

**ADDENDUM TO MASTER SERVICE AGREEMENT**  
**Between**  
**LARAMIE COUNTY, WYOMING and LUNAVI, INC.**

This is an Addendum to the Master Service Agreement (hereinafter Agreement) by and between Laramie County, Wyoming, 310 W. 19th Street, Cheyenne, Wyoming, 82001 ("COUNTY") and Lunavi, Inc., 340 Progress Circle, Cheyenne, Wyoming 82007 ("CONTRACTOR").

**I. PURPOSE**

The purpose of this Addendum is to modify the Master Service Agreement and the Service Order providing for services that include but are not limited to providing a data link and colocation services for COUNTY's facilities, attached herein and incorporated by this reference as Attachment A.

**II. TERM**

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties and shall remain in force on a month-to-month basis, or until terminated pursuant to the provisions of this Addendum.

**III. PAYMENT**

The COUNTY shall pay CONTRACTOR a monthly fee not exceeding One Thousand, one hundred fifty-four dollars and 40 cents (\$1,154.40) upon receipt of the CONTRACTOR'S invoice to the COUNTY, or submission of other documentation certifying completion of the services. The COUNTY is exempt from sales and use taxes pursuant to Wyo. Stat. Ann. § 39-15-105 as amended. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

**IV. RESPONSIBILITIES OF CONTRACTOR**

CONTRACTOR agrees to retain all required records for three (3) years after the County makes final payment and all other matters relating to the Agreement are concluded. CONTRACTOR agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, and transcriptions. It is agreed that finished or unfinished documents, data or reports, prepared by CONTRACTOR under this contract shall be considered the property of the COUNTY and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of the COUNTY, will be turned over to the COUNTY.

## **V. MODIFICATIONS**

A. Section 11 entitled "INDEMNIFICATION" is modified to provide that "each party to this MSA shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other."

B. Subsection 12.4 is modified to include the following language at the end:

"The CONTRACTOR recognizes that the duties and obligations of the COUNTY with respect to this subsection may be limited and controlled by the operation of State or Federal law regarding the disclosure of publicly held records. The CONTRACTOR agrees that COUNTY shall not be held in breach or default of this Agreement in the event release of information related to this Agreement and its subject matter is released in accordance with and pursuant to any applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. The CONTRACTOR agrees and understands that in the event of a properly formatted public records request for copy of or a copy of the contents of this agreement, the COUNTY will notify the CONTRACTOR of any such request and shall inform the requesting individual or entity, that this material cannot be released as it constitutes a "trade secret" pursuant to the above-noted Wyoming Public Records Act. In the event that the requesting individual or entity seeks relief in a court of appropriate jurisdiction for this refusal, the COUNTY agrees to appear through counsel in any proceedings, however, the CONTRACTOR agrees that it bears the sole responsibility for demonstrating in any court or other forum that the information designated as "trade secrets" is in fact confidential, and not subject to disclosure.

C. Section 15 entitled "DISPUTE RESOLUTION" is stricken in its entirety and is of no force and effect.

## **VI. ADDITIONAL PROVISIONS**

A. Independent Contractor: The services to be performed by the CONTRACTOR are those of an independent contractor and not as an employee of the COUNTY. The CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. The CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. The CONTRACTOR is free to perform the same or similar services for others.

B. Acceptance Not Waiver: The COUNTY's approval of the work or materials furnished hereunder shall not in any way relieve the CONTRACTOR of responsibility for the technical accuracy of the work. The COUNTY approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

D. Entire Agreement: This Addendum (5 pages) and Attachment A, including the Service Order (13 pages), represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

E. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party which will not be unreasonably withheld.

F. Modification: This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

G. Invalidity: If any provision of the Agreement of this Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

H. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to the CONTRACTOR and to the COUNTY in executing this Agreement. This provision is not intended, nor shall it be construed to waive the COUNTY's governmental immunity as provided in this Agreement.

I. Contingencies: The CONTRACTOR certifies and warrants no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.

J. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

K. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

L. Governmental/Sovereign Immunity: The COUNTY does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement. Further, the COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

N. Third Parties: The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement and shall inure solely to the benefit of the parties to this Agreement.

O. Conflict of Interest: The COUNTY and the CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of the CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

P. Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

Q. Limitation on Payment: The COUNTY's payment obligation with regard to the Cross Connect Agreement is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by the CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. The COUNTY shall notify the CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims if the COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to the COUNTY in the event this provision is exercised, and the COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit the COUNTY to terminate this Agreement in order to acquire similar services from another party.

R. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

S. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

T. Compliance with Law: The CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

**ADDENDUM TO MASTER SERVICE AGREEMENT**  
**Between**  
**LARAMIE COUNTY, WYOMING and LUNAVI, INC**

**Signature Page**

LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chairman, Laramie County Commissioners

ATTEST:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Debra Lee, Laramie County Clerk

CONTRACTOR: LUNAVI INC

By: *Tung Inmuth* Date 11-3-2022  
Authorized Signature:

REVIEWED AND APPROVED AS TO FORM ONLY:

By: *W. L. Weese* Date 11.7.22  
Laramie County Attorney's Office

**Prepared for:**

Laramie County Government  
Attn: Brad Alexander  
309 W. 20th Street  
Cheyenne, WY 82001  
United States

**Lunavi, Inc.**

Lunavi, Inc.  
340 Progress Circle  
Cheyenne, WY 82007

866.995.3282

Quote Number	6219
Rendered On	Jun/07/2022
Valid Until	
Prepared By	Jayden Burton

**Monthly Recurring Costs**

Service	Description	Qty	Price	Total
Colocation	Colocation - Half Cabinet (20U, DC02, Floor 1, Cabinet DD06-B [bottom] - combination lock)	1	\$ 535.20	\$ 535.20
Power	Power - 'A Side' 120V/10a (0.96kW) Circuit and CDU	1	\$ 160.80	\$ 160.80
Power	Power - 'B Side' 120V/10a (0.96kW) Circuit and CDU	1	\$ 80.40	\$ 80.40
Cross Connect	Cross Connect - Cheyenne, WY Single Mode Fiber with LC/APC hand-off; Connection(s) between ACT and new cabinet through MMR (per cross connect)	2	\$ 189.00	\$ 378.00
Total Monthly Recurring Costs:				\$ 1,154.40

Grand Total:	\$ 1,154.40
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**Notes**

Renewal of current colocation services.  
Month to Month





# Master Services Agreement

This Master Services Agreement is between Lunavi, Inc. ("Lunavi") and the undersigned customer ("Customer"). Lunavi and Customer agree as follows:

## 1 Governing Provisions.

**1.1** This Agreement governs all orders executed by Customer and Lunavi "Service Order(s)" (SO) providing for Customer's access to and use of any service provided to it by Lunavi ("Service"). The agreement ("Agreement") between Customer and Lunavi consists of this Master Services Agreement, Service Order(s), and the Lunavi Addendum for each specific type of Service which Customer obtains from Lunavi ("Addendums"). Addendums for anticipated Services are attached hereto and incorporated herein by reference. Additional Addendums may be attached to Service Orders and shall be incorporated herein upon execution of such Service Orders. Note, if the terms are in direct conflict with other Agreement terms, the following order will prevail, Addendum terms, Customer Service Order, Amendments, Master Service Agreement, Statement of Work & Exhibits shall govern with respect to such Service to the extent required to resolve the conflict.

## 1.2 Software Installation.

Customer may be responsible for taking certain action, such as installing software that Lunavi or one of its third party providers makes available to Customer, before Customer can use some Services.

## 1.3 Provisioning Tools.

Lunavi may provide Customer with access to systems for Customer's use in ordering, billing, monitoring, servicing Customer and its users or to facilitate implementation of Services. Use shall be subject to any applicable user license agreements and use of such software for any other purpose is prohibited. Such software shall remain the property of Lunavi or its suppliers at all times. Unavailability of any such software shall not be considered a Service Interruption.

## 1.4 Third Party Software.

Lunavi may provide Services through hosting and/or reseller or subscription agreements between Lunavi and third parties. The applicable third party licensing and/or service agreement, with the terms of this Agreement, shall govern Customer's use of these Services. Third party agreements can be found on Lunavi's website. Customer has reviewed and accepted the terms of such third party agreements and authorizes Lunavi, as part of its installation process, to click through any acceptance provisions on behalf of Customer.

**1.4.1** Customer agrees to name Lunavi, for the term specified in the SO, including renewals, as its Digital Partner of Record (DPOR) for Hyperscale solutions, such as Microsoft O365, EMS and Azure programs, in which Customer manages and is invoiced from the Hyperscale provider for its third party subscription(s).

## 1.5 Domain Names.

Customer is responsible for maintaining the availability of any domain names it may use in connection with a Service and for renewing them when required.

**1.6 Authorized Personnel.** Customer's personnel who are identified on Lunavi's Customer's Service Authorization list may order additional Services pursuant to this Agreement. Lunavi may require execution of a Service Order for such additional Services which, upon execution by Customer and Lunavi, shall be deemed to be part of this Agreement. Lunavi may, at its option, permit Customer to add additional Services by Customer's e-mail request. Such additional Services shall be deemed to be provided pursuant to the terms of this Agreement upon Lunavi making such additional Service available to Customer. Unless

otherwise specified by Lunavi or this Agreement, the price of such additional Services added without a Service Order shall be the Lunavi then standard rates and the Term of the Service shall not be affected.

## 2 Invoicing and Payment.

**2.1 Charges.** Customer shall pay in U.S. dollars for all charges for Services. Charges for a Service shall commence to accrue on the Billing Commencement Date for the Service (as specified in the applicable Addendum). Unless otherwise notated in the applicable Addendum, all Services will commence billing 90 days after Lunavi accepts the Service Order or upon delivery of Service, whichever occurs first. Monthly recurring charges (MRC) will be invoiced to Customer in advance at the beginning of the month for which the charges accrue. Payments for Monthly recurring charges are due upon receipt of invoice. Non-recurring charges are due upon invoice for Services.

**2.2 Taxes.** Customer shall pay applicable taxes imposed by any taxing authority with respect to the Services, excluding any tax on Lunavi's net income.

**2.3 Billing Disputes.** If Customer believes a Lunavi bill contains an error, Customer shall notify Lunavi of the suspected error within sixty (60) days of the date of the disputed bill. Lunavi shall have no obligation to make any billing adjustment or refund for any errors for which Customer has not provided Lunavi timely notice. Disputed charges to the extent found to be in error shall not incur late fees.

**2.4 Late Charges and Collection Costs.** Charges not in dispute which are not paid by Customer within thirty (30) days of Lunavi's invoice shall accrue a late fee which shall accrue daily at the rate of one and one-half percent (1 1/2%) per month until paid. Customer shall pay Lunavi's reasonable costs of collection, including reasonable attorneys' fees, incurred by Lunavi in collecting any charges payable to it by Customer.

**2.5** All Charges are subject to an annual 3% increase on the anniversary date of the Billing Commencement Date for Services.

**2.6** Charges are subject to change upon completion of the Term. Lunavi shall provide Customer thirty (30) days' written notice of the increased Charges prior to the notice of termination deadline set forth in Section 3.1. Unless otherwise mutually agreed upon by the Parties, Charges shall not increase more than an amount not to exceed ten percent (10%) of the then current Charges.

## 3 Term and Termination of Services Pursuant to a Service Order.

**3.1 Term.** The "Term" of Services provided pursuant to each Service Order shall initially be for the period specified in the applicable Service Order for such Services ("Initial Term"). The Initial Term of each Service Order shall commence on the Billing Commencement Date. Upon termination of its Term, the Service Order Term shall automatically renew for additional one-year Terms subject to section 2.6. Either party may provide sixty (60)-day written notice of termination prior to the completion of a pending Term.

**3.2 Termination.** Either Customer or Lunavi may terminate the Services pursuant to a Service Order for cause if: (1) the other party breaches a material term or condition of this Agreement or the Service Order and fails to cure the breach within thirty (30) days after receipt of written notice of the breach; (2) Customer fails to cure a payment default within five (5) days after written notice by Lunavi of the default; (3) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (4) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors if such petition or proceeding is not dismissed within sixty (60) days of filing.

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**3.3 Early Termination Fee.** Except in the event of termination by Customer pursuant to section 3.2 or at the end of the Term by providing notice in accordance with section 3.1, Customer shall pay Lunavi, as liquidated damages and not as a penalty, an early termination fee equal to one hundred percent (100%) of the monthly service fee for the remaining portion of the Term.

**3.4 Effect of Termination.** At the end of the Term or upon termination of the Services by either party for any reason, Lunavi shall cease providing the Service pursuant to the affected Service Order. Customer's obligations, including without limitation, to pay sums due and protect Proprietary Information, shall survive.

**4 Prohibited use of Services and Law Enforcement Activities.**

Customer shall not use any Service in a manner prohibited by law or that Lunavi reasonably determines may adversely affect a Service, Lunavi's systems, Lunavi suppliers or other Customers, the integrity and operation of Lunavi's business, or Lunavi's ability to provide Services to other Lunavi customers. Lunavi may terminate any Service without notification if Lunavi determines to its reasonable satisfaction that Customer has used the Service to engage in any prohibited activity or a situation exists which may result in a similar threat (e.g. a denial-of-service attack). Any such Lunavi action shall not be deemed to be a Service Interruption. Lunavi may cooperate with law enforcement agencies in any investigation related to the use of a Lunavi Service and investigate any complaint or reported violation of law or Lunavi's policies and take any action it deems is reasonably appropriate as a result of such investigations.

**5 Emergency and Scheduled Maintenance.**

In the event of any change in Lunavi standard scheduled maintenance window, Lunavi will provide reasonable notice by email to Customer of scheduled maintenance affecting the

Services and will use reasonable efforts to notify Customer of emergency maintenance affecting the Services, provided that Lunavi or third party may perform emergency maintenance at any time, without advance notice to Customer. During scheduled and emergency maintenance periods, Lunavi's or third party Services may be unavailable to Customer. Service unavailability during maintenance periods shall not be considered a Service Interruption for purposes of service level provisions.

**6 Disclaimer of Warranty.**

LUNAVI PROVIDES THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED.

LUNAVI SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY WARRANTIES THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

**7 Limitations of Liability.**

**7.1** CUSTOMER'S EXCLUSIVE REMEDY FOR ANY FAILURE OF LUNAVI'S OBLIGATIONS PURSUANT TO THIS AGREEMENT SHALL BE THE REMEDIES SET FORTH IN SECTION 3.2 ABOVE AND ANY CREDIT DUE PURSUANT TO ANY APPLICABLE SERVICE LEVEL AGREEMENT SET FORTH IN THE ADDENDUM FOR SUCH SERVICE.

**7.2** IN NO EVENT SHALL LUNAVI BE LIABLE OR RESPONSIBLE TO CUSTOMER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER

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THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

- 7.3** IN NO EVENT SHALL LUNAVI LIABILITY TO ANY CUSTOMER OR ANY THIRD PARTY IN ANY CIRCUMSTANCE EXCEED THE AMOUNT OF FEES CUSTOMER ACTUALLY PAID TO LUNAVI FOR SERVICES IN THE MONTH PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO ALLEGED LIABILITY.

## **8 Policies and Statements.**

### **8.1 Acceptable use Policy and Privacy**

**Statement.** This Agreement incorporates by reference the following which are available on the Lunavi website: The Lunavi Acceptable Use Policy (AUP) as modified from time to time and The Lunavi Privacy Statement as modified from time to time.

### **8.2 Service Level Agreements.**

Service Level Agreements (SLA) are located in the Addendum for each specific type of Service to which customer orders. Support services and response times are defined in Lunavi's Support Guidelines, which are available upon request.

## **9 Digital Millennium Copyright Act.**

Lunavi is registered as an online service provider with the United States Copyright Office pursuant to the Digital Millennium Copyright Act ("DMCA"). Lunavi's DMCA procedures are available on its website under the Acceptable Use Policy.

## **10 Use of Name and Marks.**

Neither party will, without the prior written consent of the other party, use any trademark, service mark, brand name, copyright, patent or any other intellectual property of the other party or its respective affiliates. Lunavi's and Customer's name and trademarks are proprietary and nothing herein constitutes a license authorizing its use by the other party.

## **11 Indemnification.**

Customer shall indemnify and hold harmless Lunavi, its directors, officers, managers, employees, affiliates from and against any claims, damages, losses, liability, all costs and expenses (including reasonable attorneys' fees) arising out of or relating to any (i) use of Services; (ii) violation of the Lunavi Acceptable Use Policy (iii) installation and use of equipment in Lunavi's facility by Customer or its contractors; (iv) Customer's or its contractors access to Lunavi's facility or the building containing such facility; (v) death or personal injury (including bodily injury) to any person caused by Customer or its representatives or contractor.

## **12 Confidentiality.**

- 12.1** Customer acknowledges that the following Lunavi information is Lunavi proprietary information "Proprietary Information" whether or not reduced to writing and whether or not specifically identified as "proprietary" or "confidential"

- 12.2** All information obtained by Customer as a result of access to the Lunavi colocation facilities, including without limitation information which could facilitate a security breach or disruption of or endanger Lunavi facilities, operations or systems.

- 12.3** All Lunavi pricing and other provisions of this Agreement except to the extent information is posted by Lunavi on areas of its website which are publicly accessible without restriction.

- 12.4** Customer shall not disclose any Proprietary Information or use it for its own benefit except as required to perform its obligations under this Agreement. Customer shall limit disclosure of Proprietary Information only to its employees and consultants having the need to know and shall take all reasonable steps to prevent any inadvertent or wrongful disclosure or use by such employees and consultants.



**13 Transfer; Assignment.**

Customer will acquire Services solely for its own account, and not for resale or distribution in any manner. Customer may not assign or transfer its rights and obligations under this Agreement without the prior written consent of Lunavi, which consent Lunavi may condition on Customer's agreement to remaining bound by the Agreement to pay Lunavi for Services utilized by Customer's assignee or transferee. Lunavi may assign or transfer its rights and obligations under this Agreement without Customer's consent.

**14 Notices.**

Notices and other communications between Lunavi and Customer related to this Agreement or a Service governed by it may be delivered by email. Communications may be directed to Lunavi at support@lunavi.com. Customer shall provide Lunavi with a valid email address to be used by Lunavi for communications related to this Agreement and shall update that address as needed. Lunavi shall fulfill its notice obligations by providing Customer with notice at the email address most recently provided to Lunavi by Customer for use in providing notices pursuant to this Agreement.

**15 Dispute resolution.**

This Agreement shall be governed by the laws of the state of Colorado. The location of any legal proceeding arising out of or related to the Services or this Agreement shall be in Denver County, Colorado. The prevailing party in any legal proceeding arising out of or related to this Agreement shall be entitled to recover its reasonable attorneys' fees and court costs incurred in the proceeding, including in any appellate proceedings.

**16 Force Majeure.**

Lunavi shall not be in default under any provision of this Agreement or be liable for any delay, failure of performance or interruption of any Service resulting, directly or indirectly, from causes beyond Lunavi's reasonable control, including but not limited to any of the following:

earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; fire; fire suppression activities, flood; weather conditions; action of any governmental or military authority; national emergency; insurrection; riot; war; acts of terrorism or civil disturbance; strikes; lockouts; work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other Internet provider failure.

**17 Severability.**

If any part of this Agreement is found to be unenforceable or unlawful, then that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provisions of the Agreement.

**18 Entire Agreement.**

This Agreement, including all referenced documents, constitutes the entire agreement and understanding between the parties. It supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter.

**19 Passwords and Security.**

Access to Services involves the use of identification numbers, logins, usernames, passwords, or other individualized nonpublic information. Customer shall be responsible for keeping such information private, maintaining an appropriate level of password complexity, and for routinely changing passwords. Customer acknowledges that if Lunavi does not have administrative privileges with respect to any system or application, Lunavi may not be able to retrieve or reset lost passwords for such system or application and that data may be irretrievable in such event. Customer shall keep Lunavi advised of any administrator password change on any system or application where Lunavi has administrative privileges. Customer shall use its best efforts to prevent unauthorized use of the Services or any nonpublic information and shall promptly report to Lunavi any suspected unauthorized use or other breach of security. Lunavi will promptly, upon

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written notice of a breach of security, block further access for such numbers and passwords for those systems which Lunavi has administrative responsibility.

## 20 Customer Obligations.

Customer will conduct business in a courteous and professional manner with Lunavi

- Customer users, clients, vendors, and/or suppliers using the covered Services will use the appropriate ticketing system and escalation procedures to request support.
- Customer will utilize Lunavi's ticket system for updating, tracking, and closing trouble tickets, as assigned.
- Customer will provide all information required to open or fulfill a support request.
- Customer will assign severity codes adhering to the correct usage of these codes as defined in SOW or Lunavi's Support Guidelines.
- Once a support request has been submitted, Customer will make itself reasonably available to work with the
- Lunavi's support resource assigned to the support request.
- Customer end users do not contact Lunavi support resources directly (fees may apply) to report a problem. All problem calls must be logged through the appropriate help desk.
- Customer will provide in a timely manner all of the necessary and requested documentation and information to Lunavi prior to the start of support of an existing or new infrastructure element.
- Cooperate with the Lunavi in all matters relating to the Services.



This Agreement shall be effective the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ ("Effective Date").

**Customer:**

\_\_\_\_\_, a \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

EMAIL ADDRESS (for notices): \_\_\_\_\_

\_\_\_\_\_

**Lunavi:**

Lunavi, Inc., a Wyoming corporation

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

EMAIL ADDRESS (for notices): \_\_\_\_\_

[support@lunavi.com](mailto:support@lunavi.com)



## Addendum for Colocation Services

### 21 Additional Terms & Conditions for Services.

This Addendum sets forth additional terms and conditions applicable to Customers who enter into a Master Services Agreement and Service Order with Lunavi to obtain colocation services ("Colocation Services") in a Lunavi colocation facility ("Facility").

### 22 Billing Commencement Date.

Lunavi will notify Customer when Service is available to Customer. Upon such notice, Customer shall comply with all security and orientation procedures. The first billing period for Lunavi Colocation Services shall begin ("Billing Commencement Date") on the earlier of (a) the date on which Lunavi grants the Customer access to a Lunavi Facility or (b) five days after the above notice of availability.

### 23 Access to and use of Colocation Facilities.

**23.1** Lunavi's Acceptable Use Policy ("AUP") includes protocols designed to keep Lunavi's colocation Facilities secure from access by unauthorized personnel and to preserve the security and integrity of the Facilities and the Lunavi and Customer equipment ("Customer Equipment") located in the Facilities. Customer shall be responsible for ensuring that Customer's personnel (whether employees or contractors) comply with the AUP. Without limitation, if Customer's personnel fail to secure a door or access point or device, Customer shall be responsible for any resulting damage which may arise out of unauthorized persons gaining access.

**23.2** Only Customer personnel who have been registered and approved by Lunavi for access to a particular Facility are permitted access to that Facility. Prior to being granted access to a Facility, Customer personnel who are authorized to enter a Facility shall attend an orientation presentation and participate in security procedures required by the Facility. Customer acknowledges that Lunavi may condition access to its Facility by any individual

upon that individual signing an agreement to comply with the provisions of the AUP.

**23.3** Customer's access to and use of the Facility shall be solely in connection with Customer's utilization of Services and shall be limited to such access as is reasonably necessary for such use. Lunavi may, at any time further regulate access and/or require Customer's personnel to be escorted while in the Facility.

**23.4** Customer's right to install or use equipment of any kind in a Facility is subject to Lunavi's approval which shall not be unreasonably withheld. Customer understands that the total weight of Customer's equipment will not exceed the designed structural weight limit of a Lunavi facility; WA 1,000 Lbs., WY, NJ, NY & OR 3,000 Lbs. Customer shall install, maintain and operate all Customer Equipment consistent with industry standards, manufacturer's specifications and the AUP. Customer shall permit Lunavi personnel to inspect the Customer Equipment and all wiring and network connections installed by Customer prior to Customer's operating the Equipment. Customer shall not take any action which would circumvent or make less efficient or effective any Lunavi monitoring, alarm, sensor, security or other equipment or systems.

**23.5** To connect Customer Equipment to the Lunavi network, to other Customer Equipment located in the Facility, or to other network terminations available in the Facility, Customer shall execute a Service Order to use Lunavi provided connection services. Customer will not interconnect Customer Equipment with equipment of other Lunavi customers or solicit any Lunavi customer located in the Facility

### 24 Lunavi Access to Customer Space.

**24.1** Lunavi may inspect Customer's Colocation space ("Space") at any time without notice to Customer in order to operate, maintain, and secure the Facility. If, in Lunavi's reasonable judgment, the equipment has malfunctioned or

created abnormal or unacceptable conditions, errors or faults in Lunavi's facility, network, systems or Services, Lunavi will notify Customer of the problem and require Customer to remedy it. If Lunavi determines that conditions in the Space constitute an emergency (e.g. if there is a risk to the operation of the Facility, provision of services to Lunavi or others or safety of other equipment or people), Lunavi may immediately disconnect or remove the equipment or other materials prior to such notice to Customer. Lunavi may also disconnect and remove equipment if Customer fails to correct a reported problem promptly upon notice. Once the problem is remedied to Lunavi's satisfaction, Customer may reconnect the equipment.

- 24.2** Lunavi may change the Cabinet(s) assigned to Customer and the location of Customer Equipment in a Facility, provided that the changes shall be based on Lunavi's reasonable business needs, including the reasonable needs of the other Lunavi customers. Lunavi shall provide Customer with at least thirty (30) days advance written notice of any change in the Cabinet(s) assigned to Customer. Customer shall cooperate in good faith with Lunavi to facilitate such changes. Lunavi shall be solely responsible for any costs and expenses incurred by Lunavi in connection with the relocation of Customer Equipment and will use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid any interruption to Customer's access to the Services.

**25 Lunavi's Rights on Customer's Default or at the end of the Term.**

- 25.1** If Customer defaults in any obligation to Lunavi under the Agreement, Lunavi may deny Customer access to any Lunavi Facility or require Customer to enter a Facility only in the company of Lunavi personnel.
- 25.2** Prior to the end of the Term (whether due to early termination or expiration) Customer shall remove all cabling, wiring and appurtenances

associated with the affected Service Order that were installed in the Facility by or at the request of Customer and all Customer equipment. If Customer fails to remove all such items, Customer shall pay Lunavi for the cost of removing it. Any Customer equipment left in a Lunavi Facility at the end of the applicable Term shall incur a storage charge of Fifteen and 00/100 (\$15.00) per day for each item of equipment. Any Customer equipment which has not been removed from a Facility within thirty (30) days of the end of the applicable Term shall be deemed to have been abandoned by Customer, and Lunavi may dispose of or use the Customer equipment without liability to Customer for the value of the equipment or any data contained in it.

**26 Risk of Loss and Insurance.**

- 26.1** Lunavi shall not be responsible for any loss or damage to any Customer equipment or any other Customer property if the loss is not caused by the gross negligence or intentional act of Lunavi. To the extent Lunavi is liable for any damage to or loss of Customer equipment, such liability shall be limited solely to the lesser of the immediately prior two months recurring charges paid by Customer for Colocation Services at the affected facility or the then-current replacement value of the damaged equipment located within the affected facility, excluding without limitation the value of any lost data, software, firmware and related labor costs.

- 26.2** Customer shall keep in full force and effect during the term of any Service Order for Lunavi Colocation Services: (1) comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damage and (2) workers' compensation insurance in an amount not less than that required by applicable law.

**27 Power Consumption.**

Customer shall not exceed its Contracted Maximum Power Consumption ("CMPC")



specified in the Service Order. Lunavi monitors Customer's power consumption. Lunavi will follow its standard practices in notifying Customer if it has exceeded its CMPC. If Customer's power usage exceeds the National Electrical Code (NEC) of 80% utilization for power circuits or its CMPC, Customer will have 30 days to either renegotiate its CMPC or reduce its power usage to a level which does not exceed its CMPC. If Customer's power capacity is not renegotiated or its power usage is not reduced within such 30 day period, then Lunavi may take other action, including charging Customer 150% for such additional power usage at its standard rates or disconnection of Customer's electrical service. If electrical service is metered, Customer agrees to compensate Lunavi for HVAC associated electrical costs (Cooling Percentage). The Cooling Percentage is based off of Customer's overall metered electrical consumption and is stated in the Service Order. Lunavi may pass through to Customer local Utility increases for power at any time during the contract term.

- 28 **NOT A LEASE.** Lunavi's provision of Colocation Services shall not be construed to create a lease or a tenant-landlord relationship between Lunavi and Customer. Lunavi's Colocation Services solely permit Customer to have Customer Equipment hosted in a Facility.

## 29 Service Level Agreement.

- 29.1 Objective.** Lunavi strives to obtain a 100% Power availability SLA for Customers with an A+B power circuit configuration in their cabinet(s). Customers who only have a single power circuit to their cabinet(s), Lunavi Power availability SLA is 99.99% Lunavi shall use commercially reasonable efforts to maintain the temperature conditions and power availability in the Facility where Customer's equipment is colocated consistent with industry standards.

- 29.2 Service Interruption.** Customer shall be deemed to have experienced a Service Interruption if: as a result of the failure of

Lunavi-controlled equipment or personnel, the median temperature probe reading ("Reading") in a Facility exceeds 92 degrees Fahrenheit for at least 30 minutes; or as a result of the failure of Lunavi-controlled equipment or personnel, experiences an unavailability of electrical power to its Space for at least five (5) consecutive seconds not caused by Customer's Equipment, Customer or its contractor.

If then current ASHRAE specifications for data centers establish a maximum operating temperature of greater than 92 degrees Fahrenheit, Lunavi may, at its discretion, use such temperature in lieu of 92 degrees for purposes of this section.

### 29.3 Lunavi Response to Service Interruptions.

Lunavi will commence efforts to resolve the Service Interruption within thirty (30) minutes after Lunavi learns of it. If the source of the Service Interruption is within the sole control of Lunavi, Lunavi will attempt to remedy the Service Interruption within one (1) hour of determining the source. If the source involves third parties, Lunavi will use commercially reasonable efforts to promptly notify such third parties and cooperate to resolve the problem.

### 29.4 Customer's Remedies for Service

**Interruptions.** Upon experiencing a Service Interruption, provided that Customer is current on all payments due to Lunavi at the time of the Service Interruption, Customer shall be entitled to obtain the issuance of an out-of-service credit by submitting a request to support@lunavi.com within one business day of the Service Interruption. The temperature out-of-service credit for each 24hour period in which there are one or more Service Interruptions shall be in the amount of one thirtieth (1/30) of the monthly recurring charges paid by Customer for the affected Services governed by this Addendum at the affected Facility. The electrical power out-of-service credit for each 24hour period in which there are one or more Service Interruptions, not caused by Customer's Equipment, Customer or its contractor, shall be based on the following;

100% SLA is > 0 20 minutes = 5%, 20 minutes to 45 minutes = 10 %, 45 minutes to 60 minutes = 25%, more than 60 minutes = 50%. 99.99% SLA is >020 minutes = 0%, 20 minutes to 45 minutes = 5%, 45 minutes to 60 minutes = 10%, more than 60 minutes = 25%. The maximum out-of-service credit a Customer may receive for Service Interruptions affecting any Service in any calendar month shall not exceed Customer's monthly recurring charge for the affected Service governed by this Addendum. Any out-of-service credits shall be applied to the following month's charges for the Services affected by the Service Interruption. In the event of a dispute between Lunavi and Customer regarding whether Customer experienced an Electrical Service Interruption, Customer shall provide evidence to Lunavi which establishes the unavailability of electrical power to Customer's Space to Lunavi's reasonable satisfaction. Customer's rights, set forth in this Section to obtain out-of-service credits for a Service Interruption shall be Lunavi's sole liability to Customer for Service Interruptions experienced by Customer.

## SIGNATORY PAGE

Laramie County Government hereby orders from Lunavi, Inc., the Services described above for the Term specified above.

This Service Order is subject to acceptance by an authorized representative of Lunavi, Inc. Upon such acceptance it becomes a binding Service Order, pursuant to and subject to the Master Services Agreement ("MSA") and any applicable Addendum for Services between Lunavi, Inc. and Laramie County Government.

This Service Order supersedes all proposals, written or oral, as well as other communications between Laramie County Government and Lunavi, Inc. relating to this Service Order. If this Service Order includes Services of a type not previously ordered pursuant to the MSA, the applicable Lunavi, Inc. Addendum for such Services is incorporated herein and attached hereto.

Lunavi, Inc.

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

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

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

Address:  
340 Progress Circle  
Cheyenne, WY 82007

Signature: _____	Date: _____
Your name: Brad Alexander	Title: _____

Company Name (If Applicable):	Laramie County Government
Address:	309 W. 20th Street
	Cheyenne, WY 82001
	United States
Telephone:	307-633-4340