will notify Customer that the Services are available for Customer's use. The Services shall be subject to, but are not limited to, a Monthly Recurring Charge ("MRC") as set forth in Service

EXHIBIT A



COMMERCIAL MASTER SERVICES AGREEMENT

Order. Billing shall commence on the date LS Networks notifies Customer that Services are available for Customer's use ("Service Order Completion notice"). If Customer delivers to LS Networks, within five (5) business days after Customer's receipt of the Service Order Completion notice, notice specifying non-conformance of the Service, LS Networks shall promptly undertake appropriate corrective action and the notification and Acceptance process shall be repeated.

LS Networks reserves the right to change the MRC for the Services at any time after the initial term hereof upon 25 days prior written notice to Customer. However, in no event shall the MRC be increased by more than 5%. The MRC does not include any governmental taxes or tax-related charges, fees, surcharges or other amounts assessed by any government, which may be incurred in connection with the Services to be provided hereunder, all of which shall be paid by Customer. Any installation charges or other non-refundable non-recurring charges shall be billed to Customer on a monthly invoice.

For Services billed in arrears, any payment not received within 30 days of the invoice date will accrue interest at a rate of 1½% per month, or the highest rate allowed by applicable law, whichever is less. For Service billed in advance, any payment not received within 30 days of the invoice date will accrue interest in the same manner.

If Customer has a dispute over the amount of any charges for Services, Customer will nevertheless pay all undisputed amounts. Customer will supply LS Networks with a written explanation detailing the reasons for disputing the unpaid amount within 30 days from the invoice date. The parties will cooperate in good faith to resolve any such disputes within a 60 day period after the due date of the original charges. If the dispute is not resolved during this period, then either party may seek dispute resolution in accordance with Section 18.

If, through the process of dispute resolution or a judgment from a court of competent jurisdiction, a disputed amount is determined to be a legitimate, such amount may be subject to a finance charge of 1½% per month, or the maximum allowable by law, whichever is less, calculated from the original due date until the full amount is paid.

When Services commence on a day other than the first day of the month, the charge for that month shall be determined by prorating the monthly payment by the number of days during which Services are provided.

Customer initiated terminations of Services will always occur on the 30th day following the receipt of Customer's 30 day written notice. Customer may request a Service termination date later than 30 days from written notice, but not sooner.

6. Limitation of Liability: The total liability of LS Networks to Customer and of Customer to LS Networks in connection with this Agreement, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and

other torts, shall be limited to the amount paid for the Service by Customer to LS Networks under this Agreement for the three-month period prior to accrual of the most recent cause of action. **IN NO EVENT SHALL LS NETWORKS BE LIABLE FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE, PROFITS OR OTHER BENEFIT WHETHER BY TORT, CONTRACT, OR OTHERWISE.**

7. Force Majeure: Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, extreme weather conditions, governmental action, and supplier failures. Customer's invocation of this clause shall not relieve Customer of its obligation to pay for any services actually received. In the event such failure continues for 60 days, either party may terminate the affected portion of the Services.

8. Assumption of Risk: Customer recognizes that the use of the Network and the System Equipment shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges or obligations identified herein.

9. Indemnity: Customer agrees to indemnify, defend and hold harmless LS Networks and its partners, officers, directors, employees, agents and other representatives of LS Networks from all losses or damages arising from Customer's breach of this Agreement, violation of any third party intellectual property right, all claims of any kind by Customer's end users, or any act or omission of Customer in connection with any Services provided hereunder. LS Networks agrees to indemnify, defend and hold harmless Customer from all losses or damages arising from or related to personal injury or property damages caused by the negligence or willful misconduct of LS Networks.

10. Termination of Service by LS Networks: LS Networks may terminate Service under this Agreement or any Service Order hereunder, or suspend Services, with prior written notice, upon (a) failure of Customer to pay any amounts as provided herein within 30 days of invoice date, except for fees in dispute under Section 5; or (b) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the Services; or (c) if Customer provides false information to LS Networks regarding Customer's identity, creditworthiness, or its planned use of the Services; or (d) if LS Networks deems it necessary to take any reasonable and lawful action to protect the property and rights of LS Networks, and existing and potential customers of LS Networks' communication transport services. With respect to a termination pursuant to clause (a) of this Section 10, such termination of Services may not occur until after LS Networks has given Customer written notice of failure to pay and Customer has failed to cure such failure to pay within 10 days of the date of such written notice.

11. [Intentionally omitted.]

12. Early Termination Charges: If: (a) Customer terminates any Service Order for convenience; or (b) LS Networks

EXHIBIT A



COMMERCIAL MASTER SERVICES AGREEMENT

terminates any Service Order hereunder pursuant to Section 10, then Customer will pay, within 30 days after such termination, the following amounts: (i) all accrued but unpaid charges incurred through the date of such termination; plus (ii) an amount equal to 50% of the MRC for the remainder of the initial term of each subscribed Service. If Customer desires to cancel a Service Order, the following shall apply: (i) when a Service requiring design work is canceled after the design work has begun, LS Networks may collect charges equal to the cost incurred for the associated design work time and materials to date; and (ii) if cancellation is requested at any time during installation, it will be treated as an early termination of Service to which the terms and conditions of this Section 12 shall apply. It is agreed that LS Networks' damages in the event of early termination will be difficult or impossible to ascertain. The charges identified in this Section 12 are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

13. Resale of Services: Any Services provided under this Agreement may be resold to or shared with other persons or entities at the option of Customer, subject to compliance with any applicable laws, rules and regulations governing such resale or sharing. Customer remains solely responsible for all Services ordered by it or billed to its account, for determining who is authorized to use the Services and taking appropriate actions to enforce such a determination, and for immediately notifying LS Networks of any unauthorized use. LS Networks has no obligation to provide notice to or otherwise communicate with the users or customers of Customer.

14. Assignment: Customer shall not assign, pledge, transfer or otherwise convey all or any part of the rights and privileges granted by this Agreement in any manner without prior written consent of LS Networks, which consent it will not unreasonably withhold. Any transfer of this Agreement by merger, consolidation or liquidation of Customer, or any change in the ownership of or power to vote the majority of its outstanding voting stock, membership interests or equity interests of Customer (whether effected in one or more transactions or events occurring over any period of time) shall constitute an assignment for purposes of this Section 14. Customer may enter into agreements with other parties for transport circuits on terms consistent with this Agreement.

15. Taxes: Each party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions. Notwithstanding the foregoing, Customer agrees that if there is any tax payable by it, but which is to be collected by LS Networks which LS Networks does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by LS Networks, Customer shall immediately remit the same to LS Networks or the agency, as directed by LS Networks, even if such assessment arises after the termination of this Agreement.

16. Representations and Warranties: Each party represents and warrants that it has full power and authority to execute, deliver, and perform its obligations under this Agreement. LS Networks represents and warrants to Customer that any Services

provided hereunder will be performed in a manner consistent with that of other reputable providers of the same or similar services in the same locality. **EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND ANY SERVICE ORDER ASSOCIATED WITH THIS AGREEMENT, LS NETWORKS MAKES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY PORTION OF THE NETWORK OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.**

17. Governing Law: This Agreement is governed by and subject to the laws of the State of Oregon.

18. Arbitration/Small Claims: Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of, and by filing a claim with, the Arbitration Service of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. **Small Claims:** If the amount in dispute is less than the \$10,000 jurisdictional maximum of a small claims court, and if neither party has initiated arbitration, then the claimant shall have the option (in lieu of arbitration) of bringing a small claims court action.

19. [Intentionally omitted]

20. [Intentionally omitted.]

21. Entire Agreement: This Agreement, and any addendums, attachments, Service Orders and other documents incorporated herein, constitute the entire agreement between the parties with respect to its subject matter and supersede all other representations, understandings or agreements that are not expressed herein, whether oral or written. Except as otherwise set forth herein, no amendment to this Agreement shall be valid unless in writing and signed by both parties.

22. Waivers: No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

23. Use of Name and Trademarks: Neither party shall use any name, logo or service mark of the other party in marketing services to others without the express written consent of the other party.

24. Confidentiality: Except for information subject to disclosure under Oregon Public Records Law, each party hereto shall treat all information made available or disclosed to, or developed or obtained by, the other party as the result of or related to this Agreement ("Confidential Information") as confidential, and shall not disclose or use Confidential

EXHIBIT A



COMMERCIAL MASTER SERVICES AGREEMENT

Information for the benefit of any person other than Customer and LS Networks, as the case may be; provided the following information shall not be treated as Confidential Information, (a) information that a party can demonstrate was rightfully in that party's possession prior to the date of disclosure by the other party, (b) information that a party received from a third party that had a right to make such information available, and (c) information that a party can demonstrate was independently developed by or on behalf of said party, provided further, that Customer and LS Networks shall have no obligation with respect to that portion of Confidential Information which is in or enters the public domain through no wrongful act of either party, or which must be disclosed to others by order of a governmental agency or legislative body or a court of competent jurisdiction. If either party receives a request for Confidential Information from a third party, the party receiving such notice shall promptly notify the other party in writing of such request, and if the party receiving such notice in good faith believes it is obligated to disclose the requested Confidential Information, the other party shall be given the opportunity to seek judicial or other protection of such Confidential Information, with the cooperation of the party receiving such notice.

25. Notices: All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice. It is the obligation of Customer to provide a current mailing address (and facsimile number should Customer desire to receive notice under (iii) of this Section 25) to LS Networks throughout the term of service. If to LS Networks, notices should be sent to:

If to LS Networks:

	LS Networks
	921 SW Washington Street
	Suite 370
	Portland, OR 97205
Attn:	Contracts Management
Telephone No.:	503.294.5300
Facsimile No.:	503.227.8585

Such addresses and numbers may be changed, from time to time, by means of a notice given in the manner provided in this Section 25.

26. [Intentionally omitted.]

27. Relationship of Parties: In the performance of its responsibilities hereunder, Customer and LS Networks are and at all times shall be independent contractors. Customer and LS Networks further agree to notify the other party if any governmental agency asserts that Customer or LS Networks is not an independent contractor with respect to the other party; and to permit the other party to participate in any negotiations or proceedings involved in such matters. Neither Customer or LS Networks shall have any power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the other party, except as expressly authorized by the other party.

Appendix 1 applies directly to this Master Services Agreement and is incorporated herein by reference.

EXHIBIT A



COMMERCIAL MASTER SERVICES AGREEMENT

Appendix 1 GENERAL TERMS FOR SERVICE INSTALLATION AND OPERATION

1. **Definitions**

The terms used in this Master Services Agreement and associated Service Order(s) shall have their normal or common meaning, except that the following terms shall have the following meanings:

Acceptance or Accepted. Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Service on the earliest date of: (i) when Customer first utilizes any of the Service or; (ii) five days from LS Networks' issuance of a Circuit Certification document or Service Order Completion document.

Bursting: Bursting is a Service that provides the capability for customer traffic to exceed the customer's committed information rate. The Bursting Service allows a customer to exceed their committed information rate to a predefined excess information rate at all times. If monthly customer traffic measurements exceed the committed information rate as measured in the 95th percentile of 5 minute averages in either the transmit or receive direction, overage charges will apply.

Circuit. The individual telecommunications facility(s) that makes up the Service provided.

End-User. A user to whom Customer will provide telecommunications services utilizing, in part, the Services provided by LS Networks to Customer under an associated Service Order.

Interconnection Facilities. All facilities between Customer's Point of Presence, the local exchange carrier's central office, the back-haul carrier's Point of Presence and the End-User sites.

Off-Net Services. Services where one or more locations to be connected are not served entirely by LS Networks' On-Net Services.

On-Net Services. Services which are provided entirely using the equipment and facilities owned by LS Networks.

Point-to-Point. Services are available between Customer-designated locations. Service may be ordered between the Customer's POP and an End-User location, between two Customer POPs, or between two End-User locations. There are two basic configurations for Point-to-Point Service, Hubbed Service and Two Point Service:

Hubbed Service. Allows Customer to aggregate multiple lower capacity transport Services terminating at multiple locations onto one higher capacity Service terminating at one other Customer location.

Two Point Service. Allows for two Customer designated locations to be connected by one transport Service. The Service terminated at both locations must be the same speed/capacity.

Point of Presence (POP). A specific location where LS Networks or Customer terminates and/or originates its Service.

Point of Demarcation. Point at which LS Networks' responsibility to provide equipment and Service ends and where Customer's or Customer's End-User responsibilities begin, identified as the interface between LS Networks and Customer at Customer's Point of Presence, the local exchange carrier's central office, a back-haul carrier's point of presence or End-User sites identified on an associated Service Order provided by LS Networks.

Premises. The address, to which Service is provided, identified as a Point of Presence on an associated Service Order.

Service Order (SO). Written form used by Customer to place an order, which is acceptable to LS Networks, for the purchase of Service. The SO delineates the type of Service, term of Service, Service start and end dates, Point of Presence, Point of Demarcation, and other information specific to the order. The SO includes all referenced documents, diagrams, appendices, schedules, exhibits and attachments.

Service Outage. An interruption of the Service or degradation of the Service, where the Service will no longer pass the criterion of the original Circuit Certification or Service Order Completion. If Customer reports a Service Outage but declines to release it for testing and repair, the Service is considered to be impaired but will not be deemed a Service Outage.

EXHIBIT A



Service Level Agreement - Switched Ethernet and Internet Products

Description. This document outlines a Service Level Agreement ("SLA") made between the recipient of service ("Customer") and the Vendor of service ("LS Networks") and outlines the objectives and non-compliance remedies targeted to be delivered for the LS Networks Internet and switched Ethernet products.

1. Definitions

Network Outage is defined as an unscheduled period in which the Service is interrupted and not usable for 60 or more seconds within a 15-minute period, as measured by LS Networks. The Customer must open a Trouble Ticket in order to qualify for the credits issued for any Network Outage.

Trouble Ticket is defined as the official method defined by LS Networks and used by the Customer to advise LS Networks of a perceived SLA non-compliance. If the Customer does not timely initiate a Trouble Ticket with LS Networks or does not release the circuit to LS Networks for testing, LS Networks will not be obligated to issue, and the Customer will not be eligible to receive, credits for the non-compliance.

Availability is defined as the total number of minutes in a billing month during which an LS Networks circuit is available to exchange data between two Customer end points, divided by the total number of minutes in a billing month.

Availability (%) =	$\frac{\text{Total number of minutes in a billing month during which a Service is available to exchange data between two Customer end points.}}{\text{Total of minutes in the billing month}}$	X 100
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The following table calculates the downtime that would be allowed without penalty for a particular percentage of availability.

Availability %	Downtime per year	Downtime per month*	Downtime per week
98.0000%	7.30 days	14.4 hours	3.36 hours
99.0000%	3.65 days	7.20 hours	1.68 hours
99.5000%	1.83 days	3.60 hours	50.4 min
99.9000%	8.76 hours	43.2 min	10.1 min
99.9900%	52.6 min	4.32 min	1.01 min
99.9990%	5.26 min	25.9 s	6.05 s
99.9999%	31.5 s	2.59 s	0.605 s

*Assumes a 30 day month

Mean Time to Repair (MTTR) is defined as the monthly average time taken per circuit to restore all Trouble Tickets resulting in a total loss of service.

Monthly Mean Time to Repair (Hours) =	$\frac{\text{Cumulative length of Network Outage(s) per circuit}}{\text{Total number of Trouble Tickets per billing month per each circuit}}$
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Latency is defined as the average one-way time it takes an ICMP data packet to travel from its source to its destination then back again to its source in a giving billing month on a specific customer circuit. Latency is measured by sending ICMP packets from the NOC to a device installed at the customer site and recording the time it takes to make its trip and return.

Jitter is defined as the average variation from the average in the time between two packets arriving in a given billing month on a specific customer circuit. Jitter is calculated by measuring the latency of an ICMP packet sent from the NOC to a device installed at the customer site and taking the latency difference from it and the previous ICMP packet.

Packet Loss is defined as an occurrence when one or more packets of data traveling across the network fail to reach their destination. Packet Loss is calculated by adding up the total number of lost packets sent in a giving billing month for a specific customer circuit and dividing that by the total number of packets sent in a given billing month on that same circuit.

Packet Loss (%) =	$\frac{\text{Total number of packets lost in a billing month per each circuit}}{\text{Total of Packet sent in the billing month per each circuit}}$	X 100
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On-Net is defined as the service provided between at least two locations demarcated by LSN with a provided access points for customer connections. On-Net does not include services / equipment provided to the Customer by companies other than LSN unless explicitly stated in the applicable LSN Service Order.

2. Service Level Objectives

Switched Ethernet / Internet

Service Metric	Objective	Non-Compliance Remedy
Network Availability	99.990%	1/10th MRC credit for each cumulative hour of outage beyond 4.32 min.
Mean Time to Repair	4 Hours	1/10th MRC credit for each cumulative hour of outage beyond 4 Hrs
Latency	20 Milliseconds	10% MRC single monthly credit in which delay exceeds objective
Jitter	2 Milliseconds	10% MRC single monthly credit in which Jitter exceeds objective

EXHIBIT A



Service Level Agreement - Switched Ethernet and Internet Products

Packet Loss	Less than 0.3%	2% MRR single monthly credit in which Packet Loss exceeds objective
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3. Terms and Conditions

This SLA applies to the End-to-End circuit, which is measured from Customer's primary premises demarcation point to one or more of Customer's secondary premises demarcation point(s). The demarcation point is the point at which the service provider's or carrier's facilities interconnect with the Customer's premises. The End-to-End circuit does include the LS owned and operated Customer's premises equipment (CPE) plus any equipment / service furnished by Local Exchange Carriers (LEC's) or Competitive Local Exchange Carriers (CLEC's) as part of the overall LS Networks circuit. The SLA does not include Customer provided equipment, Customer provided power, any Customer application on a covered circuit, or in-house wiring.

This Service SLA is available only to Customers who have contracted for at least one (1) year of the Service. Such Customers can seek non-compliance credits based on the parameters set forth in the MSA.

When the Customer experiences an SLA non-compliance, the Customer must notify the LSN NOC and open a Trouble Ticket. In order to receive a credit for a non-compliance the customer must report the noncompliance within four (4) hours of the occurrence and make a request in writing for a credit from LS Networks in five (5) days of opening the Trouble Ticket. The Customer must document the following information when requesting the credit: the Trouble Ticket number, the date and time the Trouble Ticket was opened and closed, and the circuit IDs for each of the circuits that experience the non-compliance.

Customer will, subject to the terms, exclusions and restrictions described herein, be entitled to receive from LSN a credit for non-compliance if the service level objectives listed for a particular Circuit for any Calendar Month falls below the objective shown in the applicable service level schedule.

The credit ("Outage Credit") to which Customer may be entitled under this section will be equal to the applicable credit percentage identified in the table above of Customer's monthly recurring charges ("MRC") for the Affected Circuit after application of any credits or discounts ("Eligible Circuit Charges"). The Outage Credit will not include credits on any other MRC billed to Customer for any other service, with the exception of On-Net or Leased Local Access Service associated with the Affected Circuit. Only during a Network outage can an outage credit be claimed for two service metrics, both Network Availability and Mean Time to Repair. For all non-compliance events outside of a Network Outage only a single Service Metric can be claimed for outage credit in a single billing month.

For the purpose of measuring Customer's Circuit Availability, the LSN Trouble Reporting System determines the number of non-compliance events and the duration of each. An event will be deemed to commence upon verifiable notification thereof by Customer to the LSN NOC and Trouble Reporting Ticket System and LSN's issuance of a trouble ticket. An event will conclude upon the restoration of the Affected Circuit as evidence by the appropriate network tests conducted by LSN.

Subject to the terms, exclusions and restrictions described herein, in the event Customer experiences chronic Network Outages with respect to any Circuit, Customer will be entitled to terminate the Affected Circuit. A circuit suffers from chronic Outages if such Circuit, measured over any Calendar Month, experiences more than five Outages, or more than 48 aggregate hours of Outages. Customer may as its sole and exclusive remedy for chronic Outages, upon 30 days prior written notice to LSN, terminate the Affected Circuit without incurring any early termination charges associated with that Affected Circuit except for all usage charges accrued to the date of termination. Customer must exercise any termination right available to it under this section within 30 days after Customer first becomes eligible to exercise the termination right. In the event Customer fails to comply with the condition set forth in the immediately preceding sentence, Customer will, with respect to the termination right, have waived its right to such termination right.

To be eligible for an Outage Credit under this Service Level Agreement, Customer must, in addition to complying with the other terms included herein: (a) be in good standing with LSN and current in their obligations, other than those invoices that are recognized as being in dispute; and (b) submit necessary supporting documentation and request reimbursement or credits hereunder within 30 days of the conclusion of the service month in which the requisite unavailability occurs. In the event Customer fails to comply with the condition set forth in the immediately preceding sentence, Customer will, with respect to that remedy, have waived its right to such remedy.

Outage Credits for any Calendar Month must exceed \$25.00 to be processed. In no case will LSN provide credit to Customer for an Affected Circuit that exceeds 100% of the monthly recurring charge or the stated applicable maximum credit percentage. Customer may receive Outage Credits for a particular affected circuit for a maximum of four months in any 12 month period.

Normal Maintenance. Normal Maintenance refers to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible outages. Such impacts to Service related to Normal Maintenance shall not give rise to Service credits under this SLA. Normal Maintenance shall be undertaken only between the hours of 12:01am and 6:00am Local Time. For the purposes of this SLA, "Local Time" refers to the local time in the time zone in which an Affected Service is located. LS Networks shall provide at least 72 hours prior notice to Normal Maintenance. Normal Maintenance, which is reasonably not expected to affect the Service, may be performed during the hours of 8:00am and 5:00pm LS Networks Local.

Urgent or Emergency Maintenance. Urgent or Emergency Maintenance refers to efforts to correct conditions that are likely to cause material Service disruption and require immediate action. Urgent or Emergency Maintenance may degrade the quality of the Service, including possible outages. Such effects related to Urgent or Emergency Maintenance does not give rise to Service credits under this SLA. LS Networks may undertake Urgent or Emergency Maintenance at any time deemed necessary and shall provide notice of Urgent or Emergency Maintenance to Customer as soon as commercially practicable under the circumstances.

Additional Restriction and Exclusions

1. Interruptions caused by the negligence, error or omission of Customer or otherwise authorized by Customer to use or modify Customer's service;
2. Interruptions due to failure of power at Customer premises or failure or poor performance of Customer premise equipment;
3. Interruptions during any period in which LSN or its agents are not afforded access to the premise where the access lines associated with Customer's service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore service;
4. Interruptions during any period when LSN has communicated to Customer in any other manner that Customer's service will be unavailable for maintenance or rearrangement purposes, or Customer has released the service to LSN for the installation of a customer service order;
5. Interruptions from events beyond the reasonable control of LSN including, but not limited to, acts of God, government regulation, labor strikes, national emergency or war (declared or undeclared);
6. Interruptions resulting from Customer's use of Service in an unauthorized or unlawful manner;