

CITY COUNCIL REPORT



Meeting Date: April 2, 2024
General Plan Element: *Public Services & Facilities*
General Plan Goal: *Partner with other jurisdictions and agencies*

ACTION

Approval of Intergovernmental Agreement (IGA). Adopt Resolution No. 13094, authorizing Contract No. 2024-060-COS, an intergovernmental agreement between the Arizona Board of Regents Sun Corridor Network and the City of Scottsdale for the purchase of network services from the Sun Corridor Network.

BACKGROUND

The Sun Corridor Network is a collaborative effort sponsored by the Arizona Board of Regents. It links the three AZ state universities through a direct network that provides high-speed digital connectivity and access to cloud-based services to other eligible subscribers like our city. The partnership with Sun Corridor Network will enable the city to leverage this network service for building direct private connections to the city's Microsoft Azure and Amazon AWS cloud platforms, which host our cloud-based applications and data analytics.

The benefits of a Scottsdale collaboration with the Sun Corridor Network include:

- **Enhanced Connectivity:** Sun Corridor's solution offers direct connections to Azure and AWS, providing our city with enhanced and more reliable connectivity to these cloud platforms. This ensures efficient data transfer, reduced latency, and improved overall network performance and cloud connectivity.
- **Increased Security and Compliance:** By utilizing Sun Corridor Network's solution, we can enhance the security of our cloud connections. The direct links offer a more secure pathway, reducing potential cybersecurity risks associated with traditional Internet-based connections. This aligns with our commitment to maintaining the highest data security and compliance standards.
- **Optimized Performance and Reliability:** The direct connections provided by the Sun Corridor Network result in optimized performance and reliability for cloud-based

applications and services. This translates to improved user experiences for our city departments and residents, especially those relying on cloud-hosted solutions.

- **Cost Efficiency:** The partnership with the Sun Corridor Network can lead to cost savings by optimizing data transfer costs associated with cloud usage. The direct connections allow for more predictable and potentially lower costs than traditional internet-based connections.
- **Scalability and Future-Readiness:** Sun Corridor Network's solution is designed to scale with our city's evolving needs. This scalability ensures the infrastructure can seamlessly adapt as our cloud usage grows, providing a future-proof solution for our expanding technological requirements.

RESOURCE IMPACTS

Available funding

We plan for a 1-year initial contract with the option to renew every year for 4 additional years. The annual cost of the service is not to exceed \$100,000. This will provide direct and private connectivity to the Microsoft Azure and Amazon AWS cloud platforms. Funds are included in the FY2024/2025 Information Technology Department's budget.

Staffing, Workload Impact

No new staff resources are anticipated, and existing staff will be responsible for overseeing the new network service.

Future Budget Implications

The contract can be renewed on an annual basis, and future funding requirements will be included in the Information Technology Department's budget.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 13094 authorizing network Contract 2024-060-COS, an intergovernmental agreement between the City of Scottsdale and the Arizona Board of Regents Sun Corridor Network for network services.

RESPONSIBLE DEPARTMENT(S)

Administrative Services Division – Information Technology Department

STAFF CONTACTS (S)


Bianca Lochner, Chief Information Officer, blochner@scottsdaleaz.gov

APPROVED BY



Bianca Lochner, City Manager
(480) 312-7615, blochner@scottsdaleaz.gov

03/19/2024
Date



Brent Stockwell, Assistant City Manager
(480) 312-7288, bstockwell@scottsdaleaz.gov

3/19/2024
Date

ATTACHMENTS

- 1. Resolution No. 13094
- 2. Contract No. 2024-060-COS

RESOLUTION NO. 13094

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY AUTHORIZING INTERGOVERNMENTAL AGREEMENT NO. 2024-060-COS WITH THE ARIZONA BOARD OF REGENTS SUN CORRIDOR NETWORK FOR THE PURCHASE OF NETWORK SERVICES FROM THE SUN CORRIDOR NETWORK.

WHEREAS, the Sun Corridor Network is a collaborative effort sponsored by the Arizona Board of Regents to provide network connectivity services; and

WHEREAS, the City of Scottsdale desires to enter an agreement with the Sun Corridor Network for the City to obtain network connectivity services; and

WHEREAS, A.R.S. Section 11-592 and Article 1, Sections 3 and 3-1 of the City of Scottsdale Charter authorize the City to enter into this Agreement'

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor is authorized and directed to execute the Intergovernmental Agreement Contract No. 2024-060-COS with the Arizona Board of Regents Sun Corridor Network for the purchase of network connectivity services from the Sun Corridor Network.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____ 2024.

ATTEST:

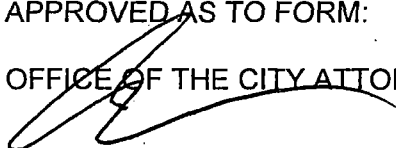
CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Ben Lane, City Clerk

By: _____
David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney

Intergovernmental Agreement for Network Services

This Intergovernmental Agreement (“IGA”) for Network Services is entered into pursuant to A.R.S. §11-952 as of April 2, 2024 (“Effective Date”) by and between The Arizona Board of Regents, a body corporate, on behalf of The University of Arizona, Arizona State University, and Northern Arizona University (each an “Institution”) acting together as the Sun Corridor Network (“Sun Corridor”) and City of Scottsdale (“End User”). Sun Corridor and End User are each referred to herein as a “Party”, and collectively “Parties”. The purpose of this IGA is to provide general terms and conditions and a framework within which End User may from time to time purchase certain network services (“Network Service(s)”) from Sun Corridor for End User use. Additional terms and conditions that apply to each type of Network Service are set forth in network service orders (“Network Service Order(s)”), if and when applicable. This IGA, Network Service Order(s) and any other attachments incorporated therein shall collectively be referred to as the “Agreement” and are binding upon the Parties.

1. Recitals

- A. Sun Corridor is a member of the Internet2 (“I2”) member-owned advanced technology community and serves as a Connector to provide access to I2 services for other public educational institutions.
- B. City of Scottsdale is a political subdivision of the State of Arizona.
- C. Sun Corridor desires to provide End User with access to I2 services, on the terms and conditions set forth in this Agreement.
- D. The Parties are empowered to carry on activities included in this Agreement pursuant to A.R.S. §§ 11-951 *et seq.*, 15-341, 15-342 and 41-2632.

2. General

2.1. Orders for Network Services

- a. **Network Service Orders.** End User may request a Network Service from Sun Corridor by submitting a Network Service Order, signed by End User, for consideration by Sun Corridor. End User acknowledges and agrees that End User is solely responsible for the accuracy of all Network Service Orders and other information that it provides to Sun Corridor. Upon completion of the review of End User’s request, Sun Corridor will notify End User as to whether such request has been accepted or rejected, which acceptance or rejection is at Sun Corridor’s sole discretion.
- b. **Conditions.** Each accepted Network Service Order shall incorporate by reference, and shall be subject to, the terms and conditions of this IGA. Network Service Orders shall clearly set forth the term, pricing, service type and location(s), and any additional specific terms for the Network Services. The pricing stated in any Network Service Order is contingent on Network Service availability (as determined by Sun Corridor). All Network Service Orders shall be subject to availability and

acceptance by Sun Corridor, and shall supersede any prior Network Service Orders for the same Network Service.

- c. **Service Activation.** Sun Corridor will notify End User that the Network Service is activated, meets the service specifications as defined in the applicable Network Service Order, and is available for use by End User ("**Service Available Notice**"). End User shall have five (5) days in which to notify Sun Corridor that the Network Service is not functioning properly because it does not meet the service specifications. If End User has notified Sun Corridor within such five (5) day period that the Network Service does not meet the service specifications, then Sun Corridor shall take such steps reasonably necessary to cause the Network Service to meet the service specifications, at which time Sun Corridor shall issue a new Service Available Notice and the acceptance process above shall be repeated. End User's failure or delay to test the Network Service or failure or delay to utilize the Network Service on or after the Service Available Notice date shall not relieve End User from paying for the Network Services from the Network Service Date.

- 2.2. **Order of Precedence.** In the event of a conflict between a term(s) of this IGA and the term(s) of the Network Service Order, precedence will be given in the following order: (a) an executed Network Service Order, but solely with respect to the Network Service(s) covered by that Network Service Order; and (b) this IGA. Silence regarding a provision does not constitute a conflict.

3. Term

- 3.1. **Term.** The term of this IGA shall commence as of the Effective Date and remain in effect for a period of one (1) year (the "**Initial Term**"), unless earlier terminated in accordance with a Party's rights hereunder or by mutual written agreement of the Parties. This IGA will automatically renew following the Initial Term for consecutive one (1) year periods (each a "**Renewal Term**"), not to exceed a total of five (5) years or until either Party provides the other Party with written notice of its intent not to renew the Initial Term or the then-current Renewal Term at least ninety (90) days before the end of the then-current Term. The initial Term and any Renewal Terms are collectively referred to herein as the "**Term**". Notwithstanding the foregoing, this IGA shall govern and continue in effect with regard to any Network Service Order until the termination of such Network Service Order.
- 3.2. **Network Service Order Term.** The term of each Network Service Order shall commence on the Service Available Notice effective date for such Network Service and continue for the period of time specified in that Network Service Order ("**Network Service Initial Term**"), unless terminated earlier as otherwise provided for in this Agreement. Thereafter, unless otherwise stated in the Network Service Order, the term of each such Network Service Order shall automatically renew for one (1) year periods (each a "**Network Service Renewal Term**") until terminated by either Party upon at least ninety (90) days written notice prior to the end of the Network Service Initial Term or the then-current Network Service Renewal Term. The Network Service Renewal Term shall not exceed a total of five (5) years.

4. Billing and Payment

4.1. **Commencement of Billing.** Billing will commence on the Service Available Notice effective date and End User shall be obligated to pay any and all fees as set forth in the relevant Network Service Order.

4.2. Payment of Invoices

- a. **Network Service Fees.** Each Network Service Order will set forth all charges, including but not limited to non-recurring charges, annual recurring charges, quarterly recurring charges, and monthly recurring charges (collectively "**Network Service Fees**") that End User is required to pay to Sun Corridor under such Network Service Order. Sun Corridor will provide End User with invoices for the Network Services. All amounts due Sun Corridor are payable in full within thirty (30) days of the invoice receipt (the "**Due Date**"). All invoices shall call for payments in U.S. dollars.
- b. **Rate Increases.** For each Network Service Renewal Term, Sun Corridor may increase rates for any Network Services thereunder if Sun Corridor provides End User notice of the increase at least sixty (60) days prior to the date of increase. Rates will not increase for the Network Service Initial Term.
- c. **Late and Unpaid Invoices.** If End User fails to make any payment required under this Agreement by the Due Date, (a) a late charge shall accrue equal to one percent (1.0%) simple per annum of the unpaid balance per month; and (b) Sun Corridor may take any action in connection with any other right or remedy Sun Corridor may have under this Agreement, including termination of Network Services, or at law or in equity. In the event Sun Corridor receives a payment and it is returned for insufficient funds or bank charges, the End User will reimburse Sun Corridor for all associated bank charges paid by Sun Corridor as well as the above stated interest to the extent applicable.
- d. **Disputed Invoices.** In the event of any disputed invoiced Network Service Fee, End User shall provide Sun Corridor with written notice of the disputed amount within thirty (30) days of invoice receipt and shall timely pay any undisputed portion of such invoice. End User shall waive its right to dispute any invoiced Network Service Fees if it fails to provide written notice of the disputed amount within such thirty (30) day period. The Parties shall cooperate in good faith to attempt to resolve any disputed invoice or portion thereof within forty (40) days of notice of dispute. Within thirty (30) days following the resolution of a dispute over an invoice or a portion thereof, End User shall pay to Sun Corridor the resolved amount of Network Service Fees due Sun Corridor.
- e. **Taxes.** Except for taxes based on Sun Corridor's net income or property, End User shall be responsible for payment of all applicable taxes, impositions, fees, or other charges that arise in any jurisdiction as a result of the transactions contemplated herein, including without limitation all sales, use, value added, consumption, gross receipts (other than in lieu of net income tax), excise, stamp or transfer taxes,

however designated, and Universal Service Fund assessments, as applicable (collectively referred to as “**Transaction Taxes**”). If any authority asserts that Sun Corridor should have collected any Transaction Taxes from End User, which Sun Corridor did not collect, End User hereby agrees to be responsible for such Transaction Taxes.

5. Delivery of Service

5.1. Network Monitoring, Management and Local Access

- a. **Sun Corridor Network Operations Center (NOC).** Sun Corridor will provide, through the Sun Corridor NOC, the following network monitoring and management services:
 - i. Proper monitoring and maintenance services (including problem determination and correction, routing set-up and control, performance monitoring, and security management) for its network twenty-four (24) hours per day, every day.
 - ii. Contact information for the NOC to allow for direct NOC to NOC communication between the Parties, both during and outside of normal business hours.
 - iii. Prompt notification to the respective Party’s NOC in the case of any network outage or degradation of either Party’s network to perform as expected for a high-performance advanced network.
 - iv. Coordination of any architecture, feature, software or equipment change with the other Party that may impact connectivity and performance.
 - v. Installation and maintenance of performance monitoring, troubleshooting, debugging and management tools consistent with current policies for Sun Corridor.
 - vi. Support for new network technologies, features and capabilities as they become available and are adopted as part of advanced network services in the R&E community.
 - vii. Maintenance of a headroom policy for its network and ports that provide sufficient capacity to support advanced networking applications with high data rates and the ability for traffic to burst.
 - viii. Performance data and statistics with respect to the Network Services. Sun Corridor will develop and provide a template for performance data and statistics. It is preferred that the Party publish its performance data and statistics on its web page, or at a minimum make them available to members of the Sun Corridor Network community via an appropriate forum.

- b. **Scheduled Maintenance.** Scheduled maintenance may, but generally will not, result in Network Service interruption. If scheduled maintenance requires Network Service interruption, Sun Corridor will: (a) provide End User notice, and (b) work with End User to minimize such interruptions.

5.2. Interruption, Suspension and Reduction of Service

- a. **Interruption of Service.** End User acknowledges that Sun Corridor is a "Connector" to I2, and may be subject to interruptions, suspensions or reductions in service by I2. Sun Corridor further reserves the right to interrupt, suspend or reduce Network Service to End User or any other person, when such action is necessary in Sun Corridor's sole and absolute discretion. Sun Corridor may where reasonably possible, but does not promise to, provide advance notice to the End User of any such interruption, suspension, or reduction. As soon as possible following the interruption, suspension or reduction Sun Corridor will use reasonable commercial efforts to contact End User in an attempt to resolve any problems and restore Network Service.
- b. **Prevention of Harm.** In the event Sun Corridor (a) is advised by a governmental authority with appropriate legal jurisdiction that End User's use of the Network Service is a violation of state, national or international law, or (b) reasonably determines that End User's use of the Network Service is or may adversely affect the Network Service or Sun Corridor Network, or interfere with other user's use of the Network Service or Sun Corridor Network, Sun Corridor shall notify the End User and provide a reasonable period for End User to correct the problem, except as provided below. However, if in Sun Corridor's sole judgment, End User's continued use of the Network Service presents a threat of harm, damage or injury to Sun Corridor, the Sun Corridor Network, or End User, or if ordered to do so by a governmental authority, Sun Corridor shall have the right to suspend End User's use of the Network Service immediately.

5.3. **Modification.** Sun Corridor reserves the right to modify or otherwise change the delivery of Network Service at any time. Sun Corridor shall give written notice to the End User via email ("**Modification Notice**"). End User has the right to terminate this Agreement if Sun Corridor modifies the Network Service in any way that materially harms End User upon thirty (30) days written notice provided such notice is provided with thirty (30) days of the receipt of Modification Notice.

5.4. **Regulatory and Legal Changes.** If changes in applicable law materially affect delivery of Network Services, or otherwise require modification of this Agreement, the Parties will, in good faith, negotiate appropriate changes to this Agreement.

6. LIMITATION OF LIABILITY

6.1. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, CONTRACTORS/AGENTS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES

ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. FOR AVOIDANCE OF DOUBT, IT IS THE PARTIES' INTENT THAT ANY DAMAGES AS A RESULT OF A CLAIM BY AN END USER OR CUSTOMER ARISING FROM A BREACH OF THIS AGREEMENT ARE NOT CONSIDERED CONSEQUENTIAL.

6.2. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT, SUN CORRIDOR SHALL NOT BE LIABLE FOR ANY ERROR OR DELAY IN TRANSMISSION OR FOR ANY INTERRUPTION OR TERMINATION OF PARTICIPATION.

6.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL ANY OF THE OFFICERS, TRUSTEES, DIRECTORS, PARTNERS, BENEFICIARIES, JOINT VENTURERS, AUTHORIZED ORGANIZATIONS, STOCKHOLDERS OR OTHER PRINCIPALS OR REPRESENTATIVES OF EITHER PARTY, DISCLOSED OR UNDISCLOSED, THEREOF, EVER BE PERSONALLY LIABLE TO THE OTHER PARTY (INCLUDING FOR DIRECT OR CONSEQUENTIAL DAMAGES), AND THE PARTIES HEREBY WAIVE THE RIGHT TO RECOVER DAMAGES FROM ANY SUCH PERSONS EXCEPT FOR INTENTIONALLY MALICIOUS ACTS.

7. WARRANTIES

7.1. EACH PARTY REPRESENTS AND WARRANTS TO THE OTHER THAT (A) THIS AGREEMENT HAS BEEN DULY EXECUTED AND DELIVERED AND CONSTITUTES A VALID AND BINDING AGREEMENT ENFORCEABLE AGAINST SUCH PARTY IN ACCORDANCE WITH ITS TERMS; (B) NO AUTHORIZATION OR APPROVAL FROM ANY THIRD PARTY IS REQUIRED IN CONNECTION WITH SUCH PARTY'S EXECUTION, DELIVERY OR PERFORMANCE OF THIS AGREEMENT; AND (C) THE EXECUTION, DELIVERY AND PERFORMANCE OF THIS AGREEMENT DOES NOT VIOLATE THE TERMS OR CONDITIONS OF ANY OTHER AGREEMENT TO WHICH IT IS A PARTY OR BY WHICH IT IS OTHERWISE BOUND.

7.2. THE SUN CORRIDOR NETWORK IS PROVIDED ON AN AS IS, AS AVAILABLE BASIS, INCLUDING UNSCHEDULED OUTAGES, WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SUN CORRIDOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SUN CORRIDOR NETWORK WILL NOT BE CAPACITY CONSTRAINED, ERROR-FREE, SECURE, OR UNINTERRUPTED. SUN CORRIDOR AND ITS SERVICE PROVIDERS PERIODICALLY SCHEDULE SYSTEM DOWNTIME FOR MAINTENANCE AND OTHER PURPOSES. UNPLANNED SYSTEM OUTAGES AND CAPACITY LIMITATIONS ARE ALSO LIKELY TO OCCUR. SUN CORRIDOR SHALL NOT BE RESPONSIBLE FOR THE RESULTING UNAVAILABILITY OF THE SUN CORRIDOR NETWORK OR FOR ANY LOSS OF DATA OR TRANSACTIONS CAUSED BY PLANNED OR UNPLANNED SYSTEM OUTAGES OR THE RESULTING

DELAY, MISDELIVERY, OR NON-DELIVERY OF DATA OR OTHER INFORMATION CAUSED BY SUCH SYSTEM OUTAGES OR DELAYS, EITHER PARTIAL OR TOTAL, EITHER INTENTIONAL OR ACCIDENTAL (INCLUDING ANY ERROR, INTERRUPTION OR TERMINATION DUE TO THE DELIBERATE MISCONDUCT OR NEGLIGENCE OF ANY PERSON), WHETHER OR NOT PRIOR NOTICE OF ANY SUCH INTERRUPTION OR TERMINATION HAS BEEN GIVEN NO STATEMENT, ORAL OR WRITTEN, GIVEN BY SUN CORRIDOR, ANY OF ITS EMPLOYEES, OR ANY OTHER PERSON WILL CREATE A WARRANTY, NOR MAY ANY END USER, SUN CORRIDOR NETWORK PARTICIPANT, OR OTHER PERSON RELY ON ANY SUCH STATEMENT FOR ANY PURPOSE. SUN CORRIDOR SHALL NOT BE RESPONSIBLE FOR ANY TRAFFIC AND CONTENT END USER OR ANY OF END USER'S USERS TRANSMITS ACROSS THE SUN CORRIDOR NETWORK.

8. Press Release and Trademarks

8.1. **Press Release.** To the maximum extent permitted by applicable law, neither Party shall have the right to issue a press release regarding this Agreement without the prior written consent of the other Party. All requests for approval pursuant to this Section must be submitted to ASU Media Relations at the following email address at least 10 business days prior to the date on which a response is needed: mediarelations@asu.edu.

8.2. **Marks and Logos.** Neither Party will use the trademarks, trade name, logos, trade dress, or other commercial property of the other Party without the express written approval of that Party. Sun Corridor shall have the right during the Term to identify End User as a subscriber to Sun Corridor, and in connection therewith, to display the End User's supplied logo on Sun Corridor's website and other marketing materials that are pre-approved by End User, in writing. End User shall have the right during the Term to identify itself as a subscriber to Sun Corridor, and in connection therewith, to display Sun Corridor's supplied logo on End User's website and other materials that are pre-approved by Sun Corridor, in writing. Any permitted use of a Party's trademarks or logos must comply with the owning Party's requirements, including but not limited to using the "®" indication of a registered trademark.

9. Termination

9.1. **Material Breach or Default.** If either Party commits a material breach or default in the performance of such Party's obligations under this Agreement, the aggrieved Party shall have the right to give the breaching or defaulting Party written notice of breach or default, including a statement of the facts relating to the material breach or default. If the material breach or default is not cured within thirty (30) days after the defaulting or breaching Party's receipt of such notice (or such later date as may be specified in such notice), the aggrieved non-defaulting and non-breaching Party, at its option, shall have the right to elect to terminate this Agreement on written notice to the other Party at any time thereafter while the breach or default remains uncured.

9.2. **Termination for Bankruptcy, Insolvency.** Each Party shall have the right to terminate this Agreement in whole or in part by giving the other written notice of termination in the

event: (a) the other Party becomes insolvent or makes a general assignment for the benefit of creditors; or (b) a petition under the Bankruptcy Code is filed by or against the other Party unless dismissed sixty (60) days after filing.

9.3. Termination for Convenience. Each Party shall have the right to terminate this Agreement in whole or in part, without cause and for its own convenience, by giving the other Party a written notice, specifying the date upon which such termination becomes effective. The termination date must be at least ninety (90) days from the date of the notice. In the event of such termination by the End User, it will cooperate in good faith with Sun Corridor with respect to any transition arrangements requested by Sun Corridor. In the event of termination for convenience by End User, Sun Corridor shall not refund any Network Service Fee or any other payment made by End User and End User shall pay upon termination all remaining Network Service Fees for the remaining period of the Initial Network Service Term or the then current Network Service Renewal Term. In the event of such termination by Sun Corridor, it will refund to End User the annual Network Service Fee paid for the year in which the termination occurs, prorated based on the number of days remaining in the year until the next then-current Term.

9.4. Effect of Termination. Whenever a Party has a right to terminate this Agreement, unless expressly stated otherwise, such Party shall not incur any liability to the other Party solely as a result of such termination. A termination of any one Network Service Schedule will not cause all Network Service Schedules, nor the IGA to be terminated. Upon termination of this Agreement for any reason, any and all liabilities accrued prior to the effective date of the termination shall survive.

10. General Terms

10.1. Funding Obligation. The Parties recognize that the performance by Sun Corridor or End User may be dependent upon the appropriation of funds by the State Legislature of Arizona ("Legislature") or the availability of funding from other sources. Should the Legislature fail to appropriate the necessary funds, if Sun Corridor's or End User's appropriation for this program is reduced during the fiscal year, or funding becomes otherwise not legally available, Sun Corridor or End User may reduce the scope of this Agreement if appropriate or cancel the Agreement without further duty or obligation. Each Party agrees to notify the other as soon as reasonably possible after unavailability of said funds comes to a Party's attention and to provide documentation of the unavailability or reduction.

10.2. Conflict of Interest. This Agreement is subject to cancellation for conflict of interest as provided in Arizona Revised Statutes ("A.R.S.") § 38-511.

10.3. Applicability of Terms and Conditions. These terms and conditions shall apply on an individual basis to each Network Service that End User contracts for under this Agreement.

10.4. Contractual Relationship. The Parties are entering into this Agreement as independent contracting parties. This Agreement will not be construed to create an association, joint venture or partnership between the Parties or to impose any partnership liability upon any Party.

- 10.5. **Non-waiver.** The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision, right or remedy in that or any other instance.
- 10.6. **Assignment.** Neither Party shall assign or otherwise transfer all or part of this Agreement or its rights or obligations hereunder without prior written approval from the other Party, which such approval shall not be unreasonably withheld. Any assignment or delegation to the contrary shall be deemed void from inception. Subject to the foregoing restrictions, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.
- 10.7. **Entire Agreement; Amendment.** This Agreement, including, Network Service Orders, and Service Available Notice, which are attached to this Agreement and incorporated herein by this reference, together with any other Exhibits, and Network Service Orders which may hereafter be attached hereto in accordance with the terms of this Agreement, constitutes the entire agreement and understanding between the Parties with regard to Network Services and supersedes any and all prior agreements between the Parties relating to Network Service. This Agreement may not be amended or modified except by a writing signed by both Parties.
- 10.8. **Severability.** If any provisions of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement will remain in full force and effect.
- 10.9. **Dispute Resolution.** In the event of any dispute, claim, question or disagreement relating to this Agreement, the Parties will first attempt to resolve the matter over a period of at least 30 days before resorting to formal dispute resolution, except that equitable remedies may be sought immediately. To this effect, they will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to A.R.S. § 12-133. A.R.S. § 12-1518 requires this provision in all Institution contracts.
- 10.10. **Indemnification.** To the extent allowable under Arizona law, each Party (individually an "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (individually, an "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the applicable Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or authorized volunteers.

- 10.11. **No Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.
- 10.12. **Force Majeure.** With the exception of a Party's payment obligations, in the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision, including but not limited to Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), epidemic, pandemic, quarantine restrictions, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, the affected Party's performance shall be temporarily excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence; provided, that the affected Party resumes performance as soon as it is reasonably able to do so and that the affected Party (a) provides the other Party prompt notice of the nature and expected duration of the event, (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provides periodic notice of relevant developments, and (d) provides prompt notice of the end of such event.
- 10.13. **Good Faith.** The Parties agree to act in good faith with respect to each provision of this Agreement and any dispute that may arise related hereto.
- 10.14. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one single agreement between the Parties. A signature delivered by PDF format or facsimile will be considered an original.
- 10.15. **Compliance with Applicable Laws.** Each Party will comply with all applicable laws in connection with the subject matter of this Agreement, and its performance under this Agreement.
- 10.16. **Post-Termination Obligations.** Upon termination of this Agreement, any liabilities accrued before the effective date of the termination will survive.
- 10.17. **Survival.** The provisions of this Agreement, which by their nature are continuing, shall continue in full force and effect and shall bind the Parties beyond any termination of this Agreement.
- 10.18. **Contractors/Agents.** Both Parties shall have the right to use independent contractors, subcontractors, or other non-employees (collectively "**Contractors/Agents**") to perform any of its obligations or to act on behalf of the Party.
- 10.19. **Insurance.** End User represents and warrants that it has in force, and will maintain in force adequate worker's compensation, commercial general liability, error and omissions, and other forms of insurance sufficient to protect from the conduct, acts or omissions, of End User, or its employees, and agents.

10.20. **Acceptable Use Policy and Compliance**

- a. **Acceptable User Policy.** End User agrees to be bound by the following Sun Corridor Acceptable Use Policy (“AUP”), and as may be modified from time to time subject to the terms of section 5.3 herein:

“The Sun Corridor Network can be used for any legal purpose, so long as it does not interfere with or adversely affect the operation of the Sun Corridor Network or any network user, as may be determined by Sun Corridor Network. The Sun Corridor Network reserves the right, through its published governance processes, to modify this AUP (and its posted guidelines or other rules) from time to time and intends to provide advance notice of any such modifications.”

- b. **Consistent Usage.** Both Parties agree to take reasonable steps, individually and collectively, to ensure use of the Sun Corridor Network by End Users and any other user is consistent with the terms of the Sun Corridor’s AUP.
- c. **Good Faith Operation.** Notwithstanding the Sun Corridor AUP, End User agrees not to intentionally violate or tamper with the operation, performance or security of the Sun Corridor Network. End User also agrees to operate equipment that is attached to the Network Services in a manner that does not adversely impact the performance of the Sun Corridor Network or other user’s equipment.

10.21. **Content.** Sun Corridor is not responsible for the content of any information transmitted or received through the Network Services. Sun Corridor exercises no control over, and accepts no responsibility for, the content of the information passing through the Sun Corridor Network, or End User equipment, and use of any such Service is at End User’s own risk.

10.22. **Notices**

- a. **Contact Information.** End User shall provide Sun Corridor the following: (a) the name and contact information for the individual responsible for matters relating to payments and invoices (the “**Billing Contact**”); (b) the name and contact information for the individual responsible for operational decisions for End User (the “**Technical Contact**”). End User is responsible for updating and providing written notice to Sun Corridor of changes to the above contact information.
- b. **Notification of loss of service.** End User shall provide Sun Corridor prompt notification of any loss of Network Service to the Sun Corridor Network or any failure of the connection to perform as expected for a high-performance advanced network connection.
- c. **Notification of breach or challenge.** End User agrees to notify Sun Corridor promptly of any known or suspected breach of or challenge to the Sun Corridor Network or any Network Service security or any known or suspected unauthorized use of a End User’s facilities to access the Sun Corridor Network or any Network Service(s). Sun Corridor will notify End User of any known breach of or challenge to the Network Service potentially affecting the End User.

- d. **Method of notification.** Unless otherwise provided for in this Agreement, any notice, communication, request or reply ("**Notice**") under this Agreement made by either Party to the other must be in writing and shall be effectively given if: (a) addressed to the Party to be notified and deposited in the United States Postal Service using certified or registered mail, postage prepaid with return receipt requested or shipped by a nationally recognized overnight courier service; (b) delivered in person; or (c) sent via email for such Party with a confirmation telephone call, provided, however, that any notice asserting a material breach or default or terminating the agreement shall also be delivered in writing by overnight courier. Any notice mailed is effective three (3) days after it is deposited in a depository of the United States Postal Service or other overnight services, and any Notice delivered in person to a Party shall be effective when received. All notices shall be addressed as set forth in the Network Service Order (or to such changes in address of which one Party notifies the other in accordance with the foregoing).

- 10.23. **Nondiscrimination.** The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the Parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**


ACCEPTED AND AGREED:

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

Signature: _____
Name: David D. Ortega
Title: Mayor
Date: _____

ATTEST:

Signature: _____
Name: Ben Lane
Title: City Clerk
Date: _____


Signature:  _____
Name: Bianca M. Lochner Ph.D.
Title: Chief Information Officer
Date: 3/19/2024

The Arizona Board of Regents for and on behalf of Arizona State University and the Sun Corridor Network

Signature: _____
Name: _____
Title: _____
Date: _____

Attorney Approval

The undersigned attorney has reviewed this Agreement pursuant to A.R.S. § 11-952(D) and determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona City of Scottsdale.

By:  _____
Sherry R. Scott, City Attorney
Eric C. Anderson, Senior Assistant City Attorney

Date: 3/18/24

The undersigned attorney has reviewed this Agreement pursuant to A.R.S. § 11-952(D) and determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Board of Regents for and on behalf of Arizona State University and the Sun Corridor Network.

By: _____

Date: _____