

**DRAFT**

**8/28/2013POS**

**Interlocal Agreement Between the University of Washington and the Port of Seattle for Co-Location of IT Services Remote Geographic Redundancy Data Center**

This Interlocal Agreement (“Agreement”) is made and entered into MM/DD/2013 by the State of Washington, through the University of Washington Information Technology Services (“UW-IT”) and the Port of Seattle (“Port”), a municipal corporation of the State of Washington, collectively referred to as the “Parties.”

**RECITALS**

*WHEREAS*, the Interlocal Cooperation Act, Chap. 34.39 RCW authorizes government entities to work cooperatively together to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; and

*WHEREAS*, both the Port and the UW-IT have authority to enter into a Colocation Master Services Agreement concerning real property; and

*WHEREAS*, the UW-IT has entered into a Master Services Agreement with TierPoint, a private entity, at the TierPoint 3 (TP3) data center located in Spokane Valley, WA for a remote geographic redundancy data center; and

*WHEREAS*, the UW-IT has extra space available in its cage area at the TP3 data center and wishes to enter into a Colocation Master Services Agreement with the Port for use of the extra space; and

*WHEREAS*, the Port has communicated a desire to enter into a Colocation Master Services Agreement with the UW-IT to share the cage area space within the UW-IT cage area at the leased TierPoint 3 (TP3) data center for its own remote geographic redundancy data center; and

NOW, THEREFORE, the Parties agree as follows:

**TERMS AND CONDITIONS**

**Roles and Responsibilities of the Parties**

**PORT OF SEATTLE**

The Port shall pay UW-IT its proportionate share of the following monthly recurring fees, which shall include charges for the use and occupancy of the cage space, as well as the network transport and power charges set forth by UW-IT Business & Finance Office. If TierPoint or utility companies increase the amount of the monthly recurring fees that they charge the UW-IT, the UW-IT may increase the amount of the fees that it charges the Port for its use of the rack space within the UW-IT cage to reflect the Port’s

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proportionate share of the amount of this increase. The UW-IT may not impose any additional markup in the amount of these fees beyond the Port's proportionate share.

1. Item (307-1-CC) \$20 per square foot for 200 square feet of cage space in the UW-IT cage
2. Item (001-0-001) 208V 30amp monthly metered fee estimated at \$500.00 per month
3. Item (303-3-QOB2303A) 208V 30A TierPoint 3 Power A Setup at \$825
4. Item (001-0-001) 208V 30amp monthly metered fee estimated at \$500.00 per month
5. Item (303-3-QOB2303B) 208V 30A TierPoint 3 Power B Setup at \$825
6. Item (307-4-CCCAT5) Cross Connect CAT5e Cable at \$60
7. Item (303-4-CCCAT5) Cross Connect CAT5e Setup (Share Colo) at \$200.00
  - a) Comply with UW-IT and TP3 standards, policies, procedures and other requirements as required and necessary to ensure the safety and operational integrity of services to the Port and to all other customers being served.
  - b) Manage the installation of Port hardware and application software and resolve any hardware and application problems.
  - c) Secure proper licenses for all equipment and software installed in the cage.
  - d) Provide hardware and application-level monitoring of Port-owned equipment.
  - e) Use the TP3 NOC support and ticketing system to communicate with UW-IT and TierPoint.
  - f) Provide for insurance to cover hardware, software and peripheral equipment or other equipment of any type against all loss or perils.
  - g) Pay UW-IT within 60 days of its receipt of a monthly invoice for colocation services provided under this agreement.
  - h) Remove its equipment from the cage at the end of the term of this Agreement.

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1. Provide space for three Port racks and will be prepared to support plans for future expansion by the Port for three more racks.
2. Facilitate issuance of TP3 access credentials to Port staff for 24x7 access to the caged area per UW-IT and TP3 standards, policies, procedures
3. Inform Port in writing 180 days in advance for termination of this Agreement.
4. Bill non-recurring and monthly recurring charges to the Port as described elsewhere in this Agreement.
5. Provide the Port with consultation for advanced technical issues and custom engineered solutions on a Time & Material (T&M) basis.
6. Schedule and coordinate downtime with the Port for updates and maintenance service, including advance notification to the Port.
7. Provide Service Level Guarantee Credits.
8. Will contact TierPoint to provide the Port with emergency Remote Hands services at the Port's request. The UW-IT will provide the Port with an emergency number for the Port to request Remote Hands services. The UW-IT will receive the bill from TierPoint for emergency Remote Hands services requested by the Port, pay TierPoint for these

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services, and then bill the Port for the services provided by TierPoint. The UW-IT will bill the Port for these services on the same time and expense basis at the prevailing rates charged by TierPoint to the UW-IT under the Master Services Agreement between TierPoint and the UW-IT.

## BOTH PARTIES

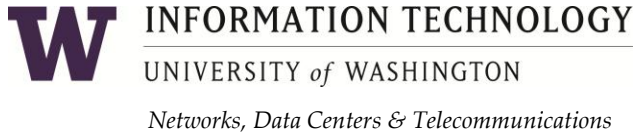
1. **Additional Services** – The Parties can negotiate additional and non-standard services. These services must be agreed to in writing prior to implementation. From time to time, services offered by UW-IT are modified or redefined to improve services or protect the operational integrity or longevity of the services offered. The services provided by the UW-IT in this Agreement shall be provided to the Port at cost and without any markup. Prior notice of changes or modifications will be given and UW-IT will employ a “best effort” strategy to assist the Port in meeting any new or changed standards.

2. **Termination of Agreement Before Expiration of its Term** – Should the UW-IT terminate its Master Services Agreement with TierPoint before this Colocation Agreement with the Port expires, the UW-IT shall provide the Port with at least 180 days written notice of its intent to terminate its Master Services Agreement with TierPoint. The Port may terminate this Agreement if the UW-IT commits a material breach of this Agreement that it fails to cure within five (5) days written notice by the Port to the UW-IT. The Port shall give written notice to the UW-IT contact person identified in this Agreement.

3. **Force Majeure** – Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement, other than payment for amounts owed, if such delay or failure arises by any reason beyond its reasonable control. The Port will promptly inform and consult with UW-IT as to any failure of the Colocation Agreement premises, Internet carriers, and/or utility providers that in its judgment may for could be the cause of a substantial delay in the Port’s performance under this Agreement.

4. **Dispute Resolution** - Any disputes or questions of interpretation of this Agreement that may arise between the Port and UW-IT shall be governed under these Dispute Resolution provisions. The Port and UW-IT agree that cooperation and communication are essential to resolving issues efficiently. If disputes about the implementation of this Agreement arise, the designated contact persons for the Port and UW-IT shall meet to discuss the issues and attempt to resolve the dispute in a timely manner. If the designated contact persons are unable to resolve the dispute, then the Parties may pursue any legal remedies. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

5. **Term of Agreement:** The term of this Agreement shall run for three years, starting at the date that both Parties have signed this Agreement, or the date that this Agreement is scheduled to begin, whichever event occurs last. The Port may extend this Agreement for another three years by notifying UW-IT in writing of its intent to do so.



**6. Confidentiality:** UW-IT and the Port jointly acknowledge that, during the course of dealing with one another, one or both Parties may have access to and will become aware of confidential information. The Parties will not:

- a. Use the confidential information of the other Party for any purpose other than to effectuate the purposes of this Agreement and will take all reasonable steps necessary to maintain and protect such confidential information;
- b. Disclose confidential information to any other person, without first obtaining the other Party's prior written consent, to anyone other than an agent, employee, or independent contractor to accomplish the purpose of this agreement.

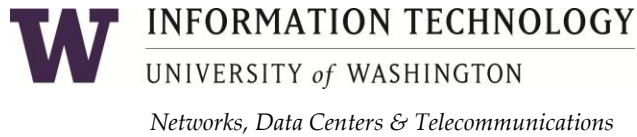
This section shall not apply to any use or disclosure of confidential information that is required by applicable laws, legal process, court order or governmental authority.

**7. Indemnification:** To the maximum extent allowed by law, the Parties shall protect, defend, indemnify, and save harmless each other, their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Parties' own negligent acts or omissions in connection with performance of activities under the terms of this Agreement. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 Revised Code of Washington (RCW). In the event that a Party incurs any judgment, award, and/or cost arising there from, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. This indemnification shall survive the termination of this Agreement.

**8. Notification:** Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

**For the UW-IT:** \_\_\_\_\_

**For the Port:** Matt Breed, Assistant Director ICT- Infrastructure Services  
 Pier 69, PO Box 1209



Seattle, WA 98111

[breed.m@portseattle.org](mailto:breed.m@portseattle.org), (206) 787-7555

9. **Amendment:** Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

10. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

11. **Jurisdiction and Venue:** The King County Superior Court in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

12. **Severability:** If any court determines that any provision of this Agreement is invalid or unenforceable to any extent, the remainder of the Agreement shall not be affected thereby and each other term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13. **Waiver of Default:** Waiver of any default by either Party shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of any default or breach shall be interpreted or construed to constitute a modification of the terms of this Agreement, unless so stated in writing and signed by both Parties.

14. **Entire Agreement:** This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Agreement of the State and the Port, and there are no other agreements or understandings, oral or written, between the State and the Port concerning this Agreement.

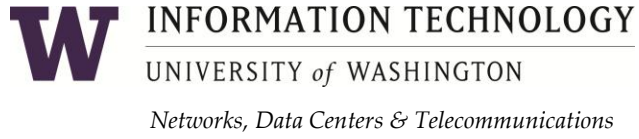
15. **Mutual Negotiation:** The Parties agree that the terms and provisions of this Agreement have been negotiated, that the Agreement shall be deemed to be mutually negotiated and mutually drafted by both Parties, and the language in the Agreement and Exhibits shall, in all respects, be construed according to its fair meaning and not strictly for or against either Party.

16. **Counterparts:** The Parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.

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Signature

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Signature

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Printed Name

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