

FIRST AMENDMENT OF DATA CENTER LEASE AGREEMENT

This First Amendment of Data Center Lease Agreement ("Amendment") is entered into the 27 day of MAY, 2009, by and between Sabey DataCenter LLC, a Washington limited liability company ("Landlord"), as Landlord, International Gateway East LLC ("Owner"), as Owner, and King County, a political subdivision of the state of Washington ("Tenant"), as Tenant, under that certain Data Center Lease Agreement ("Lease"), dated August 12, 2008, between the parties hereto.

RECITALS

A. Landlord and Tenant desire to amend the Lease to add six (6) pair of dark fiber and to make other related modifications in accordance with the terms and conditions contained herein.

B. Except as may be expressly provided otherwise in this Amendment, capitalized terms in this Amendment shall have the meaning given such terms in the Lease.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Amendments.

1.1 Section 1.4.2 is added to the Lease as follows:

1.4.2 Dark Fiber. Commencing April 1, 2009 ("Dark Fiber Commencement Date") and continuing for twelve (12) months and thereafter on a month-to-month basis, terminable by either party with thirty (30) days written notice ("Dark Fiber Term"), Tenant shall also lease from Landlord six (6) pair of dark fiber ("Dark Fiber") that run from Tenant's location at 700 5th Avenue, Seattle, Washington, around Lake Washington and into MPOE room 101 in the Building. The Dark Fiber is being leased by Landlord from AboveNet Communications, Inc., ("AboveNet") to another tenant in the Building, pursuant to the agreement between AboveNet Communications Inc. and Sabey DataCenter LLC, attached hereto as Exhibit F. Concurrently with its execution of this Amendment, Tenant agrees to pay Landlord a one-time connection fee of ~~Twenty Thousand Seven Hundred Ninety and 00/100 Dollars (\$20,790.00).~~

TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00)

AT / 5/20/09  
Pur / 5/27/09

1.2 Section 1.12.2 is added to the Lease as follows:

1.12.2 Dark Fiber Rent. Rent for the Dark Fiber ("Dark Fiber Rent") from the Dark Fiber Commencement Date through the twelfth (12th) month means ~~One Hundred four Thousand Nine Hundred Eighty-six and 35/100 Dollars (\$104,986.35)~~ per month. Thereafter, Dark Fiber Rent will be paid on a month-to-month basis and will increase by three percent (3%)

ONE HUNDRED NINE THOUSAND FOUR HUNDRED EIGHTY-FIVE AND 78/100 DOLLARS (\$109,485.78) OR SUCH AMOUNT AS IS BILLED LANDLORD

BY ABOVE NET PLUS FIVE (5%) PERCENT FEE.

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on each anniversary of the Dark Fiber Commencement Date. Dark Fiber Rent is payable in accordance with Section 4 of the Lease. Should any costs be forwarded to Landlord by AboveNet for any Network Relocation as defined in Section 7 of Exhibit F Landlord reserves the right to reject costs and terminate Dark Fiber service if Tenant does not wish to pay relocation costs and continue service..

2. Entire Amendment. This Amendment sets forth the entire agreement of the parties with respect to the subject matter set forth herein and may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors and interests.

3. Acknowledgement. The parties hereto each acknowledge that except as expressly modified by this Amendment, all the terms and conditions of the Lease remain unchanged and are in full force and effect and enforceable in accordance with their terms. In the event of a conflict between the Lease and this Amendment, the terms and provisions of this Amendment shall control.

4. Execution. This Amendment may be executed in several counterparts and all so executed shall constitute one Amendment, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Delivery of a facsimile or other copy of this Amendment has the same effect as delivery of an original.

5. Exhibit. Exhibit F attached hereto is incorporated herein by this reference.

6. Lender's Consent. The effectiveness of this Amendment is conditioned upon Landlord receiving the consent of its lender.

TENANT:

KING COUNTY

Date: 11/13/08

By: Wayne Richau  
Its: Manages Real Estate Services

LANDLORD:

APPROVED AS TO FORM ONLY:

By: Timothy Barnes  
Timothy Barnes  
Senior Deputy Prosecuting Attorney

SABEY DATACENTER LLC, by Sabey Corporation, Manager

Date: 5/29/09

By: Patricia G. Sewell  
Its: Secretary

OWNER:

INTERNATIONAL GATEWAY EAST LLC, by Sabey Corporation, Manager

Date: 5/29/09

By: Patricia G. Sewell  
Its: Secretary

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this 13<sup>th</sup> day of November, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Wayne Richardson, to me known to be the Myd - Real Estate Services of KING COUNTY, a political subdivision of the State of Washington that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Mark R. Phillips  
Printed Name: MARK R. PHILLIPS  
NOTARY PUBLIC in and for the State of Washington, residing at Belferap.  
My commission expires: 7/1/12

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this 29<sup>th</sup> day of MAY, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Secretary of Sabey Corporation, Manager of SABEY DATACENTER LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Heather Cherie Cosby  
Printed Name: HEATHER CHERIE COSBY  
NOTARY PUBLIC in and for the State of Washington, residing at SEATTLE.  
My commission expires: 7/9/09





# 1888

**SECOND AMENDMENT OF DATA CENTER LEASE AGREEMENT**

This Second Amendment of Data Center Lease Agreement ("Amendment") is entered into the 11<sup>th</sup> day of March, 2010, by and between Sabey DataCenter LLC, a Washington limited liability company ("Landlord"), as Landlord, International Gateway East LLC ("Owner"), as Owner, and King County, a political subdivision of the state of Washington ("Tenant"), as Tenant, under that certain Data Center Lease Agreement ("Lease"), dated August 12, 2008, as amended by that certain First Amendment of Data Center Lease Agreement dated November 20, 2008, between the parties hereto.

**RECITALS**

A. Landlord and Tenant desire to amend the Lease to reduce the Premises by 3,982 square feet of office and storage space.

B. Except as may be expressly provided otherwise in this Amendment, capitalized terms in this Amendment shall have the meaning given such terms in the Lease.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Amendments.

1.1 Section 1.4 is amended to reduce the Premises by 3,982 square feet of office/storage space ("Office Space") as of August 31, 2009.

1.2 Section 1.12 Base Rent is amended to include the following:

Commencing August 31, 2009, Tenant shall no longer make payments of Base Rent that includes Office Space Base Rent. The Data Center Base Rent remains unchanged.

2. Entire Amendment. This Amendment sets forth the entire agreement of the parties with respect to the subject matter set forth herein and may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors and interests.

3. Acknowledgement. The parties hereto each acknowledge that except as expressly modified by this Amendment, all the terms and conditions of the Lease remain unchanged and are in full force and effect and enforceable in accordance with their terms. In the event of a conflict between the Lease and this Amendment, the terms and provisions of this Amendment shall control.

4. Execution. This Amendment may be executed in several counterparts and all so executed

shall constitute one Amendment, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Delivery of a facsimile or other copy of this Amendment has the same effect as delivery of an original.

5. Lender's Consent. The effectiveness of this Amendment is conditioned upon Landlord receiving the consent of its lender.

TENANT:

KING COUNTY

Date: 4/5/10

By: [Signature]  
Its: Manager, Real Estate Services

LANDLORD:

SABEY DATACENTER LLC, by Sabey Corporation, Manager

Date: 5/11/10

By: [Signature]  
Its: Treasurer & Secretary

OWNER:

INTERNATIONAL GATEWAY EAST LLC, by Sabey Corporation, Manager

Date: 5/11/10

By: [Signature]  
Its: Treasurer & Secretary

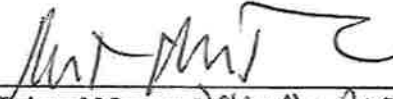


STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 5<sup>th</sup> day of April, ~~2008~~<sup>2010</sup>, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Stephen Sulyer, to me known to be the Manager of KING COUNTY, a political subdivision of the State of Washington that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



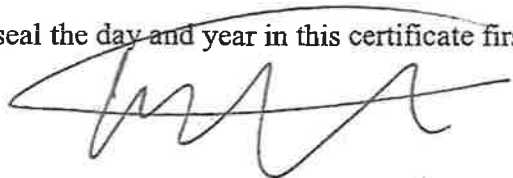
  
Printed Name: Robert Ross Thompson  
NOTARY PUBLIC in and for the State of Washington, residing at SeaTac, WA.  
My commission expires: 10.15.2012

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 11<sup>th</sup> day of May, ~~2008~~<sup>2010</sup>, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Treasurer & Secretary of Sabey Corporation, Manager of SABEY DATACENTER LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



  
Printed Name: Travis Anderson  
NOTARY PUBLIC in and for the State of Washington, residing at Sumner, WA.  
My commission expires: 2/28/14

STATE OF WASHINGTON )

COUNTY OF KING ) ss.  
)

On this 11<sup>th</sup> day of May, ~~2008~~<sup>2010</sup>, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Treasurer & Secretary of Sabey Corporation, Manager of INTERNATIONAL GATEWAY EAST LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



A handwritten signature in black ink, appearing to read "Travis Anderson".

Printed Name: Travis Anderson  
NOTARY PUBLIC in and for the State of  
Washington, residing at Sammonville, WA  
My commission expires: 2/28/14.

See Lett  
#1846

**THIRD AMENDMENT OF DATA CENTER LEASE AGREEMENT**

This Third Amendment of Data Center Lease Agreement ("Amendment") is entered into the 20<sup>th</sup> day of December, 2013, by and between Sabey DataCenter LLC, a Washington limited liability company ("Landlord"), as Landlord, International Gateway East LLC ("Owner"), as Owner, and King County, a political subdivision of the state of Washington ("Tenant"), as Tenant, under that certain Data Center Lease Agreement ("Lease"), dated August 12, 2008, as amended by that certain First Amendment of Data Center Lease Agreement dated November 20, 2008, as amended by that certain Second Amendment of Data Center Lease Agreement dated March 11, 2010, between the parties hereto.

**RECITALS**

- A. Landlord and Tenant desire to amend the Lease to add a total of one (1) RU spaces in accordance with the terms and conditions contained herein.
- B. Except as may be expressly provided otherwise in this Amendment, capitalized terms in this Amendment shall have the meaning given such terms in the Lease.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Amendments.

1.1 **Section 1.4.3 MPOE 101 RU Space** is added to the Agreement as follows:

Commencing December 1, 2013, and continuing for the Initial Term of the Lease, Tenant shall lease from Landlord one (1) rack unit ("RU") spaces located in MPOE Room 101, RR. 01.02.02, RU space 04.

1.2 **Section 1.12.3 MPOE 101 RU Space Rent** is added to the Lease as follows:

"MPOE 101 RU Space Rent" shall be payable as follows:

<b>Term</b>	<b>Rent/Month</b>
12/1/13 - 11/30/14	\$ 125.00
12/1/14 - 11/30/15	\$ 128.75
12/1/15 - 11/30/16	\$ 132.61
12/1/16 - 11/30/17	\$ 136.59
12/1/17 - 11/30/18	\$ 140.69
12/1/18 - 11/30/19	\$ 144.91
12/1/19 - 11/30/20	\$ 149.26

12/1/20 - 4/30/21
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\$ 153.73
-----------

MPOE 101 RU Space Rent shall be payable as provided in section 4.

2. Entire Amendment. This Amendment sets forth the entire agreement of the parties with respect to the subject matter set forth herein and may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors and interests.

3. Acknowledgement. The parties hereto each acknowledge that except as expressly modified by this Amendment, all the terms and conditions of the Lease remain unchanged and are in full force and effect and enforceable in accordance with their terms. In the event of a conflict between the Lease and this Amendment, the terms and provisions of this Amendment shall control.

4. Execution. This Amendment may be executed in several counterparts and all so executed shall constitute one Amendment, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Delivery of a facsimile or other copy of this Amendment has the same effect as delivery of an original.


5. Lender's Consent. The effectiveness of this Amendment is conditioned upon Landlord receiving the consent of its lender.

*The rest of this page is intentionally left blank; signatures are on the following page.*


TENANT:

KING COUNTY

Date: 12/6/13

By:   
Its: Managers, Real Estate Services

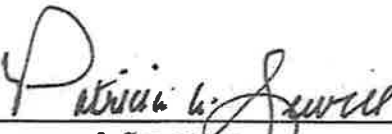
Approved as to form

  
Senior Deputy Prosecuting Attorney

LANDLORD:

SABEY DATACENTER LLC, by Sabey Corporation, Manager

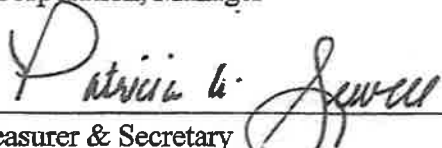
Date: 12/20/2013

By:   
Its: Treasurer & Secretary

OWNER:

INTERNATIONAL GATEWAY EAST LLC, by Sabey Corporation, Manager

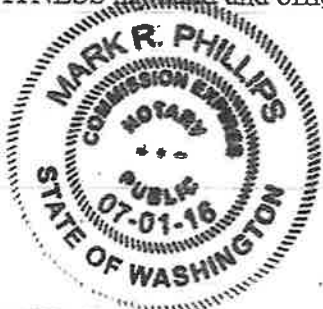
Date: 12/20/2013

By:   
Its: Treasurer & Secretary

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 6<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Stephen Salzer, to me known to be the Manager - M.E.S. of KING COUNTY, a political subdivision of the State of Washington that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he ~~is~~ was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Mark R. Phillips  
Printed Name: mark R. Phillips  
NOTARY PUBLIC in and for the State of Washington, residing at Bellevue.  
My commission expires: 7/1/16

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 20<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Treasurer & Secretary of Sabey Corporation, Manager of SABEY DATACENTER LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Erin Christine Dempster  
Printed Name: Erin Christine Dempster  
NOTARY PUBLIC in and for the State of Washington, residing at Renton, WA.  
My commission expires: 6/19/17

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this 20<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Treasurer & Secretary of Sabey Corporation, Manager of INTERNATIONAL GATEWAY EAST LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Erin Christine Dempster  
Printed Name: Erin Christine Dempster  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton, WA.  
My commission expires: 6/19/17.





**ORIGINAL**

#1888

■ \_\_\_\_\_ ■

**DATA CENTER LEASE AGREEMENT**

**BY AND BETWEEN**

**SABEY DATACENTER LLC,**

**a Washington limited liability company**

**Landlord**

**and**

**KING COUNTY,**

**a Political Subdivision of the State of Washington**

**Tenant**

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## DATA CENTER LEASE AGREEMENT

THIS DATA CENTER LEASE AGREEMENT ("Lease") is made this 12<sup>th</sup> day of August, 2008 ("Effective Date"), between Sabey DataCenter LLC, a Washington limited liability company ("Landlord"), and King County, a political subdivision of the State of Washington, ("Tenant"). The parties agree as follows:

### 1. FUNDAMENTAL LEASE PROVISIONS; DEFINITIONS; EXHIBITS.

Capitalized terms used in this Lease shall have the meanings provided in this Section 1, unless otherwise specifically modified by provisions of this Lease.

**1.1. Broker.** "Broker" shall mean Washington Partners, Inc. A commission shall be paid by Landlord to Broker pursuant to a separate agreement between Landlord and Broker.

**1.2. Building.** "Building" shall mean the structure commonly known as Sabey DataCenter ("SDC"). The Building is situated on a portion of the real property legally described in Exhibit A and has a postal address of 3355 South 120<sup>th</sup> Place, Seattle, Washington 98168. Landlord may alter the boundary lines of the Land (defined below) on which the Building is located pursuant to a boundary line or lot line adjustment and without Tenant's consent so long as the Building remains within the Landlord's property.

**1.2.1. Common Areas.** "Common Areas" shall mean those areas within the Building that are available for common use by tenants and their invitees including parking facilities, sidewalks, public toilets, and service facilities. This also includes areas which may not be accessible to tenants, but which provide functional support to tenants. Common Areas do not include Shared Infrastructure.

**1.3. Data System.** "Data System" shall mean Tenant's computer hardware and other data and telecommunications equipment installed in the Premises for use by Tenant in the operation of its business from time to time during the Term, and subject to Landlord's prior written approval.

**1.4. Premises.** The "Premises" shall mean the space consisting of approximately 11,474 rentable square feet of space located in Suite 5201 of the Building (consisting of approximately 7,492 square feet of data center space ("Data Center Space") and 3,982 square feet of office/storage (consisting of 3,402 square feet of office and 580 square feet of storage space) ("Office Space") depicted on the floor plan attached to this Lease as Exhibit B. The Premises shall include the Tenant Improvements described in Exhibit C.

**1.4.1. Tenant's Rooftop Antenna.** In addition to the Premises described above in Paragraph 1.4, throughout the Term of this Lease, Tenant shall have the right to install conduits to connect to an antenna and/or a satellite dish, or Tenant may rent an existing or new antenna and/or satellite dish on the roof of the Building from Landlord at a cost commensurate with the average prevailing rate for other tenants in the Building. Landlord shall be responsible for all costs and expenses associated with the installation and maintenance of the rooftop equipment.

Alternatively, should Tenant elect to install a rooftop antenna rather than rent one from Landlord, tenant shall obtain Landlord's prior written approval before installation of the rooftop equipment, which shall not be unreasonably withheld, conditioned, or delayed. If installation of the antenna or satellite dish requires any roof penetrations, Tenant shall use a contractor approved by Landlord and shall cause such work to be done in a manner that will preserve any roof warranty held by Landlord. Tenant shall be responsible for all costs and expenses associated with the installation and maintenance of the rooftop equipment. Tenant shall have access to the rooftop equipment subject to Landlord's roof top rules and procedures. Landlord reserves the right at any time, upon fifteen (15) days' prior written notice to Tenant, to require that Tenant remove the rooftop equipment if it interferes with any other tenant's ability to conduct its business in the Building or if it impedes Landlord's ability to lease space in the Building. Tenant agrees to remove the rooftop equipment at

the end of the Term of this Lease if so requested by Landlord, and to repair any damage to the Building's rooftop caused by such removal.

**1.5. Services.** "Services" shall mean those services provided to the Premises set forth in Exhibit C-2 attached hereto and made a part hereof.

**1.6. Software.** "Software" shall mean any software, data, information contained in documentation, and other information and intangibles used by Tenant to operate and maintain Tenant's business through the Data System.

**1.7. Property.** The Premises, Building, Land, and the improvements on the Land other than the Building, are sometimes collectively referred to in this Lease as the "Property".

**1.8. Lease Year.** "Lease Year" shall mean each twelve-month period commencing January 1 and ending December 31.

**1.9. Commencement Date.** Subject to Sections 2.1 and 3.1, "Commencement Date" shall mean the date when Tenant improvements are Substantially Complete, as defined in Section 5.2 of Exhibit C. Unless caused by Landlord's delay and subject to Section 7.9 of this Lease, if the Lease Term commences on a day other than the first day of a calendar month, then the Commencement Date as specified in the preceding sentence shall be deemed to be the first day of the next calendar month, and the Tenant shall be deemed to have been given Early Occupancy as of the date specified in the preceding sentence, with all terms of this Lease, including Rent, and other amounts due to Landlord, applicable to the period of early occupancy, EXCEPT that Tenant Contribution for Tenant Improvements shall be paid in the manner specified in Section 1.12.1.

**1.9.1. Early Occupancy.** Tenant will be allowed to occupy any square feet they feel is ready for occupancy before the Commencement Date ("Early Occupancy"). Early Occupancy shall mean any use of the Premises other than uses directly related to the installation of furniture and fixtures. Tenant shall have the right to access the Premises for such installation of furniture and fixtures as needed, but shall in all instances be coordinated with Landlord. Any increase in cost due to Tenant's interference with Landlord's activities shall be born by Tenant. Tenant's Early Occupancy shall not in any way diminish or excuse Landlord's obligations pursuant to Exhibit C ("Work Letter Agreement"). During Early Occupancy, "Base Rent" will be calculated by multiplying the actual occupied rentable square feet by One and 67/100 Dollars (\$1.67) per rentable square foot on a monthly basis for the Office Space and Three and 60/100 Dollars (\$3.60) per square foot on a monthly basis for the Data Center Space. Tenant will be responsible for all "Additional Rent" as described in Section 8 on the portion of the Premises that they occupy under this Early Occupancy clause.

**1.10. Expiration Date.** "Expiration Date" shall mean the date that is twelve (12) years after the Commencement Date, unless sooner terminated or extended in accordance with this Lease.

**1.10.1. Shared Infrastructure.** "Shared Infrastructure" shall mean that infrastructure that consists primarily of electrical and mechanical equipment and systems which service not only the Tenant, but also similar tenants within the Building. Shared Infrastructure does not include systems which support a single tenant, including all systems included as part of the Tenant Improvements. Landlord will maintain and operate this equipment in a professional and industry standard manner comparable to other data centers of equal quality to support building tenants. Shared electrical equipment includes but is not limited to back-up power generators, switchgear, transformers, monitoring and cabling which connects shared equipment. Shared mechanical or cooling equipment includes but is not limited to rooftop air handlers, chillers, pumps, piping, ductwork, and controls.

**1.11. Term.** "Term" shall mean a period of twelve (12) years, commencing on the Commencement Date and terminating on the Expiration Date, unless sooner terminated or extended in accordance with this Lease.

**1.12. Base Rent.** "Base Rent" means Data Center Base Rent and Office Space Base Rent and are sometimes referred to collectively as "Rent." "Data Center Base Rent" from the Commencement Date through the twelfth (12<sup>th</sup>) month shall mean Twenty-six Thousand Nine Hundred Seventy-one and 20/100 Dollars (\$26,971.20) per month.

"Data Center Base Rent" from the thirteenth (13<sup>th</sup>) month through the twenty-fourth (24<sup>th</sup>) month shall mean Twenty-seven Thousand Seven Hundred Eighty-two and 83/100 Dollars (\$27,782.83) per month. 5/1/10

"Data Center Base Rent" from the twenty-fifth (25<sup>th</sup>) month through the thirty-sixth (36<sup>th</sup>) month shall mean Twenty-eight Thousand Six Hundred Nineteen and 44/100 Dollars (\$28,619.44) per month.

"Data Center Base Rent" from the thirty-seventh (37<sup>th</sup>) month through the forty-eighth (48<sup>th</sup>) month shall mean Twenty-nine Thousand Four Hundred Eighty-one and 02/100 Dollars (\$29,481.02) per month.

"Data Center Base Rent" from the forty-ninth (49<sup>th</sup>) month through the sixtieth (60<sup>th</sup>) month shall mean Thirty Thousand Three Hundred Sixty-seven and 57/100 Dollars (\$30,367.57) per month. 5/1/12

"Data Center Base Rent" from the sixty-first (61<sup>st</sup>) month through the seventy-second (72<sup>nd</sup>) month shall mean Thirty-one Thousand Two Hundred Seventy-nine and 10/100 Dollars (\$31,279.10) per month. 5/1/14

"Data Center Base Rent" from the seventy-third (73<sup>rd</sup>) month through the eighty-fourth (84<sup>th</sup>) month shall mean Thirty-two Thousand Two Hundred Fifteen and 60/100 Dollars (\$32,215.60) per month.

"Data Center Base Rent" from the eighty-fifth (85<sup>th</sup>) month through the ninety-sixth (96<sup>th</sup>) month shall mean Thirty-three Thousand One Hundred Eighty-three and 32/100 Dollars (\$33,183.32) per month.

"Data Center Base Rent" from the ninety-seventh (97<sup>th</sup>) month through the one hundred eighth (108<sup>th</sup>) month shall mean Thirty-four Thousand One Hundred Seventy-six and 01/100 Dollars (\$34,176.01) per month.

"Data Center Base Rent" from the one hundred ninth (109<sup>th</sup>) month through the one hundred twentieth (120<sup>th</sup>) month shall mean Thirty-five Thousand One Hundred Ninety-nine and 91/100 Dollars (\$35,199.91) per month.

"Data Center Base Rent" from the one hundred twenty-first (121<sup>st</sup>) month through the one hundred thirty-second (132<sup>nd</sup>) month shall mean Thirty-six Thousand Two Hundred Fifty-five and 04/100 Dollars (\$36,255.04) per month.

"Data Center Base Rent" from the one hundred thirty-third (133<sup>rd</sup>) month through the Expiration Date shall mean Thirty-seven Thousand Three Hundred Forty-one and 38/100 Dollars (\$37,341.38) per month.

Data Center Base Rent shall be payable as provided in Section 4.

**Office Space Base Rent.** "Office Space Base Rent" from the Commencement Date through the twelfth (12<sup>th</sup>) month shall mean Seven Thousand Seven Hundred Sixty-three and 33/100 Dollars (\$7,763.33) per month.

"Office Space Base Rent" from the thirteenth (13<sup>th</sup>) month through the twenty-fourth (24<sup>th</sup>) month shall mean Seven Thousand Nine Hundred Ninety-six and 23/100 Dollars (\$7,996.23) per month.

"Office Space Base Rent" from the twenty-fifth (25<sup>th</sup>) month through the thirty-sixth (36<sup>th</sup>) month shall mean Eight Thousand Two Hundred Thirty-six and 90/100 Dollars (\$8,236.90) per month.



“Office Space Base Rent” from the thirty-seventh (37<sup>th</sup>) month through the forty-eighth (48<sup>th</sup>) month shall mean Eight Thousand Four Hundred Eighty-five and 32/100 Dollars (\$8,485.32) per month.

“Office Space Base Rent” from the forty-ninth (49<sup>th</sup>) month through the sixtieth (60<sup>th</sup>) month shall mean Four Thousand Seven Hundred Forty-one and 51/100 Dollars (\$8,741.51) per month.

“Office Space Base Rent” from the sixty-first (61<sup>st</sup>) month through the seventy-second (72<sup>nd</sup>) month shall mean Nine Thousand-five and 47/100 Dollars (\$9,005.47) per month.

“Office Space Base Rent” from the seventy-third (73<sup>rd</sup>) month through the eighty-fourth (84<sup>th</sup>) month shall mean Nine Thousand Two Hundred Seventy-seven and 18/100 Dollars (\$9,277.18) per month.

“Office Space Base Rent” from the eighty-fifth (85<sup>th</sup>) month through the ninety-sixth (96<sup>th</sup>) month shall mean Nine Thousand Five Hundred Fifty-six and 66/100 Dollars (\$9,556.66) per month.

“Office Space Base Rent” from the ninety-seventh (97<sup>th</sup>) month through the one hundred eighth (108<sup>th</sup>) month shall mean Nine Thousand Eight Hundred Forty-three and 91/100 Dollars (\$9,843.91) per month.

“Office Space Base Rent” from the one hundred ninth (109<sup>th</sup>) month through the one hundred twentieth (120<sup>th</sup>) month shall mean Ten Thousand One Hundred Thirty-eight and 91/100 Dollars (\$10,138.91) per month.

“Office Space Base Rent” from the one hundred twenty-first (121<sup>st</sup>) month through the one hundred thirty-second (132<sup>nd</sup>) month shall mean Ten Thousand Four Hundred Forty-one and 68/100 Dollars (\$10,441.68) per month.

“Office Space Base Rent” from the one hundred thirty-third (133<sup>rd</sup>) month through the Expiration Date shall mean Ten Thousand Seven Hundred Fifty-six and 10/100 Dollars (\$10,756.10) per month.

Office Space Base Rent shall be payable as provided in Section 4.

**1.12.1. Tenant Contribution for Tenant Improvements.** The rates for Data Center Base Rent are based upon Landlord making Tenant Improvements in the amount of Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) ("Not-To-Exceed Cost") to the Premises. The actual cost of the Tenant Improvements, up to the Not-To-Exceed Cost, shall be payable to Landlord by Tenant and due within thirty (30) days of Substantial Completion of Landlord's Work, as defined in Section 5.2 of Exhibit C. The Tenant Contribution for Tenant Improvements is not part of Additional Rent provided for in Section 1.13.

If Tenant occupies the Additional Space described in Section 2.3 of this Lease, Landlord shall make additional Tenant Improvements in an amount to be determined by negotiation with Tenant. Tenant shall make an additional Tenant contribution equal to the value of the Landlord's Tenant Improvement costs payable as Tenant Contribution within sixty (60) days after acceptance of the Additional Space.

**1.13. Additional Rent.** “Additional Rent” shall mean the amounts described in Section 8, excluding the Tenant Contribution for Tenant Improvements as defined in Section 1.12.1, as Building Operating Costs, Infrastructure Operating Costs, electrical utility costs and all other amounts except Base Rent which are payable by Tenant under this Lease.

**1.14. Security Deposit .** Intentionally deleted.

**1.15. Parking.** Subject to Section 29.

**1.16. Landlord's Payment Address.** “Landlord's Payment Address” shall mean: Sabey DataCenter LLC, P.O. Box 34108, Seattle, Washington 98124-1108. Tenant may also arrange for monthly wire transfer of Rent using the following information:

Bank: The Commerce Bank of Washington, 601 Union St., Suite 3600, Seattle, WA 98101; ABA # 125008013; Bank Account # 1173731; Account Name: Sabey Corporation, 12201 Tukwila International Blvd., Fourth Floor, Seattle, WA 98168-5121

**1.17. Notice Addresses.**

If to Landlord: Sabey DataCenter LLC c/o Sabey Corporation  
12201 Tukwila International Blvd.  
Fourth Floor  
Seattle, WA 98168-5121  
Attn: Sr. V.P. Real Estate  
Fax No. 206-282-9951

with a copy to: Sabey Corporation  
12201 Tukwila International Blvd.  
Fourth Floor  
Seattle, WA 98168-5121  
Attn.: Sr. V.P. Property Operations & Leasing  
Fax No. 206-282-9951

Landlord's Mortgagee (if any): [Need this from Sabey]

If to Tenant: King County  
Facilities Management Division  
Department of Executive Services  
500 King County Administration Building  
500 Fourth Avenue  
Seattle, WA 98104-2337  
Phone No. 206-616-3400, Fax No. 206-685-1547

**1.18. Permitted Uses.** "Permitted Uses" shall mean Tenant's use of the Premises for operating its Data System and ancillary office space, subject to the terms and conditions of this Lease.

**1.19. Landlord's Work.** "Landlord's Work" shall mean the improvements to be made by Landlord in accordance with Exhibit C.

**1.20. Tenant's Work.** "Tenant's Work" shall mean the improvements, if any, to be made by Tenant in compliance with Landlord's "Tenant & Tenant Contractor Construction Criteria," as may be updated and modified from time to time by Landlord.

**1.21. Guarantor.** Intentionally deleted.

**1.22. Exhibits.** The following exhibits or riders are attached to this Lease and are incorporated into this Lease by this reference:

- (a) Exhibit A - Legal Description
- (b) Exhibit B - Floor Plan of Premises
- (c) Exhibit C - Landlord's Work
- (d) Exhibit C-1 - Tenant's Removable Property
- (e) Exhibit C-2 - Services Offering
- (f) Exhibit C-3 - Approved Plans
- (g) Exhibit D - Rules and Regulations
- (h) Exhibit E - Parking Area

**2. PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in Section 1.4 together with the Landlord's Work described on Exhibit C ("Tenant Improvements") and together with rights of ingress and egress over public and common areas in the Building and on the land legally described on Exhibit A, including all easements appurtenant to the land ("Land"). Tenant's lease of the Premises shall be subject to all of the terms and conditions of this Lease.

Landlord shall complete Landlord's Work in accordance with Exhibit C. Notwithstanding anything to the contrary in this Lease, Tenant shall provide Landlord and Landlord's contractor with such access to the Premises as may be required by Landlord and Landlord's contractor to efficiently perform Landlord's Work. Tenant acknowledges and agrees that Landlord shall have no obligation to improve the Premises except as may be expressly set forth on Exhibit C.

**2.1. Acceptance of Premises.** Landlord and Tenant hereby agree that Landlord's Work as set forth in Exhibit C shall be constructed by Landlord's contractor, Sabey Construction Inc., at Landlord's sole risk and liability. Tenant's acceptance of the Premises shall be deferred until the Substantial Completion of Landlord's Work as provided in Section 5.2 of Exhibit C. The existence and repair of punch list items shall not postpone the Commencement Date or the obligation of Tenant to pay Base Rent, Additional Rent, or the Tenant Contribution in Section 1.12.1. If after 30 days, Landlord has failed to diligently undertake repairs of punch list items previously identified by Tenant pursuant to the process for determining Substantial Completion contained in Section 5.2 of Exhibit C, the failure to repair such punch list items shall be considered a default by Landlord and subject to the provisions of Section 19.9.

**2.2. Installation of Data System.**

2.2.1 No later than thirty (30) days prior to the initial installation of Tenant's equipment by Tenant, Tenant shall submit to Landlord the following: (i) a detailed equipment list of all of the equipment that Tenant intends to install in the Premises, including, without limitation, as part of its Data System (including any additional equipment installed or placed in the Premises by or on behalf of Tenant, "Tenant's Equipment"), which list shall include the manufacturer, model number, serial number and electrical usage rating (if relevant) for each item of Tenant's Equipment, and (ii) detailed plans and specifications for Tenant's proposed installation of Tenant's Equipment in the Premises, including the weight of each item of Tenant's Equipment. Notwithstanding anything to the contrary contained in this Lease, all of Tenant's Equipment, and Tenant's plans for the installation thereof shall be subject to Landlord's written approval prior to installation. Landlord's approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord has not responded to Tenant within ten (10) days of receipt of Tenant's plans, the plans shall be deemed approved at no cost to Tenant. Tenant shall pay to Landlord within ten (10) days after delivery of an invoice thereof, Landlord's actual costs and 1% markup thereon for Landlord's review of Tenant's plans and oversight of the installation of Tenant's Equipment, provided that Landlord has provided Tenant an estimate of said costs beforehand. Tenant may revise the scope of its equipment installation in order to reduce the costs associated with Landlord's review within ten (10) days of receipt from Landlord. If Landlord and Tenant fail to mutually agree on either the cost of review or the scope changes proposed by Tenant, Tenant shall advise Landlord in writing of its objection and pay Landlord its requested cost subject to subsequent binding arbitration regarding the appropriateness of such costs by a single arbitrator subject to the rules and qualifications contained in Section 8.4. Such binding arbitration must be arranged by Tenant within ten (10) days of objection. If the arbitrator decides that Tenant has been overcharged for Landlord's review, Landlord shall refund the overcharge, plus attorneys' fees as provided in Section 24, to Tenant within thirty (30) days of such decision. Following the initial installation of Tenant's Equipment, Landlord's approval shall only be required for replacement of existing servers with servers with different specifications than those already existing and only when the new replacement servers occupy one full rack or more of datacenter space. Tenant shall have no duty to notify Landlord or seek Landlord's approval to replace existing servers and equipment with servers and equipment with the same specifications as those being replaced, regardless of number.

2.2.2 Subject to Section 2.2.1 above, Tenant shall install within the Premises the approved Data System together with the related Software. All costs and expenses for

such installation shall be the sole responsibility of Tenant. To the extent any such installations would constitute alterations hereunder, Tenant shall perform the same in accordance with Section 9 hereof. Tenant shall not place a load upon any floor of the Premises that exceeds either the load per square foot, which such floor was designed to carry, or that which is allowed by law. Landlord reserves the right to prescribe the weight and position of all heavy equipment.

**2.3 Tenant's Right of First Refusal.** During the Term of the Lease, Tenant shall have a right of first refusal ("Right of First Refusal") to lease approximately 3,114 rentable square feet of data center space adjacent to the Premises (such space being referred to herein as an "Additional Space"), on the same terms and conditions that Landlord is prepared to accept from any third party; provided that any tenant improvement package shall be of equal dollar value rather than the same improvements, except that if Landlord's notice to Tenant is within the first 24 months of the Lease Term, the Rent will be the same rate as for the initial Premises and Landlord will construct all necessary Tenant Improvements in the same manner and subject to the same terms, program design criteria, and conditions as the Tenant Improvements for the Premises. When Landlord receives an offer to lease the Additional Space from a third party which Landlord desires to accept, Landlord shall present the same, in writing, to Tenant, and Tenant shall thereafter have ten (10) calendar days in which to accept or reject that offer by written notice to Landlord. Tenant's acceptance shall be conditioned upon approval by the King County Council's adoption of an ordinance authorizing such acceptance within forty-five (45) days of acceptance, or absent that approval by ordinance, Tenant shall be entitled to terminate the lease for Additional Space within forty-five (45) days of acceptance with no further obligations or liability to either Landlord or Tenant. If Tenant rejects that offer or fails to accept the same in writing within that time, then Landlord shall be free to lease the Additional Space to the third party on substantially similar terms and conditions to those offered to Tenant in the foregoing manner.

Each Right of First Refusal shall, at Landlord's election, be null and void if Tenant is in default under the Lease at the date Landlord would otherwise notify Tenant of the offer concerning the Additional Space or at any time thereafter and before commencement of the Lease for the Additional Space. After Tenant validly exercises a Right of First Refusal provided in this Lease, the parties shall execute an amendment to the Lease adding the Additional Space, or a new lease for the Additional Space, or such other documentation as Landlord shall require, promptly after Landlord shall prepare the same, confirm the leasing of such Additional Space to Tenant, but an otherwise valid exercise of the Right of First Refusal contained in this Lease shall be fully effective, whether or not such confirmatory documentation is executed.

If Tenant exercises a Right of First Refusal granted in this Lease, Landlord does not guarantee that the Additional Space will be available on the commencement date for the Lease thereof if the then-existing occupants of the Additional Space shall hold over, or for any other reason beyond Landlord's reasonable control. In that event, Tenant's sole recourse shall be that the rent with respect to the Additional Space shall be abated until Landlord legally delivers the same to Tenant. Tenant's exercise of that Right of First Refusal shall not operate to cure any default by Tenant of any of the terms or provisions in the Lease, nor to extinguish or impair any rights or remedies of Landlord arising by virtue of such default. Each and all Rights of First Refusal are personal to Tenant and may not be exercised or enjoyed by any other person or entity. If the Lease or Tenant's right to possession of the Premises shall terminate in any manner whatsoever before Tenant shall exercise a Right of First Refusal, or if Tenant shall have subleased or assigned its right to possess all or any portion of the Premises, then immediately upon such termination, sublease, or assignment, the Right of First Refusal shall simultaneously terminate and become null and void. Under no circumstances whatsoever shall a subtenant under a sublease of the Premises, or the assignee under a full or a partial assignment of the Lease, have any right to exercise a Right of First Refusal granted in this Lease.

### **3. LEASE TERM.**

**3.1. Duration of Lease Term.** Tenant's lease of the Premises shall commence on the Commencement Date and terminate on the Expiration Date or such earlier or later date as may be provided for under this Lease. Notwithstanding anything to the contrary in Section 1.9, if Landlord is unable to deliver possession of the Premises to Tenant with Landlord's Work constructed by Landlord's contractor substantially completed in accordance with Exhibit C on the

date specified in Section 1.9 and such delay (to the extent of such delay) is due to no fault on the part of Tenant, then the Commencement Date shall be the earlier of the date on which Tenant first occupies the Premises or the date that is five (5) days from the date of Landlord's written notice to Tenant of Substantial Completion of Landlord's Work constructed by Landlord's contractor provided for in Section 2, above. In no event shall Landlord be liable for damages, other than in Section 7.9, caused by any such delay or failure to deliver possession of the Premises.

**3.2. Confirmation of Commencement Date.** If the Commencement Date is not the date indicated in Section 1.9, Landlord will confirm the Commencement Date to Tenant in writing within a reasonable time after delivery of the Premises in accordance with this Lease.

**3.3. Extension Term.** The Term of this Lease shall automatically renew for (two) additional periods of five (5) years and two (2) subsequent four (4) year periods (the "Renewal Term(s)") on the same terms and conditions of this Lease as are provided for in the initial Term, except as provided below in this Section 3.3 or in Section 3.4 and without any free Rent periods or Tenant Improvement allowances. Unless Tenant gives written notice to Landlord at least twelve (12) months before the date of expiration of the initial Term or subsequent Renewal Term, as the case may be, that it will be vacating the Premises, this Lease will automatically renew upon the date of expiration of the initial Term of this Lease or the prior Renewal Term, as the case may be. Once such notice is delivered to Landlord, it shall be irrevocable by Tenant. Tenant acknowledges and agrees that notwithstanding anything to the contrary in this Lease, the automatic Renewal Term shall not extend to any assignee or subtenant of Tenant, or to any space assigned or subleased by Tenant, and any attempt to do so by any such assignee or subtenant, or by Tenant in connection with such assigned or subleased space, shall be deemed null and void.

**3.4. Base Rent During Renewal Term(s).** In the event that Tenant elects to extend the Term of this Lease in accordance with the terms of Section 3.3, the Base Rent for each year during each Renewal Term shall increase by three percent (3%) per year. The adjusted Base Rent shall commence on and be payable on the first day of each Renewal Term and shall continue thereafter throughout the Renewal Term.

**3.5. Surrender of Premises.** Subject to Section 11, Tenant shall promptly and peacefully surrender the Premises to Landlord upon the termination of the Lease Term in as good a condition as when received by Tenant from Landlord and/or as thereafter improved, if applicable, normal wear and tear excepted. Unless Landlord expressly provides otherwise in writing to Tenant, upon the expiration or termination of this Lease, all improvements and additions to the Premises except those items set forth on Exhibit C-1 shall be deemed property of Landlord and shall not be removed by Tenant from the Premises. Tenant shall be solely responsible for, and shall repair, all damage to the Property arising out of its surrender of the Premises. In addition to all other requirements under this Lease, Tenant shall remove any Hazardous Substances, as such term is defined in Section 6.3, on the Premises which were placed on the Premises by Tenant, its employees, agents, contractors and/or invitees, prior to its surrender and vacation of the Premises.

**3.6. Holding Over With Consent.** If Tenant remains in possession of the Premises after termination or expiration of the Lease Term with Landlord's written permission, such tenancy shall be deemed a month-to-month tenancy, which may be terminated by either party upon thirty (30) days' notice. During such tenancy, Tenant shall be bound by all of the terms, covenants and conditions in this Lease so far as applicable, except that the Base Rent shall be increased to the greater of (i) the then-quoted rates for similar space in the Building or (ii) one hundred fifty percent (150%) multiplied by the sum of the monthly installment of Base Rent payable for the last month of the Lease Term.

**3.7. Holding Over Without Consent.** If Tenant remains in possession of the Premises after the termination or expiration of the Lease Term without Landlord's prior written consent, Tenant shall become a tenant at sufferance only, subject to all the provisions of this Lease so far as applicable, except that Base Rent shall be increased to an amount equal to two hundred percent (200%) multiplied by the sum of the monthly installments of Base Rent payable by Tenant during the last month of the Lease Term, prorated on a daily basis. Acceptance by Landlord of Rent after the termination of the Lease Term shall not result in a renewal or extension of this Lease. The provisions of Section 3.6 and this Section 3.7 are in addition to, and shall not act as a waiver of or

otherwise affect, Landlord's right of re-entry or any other rights of Landlord under this Lease or as provided by law or in equity. If Tenant fails to surrender the Premises upon the termination of the Lease Term, despite Landlord's demand to do so, Tenant shall indemnify, defend and hold Landlord harmless from and against all loss and liability, including, without limitation, any claim made by any succeeding tenant founded on, or resulting from, such failure to surrender, including without limitation, any attorneys' fees or costs associated therewith.

#### **4. RENT.**

**4.1. Payment.** Tenant shall pay Landlord the monthly installments of Data Center and Office Space Base Rent ("Base Rent") provided in Section 1.12 and Additional Rent provided in Section 1.13 in lawful money of the United States, in advance, on the Commencement Date and thereafter on or before the first day of each month throughout the Lease Term. Base Rent and Additional Rent shall be paid by Tenant without notice or demand, deduction, abatement, or offset, except as expressly provided herein. Base Rent and Additional Rent for any partial month at the beginning or end of the Lease Term shall be prorated in proportion to the number of days in such month. Base Rent and Additional Rent are collectively referred to in this Lease as "Rent."

**4.1. Wire Payments.** Any amounts payable to Landlord under this Lease in excess of Ten Thousand and No/100 Dollars (\$10,000.00) per occurrence shall be made by wire transfer as follows:

Bank: The Commerce Bank of Washington, 601 Union St., Suite 3600, Seattle, WA 98101; ABA # 125008013; Bank Account # 1173731; Account Name: Sabey Corporation, 12201 Tukwila International Blvd., Fourth Floor, Seattle, WA 98168-5121. Should Tenant fail to wire amounts above Ten Thousand Dollars (\$10,000), a one-half of one percent (0.5%) fee will be charged for handling the check.

**4.2. Interest on Late Payments; Late Charge.** If any Base Rent or Additional Rent is not paid on the due date thereof: (i) such overdue amounts shall bear interest at a rate equal to the prime rate plus eight percent (8%) per annum; and (ii) Tenant shall pay Landlord a late charge equal to three percent (3%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant, the exact amount of which would be difficult to ascertain. Acceptance by Landlord of any partial amounts due under this Section 4 shall in no event constitute a waiver of Tenant's default with respect to any overdue amount, nor prevent Landlord from exercising any of its other rights and remedies granted under this Lease or by law or in equity.

**4.3. Address for Payments.** Tenant shall pay all Rent to Landlord at Landlord's Payment Address, or at such other place as may be designated by Landlord from time to time by written notice to Tenant.

**5. SECURITY DEPOSIT.** Intentionally deleted.

#### **6. USES; COMPLIANCE WITH LAWS.**

**6.1. Permitted Uses.** Tenant expressly acknowledges that the Premises are to be used only for the Permitted Uses, and for no other business or purpose without the prior written consent of Landlord, which consent may be withheld by Landlord, in its sole discretion. Tenant acknowledges that Landlord may lease, or otherwise permit the use of, other space in the Building to others for uses including the location and usage of electronic equipment and data centers. Tenant shall not vacate or abandon the Premises, or a significant portion thereof, Tenant agrees to conduct normal business operations of the Permitted Uses within the Premises on a continuous basis, except for weekends, holidays and temporary closures not to exceed two (2) continuous weeks.

**6.2. Duties and Prohibited Conduct.** Notwithstanding anything to the contrary in this Lease, Tenant shall not commit any act that will increase the then-existing rate of insurance on the Building without Landlord's prior written consent. Tenant shall promptly pay upon demand the amount of any increase in insurance rates caused by the Permitted Uses or by any

act or acts of Tenant or its employees, agents or representatives. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act which disturbs the quiet enjoyment of any other tenant of the Property or which is unlawful. Tenant shall not, without the written consent of Landlord, use any apparatus, machinery or device in or about the Premises, or act in any way, which will cause any substantial noise, or any vibration, fumes, or releases of Hazardous Substances into the surrounding environment. Tenant shall not use any equipment in the Premises in a manner so as to interfere with the use of the Building by other occupants or in a manner, which, in the opinion of Landlord, is not in accordance with generally accepted standards of internet access and use. If any of Tenant's office machines, equipment or activities, including the Data System or Tenant's Equipment or Tenant's use thereof, should disturb the quiet enjoyment of any other occupant in the Building, cause any substantial noise, or cause any vibration, fumes or releases of Hazardous Substances, or interfere with any other equipment of any other Building occupant or Landlord's Building Systems then Tenant, at Tenant's sole expense, shall immediately stop such interference, provide adequate insulation or take such other action as may be necessary to eliminate such disturbance, noise, vibration, fumes, releases or interference. If Tenant fails to immediately remedy such vibration, fumes, releases or interferences Landlord shall have the right, but not the obligation, to immediately remedy the same at Tenant's expense. Tenant, at Tenant's expense, shall comply with all laws, rules, regulations, orders, ordinances and permits relating to the Premises, or its use or occupancy of the Premises, and shall observe such Rules and Regulations as set forth on Exhibit D to this Lease, and as may be modified by Landlord and made available to Tenant from time to time. This Lease shall be subject to all applicable zoning ordinances and to all municipal, county, state and federal laws and regulations governing or regulating the use of the Premises. If Tenant's Equipment or Tenant at any time causes any damage to, or increases the cost of maintenance of, the Premises, Building, or Landlord's operations, Landlord may demand that Tenant repair such damage or Landlord may elect to repair such damage itself at Tenant's sole cost and expense, and, without limiting any of Landlord's other rights and remedies in law or in equity, Landlord shall be entitled to reimbursement by Tenant for such costs of repair and any additional maintenance costs reasonably incurred within ten (10) days after notice to Tenant.

**6.3. Environmental, Health and Safety Laws.** Without limiting Tenant's obligations under this Section 6, Tenant in the exercise of its rights and the performance of its obligations under this Lease shall comply, at Tenant's expense, with all local, state, or federal laws, rules, regulations, ordinances, orders and permits now existing, or as hereafter enacted, amended, or issued concerning environmental, health, or safety matters (collectively, the "Environmental Laws"). Tenant shall not use the Premises for, or permit anything to be done in or about the Property which may subject Landlord, any guarantor, or any mortgagee under any mortgage covering the Property, to liability for remediation costs or other damages or penalties under any Environmental Laws resulting from Tenant's use of, or conduct on, the Property, including without limitation, the use, generation, transportation, management, handling, treatment, storage, manufacture, emission, release, disposal or deposit of any radioactive material, hazardous or toxic wastes, hazardous or toxic substances, any material containing hazardous wastes or hazardous substances (except as they occur in normal office products or household cleaning products), or any other pollutant, contaminant, human pathogen or infectious agent as such terms may now or in the future be defined in any Environmental Laws (collectively, "Hazardous Substances"), on the Property, adjacent surface waters, soils, underground waters, or air.

Landlord shall have the right at all reasonable times upon notice to Tenant to conduct environmental investigations, including the taking of samples, for the purpose of detecting or measuring the presence of Hazardous Substances on the Property. Tenant shall keep Landlord continuously informed by written notice of all Hazardous Substances, which Tenant, or Tenant's employees, agents, representatives, invitees, licensees, or contractors, generates, stores or otherwise allows on the Property. Tenant shall provide Landlord with copies of all documents received or prepared by Tenant concerning any release of a Hazardous Substance at the Property, all documents Tenant receives or prepares in connection with any violation, or alleged violation, of an Environmental Law by Tenant, and all reports or other documents Tenant is required to provide any governmental authority under any Environmental Law concerning any Hazardous Substance. Upon request by Landlord, Tenant shall provide Landlord with all other information, which Landlord reasonably deems necessary or useful for the purpose of determining whether Tenant is in

compliance with all Environmental Laws and whether the Property, or any part of the Property, is contaminated by any Hazardous Substances. If Tenant or the Premises is in violation of any Environmental Law, or in the event of a release of Hazardous Substances into or on the Property or adjacent surface waters, soils, underground waters, or air, Tenant shall (i) immediately notify Landlord in writing of such occurrence and the action necessary to correct or mitigate such occurrence, and (ii) take such action as is necessary to mitigate and correct such violation or release. Provided, however, Landlord reserves the right, but not the obligation, to enter the Premises, to act in place of the Tenant (and Tenant hereby appoints Landlord as its agent for such purposes) and to take such action as Landlord deems necessary to ensure compliance or to mitigate the violation, at Tenant's expense. If Landlord has a reasonable belief that Tenant is in violation of any Environmental Law, or that Tenant's actions or inaction presents a threat of violation or a threat of damage to the Property, Landlord reserves the right to enter the Premises and take such corrective or mitigating action as Landlord deems necessary. All costs and expenses incurred by Landlord in connection with any such actions shall become immediately due and payable by Tenant upon presentation of an invoice therefore.

Tenant shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining Landlord's written consent. Tenant shall promptly inform Landlord of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Tenant, and Tenant shall provide copies to Landlord, upon request by Landlord and at no cost to Landlord. Notwithstanding the foregoing, in no event shall Tenant be responsible for or liable to Landlord for any Hazardous Substances located in the Premises that existed or were released upon the Premises prior to the Commencement Date of this Lease.

Notwithstanding any other provisions of this Lease, Tenant's obligations and responsibilities for the proper use, storage and maintenance of Hazardous Substances and for any breach of the obligations pursuant to this Paragraph 6.3, shall survive any expiration or any termination of this Lease.

## **7. SERVICES AND UTILITIES; REPAIRS AND MAINTENANCE.**

**7.1. Services and Utilities; Landlord's Obligations.** Landlord shall supply Landlord's standard Building and Property security services and elevator service, Landlord's standard trash removal services (excluding disposal of Hazardous Substances or medical or biological waste) from the Building compactor, if any, electrical power access, and standard plumbing and water (including sewer) services. If the power provided by Landlord causes interference with the proper operation of Tenant's Equipment, Tenant will be responsible for providing at Tenant's sole expense any filtering or regulation devices within the Premises to correct the interference.

Except for the Office Space, the Base rental rate excludes the cost of electricity to the Premises including the estimated cost of electricity to supply the Premises with support from shared equipment such as chillers. These services shall be paid by Tenant each month as provided in Section 8. The cost for any services or utilities, which are not separately metered or sub-metered shall be based on Landlord's reasonable estimate of Tenant's consumption of such utilities. Landlord shall be entitled to install, maintain and operate, at Tenant's cost, a monitoring/ metering system(s) in the Premises to measure Tenant's consumption of electricity and HVAC, or to measure the added demands on the Premises electrical or HVAC systems resulting from Tenant's Equipment, including without limitation, Tenant Improvements pursuant to Exhibit C. Tenant shall utilize best practices (such as blanking plates) to insure that their space operates at a high level of efficiency. In no event shall Tenant's electrical power usage at any time exceed 1.2 megawatts of power, including Tenant's share of shared equipment such as chillers. Notwithstanding anything to the contrary contained herein, Tenant acknowledges that Landlord may, at its option, from time to time, conduct audits of its power systems to ensure that Tenant's usage thereof is in compliance with the terms of this Lease, including the amperage allocated to Tenant. If Landlord determines that Tenant is out of compliance, Landlord, at its option, and in addition to all other rights and remedies available to Landlord, may immediately require Tenant to disconnect any non-compliant piece of Tenant's Equipment, and charge Tenant for the costs of such additional electrical power consumed by such non-compliant piece of Tenant's Equipment.



Landlord's obligation to provide the services and utilities described in this Section 7.1 is subject to Section 11 (Damage and Destruction) and Section 22 (Condemnation).

Before installing fixtures, lights or Equipment in the Premises, which consume or require services or utilities exceeding the levels described in Exhibit C-2 hereto, Tenant shall obtain the written permission of Landlord. Landlord may refuse to grant such permission unless Tenant agrees to pay Landlord's costs, including Landlord's reasonable administrative fee, for installation of supplementary air conditioning capacity or electrical systems as necessitated by such equipment or lights. In addition, Tenant shall pay Landlord as Additional Rent the amount estimated by Landlord (including Landlord's administrative fee) as the cost of furnishing services or utilities for the operation of such equipment or lights and the cost of operation and maintenance of any supplementary air conditioning units necessitated by Tenant's use of such equipment or lights.

Tenant acknowledges that Landlord will restrict access to the Building in accordance with the Building's security system and security procedures, provided that Tenant shall have at all times during the Term of this Lease (24 hours of all days) reasonable access to the Premises, in accordance with such procedures.

If after request by Tenant, Landlord furnishes HVAC or other services or utilities in addition to the utilities or services required to be provided by Landlord under this Lease, including without limitation, furnishing utilities or services in amounts exceeding the levels described in Exhibit C-2 hereto, then the cost of such non-standard or additional services or utilities, as reasonably established by Landlord, shall be paid by Tenant as Additional Rent.

**7.2. Services and Utilities; Tenant's Obligations.** Tenant shall be solely responsible for providing, and shall pay as Additional Rent, all charges for any special janitorial services within the Premises and for any security services desired by Tenant in addition to Landlord's standard Building and site security services. It is understood that except as provided in Sections 7.1, 7.4, or with regard to the equipment, services and utilities listed in Exhibit C-2, and Landlord's obligations for construction, operation and maintenance, as well as any applicable warranties, for Tenant Improvements pursuant to Exhibit C, Landlord shall not be required to provide any services or utilities to Tenant, and Tenant shall make all necessary arrangements to have such services billed directly to Tenant and paid directly by Tenant.

**7.3. Interruption.** Notwithstanding anything to the contrary herein, Landlord shall not be liable for any loss, injury or damage to persons or property caused by or resulting from any temporary variation, interruption, or failure of equipment, services or utilities to be provided by Landlord under this Lease, with the exception of equipment, services or utilities set forth in Exhibit C-2 hereto, due to any cause whatsoever, including without limitation, Landlord's failure to make any repairs or perform any maintenance required to be performed by Landlord under this Lease. No temporary variation, interruption or failure of services or utilities to be provided by Landlord under this Lease incident to the making of repairs, alterations or improvements, or due to accident, strike or conditions or events beyond Landlord's reasonable control, shall be deemed an eviction of Tenant or relieve Tenant from any of Tenant's obligations under this Lease, provided that Landlord make best efforts to restore normal service as soon as possible, and further provided that where the failure to restore service has resulted in a material deviation from the performance levels specified in the Approved Plans, attached to Exhibit C (Work Letter Agreement), for a total of seven (7) days, Tenant shall have the right to resort to the actions specified in Section 19.9 (Default by Landlord).

**7.4. Landlord's Repair and Maintenance Obligations.** Except as provided in Sections 9 (Improvements and Alterations by Tenant), 11 (Damage or Destruction) or 22 (Condemnation), Landlord shall cause to be maintained in reasonably good order and condition the Building (other than any leased premises) and the public and common areas of the Property, such as lobbies, elevators, stairs, corridors, restrooms, and the Premises' water, if applicable; provided, however, Tenant shall be responsible for the cost of repair of damage occasioned by any act or omission of Tenant or Tenant's officers, contractors, agents, invitees, licensees or employees, subject to Section 12 (Waiver of Subrogation). Landlord shall maintain, repair and operate in compliance with the operation and performance standards provided in the Approved Plans, attached to Exhibit C, the equipment and systems listed in Exhibit C-2, including chilled water system (and

associated controls), standby generator systems and associated electrical systems, UPS systems, power distribution units ("PDU"), and additionally the Tenant Improvements constructed by Landlord pursuant to the Work Letter Agreement attached hereto as Exhibit C. In conjunction with its maintenance and repair obligations pursuant to this Section 7.4, Landlord shall be responsible for the cost of repair from damage occasioned by any negligent act or omission of Landlord or Landlord's contractors, agents, invitees, licensees or employees, subject to Section 12 (Waiver of Subrogation).

**7.5 Tenant's Repair and Maintenance Obligations.** Except for maintenance, replacements and repairs required to be made or provided by Landlord under Sections 7.1 or 7.4, Tenant, at its sole cost and expense, shall provide for the maintenance in accordance with the manufacturer's recommendations, repair and replacement within the Premises and all built-in appliances and equipment and any private restrooms and associated plumbing, which are in the Premises for Tenant's exclusive use, light bulb replacement, and any security systems or services desired by Tenant in addition to any such systems or services as may be provided by Landlord under this Lease. Tenant shall operate, maintain, and repair its equipment in such a manner as not to negatively impact the Shared Infrastructure. Tenant shall also, at its sole expense, maintain and repair its equipment, including, without limitation, to avoid hazard or damage to the Premises or injury to Landlord's employees, agents and suppliers or to the public. All of Tenant's Equipment shall be designed and constructed so as to prevent electromagnetic and radio frequency signal leakage. Upon notice from Landlord that any of Tenant's Equipment is causing or is likely to cause a hazard, interference, or service obstruction, Tenant shall forthwith eliminate such hazard, interference or service obstruction. Landlord reserves the right to disconnect such equipment until such hazard, interference, or service obstruction is corrected.

**7.6 Additional Security.** In the event that Tenant's use of the Premises, or its presence in the Building, results in the need for additional security for the Premises or the Building, as reasonably determined by Landlord, then any additional security provided by Landlord for the Building or the Premises shall be at Tenant's sole cost and expense, and shall be reimbursed by Tenant to Landlord within five (5) days of written demand. This Section 7.6 shall include, without limitation, any additional security required as a result of labor disturbances, strikes, political protests, dangerous activities, and any other disturbance or disruption of any kind.

**7.7 Tenant's Obligations.** In performing its obligations under this Section 7, Tenant, at Tenant's expense, shall comply with all Environmental Laws and all other applicable laws, ordinances, codes, orders, rules or regulations of any governmental authority. Tenant shall retain, and shall provide Landlord upon request, copies of Tenant's maintenance and service contract(s) if any. Except as provided in Section 9 in connection with Alterations, and excepting Tenant's right to cure under the Landlord default provisions of Section 19.9, before making or performing any work, repairs, or replacement of any kind in the Premises, if such work shall affect the Building's systems or costs of operation to Landlord then Tenant shall obtain Landlord's prior written approval, which approval may be conditioned on Tenant providing Landlord with plans and specifications therefore, if applicable, which are acceptable to Landlord. All work, maintenance, repairs and replacements by Tenant under this Lease shall be performed by licensed contractors acceptable to Landlord. Tenant shall provide Landlord with copies of all contracts or purchase orders, for such work, maintenance, repairs and replacements prior to having such work, maintenance, repairs or replacements performed. Before installing any heavy equipment or fixtures in the Premises, Tenant shall submit the plans and specifications therefore to Landlord for Landlord's written approval.

**7.8 Operational Governance Protocol.** Intentionally Deleted.

**7.9 Landlord's Delay for Landlord's Work.** Other than as provided in this Section 7.9, Landlord shall have no liability for loss or damage to Tenant resulting in any delay in the Commencement Date, nor shall Tenant have any right to terminate this Lease for Landlord's Delay except as provided herein:

(a) If Substantial Completion (as defined in Section 5.2 of the Work Letter Agreement, attached hereto as Exhibit C) of Landlord's Work does not occur within 300 days of Execution, which for purposes of this Section 7.9 is defined as the date when the both parties of this Lease

have provided a notarized signature (excepting delays caused by Tenant or Force Majeure), Landlord shall pay to Tenant the sum of \$50,000.00;

(b) If Substantial Completion of Landlord's Work does not occur within 330 days of Execution (except in the event of any Tenant Delay or event of Force Majeure), Landlord shall pay to Tenant the additional sum of \$100,000.00; and

(c) If Substantial Completion of Landlord's Work does not occur within 360 days of Execution (except in the event of any Tenant Delay or event of Force Majeure), Landlord shall pay to Tenant the additional sum of \$150,000.00.

(d) In the event Landlord is required to compensate Tenant under this Section 7.9, Tenant may elect to be paid in the form of rent credit, or cash payment, or combination thereof, so long as such sum is credited or paid on or prior to the issuance of a final certificate of occupancy from the City of Tukwila.

(e) In the event Landlord is required to pay Tenant liquidated damages as required by this Section 7.9, and Landlord fails to make such payments to Tenant as set forth herein, or if the Final Certificate of Occupancy has not been issued within 390 days of Execution, Tenant may alternatively elect to terminate this Lease by providing Landlord 14 days notice of termination, in which case this Lease shall terminate without further liability of Landlord or Tenant.

(f) These liquidated damages are not a penalty, but will be assessed against Landlord for failure to complete Tenant Improvements. These liquidated damages amounts are fixed and agreed upon by and between the Landlord and Tenant because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Tenant would in such event sustain.

## **8. ADDITIONAL RENT.**

**8.1. Definitions.** In addition to the Base Rent, Tenant shall pay to Landlord each month as Additional Rent, excluding the Tenant contribution paid by Tenant for Tenant Improvements, which is subject only to in Section 1.12.1, and excluding Office Space, Tenant's Share of Taxes, Building Operating Costs, Infrastructure Operating Costs, and electrical utility costs as provided in this Section 8 using the following definitions:

**8.1.1. Taxes.** "Taxes" shall mean taxes on real property and personal property, charges and assessments (or any installments thereof due during the Lease Year) levied with respect to the Property, any improvements, fixtures and equipment on the Property, and all other property of Landlord, real or personal, used directly in the operation of the Property, and any taxes levied or assessed (or any installment thereof due during the Lease Year) in lieu of, in whole or in part, such real property or personal property taxes, or any other tax upon leasing of the Property and/or Building or rents collected, but not including any federal or state income, estate, business and occupation (except to the extent that a rental tax is imposed as a business and occupation tax), inheritance or franchise tax. Any assessment must be paid over the maximum time possible and Tenant shall be responsible only for its pro rata share of the installments, or portions thereof, falling due during the Term.

**8.1.2. Infrastructure Operating Costs.** "Infrastructure Operating Costs" shall mean all expenses paid or incurred by Landlord for obtaining services and products for maintaining, operating, equipment replacement, and repairing the Shared Infrastructure, including without limitation, the Shared Infrastructure areas, and the personal property used in conjunction therewith, and which shall include, without limitation, depreciation and amortization of capital improvements on a straight-line basis over the useful life of the item in question, with commercially reasonable interest, but only if and to the extent made subsequent to the initial development of the Shared Infrastructure and which are designed with a reasonable probability of enhancing the health and life safety systems of the Shared Infrastructure or improving the operating efficiency of the Shared Infrastructure (and then only in proportion to the anticipated benefit received by Tenant), security services for the Shared Infrastructure, fire alarm system monitoring and testing specific to Shared Infrastructure areas, refuse collection for Shared Infrastructure areas, maintaining water, sewer, storm drainage and other utility systems and services

specific to Shared Infrastructure areas, electrical maintenance, which includes repair, maintenance and operations of generator(s) and miscellaneous electrical equipment, mechanical maintenance, which includes repair, maintenance and operations of chiller(s) and miscellaneous mechanical equipment, supplies, Shared Infrastructure area janitorial and cleaning services, services of independent contractors engaged to perform the services of Landlord hereunder, compensation (including employment taxes and fringe benefits) of all persons who perform duties in connection with the operation, maintenance and repair of the Shared Infrastructure, premiums for Landlord's insurance related to the Shared Infrastructure (including applicable interest charges unless Tenant elects to pay its proportionate share of insurance premiums in full when due), commercially reasonable insurance deductibles, licenses, permits and inspection fees, reasonable legal, administrative and accounting expenses, and any other expense or charge whether or not hereinabove described, which in accordance with generally accepted management practices would be considered an expense of maintaining, operating, or repairing the Shared Infrastructure, excluding or deducting, as appropriate costs of any special services rendered to individual tenants (including Tenant). Notwithstanding the foregoing, Infrastructure Operating Costs for 2009 shall be limited to Three and 40/100 Dollars (\$3.40) per square foot per month.

**8.1.3. Operating Costs.** "Operating Costs" shall mean all expenses other than Taxes and Infrastructure Operating Costs paid or incurred by Landlord for obtaining services and products for maintaining, operating, equipment replacement, and repairing the Property, including without limitation, the Property's public and Common Areas, and the personal property used in conjunction therewith, and which shall include, without limitation:

The costs of Landlord performing its maintenance and repair obligations with respect to the Common Areas and Building under this Lease;

Maintenance, repair and equipment replacement of the Tenant Improvements constructed in accordance with the Work Letter Agreement attached hereto as Exhibit C but excluding maintenance, repair and equipment replacement conducted pursuant to any warranty;

Depreciation and amortization of capital improvements on a straight-line basis over the useful life of the item in question, with reasonable interest, but only if and to the extent made subsequent to the initial development of the Property or Building and which are designed with a reasonable probability of enhancing the health and life safety systems of the Property or improving the operating efficiency of the Property or Building, and then only in proportion to the anticipated benefit received by Tenant;

Security services for the Building or Property, fire alarm system monitoring and testing, refuse collection for the common areas of the Property, maintaining water, sewer, storm drainage and other utility systems and services, Common Area electricity, which may include repair and maintenance on UPS and generator(s), electricity, gas and other similar energy sources (excluding electricity for the Premises which will be charged to the Tenant subject to Section 7.1 above and electricity provided to other leased spaces in the Property), supplies, Common Area janitorial and cleaning services, exterior window washing, landscape planting, maintenance and irrigation, services of independent contractors engaged to perform the services of Landlord hereunder, compensation (including employment taxes and fringe benefits) of all persons who perform duties in connection with the operation, maintenance and repair of the Building and common areas of the Property and its equipment, the maintenance, resurfacing, repair and striping of parking areas and curbs (including driveways, loading zones and access easements), downspouts and gutters, lighting and outdoor facilities, premiums for Landlord's insurance (including applicable interest charges unless Tenant elects to pay its proportionate share of insurance premiums in full when due), commercially reasonable insurance deductibles, licenses, permits and inspection fees, a management fee not to exceed three percent (3%) of the Base Rent charged to Tenant, reasonable legal, administrative and accounting expenses, and any other expense or charge whether or not hereinabove described, which in accordance with generally accepted management practices would be considered an expense of maintaining, operating, or repairing the Property, excluding or deducting, as appropriate costs of any special services rendered to individual tenants (including Tenant). Operating Costs shall not include the following:

(A) Costs of repairs, restoration, replacements or other work occasioned by (1) fire, windstorm or other casualty of an insurable nature (whether such destruction be total or partial) and either (aa) payable (whether paid or not) by insurance required to be carried by Landlord under this Lease, or (bb) otherwise payable (whether paid or not) by insurance then in effect obtained by Landlord, (2) the exercise by governmental authorities of the right of eminent domain, whether such taking be total or partial, (3) the negligence or intentional tort of Landlord, or any subsidiary or affiliate of Landlord, or any representative, employee or agent of same (including the costs of any deductibles paid by Landlord), or (4) the act of any other tenant in the Building, or any other tenant's agents, employees, licensees or invitees to the extent Landlord has the right to recover the applicable cost from such person;

(B) Leasing commissions; attorneys' fees, except for those reasonable attorney's fees in connection with enforcing rules and regulations in the Building; costs disbursements and other expenses incurred in connection with negotiations for leases with tenants, other occupants, or prospective tenants or other occupants of the Building, or similar costs incurred in connection with disputes with tenants, other occupants, or prospective tenants, or similar costs and expenses incurred in connection with negotiations or disputes with consultants, management agents, purchasers or mortgagees of the Building;

(C) Allowances, concessions and other costs and expenses incurred in completing, fixturing, furnishing, renovating or otherwise improving, decorating or redecorating space for tenants (including Tenant), prospective tenants or other occupants and prospective occupants of the Building;

(D) Costs of the initial construction of the Building and repairing, replacing or otherwise correcting substantial defects (but not the costs of repair for normal wear and tear) in the original construction of the Base Building;

(E) Costs or expenses relating to another tenant's or occupant's space which (1) were incurred in rendering any service or benefit to such tenant that Landlord was not required, or were for a service in excess of the service that Landlord was required, to provide Tenant hereunder (including without limitation insurance coverage for another tenant's or occupant's leasehold improvements), or (2) were otherwise in excess of the Building standard Services then being provided by Landlord to all tenants or other occupants in the Building, whether or not such other tenant or occupant is actually charged therefor by Landlord;

(F) Payments of principal and interest or other finance charges made on any debt and rental payments made under any ground or underlying lease or leases;

(G) Costs incurred in connection with the sales, financing, refinancing, mortgaging, selling or change of ownership of the Building, including brokerage commissions, attorneys' and accountants' fees, closing costs, title insurance premiums, transfer taxes and interest charges;

(H) Costs, fines, interest, penalties, legal fees or costs of litigation incurred due to the late payments of taxes, utility bills and other costs incurred by Landlord's failure to make such payments when due;

(I) Costs incurred by Landlord for trustee's fees and partnership organizational expenses;

(J) Landlord's income and franchise taxes, special assessments and other business taxes except those business taxes which relate solely to the operation of the Building and the Property;

(K) All amounts which would otherwise be included in operating expenses which are paid to any affiliate or subsidiaries of Landlord, or any representative, employee or agent of same, to the extent the costs of such services exceed the competitive rates for similar services of comparable quality rendered by persons or entities of similar skill, competence and experience;

(L) Costs or expenses of utilities directly metered to tenants of the Building and payable separately by such tenants;

(M) Increased insurance premiums caused by Landlord's or any other tenant's hazardous acts;

(N) Advertising and promotional costs associated with the leasing of the Building, and costs of signs in or on the Building identifying the owners of the Building or any tenant of the Building;

(O) Costs incurred to correct violations by Landlord of any law, rule, order or regulation which was in effect as of the Lease Effective Date;

(P) Electric power costs for which any tenant directly contracts with the local public service company; or

(Q) Charitable or political contributions.

Landlord shall at all times use its best efforts to operate the Building and Property in an economically reasonable manner as those experienced by other comparable buildings in the Greater Seattle area. Tenant's share of Operating Costs shall be limited to \$.87 per square foot per month of data center space for 2009.

**8.1.4. Tenant's Share.** "Tenant's Share" shall mean Tenant's proportionate share of Building Operating Costs, Taxes, and Infrastructure Operating Costs and will vary depending on the cost or expense being allocated.

(a) With respect to Operating Costs attributable to the Building that are primarily variable and are directly associated with and driven by data center tenancy, Tenant's Share shall be the ratio of the occupied raised floor area or server area if not on raised floor in the Premises to the raised floor area or server area if not on raised floor in the entire Building. Operating Costs attributable to the entire Property that are primarily variable and are directly associated with and driven by data center tenancy shall be allocated first to the Building based on the ratio of the total raised floor area of the Building (whether occupied or not) to the total raised floor area of the entire Property (whether occupied or not), and then allocated among the occupants of the Building as provided above.

(b) With respect to Operating Costs that are primarily fixed and do not vary with raised floor occupancy, such as costs of roof maintenance or parking lot maintenance, Tenant's share shall be the ratio of the rentable square footage in the Premises (excluding Office Space) to the rentable square footage in the Building. Such Operating Costs attributable to the entire Property shall first be allocated to the Building based on the ratio of the square footage in the Building to the square footage of the buildings in the Property, and then allocated to occupants of the Building as provided above.

(c) With respect to Taxes and Insurance, Tenant's Share shall be determined by first allocating those costs in the same manner as set forth in Section 8.1.4(a) above.

(d) With respect to Infrastructure Operating Costs, Tenant's Share shall be the ratio of Tenant's reserved UPS unit capacity (initially 750 kW) to the total reserved UPS unit capacity of the Shared Infrastructure.

**8.1.5. Tenant's Utility Charges.** Landlord and Tenant agree that the cost to provide electricity (including electricity required for cooling) to the Premises is not included in the Base Rent. Landlord will estimate the cost of Tenant's electricity usage utilizing meters installed to monitor the energy usage of Tenant's UPS units. The ratio of Tenant's UPS unit electricity usage to the overall Shared Infrastructure UPS unit usage shall be applied to the overall Shared Infrastructure electricity bill to determine Tenant's share of the Shared Infrastructure electricity bill. Tenant shall pay to the Landlord as Additional Rent each month the Landlord's estimate of such charges as set forth in Section 8.2. At the end of each calendar year the Landlord

shall compare the previous 12 months actual charges to its estimates. Any amounts owing shall be paid by Tenant, and credit amounts shall be refunded to Tenant in accordance with Section 8.3. Landlord shall adjust its estimates as provided for in Section 8.3.

**8.2. Payment of Additional Rent for Estimated Operating Costs and Taxes.**

Within thirty (30) days of the Commencement Date or the close of each Lease Year, as applicable, or as soon thereafter as is practicable, Landlord shall provide Tenant with a written statement of Tenant's Share of estimated Building Operating Costs, Taxes, and Infrastructure Operating Costs for such Lease Year. Tenant shall pay 1/12 of the amount of any special or specific Tenant charges, and Tenant's Share of Building Operating Costs, Taxes, and Infrastructure Operating Costs as Additional Rent as provided in Section 4 each month during such Lease Year and until such time as Landlord provides Tenant with a statement of estimated Building Operating Costs, Taxes and Infrastructure Operating Costs for the subsequent Lease Year. If at any time or times during such Lease Year, it appears to Landlord that Tenant's Building Operating Costs, Taxes and Infrastructure Operating Costs will vary from the estimated Building Operating Costs, Taxes and Infrastructure Operating Costs by more than five percent (5%) on an annual basis, Landlord may, by written notice to Tenant, revise its estimate for such Lease Year and Additional Rent payable by Tenant under this Section 8 for such Lease Year shall be increased or decreased based on Landlord's revised estimate.

**8.3. Reconciliation.**

Landlord will make reasonable efforts within ninety (90) days after the close of each Lease Year during the Term hereof for which an estimated statement was delivered to Tenant pursuant to Section 8.2, to deliver to Tenant a written statement ("Reconciliation Statement") setting forth Tenant's actual Building Operating Costs, Taxes and Infrastructure Operating Costs paid or incurred by Landlord during the preceding Lease Year (or such prorated portion of such Lease Year if this Lease commences or terminates on a day other than the first or last day of a Lease Year, based on a 365-day Lease Year). If the actual Building Operating Costs, Taxes and Infrastructure Operating Costs shown on the Reconciliation Statement for any Lease Year exceed estimated Building Operating Costs, Taxes and Infrastructure Operating Costs paid by Tenant to Landlord pursuant to Section 8.3, Tenant shall pay the excess to Landlord as Additional Rent within thirty (30) days after the date of the Reconciliation Statement. If the Reconciliation Statement shows that actual Building Operating Costs, Taxes and Infrastructure Operating Costs are less than the estimated Building Operating Costs, Taxes and Infrastructure Operating Costs paid by Tenant to Landlord pursuant to Section 8.3, then the amount of such overpayment shall be credited by Landlord to the next Additional Rent payable by Tenant (or refunded to Tenant in the event of the termination or expiration of this Lease).

**8.4. Determinations.**

The determination of actual and estimated Building Operating Costs, Taxes and Infrastructure Operating Costs shall be made by Landlord. Landlord or its agent shall keep records in reasonable detail showing all expenditures made for the items enumerated in this Section 8.

Tenant shall have the right at its own cost and expense to review and/or inspect Landlord's records once in any calendar year with respect to any Building Operating Costs, Taxes and Infrastructure Operating Costs shown on Landlord's annual reconciliation statement provided to Tenant. This review/inspection right is limited solely to the prior calendar year based upon the date Tenant provides written notice to Landlord. Tenant shall give Landlord written notice ("Tenant's Notice") of its intention to conduct any such review or inspection on or before thirty (30) days after the date of Tenant's receipt of Landlord's annual reconciliation statement. Tenant's review/inspection shall be conducted by a certified public accounting firm at Landlord's main business office, or at such other location as Landlord may keep its relevant business records, and on a date mutually agreed upon by Landlord and Tenant, but in no event is Landlord required to agree to a date which is earlier than sixty (60) days from the date of Tenant's Notice to Landlord. Landlord agrees that it shall give Tenant said access to review/inspect the business records no later than seventy-five (75) days after Tenant's Notice to Landlord. Tenant must provide written notice to Landlord within one hundred twenty (120) days after Tenant's Notice to Landlord, specifying any and all claims it may have determined in good faith. Tenant agrees to diligently pursue its review/inspection of Landlord's records in order to determine if it concurs or disagrees with Landlord's statement.

Tenant shall be deemed to have waived its review and inspection right, and therefore agree with Landlord's changes, with respect to the period of time covered in Landlord's annual reconciliation statement if any of the following occurs:

Tenant has not notified Landlord in writing on or before thirty (30) days after Tenant's receipt of Landlord's annual reconciliation statement of its intention to conduct its review/inspection,

Tenant has not commenced its review/inspection of Landlord's records at Landlord's office or designated location on or before ninety (90) days after Tenant's Notice to Landlord,

Tenant has not provided written notice to Landlord on or before one hundred twenty (120) days after Tenant's Notice of review/inspection to Landlord, specifying any and all claims it may have determined in good faith.

Except as required by the Washington Public Records Act, ch. 42.56 RCW, and other applicable law, the information and results of any inspection conducted by or on behalf of Tenant shall be kept confidential by Tenant, and the results shall be provided to Landlord within ten (10) business days after the completion of the inspection. All such inspection(s) shall be at the sole cost and expense of Tenant, provided that in the event Tenant's review reasonably determines there is an overcharge of Operating Expenses which has not been credited to Tenant, said overcharge being more than five percent (5%) of Tenant's share of the Operating Expenses, and Landlord does not contest the Tenant's results, then Landlord shall pay Tenant's reasonable out-of-pocket costs of such inspection, not to exceed Two Thousand Dollars (\$2,000). If Landlord desires to contest the result of Tenant's inspection, Landlord may do so within ten (10) business days of its receipt of the inspection results, by submitting the results of the inspection to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, to be conducted by a mutually acceptable single arbitrator with not less than ten (10) years experience as a real estate attorney, or a retired judge with experience in commercial real estate litigation and/or leases. Any overcharge or undercharge determined as a result of Tenant's inspection or by the arbitrator shall be paid by the appropriate party to the other within thirty (30) days after the inspection results are provided to Landlord. In the case of arbitration, the non-prevailing party shall pay to the prevailing party all attorneys fees and costs as provided in Section 24 of this Lease. Nothing in this paragraph shall relieve Tenant of its obligation under Section 8 to pay Additional Rent without notice, demand, offset or deduction.

**8.5. Tenant's Personal Property Taxes.** To the extent Tenant is required to pay Personal Property Taxes, Tenant shall pay prior to delinquency all such taxes payable with respect to all Property of Tenant located on the Premises or the Property and, upon Landlord's request, shall promptly provide Landlord with written proof of such payment or provide Landlord with the applicable tax exemption. Solely for purposes of this Section 8.6, "Property of Tenant" shall include Landlord's Work, Tenant's Work, Tenant's Equipment, including the Data System and all other improvements which are paid for by Tenant, and "Personal Property Taxes" shall include all property taxes assessed against the Property of Tenant, whether assessed as real or personal property.

**9. IMPROVEMENTS AND ALTERATIONS BY TENANT.** Tenant shall not make any changes, alterations, additions or improvements in or to the Premises ("Alterations"), including, without limitation, changes to locks on doors or to cages and wiring, subject to the provisions of Section 19.9 (Default by Landlord), without first obtaining the written consent of Landlord and, where required by Landlord, such Alterations shall be made under the supervision of a competent architect and/or a licensed structural engineer, and in accordance with plans and specifications which meet current building standards for quality and design, approved by Landlord, which approval shall not be unreasonably withheld. All work with respect to any Alterations shall be done in a good and workmanlike manner and shall be diligently prosecuted to completion. In no event shall Tenant's Alterations change or affect the strength, exterior appearance, roof, or the mechanical, electrical, or plumbing services or systems, of the Building without Landlord's consent. Tenant shall reimburse Landlord upon demand for any reasonable sums expended by Landlord for examination and approval of plans and specifications for any and all Alterations. Tenant shall also pay Landlord a sum equal to the reasonable costs incurred by Landlord during any inspection or supervision of any and all Alterations. All damages or injury to the Property caused



by any act or omission of Tenant, or Tenant's officers, contractors, agents, invitees, licensees or employees, or by any persons who may be in or upon the Property with the express or implied consent of Tenant, including but not limited to, damage from cracked or broken glass in windows or doors, shall be paid by Tenant upon demand by Landlord.

**10. ACCESS.** Landlord may restrict access to the Building in accordance with the Building's security system. Tenant shall have at all times during the Lease Term (24 hours of all days) reasonable access to the Premises. Landlord, at Tenant's cost, shall provide Tenant with security access cards to the Building as such cards are a part of the Building's security system (it is recommended that Tenant keep such cards to a maximum of five (5), however Tenant may designate as many people they choose to receive the cards). Tenant shall permit Landlord and its agents to enter the Premises at all reasonable times (except in cases of emergency) for the purpose of inspecting or improving the Premises or the Building, upon advance notice to Tenant, or for performing any of its obligations under this Lease. Nothing contained in this Section 10 shall be deemed to impose any obligation upon Landlord not expressly stated elsewhere in this Lease. When reasonably necessary Landlord may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Tenant by reason of such closure and without such action by Landlord being construed as an eviction of Tenant or release of Tenant from the duty of observing and performing any of the provisions of this Lease, so long as such action does not materially and unreasonably interfere with Tenant's access to the leased Premises. Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective tenants within the period of one hundred eighty (180) days prior to the expiration or sooner termination of the Lease Term. Landlord shall have the right at all times to enter the Premises, with reasonable notice to Tenant, for the purpose of showing the Premises to prospective purchasers or lenders.

## **11. DAMAGE OR DESTRUCTION.**

**11.1. Damage and Repair.** If the Building is damaged by fire or any other cause to such extent that the cost of restoration, as estimated by Landlord, will equal or exceed thirty percent (30%) of the replacement value of the Building (exclusive of foundations) just prior to the occurrence of the damage, or if insurance proceeds sufficient for restoration are for any reason unavailable, then Landlord may no later than the one hundred twentieth (120th) day following the damage, give Tenant a notice of its election to terminate this Lease. In the event of such election; (a) this Lease shall be deemed to terminate on the date that is thirty (30) days from the date of Tenant's receipt of such notice ("Termination Date"); (b) Tenant shall surrender possession of the Premises on the Termination Date; (c) Rent, Additional Rent and any unamortized over the initial Term of this Lease Tenant contribution for Tenant Improvements shall be apportioned as of the date of Tenant's surrender and any Rent or Tenant contribution for Tenant Improvements paid for any period beyond such date shall be repaid to Tenant; and (d) any insurance proceeds paid to Tenant as a result of Tenant's insurance obligations in Section 14.3 shall be paid to Landlord, but only in an amount calculated on a pro rata monthly basis from the date of termination under this Section 11.1 and extending to the Expiration Date.

If the cost of restoration as estimated by Landlord shall amount to less than thirty percent (30%) of said replacement value of the Building and insurance proceeds sufficient for restoration are available, or if Landlord does not elect to terminate this Lease, Landlord shall restore the Building and the Premises to the extent of the improvements to the Premises originally provided by Landlord hereunder, including improvements made by Landlord pursuant to the Work Letter Agreement attached hereto as Exhibit C, and subject to Landlord's receipt of insurance proceeds from Tenant based on Section 14.3, but in all instances limited to a pro rata share based on the remaining time between the date of the damaging event and the Expiration Date, but excluding any improvements made by Tenant, with reasonable promptness, subject to delays beyond Landlord's control and delays in the making of insurance adjustments by Landlord, and Tenant shall have no right to terminate this Lease except as provided in this Section 11.

If this Lease is terminated as a result of damage or destruction, then all insurance proceeds from Tenant's insurance policy on improvements made by Tenant shall be paid to Landlord. To the extent that the Premises are rendered untenable by such damage or by Landlord's restoration work under this Section, the Base Rent, Additional Rent, provided, however, in the event such damage resulted from or was contributed to, directly or indirectly, by the act, fault or neglect of

Tenant, Tenant's officers, contractors, agents, employees, invitees or licensees, Base Rent and Additional Rent shall abate only to the extent Landlord receives proceeds from any rental income insurance policy received by Landlord for loss of Rent under this Lease.

**11.2. Destruction During Last Year of Term.** Notwithstanding anything to the contrary in this Lease, in case the Building shall be substantially destroyed by fire or other cause at any time during the last Lease Year of this Lease, or the last year of any subsequent Renewal Term described in Section 3.3, either Landlord or Tenant may terminate this Lease upon written notice to the other given within thirty (30) days of the date of such destruction.

**11.3. Business Interruption.** No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any damage or destruction, repair or restoration of any portion of the Premises or the Building. Landlord shall use commercially reasonable efforts to make such repairs promptly.

**11.4. Tenant Improvements.** Except for the Shared Infrastructure, Landlord will not carry insurance of any kind on Tenant's furniture, furnishings, fixtures, equipment, including the Data System and Tenant's Equipment, or appurtenances of Tenant under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same. Tenant shall insure its improvements in accordance with Section 14.3 and proceeds of such insurance shall be used in any repair or restoration of the Premises and shall pay its pro rata share of the cost of insuring the Shared Infrastructure.

**11.5. Express Agreement.** The provisions of this Section 11 shall be considered an express agreement governing any case of damage or destruction of the Building or Premises by fire or other casualty.

**12. WAIVER OF SUBROGATION.** Whether loss or damage is due to the negligence of either Landlord or Tenant, their agents or employees, or any other cause, Landlord and Tenant do each hereby release and relieve the other, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage to the real or personal property of either party located anywhere on the Property, including the Building itself, arising out of or incident to the occurrence of any of the perils which are covered, or are required to be covered under this Lease, by their respective property and related insurance policies. Each party shall use best efforts to cause its insurance carriers to consent to the foregoing waiver of rights of subrogation against the other party. Notwithstanding the foregoing, no such mutual release shall be effective unless and to the extent the aforesaid insurance policy or policies shall expressly permit such a release or contain a waiver of the carrier's right to be subrogated.

**13. INDEMNIFICATION.** Landlord shall not be liable for, and Tenant shall defend (unless Landlord waives its right to such defense, and in any event with counsel reasonably satisfactory to Landlord), indemnify, hold harmless and protect Landlord and its employees and agents from any claim, demand, liability, judgment, award, fine, mechanics' lien or other lien, loss, damage, expense, penalty, charge or cost of any kind or character (including reasonable attorney fees and court costs) which may be made, incurred or asserted by Tenant, Tenant's agents or employees, contractors, or any third parties (including but not limited to Landlord's agents, servants or employees), to the extent caused by: (a) any labor dispute involving Tenant or its agents or contractors (but excluding labor disputes involving Landlord or its contractors, subcontractors, or agents); (b) the construction, repair, alteration, improvement, use, occupancy or enjoyment of the Premises by Tenant its contractors, agents, employees and/or customers, licensees, or invitees; (c) injury to, or death of, any person or persons or damage to, or destruction of, any property occurring in, on or about the Premises (d) Tenant's breach of this Lease; (e) infringement or misappropriation of any intellectual property rights, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity or spamming, or any other offensive, harassing or illegal conduct by Tenant or its agents, employees, contractors, agents, invitees or licensees arising from the use of the Premises or the equipment located therein; or (f) Tenant's network or its subcontractor's systems security is breached, including implantation or spread of viruses, malicious acts, denial of service attacks, information theft, unauthorized access or use, and other computer crimes by Tenant or its agents, employees, contractors, agents, invitees or licensees, customers, arising from the use of the Premises or the equipment located therein (the "Claims").

Notwithstanding anything to the contrary in this Section 13, nothing in this Section 13 shall relieve Landlord from responsibility for its proportionate share of its fault attributable to the negligence or willful misconduct of Landlord or its agents or contractors in causing any such Claims and nothing shall require the defense, indemnification, or holding harmless of Landlord by Tenant to the extent such claims result from the negligence or willful misconduct of Landlord or its agents or contractors. TENANT HEREBY WAIVES ITS IMMUNITY WITH RESPECT TO LANDLORD ONLY, UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND/OR THE LONGSHOREMEN'S AND HARBOR WORKER ACT, AND/OR ANY EQUIVALENT ACTS AND TENANT EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY FOR ACTIONS BROUGHT AGAINST LANDLORD BY TENANT'S EMPLOYEES. THIS WAIVER HAS BEEN SPECIFICALLY NEGOTIATED BY THE PARTIES TO THIS LEASE AND TENANT HAS HAD THE OPPORTUNITY TO, AND HAS BEEN ENCOURAGED TO, CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

Tenant shall, at its sole cost and expense, indemnify, defend and hold harmless Landlord and Landlord's subsidiaries and parent corporations, shareholders, members, managers, directors, officers, employees, partners, affiliates, and agents from, any claims, liabilities, costs or expenses incurred or suffered arising in connection with any Hazardous Materials which are brought on the Premises or the Property by Tenant, Tenant's employees, agents, vendors, visitors or contractors. Tenant's indemnification, defense, and hold harmless obligations include, without limitation, the following: (i) claims, liability, costs or expenses resulting from or based upon administrative, judicial (civil or criminal) or other action, legal or equitable, brought by any private or public person under common law or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1980 ("RCRA") or any other Federal, State, County, or Municipal law, ordinance, or regulation now or hereafter in effect; (ii) claims, liabilities, costs or expenses pertaining to the indemnification, monitoring, clean-up, containment or removal of Hazardous Materials from soils, riverbeds or aquifers including the provision of an alternative public drinking water source; (iii) all costs of defending such claims; and (iv) all other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation. This indemnity shall survive the expiration or termination of this Lease.

Tenant shall not be liable for, and Landlord shall defend (unless Tenant waives its right to such defense, and in any event with counsel reasonably satisfactory to Tenant), indemnify, hold harmless and protect Tenant and its employees and agents from any claim, demand, liability, judgment, award, fine, mechanics' lien or other lien, loss, damage, expense, penalty, charge or cost of any kind or character (including reasonable attorneys' fees and court costs) which may be made, incurred or asserted by Landlord, Landlord's agents or employees, contractors, or any third parties (including but not limited to Tenant's agents, servants or employees), to the extent caused by: (a) any labor dispute involving Landlord or its agents or contractors (but excluding labor disputes involving Tenant or its contractors, subcontractors, or agents); (b) the construction, repair, alteration, improvement, use, occupancy or enjoyment of the Building by Landlord its contractors, agents, employees and/or customers, licensees, or invitees; (c) injury to, or death of, any person or persons or damage to, or destruction of, any property occurring in, on or about the Premises to the extent caused by Landlord's contractors, agents, employees and/or customers, licensees, or invitees; or (d) Landlord's breach of this Lease (the "Claims"). Notwithstanding anything to the contrary in this Section 13, nothing in this Section 13 shall relieve Tenant from responsibility for its proportionate share of its fault attributable to its negligence or willful misconduct in causing any such Claims. LANDLORD HEREBY WAIVES ITS IMMUNITY WITH RESPECT TO TENANT ONLY, UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND/OR THE LONGSHOREMEN'S AND HARBOR WORKER ACT, AND/OR ANY EQUIVALENT ACTS AND LANDLORD EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY FOR ACTIONS BROUGHT AGAINST TENANT BY LANDLORD'S EMPLOYEES. THIS WAIVER HAS BEEN SPECIFICALLY NEGOTIATED BY THE PARTIES TO THIS LEASE AND LANDLORD HAS HAD THE OPPORTUNITY TO, AND HAS BEEN ENCOURAGED TO, CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

Landlord shall, at its sole cost and expense, indemnify, defend and hold harmless Tenant and Tenant's elected officials, directors, officers, employees, and agents from, any claims, liabilities, costs or expenses incurred or suffered arising in connection with any Hazardous Materials which are brought on the Premises or the Property by Landlord, Landlord's employees, agents, vendors, visitors or contractors. Landlord's indemnification, defense, and hold harmless obligations include, without limitation, the following: (i) claims, liability, costs or expenses resulting from or based upon administrative, judicial (civil or criminal) or other action, legal or equitable, brought by any private or public person under common law or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1980 ("RCRA") or any other Federal, State, County, or Municipal law, ordinance, or regulation now or hereafter in effect; (ii) claims, liabilities, costs or expenses pertaining to the indemnification, monitoring, clean-up, containment or removal of Hazardous Materials from soils, riverbeds or aquifers including the provision of an alternative public drinking water source; (iii) all costs of defending such claims; and (iv) all other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation. This indemnity shall survive the expiration or termination of this Lease.

#### **14. INSURANCE.**

**14.1. Worker's Compensation.** Commencing on the earlier of the Commencement Date or the date Tenant first enters onto the Premises and continuing throughout the Term of this Lease and any renewal hereof, Tenant shall, at its own expense, keep and maintain in full force and effect all required worker's compensation coverages, including employer's liability at a limit of not less than One Million Dollars (\$1,000,000).

**14.2. Liability Insurance.** Commencing on the earlier of the Commencement or the date Tenant first enters onto the Premises, Tenant shall, throughout the Term of this Lease and any renewal hereof, at its own expense, keep and maintain in full force and effect, a policy of commercial general liability insurance on an occurrence form, at least as broad as Insurance Services Office form CG00 01 current edition insuring activities upon, in or about the Premises or the Building against claims of injury to persons including death and property damage with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. General aggregate shall apply on a per location basis.

**14.3. Property Insurance.** Tenant shall, throughout the Term of this Lease and any renewal hereof, at its own expense, keep and maintain in full force and effect special form perils coverage, including business interruption insurance with limits of liability representing at least one (1) year of rent on Tenant's furniture, furnishings, fixtures, personal property, and equipment, and on any improvements and alterations to the Premises made by Tenant, including without limitation, any improvements made by Landlord pursuant to the Landlord's Work contained in Exhibit C and attached hereto and on all Tenant's furniture, furnishings, fixtures, equipment and appurtenances, including the Data System and Tenant's Equipment, at one hundred percent (100%) of the current replacement cost value on an agreed amount basis

Landlord is not required to carry insurance of any kind on Tenant's furniture, furnishings, fixtures, personal property, and equipment and on any improvements and alterations to the Premises made by Tenant, including without limitation, any improvements made by Landlord on behalf of Tenant pursuant to a Tenant allowance or credit under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same.

Landlord shall maintain at its expense all risk property insurance on the building, appurtenances, fixtures and equipment other than property for which Tenant is responsible at one hundred percent (100%) of the current replacement cost value or an agreed amount basis.

**14.4. Automobile Liability Insurance Requirements.** Tenant shall maintain automobile coverage with a combined single limit of not less than One Million Dollars (\$1,000,000). Coverage shall apply to any owned, non-owned or hired automobiles.

**14.5. Insurance Policy Requirements.** All policies of insurance required under this Section 14 shall be with companies reasonably approved by Landlord. No insurance policy required under this Section 14 shall be cancelled or reduced in coverage except after forty-five (45) days (ten (10) days for non-payment of premium) prior written notice to Landlord. All insurers shall have a Best's rating of AV or better. The property and liability policies required under this Section 14 shall be written as primary policies and not contributing to or in excess of any coverage Landlord may choose to maintain. Tenant shall make available for inspection by Landlord prior to occupancy or entrance onto the Premises and at least annually thereafter, at the King County offices of Risk Management, copies of policies of such insurance or certificates with endorsement, evidencing the existence of the minimum required insurance. In no event shall the limits of any insurance policy required under this Section 14 be required under this Section 14 be considered as limiting the liability of Tenant under this Lease.

In no event shall the limits or coverages required to be carried be considered as necessarily adequate nor limiting the liability of Tenant under this Lease.

**14.6. Self-Insurance.** Landlord hereby consents to Tenant's right to comply with and satisfy the obligations contained in this Section 14 as to maintenance of policies of insurance by acting as a self-insurer as to the applicable insurance coverage, King County, a charter county government under the constitution of the State of Washington, hereinafter referred to as "Tenant", maintains a fully funded Self-Insurance program as defined in King County Code 4.12 for the protection and handling of the County's liabilities including injuries to persons and damage to property.

Landlord acknowledges, agrees and understands that the Tenant is self-funded for all of its liability exposures. The Tenant agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this Lease Agreement. The Tenant agrees to provide the Landlord with at least 30 days prior written notice of any material change in the County's self-funded program and will provide the Landlord with a certificate of self-insurance as adequate proof of coverage. Landlord further acknowledges, agrees and understands that the Tenant does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Tenant does not have the ability to add the Landlord as an additional insured.

Should the Tenant elect to cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Tenant agrees to add the Landlord as an additional insured and comply with Section 14 above.

**14.7. Failure to Maintain Insurance.** If Tenant fails to maintain its self-insurance program described above and fails or refuses to purchase and maintain any insurance required in Section 14, Landlord may, at its option, procure insurance for Landlord's benefit and/or interests and any and all reasonable premiums paid by Landlord therefore shall be deemed Additional Rent and shall be due on demand. Landlord will not be responsible to procure insurance for Tenant's interests and/or benefit.

**14.8. Increased Insurance Costs.** Tenant shall not keep, use, sell or offer for sale in or upon the Premises, nor conduct any operation, which may be prohibited by Landlord's insurance carriers. Tenant shall pay any increase in premiums for property and liability insurance that may be charged during the Lease Term on the amount of such insurance which may be carried by Landlord on the Premises or the Building or Buildings of which they are a part, resulting from Tenant's occupancy or from the type of merchandise which Tenant stores or sells on the Premises, whether or not Landlord has consented thereto. In determining whether increased premiums are the result of Tenant's use of the Premises, rates and/or premiums determined by the organization and/or underwriter setting the insurance rates and/or charges on the Premises or Building or Buildings of which they are a part shall be conclusive evidence of the several items and charges which make up

the insurance premium. Landlord shall deliver bills for such additional premiums to Tenant at such times as Landlord may elect, and Tenant shall immediately reimburse Landlord therefore.

## **15. ASSIGNMENT AND SUBLETTING.**

**15.1. Assignment or Sublease.** Tenant shall not assign, mortgage, encumber or otherwise transfer this Lease, sublet the whole or any part of the Premises, or allow any third party to use the Premises, without in each case first obtaining Landlord's prior written consent, which consent may not be unreasonably conditioned, delayed or withheld. Tenant also acknowledges that any right of first refusal, option to extend the Term of this Lease, terminate this Lease, or any other options which Landlord has granted herein are particular to Tenant are not assignable or transferable to any assignee or sublessee under this Lease and will terminate upon any such assignment, transfer, sublease or other grant of occupancy rights with respect to the Premises, except to a Permitted Assignee.

In no event shall an assignment, subletting or other transfer of the Lease relieve Tenant of any of its obligations under this Lease. Consent to any such assignment, subletting or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, subletting or transfer.

If Tenant is a corporation, any transfer of this Lease by merger, consolidation or liquidation, or any change in the ownership of a majority of its outstanding voting stock, or power to vote a majority of its outstanding voting stock, shall constitute an assignment for the purpose of this Section 15; provided, however, for the purposes of this Section 15, a public offering of stock registered with the SEC, shall not constitute a transfer. If Tenant is a partnership, limited liability company, or other entity, any transfer of this Lease by merger, consolidation, liquidation, dissolution, or any change in the ownership of a majority of the ownership and/or economic interests shall constitute an assignment for the purpose of this Section 15.

Tenant shall have the right, without Landlord's consent, to sublet or assign the Premises or any part thereof to any subsidiary of Tenant or to any entity which controls or is under the common control of Tenant ("Permitted Assignee"). Furthermore, provided that the successor to Tenant resulting from a merger, consolidation or other corporate restructuring has a net worth of equal or greater value to Tenant just prior to such merger, consolidation or other corporate restructuring, Landlord's consent to any such subletting or assignment shall not be required. Tenant may also allow any person or company which is a client and/or customer of Tenant or which is providing service to Tenant or one of Tenant's clients (i.e., service level, outsourcing and/or management) to occupy, use and/or operate from certain portions of the Premises without such occupancy, use or operation being deemed an assignment or subleasing as long as no new demising walls are constructed to accomplish such occupancy, use and/or operation and as long as such relationship was not created as a subterfuge to avoid the obligations set forth in the Sublease provisions of the Lease document.

**15.2. Documentation and Expenses.** In connection with each request for an assignment or subletting Tenant shall: (i) submit in writing to Landlord the name and legal composition of the proposed subtenant or assignee, the nature of the proposed subtenant's or assignee's business to be carried on in the Premises, the terms and provisions of the proposed sublease or assignment and such reasonable financial information as Landlord may request concerning the proposed subtenant or assignee; and (ii) pay Landlord's reasonable costs of processing such assignment or subletting, including attorneys' fees, upon demand of Landlord. Tenant shall provide Landlord with copies of all assignments, subleases and assumption instruments.

**15.3. Transferee Obligations.** As a condition to Landlord's approval of an assignment, any potential assignee otherwise acceptable to Landlord shall assume, in writing, all of Tenant's obligations under this Lease and Tenant and such assignee shall agree, in writing, to be jointly and severally liable for the performance of all of Tenant's obligations under this Lease. As a condition to Landlord's approval, any sublessee otherwise acceptable to Landlord shall assume, in writing, all of Tenant's obligations under this Lease as to the subleased portion of the Premises and Tenant and such sublessee shall agree, in writing, to be jointly and severally liable with Tenant for Rent and performance of all of the terms, covenants, and conditions of such approved sublease. If an assignment or sublease is consented to by Landlord, then the Tenant shall pay all costs incurred

in connection therewith (including any lease commissions and lease concessions), and the assignment or sublease shall state that all payments from the assignee or sublessee shall be paid directly to Landlord. In connection with a permitted assignment or sublease, so long as the Tenant is not in default under this Lease, Landlord shall grant to Tenant a credit against the monthly rental due under this Lease in the amount of the rental actually received by Landlord under the assignment or sublease for that month, calculated on a per square foot basis, and based upon the portion of the Premises covered by the assignment or sublease. The maximum credit for any month under this subsection (a) shall be equal to the per square foot rental due under this Lease. (By way of example only, if the then applicable monthly rental under this Lease is \$2.50 per square foot, and there is a sublease providing for monthly rental of \$2.75 per square foot, then the maximum monthly credit under this subsection (a) shall be \$2.50 per square foot times the number of square feet covered by the sublease, and with the credit being applicable only once the payment is received by Landlord from the sublessee.) If in any month Tenant is entitled to a credit under this subsection (a), but the credit arises after the Tenant has paid in full the rental due under this Lease for that month, then Landlord shall pay the amount of the credit within five (5) business days after the date that the payment is received by Landlord from the assignee or sublessee.

**16. SIGNS.** Tenant shall not inscribe any inscription, or post, place, or in any manner display any sign, graphics, notice, picture, placard or poster, or any advertising matter whatsoever, anywhere in or about the Property at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Premises without first obtaining Landlord's written consent, such consent to be at Landlord's sole discretion. Any such consent by Landlord shall be upon the understanding and condition that Tenant shall remove the same at the expiration or sooner termination of this Lease and Tenant, at its expense, shall repair any damage to the Property, or any portion thereof, caused by such removal. Notwithstanding the foregoing, if Tenant is permitted to place signage on the Building such signage must be pre-approved by Landlord's architect and must comply with local laws. The cost of such signage, maintenance, repair and operation shall be borne exclusively by Tenant.

**17. LIENS.** Tenant has no authority to allow any liens to be placed against the Property. Tenant shall keep its interest in this Lease, any property of Tenant located on the Property, and the Property free from any liens arising out of any work performed or materials ordered or obligations incurred by or on behalf of Tenant and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any liability from any such lien, including without limitation, liens arising from Tenant's Work. In the event any lien is filed against the Property, or any portion thereof, by any person claiming by, through or under Tenant, Tenant shall, upon request of Landlord and at Tenant's expense, immediately either cause such lien to be released of record or furnish to Landlord a bond, in form and amount and issued by a surety, satisfactory to Landlord, indemnifying Landlord and the Property against all liability, costs and expenses, including attorneys' fees, which Landlord may incur as a result thereof. Provided that such bond has been furnished to Landlord, Tenant, at its sole cost and expense and after written notice to Landlord, may contest, by appropriate proceedings conducted in good faith and with due diligence, any lien, encumbrance or charge against the Property arising from work done or materials provided to and for Tenant, if, and only if, such proceedings suspend the collection thereof against Landlord, Tenant and the Property and neither the Property nor any part thereof or interest therein is or will be, in Landlord's sole judgment, in any danger of being sold, forfeited or lost.

## **18. BANKRUPTCY.**

**18.1. Assumption of Lease.** In the event Tenant becomes a Debtor under Chapter 7 of the Bankruptcy Code ("Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 of the Code and is transferred to Chapters 11 or 13 of the Code, the Trustee or Tenant, as Debtor and as Debtor-In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has cured all defaults under the Lease and paid all sums due and owing under the Lease or provided Landlord with "Adequate Assurance" (as defined below) that: (i) within ten (10) days from the date of such assumption, the Trustee or Tenant will completely pay all sums due and owing under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default or breach of this Lease, including without limitation, Landlord's

reasonable costs, expenses, accrued interest, and attorneys' fees incurred as a result of the default or breach; (ii) within twenty (20) days from the date of such assumption, the Trustee or Tenant will cure all non-monetary defaults and breaches under this Lease, or, if the nature of such non-monetary defaults is such that more than twenty (20) days are reasonably required for such cure, that the Trustee or Tenant will commence to cure such non-monetary defaults within twenty (20) days and thereafter diligently prosecute such cure to completion; and (iii) the assumption will be subject to all of the provisions of this Lease.

**18.1.1. Definition of Adequate Assurances.** For purposes of this Section 18, Landlord and Tenant acknowledge that in the context of a bankruptcy proceeding involving Tenant, at a minimum, "Adequate Assurance" shall mean: (i) the Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease; and (ii) the Bankruptcy Court shall have entered an Order segregating sufficient cash payable to Landlord and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in or on property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults and breaches under this Lease within the time periods set forth above; and (iii) the Trustee or Tenant, at the very minimum, shall deposit a sum equal to two (2) month's Base Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

**18.2. Assignment of Lease.** If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 18 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of this Lease, including, without limitation, those with respect to Additional Rent. Landlord and Tenant acknowledge that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment.

**18.3. Adequate Protection.** Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor-In-Possession, and any Trustee who may be appointed agree to adequately protect Landlord as follows: (i) to perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by Order of the Bankruptcy Court; (ii) to pay all monetary obligations required under this Lease, including without limitation, payment of Rent and Additional Rent payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises; (iii) provide Landlord a minimum of thirty (30) days prior written notice, unless a shorter period is agreed to in writing by the parties, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and (iv) to perform to the benefit of Landlord as otherwise required under the Code. The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease.

## **19. DEFAULT.**

**19.1. Cumulative Remedies.** All rights of Landlord in this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law in force when the default occurs or in equity. In addition to the other remedies provided in this Lease, Landlord shall be entitled to restrain by injunction (without bond) the violation or attempted violation of any of the covenants, agreements or conditions of Tenant under this Lease.

**19.2. Tenant's Default; Right to Cure.** The failure of Tenant to perform any obligation of Tenant as provided in this Lease shall be a default under this Lease. Tenant shall have a period of five (5) business days from the date of Tenant's receipt of written notice from Landlord to Tenant within which to cure any default in the payment of Rent. Tenant shall have a period of ten (10) business days from the date of written notice from Landlord to Tenant to cure any



other default under this Lease; provided, however, that with respect to any such default which cannot be cured within such ten (10) day period, the default shall not be deemed to be uncured if Tenant commences to cure within ten (10) days and for so long as Tenant is diligently prosecuting the cure thereof, but in no event longer than ninety (90) days. If the nature of the default is one that can be cured immediately (e.g. turn off loud music, take unauthorized sign off door, etc.), Tenant will use its best efforts to cure immediately. Notwithstanding anything herein to the contrary, if Tenant is in default under any covenant, condition, or agreement of this Lease more than one (1) time within any twelve (12) month period, irrespective of whether or not such default is cured, Landlord, at its sole election, in its sole and absolute discretion, and without notice to Tenant, may exercise any and all of its available rights and remedies.

**19.3. Landlord's Rights And Remedies.** Upon the occurrence of an uncured default by Tenant, Landlord, in addition to all other rights or remedies it may have, at its option, may exercise any one or more of the following rights without further notice or demand of any kind to Tenant or any other person, except as required by applicable State law:

**19.3.1. Termination of Lease.** The right of Landlord to terminate this Lease and Tenant's right to possess the Premises and to reenter the Premises, take possession thereof and remove all persons from the Premises, following which Tenant shall have no further claim thereon or hereunder; provided, however, that Tenant shall remain obligated as provided in Section 19.4 below.

**19.3.2. Re-entry of the Premises.** The right of Landlord, without terminating this Lease and Tenant's right to possess the Premises, to reenter the Premises and occupy the whole or any part of the Premises for and on account of Tenant and to collect any unpaid Rents which have become payable, or which may thereafter become payable; provided, however, that Tenant shall remain obligated as provided in Section 19.4 below.

**19.3.3. Termination After Reentry.** The right of Landlord, even though it may have reentered the Premises in accordance with Section 19.3.2, to elect thereafter to terminate this Lease and Tenant's right to possess the Premises; provided, however, that Tenant shall remain obligated as provided in Section 19.4 below.

Should Landlord reenter the Premises under Section 19.3.2, Landlord shall not be deemed to have terminated this Lease or to have accepted a surrender thereof by any such reentry, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease and Tenant's right of possession. Tenant further covenants that Landlord's service of any notice pursuant to the unlawful detainer statutes of the State of Washington and Tenant's surrender of possession pursuant to such notice shall not (unless Landlord elects in writing to the contrary at the time of, or at any time subsequent to, the serving of such written notice and such election is evidenced by a notice to Tenant) be deemed to be a termination of this Lease.

**19.4. Landlord's Damages.** If Landlord terminates this Lease and/or Tenant's right to possession of the Premises pursuant to the terms of this Section 19, Landlord may recover from Tenant as damages, all of the following:

**19.4.1. Delinquent Rent.** The worth at the time of award of any unpaid Rent earned at the time of such termination;

**19.4.2. Rent After Termination Until Judgment.** The worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds such rent loss Tenant proves could have been reasonably avoided;

**19.4.3. Rent After Judgment.** The worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided;

**19.4.4. Leasing Concessions.** The unamortized portion of any financial concessions incurred by Landlord on Tenant's behalf to arrange for Tenant's leasing of the

Premises that Landlord conditionally waived at the commencement of the Lease in consideration of Tenant's full performance of this Lease, but which upon termination of the Lease pursuant to this Section 19 shall accrue as Rent, which costs include, but are not limited to, leasing commissions, tenant allowances and improvements (including without limitation, the cost of any improvements to the Premises by Landlord pursuant to Exhibit C), "free rent" allowances and other such concessions in this Lease, amortized on a straight-line basis over the number of months during the Lease Term in which Tenant is obligated to pay Base Rent, and such amounts shall become immediately due and payable as Rent earned at the time of such termination of the Lease;

**19.4.5. Other Compensation.** Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result there from, including, without limitation, any cost or expense incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorney fees therefore, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs necessary to the Premises for such reletting, (iv) leasing commissions, limited to those years remaining in the initial term, and (v) any other costs necessary or appropriate to relet the Premises; and

**19.4.6. Additional or Alternative Damages.** At Landlord's election, such other amounts in addition to or in lieu of the foregoing in this Section 19.4 as may be permitted from time to time by the laws of the State of Washington; and

**19.4.7. Calculation of Damages.** As used in Sections 19.4.1 and 19.4.2, the "worth at the time of award" is to be computed by allowing interest at the rate specified in Section 4.2. As used in Section 19.4.3, the "worth at the time of award" is computed by discounting such amount at a discount rate equal to six percent (6%) per annum. All Rent, other than Base Rent, shall, for the purposes of calculating any amount due under the provisions of Section 19.4.3 be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute such rent before such a sixty (60) month period has occurred, then such rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

**19.5. Tenant's Property.** Without limiting any of Landlord's rights under this Lease, in the event of a termination of this Lease pursuant to Section 19, any of Tenant's property which, pursuant to this Lease, may be removed by the Tenant (not including attached furniture and equipment specified on Exhibit C-1) shall be removed by Tenant immediately upon demand by Landlord. If not so removed by Tenant, Landlord may remove such property from the Premises and place it in storage at a public warehouse at the expense and risk of Tenant, after which it shall be subject to the sale provisions of Section 21. Without limiting any of Landlord's rights under this Lease, in the event of a termination of this Lease pursuant to Section 19, all attached furniture and equipment specified on Exhibit C-1 shall, at Landlord's election, be deemed real property and shall be Landlord's property as part of the Premises upon termination.

**19.6. No Waiver.** The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. Landlord's subsequent acceptance of partial rent or performance by Tenant shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of Landlord's acceptance. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

**19.7. Waiver of Notice.** Notwithstanding anything to the contrary in this Section 19, Tenant waives (to the fullest extent permitted under law) any written notice, other than such notice as this Section 19 or any other provision of this Lease specifically requires, which any statute or law now or hereafter in force prescribes be given Tenant.

**19.8. Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under it, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law, to redeem the Premises or to have a continuance of this Lease for the term hereof, as it may have been extended, after having been dispossessed or ejected there from by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

**19.9. Default by Landlord.** Landlord's failure to perform or observe any of its obligations under this Lease or to correct a breach of any warranty or representation made in this Lease, including maintaining levels of performance for operation of Tenant's data center related to Landlord's Work as provided in the Approved Plans attached as Attachment 1 to Exhibit C (Work Letter Agreement), within thirty (30) days after receipt of written notice from Tenant setting forth in reasonable detail the nature and extent of the failure referencing pertinent Lease provisions or if more than thirty (30) days is required to cure the breach, Landlord's failure to begin curing within the thirty (30) day period and diligently prosecute the cure to completion, shall constitute a default. If Landlord commits a default that materially affects Tenant's use of the Premises, and Tenant has provided simultaneous written notice thereof to Landlord's mortgagee (if any and if Tenant has notice thereof) and Landlord (and/or Landlord's mortgagee if any) has failed to commence to cure such default within thirty (30) days (or such shorter time as is commercially reasonable in the case of an emergency threatening imminent harm to persons or property), Tenant may, without waiving any claim for damages or other relief for breach of agreement, thereafter cure the default for the account of the Landlord, which cure shall be preceded by an additional written notice given at least three (3) days prior to such cure to Landlord and Landlord's mortgagee that Tenant plans to undertake the cure, and the reasonable cost of such cure shall be deemed paid or incurred for the account of Landlord, and Landlord shall reimburse Tenant for Tenant's out-of-pocket expenditures paid to third parties to effectuate such cure, such reimbursement to be within thirty (30) days after completion of the cure and invoice to Landlord showing the costs of cure. If Landlord disputes either the necessity of the cure or the cost thereof, the matter shall be settled by arbitration administered by the American Arbitration Association in accordance with its Rules for the Real Estate Industry before a single neutral arbitrator of the American Arbitration Association sitting in Seattle, Washington. The arbitrator shall be a person having at least ten (10) years' experience and knowledge about commercial leasing and property management. The arbitration shall be held within sixty (60) days of Landlord notifying Tenant it disputes Tenant's cure. The costs of the arbitrator shall be shared equally by the parties. The prevailing party shall be entitled to an award of reasonable attorney's fees. The arbitrator's award shall be final and binding on the parties.

**20. SUBORDINATION AND ATTORNMENT.** This Lease shall be subordinate to any mortgage or deed of trust now existing or hereafter placed upon the Land, the Building or the Premises, created by or at the instance of Landlord, and to any and all advances to be made hereunder and to interest thereon and all modifications, renewals and replacements or extensions thereof ("Landlord's Mortgage"); provided, however, that the holder of any Landlord's Mortgage or any person or persons purchasing or otherwise acquiring the Land, Building or Premises at any sale or other proceeding under any Landlord's Mortgage may elect to continue this Lease in full force and effect and, in such event, Tenant shall attorn to such person or persons. Notwithstanding the foregoing, if a lender requires that the Lease be subordinate to any mortgage recorded after the date of the Lease affecting the Property, the Lease shall be subordinate to such mortgage if Landlord first obtains from such lender a written statement providing that so long as Tenant performs its obligations under the Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the mortgage, and no steps or procedures, taken under the mortgage, shall affect Tenant's rights under this Lease; provided, however, then the holder of Landlord's Mortgage, or any person or persons purchasing or otherwise acquiring the Land, Building or Premises at any sale or other proceeding under any Landlord's Mortgage, shall not be subject to any option to purchase, or right of first refusal to purchase, granted to Tenant in connection with this Lease.

Tenant shall execute, acknowledge and deliver documents, which the Holder of any Landlord's Mortgage may require to effectuate the provisions of this Section 20 within ten (10) days of the date of Landlord's request therefore. In the event of any transfer of Landlord's interest in the Premises or in the Property, other than a transfer for security purposes only, the transferor shall be

automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer and such transferee shall have no obligation or liability with respect to any matter occurring or arising prior to the date of such transfer. Tenant agrees to attorn to such transferee, provided transferee assumes all of Landlord's responsibilities. If any holder of any Landlord's Mortgage shall request reasonable modifications to this Lease, Tenant shall not unreasonably withhold, delay or defer its consent thereto, provided such modifications do not have a materially adverse affect on Tenant's rights hereunder.

**21. REMOVAL OF PROPERTY.** Subject to Section 19.5, upon the expiration of this Lease, Tenant shall remove Tenant's personal property not permanently affixed to the Premises or as specified on Exhibit C-1, and shall pay Landlord any damages for injury to the Premises or Property resulting from such removal. If Tenant fails to remove any such property from the Premises at the expiration of this Lease, Landlord may remove and store said property without liability for loss thereof or damage thereto. Such storage shall be for the account and at the expense of Tenant. If Tenant fails to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, or if Tenant has not removed the property from the Premises after a thirty (30) day period, Landlord may, at its option, sell, or permit to be sold, any or all such property at public or private sale, in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant, unless notice is required under applicable statutes, and shall apply the proceeds of such sale first, to the cost and expense of such sale, including reasonable attorneys' fees actually incurred; second, to the payment of the costs or charges for storing any such property; third, to the cost of removal of such property and the restoration of the Premises following such removal; fourth, to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms of this Lease; and, fifth, the balance, if any, shall be paid to Tenant. Notwithstanding the foregoing, with respect to any conduit or cable installed in the Building by or on behalf of Tenant, Landlord shall have the right, at its option, in its sole discretion, on the Expiration Date, to take possession of such conduit and cable and, upon exercise of such right, Landlord shall be the owner thereof notwithstanding anything to the contrary contained in this Lease. Tenant agrees to execute and deliver any necessary documentation to effectuate the transfer of ownership of the conduit and cable to Landlord.

## **22. CONDEMNATION.**

**22.1. Entire Taking.** If all of the Premises, or such portion of the Building as may be required for the reasonable use of the Premises, in Landlord's determination, are taken by eminent domain, this Lease shall automatically terminate as of the date title vests in the condemning authority and all Rent, Additional Rent and other payments shall be paid to that date. Should termination occur prior to the twelfth (12<sup>th</sup>) year of this Lease, Landlord shall refund to Tenant a pro rata share of the Additional Rent paid for Tenant Improvements based on a twelve (12) year amortization of the Tenant Contribution paid for Tenant Improvements.

**22.2. Constructive Taking of Entire Premises.** In the event of a taking by eminent domain of a material part of but less than all of the Building, if Landlord determines that the remaining portions of the Building cannot be economically and effectively used by it (whether on account of physical, economic, aesthetic or other reasons) or if Landlord determines the Building should be restored in such a way as to materially alter the Premises, then Landlord shall forward a written notice to Tenant of such determination not more than sixty (60) days after the date of taking. The Term of this Lease shall expire upon the date specified by Landlord in such notice but not earlier than sixty (60) days after the date of such notice. Should Landlord provide Tenant with written notice of termination pursuant to this Section 22.2 prior to the twelfth (12<sup>th</sup>) year of this Lease, Landlord shall refund to Tenant a pro rata share of the Tenant's Contribution paid for Tenant Improvements based on a twelve (12) year amortization of the Additional rent paid for Tenant Improvements.

**22.3. Partial Taking.** Subject to the provisions of the preceding Section 22.2, in case of taking by eminent domain of a part of the Premises, or a portion of the Building not required for the reasonable use of the Premises, then this Lease shall continue in full force and

effect and the Rent shall be equitably reduced based on the proportion by which the floor area of the Premises is reduced, such Rent reduction to be effective as of the date title to such portion vests in the condemning authority. If more than twenty-five percent (25%) of the Premises is taken and Landlord cannot replace such space with space in the Building, which is mutually acceptable to Landlord and Tenant, then with sixty (60) days written notice by either party, Landlord or Tenant shall have the right to terminate this Lease.

**22.4. Awards and Damages.** Landlord reserves all rights to damages to the Premises for any partial, constructive, or entire taking by eminent domain, and Tenant hereby assigns to Landlord any right Tenant may have to such damages or award, and Tenant shall make no claim against Landlord or the condemning authority for damages for termination of the leasehold interest or interference with Tenant's business. Tenant shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Tenant may be put for Tenant's moving expenses, business interruption or taking of Tenant's personal property (not including Tenant's leasehold interest) provided that such damages may be claimed only if they are awarded separately in the eminent domain proceedings and not out of or as part of and/or will not reduce any damages recoverable by Landlord.

**23. NOTICES.** All notices under this Lease shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, or by facsimile, or by private overnight courier to Landlord, Landlord's Mortgagee (if any) and Tenant at their respective Notice Addresses set forth in Section 1.17 (provided that after the Commencement Date any such notice shall be mailed, delivered by hand or transmitted by facsimile to Tenant at the Premises) or such other addresses as may from time to time be designated by amending applicable provisions of this Lease in writing. Notices mailed as provided in this Section shall be deemed given and received on the date that is three (3) business days following the date of post mark, in the case of mailing, or the date of transmission confirmation by the sender's facsimile machine, in the case of facsimile transmission, or one (1) day after deposit with a private overnight courier.

**24. COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord brings any action for any relief against the other, declaratory or otherwise, including arbitration as provided in Section 8.4, arising out of this Lease, each party shall, and hereby does to the extent permitted by law, waive trial by jury and the losing party shall pay the substantially prevailing party's attorneys' fees in connection with such suit, at trial and on appeal, and such attorneys' fees shall be deemed to have accrued on the commencement of such action.

**25. LANDLORD'S LIABILITY.** Notwithstanding anything in this Lease to the contrary, covenants, undertakings and agreements herein made on the part of Landlord in this Lease are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord (except Landlord's interest in the Premises and Building), but are made and intended for the purpose of binding only the Landlord's interest in the Premises and Building, as the same may from time to time be encumbered. Notwithstanding anything to the contrary herein, Landlord's maximum aggregate liability to Tenant shall be limited to the total amount of Rent and Additional Rent for Tenant Improvement work paid to Landlord hereunder during the initial term hereof. No personal liability or personal responsibility is assumed by Landlord, nor shall at any time be asserted or enforceable against Landlord or its heirs, legal representatives, successors or assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease. In no event shall Landlord be liable for lost profits, business interruption (except as to services provided in Exhibit C-2 and then limited to the actual cost of establishing alternative datacenter space, but limited to the amount of Base Rent and Additional Rent calculated on a monthly basis), incidental, special or punitive damages. In no event shall any incidental, consequential, special, exemplary, speculative, or punitive damages, including without limitation any claims for lost or imputed revenues, profits, and/or business opportunities be part of any Landlord liability.

**26. LANDLORD'S CONSENT.** Except as may be provided otherwise in this Lease, whenever Landlord's consent is required under this Lease, such consent shall not be unreasonably withheld, conditioned or delayed, provided, however, Landlord's withholding of consent due to any mortgagee's refusal to grant its consent shall not be deemed unreasonable.

**27. ESTOPPEL CERTIFICATES.** Tenant shall, from time to time upon the written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement stating: the Effective Date, Commencement Date and Expiration Date, the date the term commenced and the date Tenant accepted the Premises; the amount of Base Rent and the date to which such Base Rent and Additional Rent has been paid; and certifying such additional information as may be requested by Landlord. It is intended that any such statement delivered pursuant to this Section may be relied upon by Landlord and/or a prospective purchaser or mortgagee who may acquire an interest in, or a lien upon, Landlord's interest in the Building. If Tenant shall fail to respond within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee and to have certified that this Lease is in full force and effect, that this Lease represents the entire agreement between the parties as to this leasing, that there are no existing claims, defenses or offsets which Tenant has against enforcement of the Lease by Landlord, that there are no uncured defaults in Landlord's performance, that the security deposit is as stated in the Lease, and that not more than one month's Base Rent or Additional Rent has been paid in advance.

**28. RIGHT TO PERFORM.** If Tenant fails to pay any sum of money required to be paid by it under this Lease or fails to perform any other act on its part to be performed under this Lease, and such failure continues for ten (10) days after notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment of sums due under this Section 28 as in the case of default by Tenant in the payment of Rent.

**29. PARKING.** All parking that serves SDC is on a non-reserved, first-come first-served basis and Tenant shall have full access to said parking. Tenant's use of the parking stalls shall be subject to such market rate charges as are customary for similar commercial space in the City of Tukwila, and such rules and regulations, as Landlord and/or Landlord's parking operator may adopt from time to time. Landlord retains the right to alter such market rate charges, and such rules and regulations and to relocate within the area as outlined on Exhibit E, or reconfigure the parking area shown on Exhibit E, with reasonable notice to Tenant. Tenant shall pay, upon demand by Landlord, Landlord's costs incurred to stencil any changes to reserved parking stalls provided to Tenant under this Lease.

**30. AUTHORITY.** If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with a duly adopted resolution of the Board of Directors of Tenant and in accordance with the bylaws of Tenant, and that this Lease is binding upon Tenant in accordance with its terms. If Tenant is a partnership or limited liability company, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with the partnership or operating agreement of Tenant, and that this Lease is binding upon Tenant in accordance with its terms.

**31. GENERAL.**

**31.1. Headings.** Titles to Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of this Lease.

**31.2. Heirs and Assigns.** All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

**31.3. No Brokers.** Except as provided in Section 1.1, Landlord and Tenant represent and warrant to one another that they have not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution or delivery of this Lease and Landlord and Tenant shall indemnify and hold one another harmless from and against any loss, cost, liability or expense incurred by the other party as a result of any claim

asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of the other party. In no event will a brokerage fee be paid on any renewal or Option to renew. Tenant agrees that any broker it may elect to assist in any renewal discussions or options will be compensated directly by Tenant.

**31.4. Entire Agreement.** This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the leasing, use and occupancy of the Premises, to Tenant's use of the Building and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

**31.5. Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

**31.6. Force Majeure.** (A) Landlord. Landlord shall have no liability whatsoever to Tenant on account of Landlord's inability to perform any of its obligations under this Lease, in whole or part, including to timely complete Landlord's Work, or the restoration of the Building and the Premises following damage or destruction, as a result of "force majeure," which shall include (a) strike, lockout, other labor trouble, dispute or disturbance; (b) governmental regulation, moratorium, action, preemption or priorities or other controls; (c) shortages of fuel, supplies or labor, other than those which were reasonably foreseeable; (d) any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises by reason of any requirement, act or omission of the public utility or others furnishing the Building with electricity or water; and (e) for any other reason, whether similar or dissimilar to the above, or for Act of God, beyond Landlord's reasonable control and which were not reasonably foreseeable. If this Lease specifies a time period for performance of an obligation of Landlord to complete Landlord's Work, or the restoration of the Building and the Premises following damage or destruction, that time period shall be extended by the period of any delay in Landlord's performance caused by any of the events of force majeure described herein.

(B) Tenant. Tenant shall have no liability whatsoever to Landlord on account of Tenant's inability to timely complete Tenant's Work, or the restoration of the Tenant's Work following damage or destruction, as a result of "force majeure," which shall include (a) strike lockout, other labor trouble, dispute or disturbance; (b) governmental regulation, moratorium, action, preemption or priorities or other controls; (c) shortages of fuel, supplies or labor; (d) any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises by reason of any requirement, act or omission of the public utility or others furnishing the Building with electricity or water; and (e) for any other reason, whether similar or dissimilar to the above, or for Act of God, beyond Tenant's reasonable control. If this Lease specifies a time period for performance of an obligation of Tenant to complete Tenant's Work, or the restoration of Tenant's Work following damage or destruction, that time period shall be extended by the period of any delay in Tenant's performance caused by any of the events of force majeure described herein. Nothing in this section shall be construed as excusing or delaying the obligation of Tenant to pay in a timely manner when due any Rent or other amounts due under this Lease.

**31.7. Right to Change Public Spaces.** Landlord shall have the right at any time without thereby creating an actual or constructive eviction or incurring any liability to Tenant therefore, to change the arrangement or location of such of the following as are not contained within the Premises or any part thereof: entrances, passageways, doors and doorways, corridors, stairs, toilets and other public portions of the Property. In no event, however, shall Landlord diminish any service provided by Landlord under this Lease, make any change which reduces the area of the Premises, make any change which, on other than a temporary basis, either changes the character of the Building or materially interferes with Tenant's access to and use of the Building.

**31.8. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington.

**31.9. Building Directory.** In the event Landlord maintains in the lobby of the Building a directory of tenants, such directory shall include the name of Tenant and any other names reasonably requested by Tenant in proportion to the number of listings given to comparable tenants of the Building. Tenant will also be required to provide suite signage consistent with the Building standard or subject to Landlord's architects' approval.

**31.10. Building Name.** The Building will be known as Sabey DataCenter or by such name as Landlord may designate from time to time.

**31.11. Quiet Enjoyment.** Landlord agrees that Tenant, upon paying the Rent and performing all other terms, covenants and conditions of this Lease to be performed by Tenant, may quietly have, hold and enjoy the Premises from and after the Commencement Date until the Expiration Date, subject, however, to the provisions of Section 11 (Damage Or Destruction) and 22 (Condemnation).

**31.12. Survival.** The representations, warranties and indemnification obligations of the parties to this Lease shall survive the termination or expiration of this Lease.

**31.13. Lender's Consent.** The effectiveness of this Lease is contingent upon and subject to the approval of Landlord's lender, which approval shall be secured by Landlord prior to execution of this Lease.

**31.14. Time.** Time is of the essence of each and every provision of this Lease.

**31.15. Interpretation.** This Lease has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

**31.16. Execution.** This Lease may be executed in several counterparts and all so executed shall constitute one Lease, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Delivery of a facsimile or other copy of this Lease has the same effect as delivery of an original.

## **32. PRIME LEASE; SUBLEASE PROVISIONS.**

**32.1. Prime Lease.** Landlord leases the Building pursuant to a Lease ("Prime Lease") entered into with INTERNATIONAL GATEWAY EAST LLC ("Owner"), which is the owner of the Building. This Lease is a sublease under the Prime Lease, subject to the terms of this Section 32.

**32.2. Landlord Representations.** Landlord represents to Tenant that: (a) the Prime Lease is, as of the date hereof, in full force and effect; (b) no event of default has occurred under the Prime Lease and, to Landlord's knowledge, no event has occurred and is continuing which would constitute an event of default but for the requirement of the giving of notice and/or the expiration of the period of time to cure; (c) the initial term of the Prime Lease runs beyond the Expiration Date, as such date may be extended under this Lease.

### **32.3. Owner Agreements.**

By its signature below, Owner hereby agrees as follows:

A. Owner hereby consents to this Lease as a sublease of the Premises.

B. With respect to the Premises, the provisions of this Lease shall override and supersede all terms and provisions of the Prime Lease, so that so long as Tenant is not in default under this Lease (subject to any cure rights provided in this Lease), the Prime Lease with respect to the Premises shall be deemed satisfied and this Lease shall remain in full force and effect.



C. In the event the Prime Lease is terminated for any reason, Owner agrees that it will recognize this Lease as in full force and effect as a direct lease between Owner as landlord and Tenant as tenant, with Owner recognizing all Tenant's rights under this Lease so long as Tenant is not in default under this Lease (subject to any cure rights provided in this Lease). Owner shall assume all of Landlord's obligations hereunder and Tenant shall be given full credit for all amounts paid to Landlord hereunder. If necessary, Owner shall enter into a new lease on all of the terms and conditions contained in this Lease. All of the foregoing shall be completed without any interruption of Tenant's use or possession of the Premises.

D. Owner represents to Tenant that: (a) the Prime Lease is, as of the date hereof, in full force and effect; (b) no event of default has occurred under the Prime Lease and, to Owner's knowledge, no event has occurred and is continuing which would constitute an event of default but for the requirement of the giving of notice and/or the expiration of the period of time to cure; (c) the initial term of the Prime Lease runs beyond the Expiration Date, as such date may be extended under this Lease.

IN WITNESS WHEREOF this Lease has been executed the day and year first above set forth.

LANDLORD:

SABEY DATACENTER LLC,  
by Sabey Corporation, Manager

Date: 8/12/08

By: Patricia G. Jewell  
Its: SR VP FINANCIAL SECRETARY

TENANT:

KING COUNTY

Date: 8/12/08

By: [Signature]  
Its: CFO

APPROVED AS TO FORM ONLY:

Date: 8/8/08

By: [Signature]  
Timothy Barnes  
Senior Deputy Prosecuting Attorney

Date: 8/8/08

By: [Signature]  
Kathy Brown  
Director, Facilities Management Division

OWNER:

INTERNATIONAL GATEWAY EAST LLC,  
by Sabey Corporation, Manager

Date: 8/12/08

By: Patricia A. Jewell  
Its: SR VP-FINANCE & SECRETARY

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 12<sup>th</sup> day of August, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Secretary of SABEY CORPORATION, Manager of SABEY DATACENTER LLC, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



[Signature]  
Printed Name: Heather Cherie Casey  
NOTARY PUBLIC in and for the State of Washington,  
residing at Snohomish  
My commission expires: 7/9/09

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 8<sup>th</sup> day of August, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Kathy Brown, to me known to be the Director, FMD of KING COUNTY, a political subdivision of the State of Washington that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

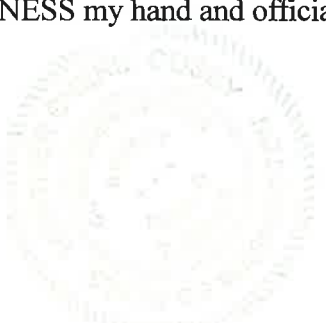


[Signature]  
Printed Name: Robert Ross Thompson  
NOTARY PUBLIC in and for the State of WA,  
residing at Seattle  
My commission expires: 10.15.2009

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 12<sup>th</sup> day of August, 2008 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn as such, personally appeared Patricia A. Sewell, to me known to be the Secretary of SABEY CORPORATION, Manager of INTERNATIONAL GATEWAY EAST LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

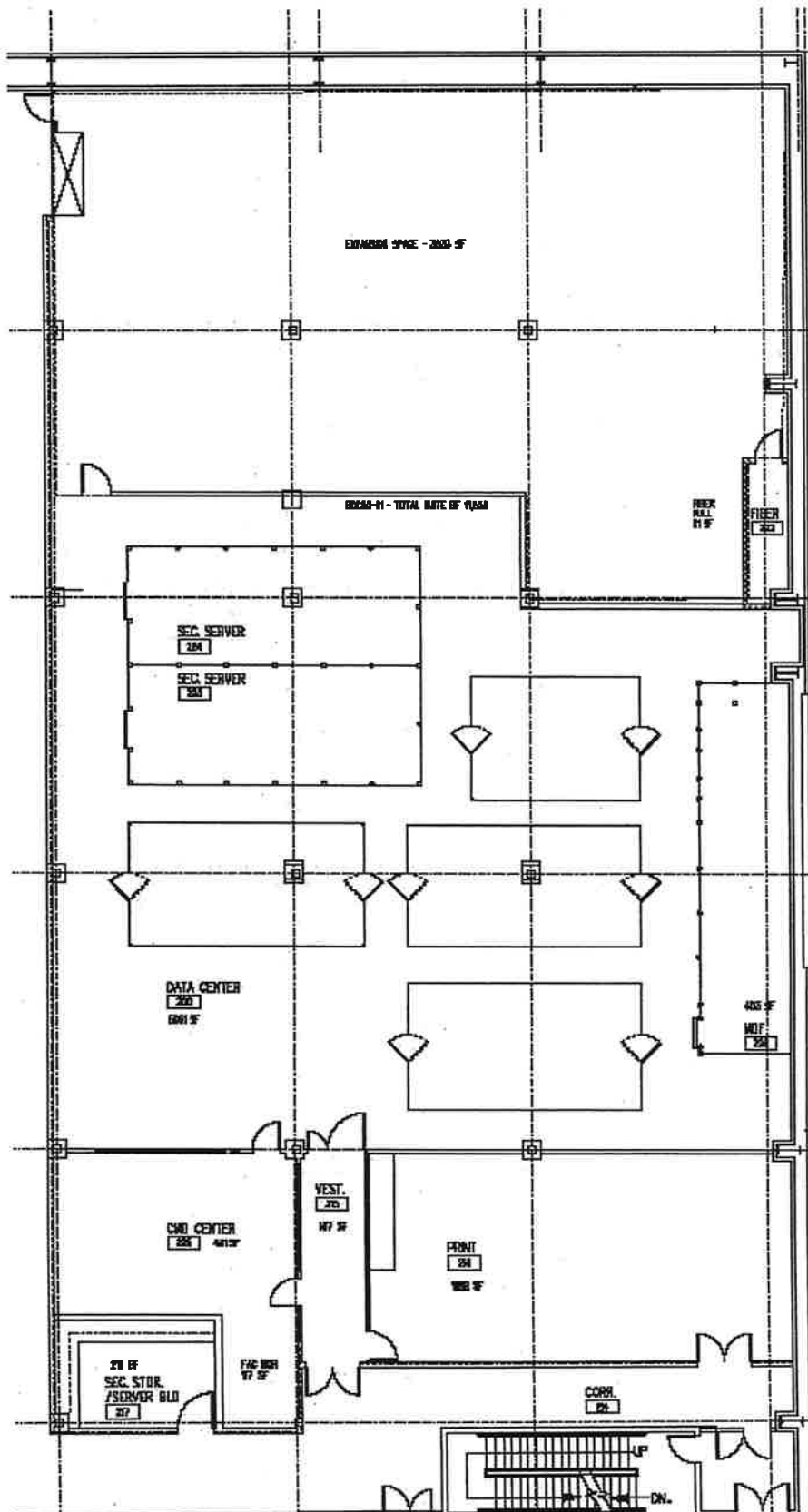


[Signature]  
Printed Name: Heather Cherie Casey  
NOTARY PUBLIC in and for the State of Washington,  
residing at Snohomish  
My commission expires: 7/9/09

**EXHIBIT A**  
**TO LEASE AGREEMENT**  
**LEGAL DESCRIPTION**

LOT 5 OF BOUNDARY LINE ADJUSTMENT NO. L02-087 RECORDED UNDER KING COUNTY RECORDING NO. 20030327900002, RECORDS OF KING COUNTY, AS AMENDED BY RECORDING NUMBER 200307250001852, RECORDS OF KING COUNTY; SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON

**EXHIBIT B**  
**TO LEASE AGREEMENT**  
**FLOOR PLAN OF PREMISES**



## EXHIBIT C

### TO LEASE AGREEMENT

#### WORK LETTER AGREEMENT

##### IMPROVEMENTS MADE BY LANDLORD (LANDLORD'S WORK)

This Work Letter Agreement is part of and incorporated into that certain lease (the "Lease") between King County, a political subdivision of the State of Washington (hereinafter called "Tenant") and Sabey Datacenter, LLC (hereinafter called "Landlord") for the Premises, as defined in section 1.4 of the Lease, located at 3355 South 120<sup>th</sup> Place, Suite 5201 (SDC52), Seattle, WA 98168.

**1. General Intent.** It is the intent of this Work Letter Agreement that Landlord shall construct "Landlord's Work" in accordance with the **Construction Documents** (described below) so long as the same is done at the sole cost and risk of Landlord and within the **Not-To-Exceed Cost** (described below). The Construction Documents shall contain the detailed design work necessary to meet the design and performance standards contained in the "**Approved Plans**," which are attached to the Lease as **Exhibit C-3**. Landlord's Work shall include all tenant improvements to the Premises (the "**Tenant Improvements**"). As more fully set out in the Construction Documents, the Tenant Improvements include:

**1.1** Construction of an N+1 type data center to support a server load of 150 watts per square foot, server floor only including but not limited to: partitions, doors, ceilings, floors, floor finishes, walls, wall finishes, electrical (panels, wiring, cabling, lighting, switching, outlets, etc.), communications (wiring, cables, conduit and fiber), plumbing, heating, ventilation and air conditioning systems and equipment as specified by Tenant, conduits, pathways, maintenance access, innerduct/conduit from utility vault to Premises and from Premises to Building 2, and includes third party commissioning of all connections to Building systems and infrastructure;

**1.2** Office Space as specified by Tenant

**1.3 "Cable Distribution Facilities,"** which means the areas within the Building comprised of the info-riser shaft(s), the conduits or other means of exiting the info-riser or info-structure, and the cable trays, raceways or conduits providing the horizontal distribution pathway from the info-riser to a destination elsewhere in the Building; and

**1.4 "Additional Services,"** which shall include any services requested by Tenant to be provided by Landlord not included in the Tenant Improvements and to be paid for separately if Landlord agrees to provide in writing.

**2. Intentionally Omitted.**

**3. Construction Documents.**

**3.1** Landlord will obtain architectural, mechanical, and electrical plans required for the performance of the Tenant Improvement work addressed in this Work Letter Agreement, including plans and specifications for the Tenant Improvements (the "**Construction Documents**") which are prepared by Landlord's architect in accordance with Tenant's Approved Plans and which present a full and complete accounting of the scope of the Tenant Improvements, as well as required operating and performance standards. Landlord hereby approves and designates Callison Architects as architect ("Architect") for the Construction Documents. The Construction Documents shall be prepared pursuant to (i) Tenant's Approved Plans, attached hereto as Exhibit C-3, (ii) Landlord's Building Standard Specifications (the "**Standards**"), and (iii) all appropriate regulatory requirements. The Construction Documents shall include full construction drawings and specifications for the Tenant Improvements. Landlord shall contract directly with Architect for preparation of the

Construction Documents. Landlord shall provide the Construction Documents to Tenant at 80% and 100% plan development stages for its review and written approval. Tenant approvals, comments or requests for revisions must be identified by Tenant and returned to Landlord within ten (10) business days after Tenant's receipt of the Construction Documents. Any further revisions by Landlord shall similarly be responded to by Tenant within ten (10) business days after Tenant's receipt of the Construction Documents. The final plans so approved by Landlord and Tenant at the 100% complete stage shall be the Construction Documents for all purposes hereunder, subject only to approved Field Change Orders in accordance with 4.2 below. Landlord shall also obtain the appropriate building permits, and shall construct the Tenant Improvements in accordance with the Construction Documents. Landlord shall perform all work necessary to substantially complete the Tenant Improvements within 270 days of Execution of the Lease. Landlord and Tenant agree to cooperate with each other in the completion of the Tenant Improvements by responding to each party's requests for information and approvals in a timely fashion.

**3.2** Landlord and Tenant agree that the Construction Documents, once reviewed by Tenant and Landlord and signed by Tenant, and any Field Change Orders approved in accordance with Section 4.2 below, shall represent the complete understanding between Landlord and Tenant as to the scope of the Tenant Improvements to be constructed under the Lease and this Work Letter Agreement.

#### **4. Cost of Tenant Improvement Work:**

**4.1 Cost of Work.** Landlord and Tenant agree that Landlord has committed to constructing the Tenant Improvements at its sole cost and risk for a total not-to exceed price of \$9,500,000.00 (Nine Million Five Hundred Thousand Dollars) (the "**Not-To-Exceed Cost**" or "**NTEC**"). The NTEC shall include all costs of design, administration and construction costs in approving, furnishing and constructing the Landlord's Work pertaining to the Datacenter Space and Office Space in accordance with the Construction Documents, including without limitation the following: the cost of constructing improvements; any and all costs of space planning and design; the cost of preparing engineering plans; governmental agency plan check, permit and other fees; any costs arising from modifications required by governmental agencies to meet building or environmental codes; insurance premium; bond premium, sales and use taxes; signage; Landlord's administrative fee of five percent (5%) on all costs, including general conditions; applicable state and local taxes; and all other costs to be expended by Landlord in the construction of the Tenant Improvements.

**4.2 Revisions.** Revisions to the final approved Construction Documents, if any, are to be accomplished by Field Change Orders. A "**Field Change Order**" is a document which details the scope of a requested change to any work set forth in the Construction Documents and bears the signature of Tenant and Landlord representatives approving such change in scope. All such plans, specifications, and Field Change Orders shall be approved by Landlord and Tenant prior to being executed or acted upon by the Contractor. In order to avoid delays in construction, in the event the cost of the work included in a Field Change Order request is Twenty-five Thousand Dollars (\$25,000) or less, and the aggregate amount of Field Change Order requests has not exceeded One Hundred Thousand Dollars (\$100,000) Tenant will provide the necessary approval in writing without requiring the documentation set forth above, with written confirmation and cost itemization to follow. In the event the Field Change Order (other than a change order initiated by Landlord or necessitated by irregularities between design and construction functions [A&E coordination], or a result of unforeseen building conditions) increases the construction cost, Tenant shall be solely responsible for such increased cost and shall pay the same to Landlord in accordance with Section 7 of this Work Letter Agreement. In the event the Field Change Order is initiated by Landlord, including but not limited to those necessitated by irregularities between design and construction functions [A&E coordination], or as a result of unforeseen construction conditions, the cost shall be solely borne by Landlord and shall not be the responsibility of Tenant. The cost of Field Change Orders necessitated by Force Majeure shall be paid by Landlord at Landlord's sole expense, unless Tenant elects a

different but equally viable option, in which case the cost shall be born by Tenant.

**4.3** Tenant agrees that it shall designate a field representative who shall be available on not more than four (4) hours notice during the hours of construction to be present at the job site to respond to questions and Field Change Order issues. Tenant agrees to approve or disapprove any Field Change Order within ten (10) business days of receipt of notice of same. Approved Field Change Orders initiated by Tenant shall, if necessary, be accompanied by written amendments to the Lease adjusting the date for Substantial Completion and associated provisions accordingly.

## **5. Construction of Tenant Improvements**

**5.1 General.** Landlord acknowledges that it is solely responsible for the Tenant Improvements contained in this Work Letter and that it will enter into a construction contract with a contractor of its choosing.

**5.2 Substantial Completion.** As used herein, "Substantially Completed" or "Substantial Completion" shall mean that on or before the 270<sup>th</sup> day following execution (execution is herein defined as the date on which both Landlord and Tenant have signed and notarized the Lease) each of the following have occurred subject only to completion of customary "punch list" items: (a) Landlord's contractor shall have notified Landlord in writing that Landlord's Work is substantially complete in accordance with the Construction Documents; (b) the City of Tukwila has issued a certificate of occupancy or temporary certificate of occupancy such that Tenant is legally entitled to occupy the Premises for its permitted use; and (c) the director of the King County Facilities Management Division shall have issued a written statement to Landlord stating Landlord's Work is sufficiently complete in accordance with the Construction Documents to permit Tenant to utilize the Premises for the Permitted Uses as defined in Sections 1.4 and 1.18, respectively, of the Lease. Tenant shall not unreasonably withhold, delay or condition its concurrence if each of the items (a) and (b) have occurred, and provided further, it shall be deemed unreasonable hereunder for Tenant to withhold its concurrence. Landlord agrees to provide Tenant no less than ten (10) business days advance notice of the substantial completion date, and for the sole purpose of determining substantial completion hereunder. Landlord shall include Tenant's representatives in all third party commissioning and provide reports as timely as possible.

**5.3 Indemnification.** Landlord shall indemnify, defend (using legal counsel acceptable to Tenant) and hold Tenant harmless from all claims, damages, costs, judgments and settlements against Tenant from Landlord's contractor or subcontractors arising from the construction covered in this Work Letter. Landlord further agrees to indemnify, defend and hold Tenant harmless for any personal injury or property damage claims arising from the construction of the Tenant Improvements contemplated in this Work Letter. Nothing in this Section 5.3 shall require Landlord to protect, defend and indemnify Tenant to the extent of its sole negligence. This indemnity with respect to acts or omissions during the term of construction of tenant improvements shall survive termination and expiration of the Lease. The foregoing indemnity covers actions brought by Landlord's own employees and it is specifically and expressly intended to constitute a waiver of Landlord's own immunity, as respects the Tenant only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Tenant with a full and complete indemnity from claims made by Landlord and its employees, to the extent provided herein. Landlord shall promptly notify Tenant of casualties or accidents occurring during construction. **TENANT AND LANDLORD ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 5 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

**5.4 Warranties.** Upon Substantial Completion of all Tenant Improvements, Landlord shall warrant that the Tenant Improvements have been completed in substantial accordance



with the Construction Documents, and that the Tenant Improvements are free from defects in workmanship and materials for one (1) year following the date of Substantial Completion.

**5.5 Prevailing Wages.** Landlord agrees that all contractors and subcontractors shall pay Prevailing Wages in accordance with chapter 39.12 RCW.

**6. Additional Services.** All Additional Services shall be contracted for and managed by Landlord at the direction of, and with the approval of Tenant. Tenant shall pay to Landlord all costs and expenses arising out of or related to Additional Services within 30 days, such Additional Services shall include, but are not limited to, acquisition of the furnishings for the Office Space.

**7. Payment for Tenant Improvements and Additional Services.**

**7.1** Subject to the Landlord's indemnity set forth in Section 5.3 of this Work Letter Agreement, Tenant shall pay to Landlord the actual cost, but not in excess of the NTEC, plus any Additional Services, rendered as of the time of Tenant's Occupancy, plus any costs associated with Tenant's Field Change Orders, as a lump sum Tenant Contribution for Tenant Improvements in accordance with the terms of the Lease, Section 1.12.1.

**7.2** Landlord shall keep accurate records of the Cost of Tenant Improvement as they are incurred during construction. Tenant shall have a right of reasonable access to such records and to all Tenant Improvement construction-related records on an open book basis. Tenant and Landlord shall cooperate in good faith to provide this access while minimizing interference with Landlord's operations. Upon Substantial Completion, Landlord shall provide Tenant with a final accounting of the actual costs of all Tenant Improvements as a precondition to payment. Monthly during construction, Landlord shall furnish Tenant with a summary report of such costs incurred since the date of the last report.

**7.3** Landlord shall notify Tenant in writing as soon as is commercially reasonable as to any developments or information of any kind that could potentially lead to a delay in the construction schedule.

**8. GENERAL**

**8.1** This Work Letter Agreement, the Approved Plans, and subsequent Construction Documents, and any approved Field Change Orders shall constitute the complete construction specifications and no other representations, or oral agreements between the parties shall be recognized in the event of a dispute between Landlord and Tenant.

**8.2** Time is of the essence with respect to each of the duties and obligations of Landlord and Tenant set forth in this Work Letter Agreement. Notwithstanding any of the foregoing provisions hereof, default by Tenant or Landlord under any provisions of this Work Letter Agreement which are not cured within applicable notice and cure periods set forth in the Agreement shall constitute a default under the Agreement.

**8.3** Any notice, statement, advice, approval, consent or other communication required or permitted to be given by either party to the other pursuant to this Work Letter Agreement shall be given in the manner set forth in Section 23 of the Lease. A default by Landlord of any obligation hereunder shall constitute a default by Landlord under the Lease.

TENANT AND SABEY DATACENTER LLC AGREE TO THE ABOVE TERMS CONTAINED IN THIS EXHIBIT C AND ATTACHMENTS AND TO THE RELATED PROVISIONS OF THE LEASE TO WHICH THIS EXHIBIT C IS ATTACHED.

TENANT:

KING COUNTY

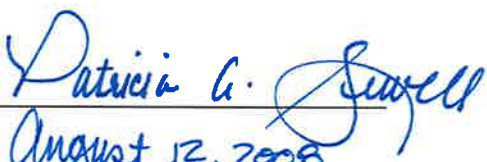
By: 

Date: Aug 18, 2008

Its: Deputy Director, FMD

SABEY DATACENTER LLC, by

Sabey Corporation, Manager

By: 

Date: August 12, 2008

Its: Sr VP Finance + Secretary

**EXHIBIT C-1**  
**TO LEASE AGREEMENT**  
**TENANT'S REMOVABLE PROPERTY**

Subject to the terms and conditions of this Lease, the fixtures, improvements, furniture, equipment and other property of Tenant which may be removed by Tenant from the Premises at the expiration or earlier termination of this Lease are as set forth below in this Exhibit C-1. No other improvements, alterations or property shall be removed from the Premises at the expiration or termination of this Lease except as may be provided otherwise in the Lease or as may be agreed upon by Landlord and Tenant and added to this Exhibit C-1 by amendment to this Lease.

1. Upon the termination or expiration of this Lease Tenant, at Tenant's expense, shall remove all cabling and wiring included within the scope of Tenant's Work, Landlord's Work, Tenant's Alterations, or which was otherwise installed by Tenant, from all interstitial/ceiling plenum areas upon Landlord's request.
2. Furniture and personal property.
3. Data System and Tenant's Computer Equipment.

**EXHIBIT C-2**

**SERVICES OFFERING**

**I. SERVICES:**

- (a) Maintenance, operation and repair of utility electric source and standby generators in accordance with manufacturer recommendations.
- (b) Maintenance, operation and repair of chillers and associated chilled water piping, valves, and components in accordance with manufacturer recommendations
- (c) 24-hour monitoring and on-call response to equipment alarms on generators and chillers.
- (d) Fire Suppression System
- (e) Generator backed-up electricity to server floor provided up to 1.2 megawatts.
- (f) Premises access 24 hours per day, subject to Section 10

Except in the event of an emergency, a court order or other exercise of legal authority, only Tenant's pre-authorized representatives shall be allowed to enter the Tenant's Premises without prior written authorization from Tenant.

**II. MAINTENANCE:**

**Scheduled maintenance**

Landlord will notify Tenant of all scheduled maintenance plans no less than seventy-two (72) hours prior to any scheduled maintenance on any critical environment equipment. Landlord must receive any objection Tenant has to the scheduled maintenance within twenty-four (24) hours of such notification. Tenant shall not unreasonably withhold, condition or delay its consent. Any objection by Tenant, to be effective, must include a reasonable maintenance alternative which must be mutually agreed upon by Landlord and Tenant.

In the event of an emergency maintenance situation, Landlord will provide Tenant with as reasonable notice as possible, and if needed, may perform emergency maintenance at any time. Tenant agrees to cooperate with Landlord during the scheduled and emergency maintenance periods.

**III. CUSTOMER CONTACT IN THE EVENT OF AN INTERFERENCE OR NOTIFICATION:**

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

Access Telephone Number: \_\_\_\_\_ (Pager)

\_\_\_\_\_ ( Telephone)

\_\_\_\_\_ (e-mail)

**EXHIBIT C-3**  
**APPROVED PLANS**