

Ordinance 19019

ATTACHMENT A:

LEASE AGREEMENT

COMMUNICATIONS INFRASTRUCTURE LEASE AGREEMENT

This Communications Infrastructure Lease Agreement (this "Lease") is effective this _____ day of _____, 2019, by and between International Gateway East LLC as Landlord ("Landlord") and King County, a political subdivision of the State of Washington, as Tenant ("Tenant").

WHEREAS, Tenant desires to lease three (3) standard telecommunications rack locations in the NODE room telco entrance facilities located at 3311 S. 120th Place, Seattle, Washington 98168 (the "Building"), and Landlord has agreed to allow the Tenant to use such space under the conditions described herein. The real property upon which the Building sits ("Land") is legally described in Schedule B attached hereto. The Premises, Building, Land, and Intergate.East campus are sometimes collectively referred to in this Lease as the "Property".

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the space sufficient for the use of three (3) standard telecommunications racks identified as rack numbers 3.8, 3.9, and 3.10 ("Premises") located in the Building's NODE room and telco entrance facilities. Landlord also grants Tenant's preferred carrier access to "minimum point of entry" within the premises. Landlord hereby grants Tenant the nonexclusive right to install, maintain, operate Tenant's equipment, appurtenances and related equipment together with rights for parking, access and utilities, as provided herein. Landlord hereby reserves the right to grant, renew or extend similar lease rights to others. Nothing contained herein shall be construed as granting to Tenant any ownership rights in the Premises, or to create a partnership or joint venture between Landlord and Tenant. The Premises are depicted on the Site Plan attached hereto as Schedule A.

2. Use. The Premises will be used by Tenant, subject to any regulatory requirements or limitations, for any lawful activity in connection with the construction, maintenance and operation of related communications facilities. Landlord agrees, if applicable, at no expense to Landlord, to cooperate with Tenant, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises. Tenant may, at its expense, and with Landlord's reasonable written consent, make non-structural improvements to the Premises as necessary, subject to section 7. Tenant shall cause all construction to occur lien-free. Upon termination of the Lease, Tenant will remove its equipment in the Premises within thirty (30) days, and return the Premises to the condition existing on the commencement date of the Communications Infrastructure Lease Agreement dated September 29, 2006, reasonable wear and tear and casualty excepted.

Installation of any equipment by Tenant shall be without cost to Landlord, except as specifically provided herein, and the cost of all materials and services incurred in connection with the installation of any of Tenant's equipment shall be paid by Tenant.

3. Term. The term of this Lease ("Term") will commence on the Commencement Date and expire on January 31, 2027. The "Commencement Date" means the first day of the calendar month after Tenant executes this Lease. Tenant shall have the right to extend the Term of this Lease for two (2) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein except for Base Rent which shall be as provided below. Tenant must provide Landlord written notice of its intent to renew 180 days prior to the expiration of the initial term or renewal terms. Any holdover by Tenant after the Term will be considered a month-to-month tenancy under the same terms and conditions of this Lease, until terminated by either party upon thirty (30) days written notice. If Tenant holds over after termination with Landlord's prior written consent, Rent shall be invoiced at the last monthly Rent rate for sixty (60) days, and thereafter at one hundred twenty-five percent (125%) of total monthly Rent. If Tenant holds over after termination without Landlord's prior written consent, then (i) Rent shall be invoiced at one hundred fifty percent (150%) of total monthly Rent, and (ii) Tenant shall indemnify, defend and hold Landlord harmless from and against all loss and liability, including without limitation, any claim made by any succeeding licensee or tenant founded on, or resulting from, such failure to surrender or vacate, including without limitation, any reasonable attorneys' fees or costs associated therewith.

3.1 Landlord Cancellation Option. If the Landlord has executed this Lease, but Tenant has not executed this Lease by December 31, 2019, then Landlord has the option (“Cancellation Option”) to cancel this Lease by providing written notice of such to Tenant. If Landlord exercises the Cancellation Option, then this Lease will be cancelled, void, and of no further force and effect, regardless of whether the Tenant subsequently countersigns the Lease.

4. Rent. Upon the Commencement Date, Tenant shall pay Landlord as rent the sum of \$4,700 per month (“Rent”). Upon the Commencement, Rent will be charged at the above described rates. Rent shall increase by two and 50/100 percent (2.5%) on the anniversary of the Commencement Date and annually thereafter for the duration of the Term and any Renewal Terms thereafter. Rent is due on or before the first day of each month during the term. Landlord’s payment address shall mean: International Gateway East LLC, 12201 Tukwila International Blvd, Fourth Floor, Seattle, Washington 98168 or such other address as provided by Landlord. Tenant shall pay any federal, state and local taxes directly attributable to Tenant’s use of the Premises. If Rent is paid late, interest shall be charged at 18% per year prorated on a daily basis until received plus a late charge equal to three percent (3%) of the total Rent due.

If the Commencement Date is other than the first day of a calendar month, Tenant may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Tenant shall pay a full month’s Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month.

5. Security Deposit. Intentionally deleted.

6. Feasibility. Intentionally deleted.

7. 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 plumbing or wiring, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld or delayed and, where reasonably 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, design, and colors if visible from the hallways or exterior, approved by Landlord, which approval shall not be unreasonably withheld or delayed. Tenant may from time to time replace or upgrade its Data System equipment without having to obtain Landlord’s consent, provided such equipment may be operated within Building capacities and limitations set forth in this Lease. Prior to commencing any Alterations, Tenant shall notify Landlord of such work and Landlord shall perform a good faith asbestos inspection in accordance with applicable laws and regulations, and Tenant shall provide Landlord with a copy of Tenant’s final plans within thirty (30) days of completion of such work. 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. Tenant and Tenant’s contractor shall comply with the general conditions for construction as referenced in the Landlord’s Tenant Construction Manual, as updated from time to time, with written notice to Tenant.

7.1 Labor. Tenant shall ensure that all contractors, subcontractors at any tier, and vendors performing any work (including construction, repairs or restorations) in the Building under contract with or through Tenant, are bound by, and a signatory to, a collective bargaining agreement with an organization (1) whose jurisdiction covers the type of work to be performed at the Building, and (2) who is an Approved

Building Trades Department Contractor or Subcontractor (as defined below), and which observes area standards for wages and other terms and conditions of employment, including fringe benefits. For purposes hereof, an "Approved Building Trades Department Contractor or Subcontractor" is a contractor or subcontractor which is currently affiliated with the Building and Construction Trades Department of the AFL-CIO (the "BCTD") or, if no such BCTD-affiliated contractor or subcontractor is available for a particular trade (e.g., carpentry work), a contractor or subcontractor which is affiliated with a national trade union which was formerly affiliated with the BCTD and which recognizes (and shall recognize and respect, for its work on the applicable project), the jurisdictional limitations established by the local BCTD. Contractors, subcontractors or vendors who are parties to such an agreement are referred to herein as "union labor" and contractors, subcontractors or vendors who are not parties to such an agreement are referred to herein as "non-union labor". Notwithstanding the foregoing, the use of union labor is not required where (A) the vendor of equipment requires, as a condition to the effectiveness of its applicable warranty, that such vendor or an authorized contractor (or subcontractor) installs and/or maintains such equipment (and such vendor, contractor or subcontractor is non-union labor); (B) the related maintenance contract with the vendor (or the vendor's authorized contractor or subcontractor) requires the use of its own employees or specifically authorized agents, contractors or subcontractors that are non-union labor, and Landlord has not had the opportunity to choose or elect to choose a contractor or subcontractor that is a party to such a bargaining agreement; (C) the replacement of current vendors or contractors (including subcontractors) with vendors or contractors (or subcontractors) who are BCTD-affiliated contractors or subcontractors would void or impair warranties in place or cause the breach of existing contracts relating specifically to the Building, (D) Tenant uses its own employees to perform any work, or (E) Tenant is not allowed to include a union-only requirement in a proposal or bid application as a matter of law. If Tenant qualifies to use any non-union labor as aforesaid, Tenant shall so notify Landlord in writing before the commencement of the applicable work. In addition, Tenant shall not, at any time prior to or during the term, directly or indirectly employ, or permit the employment of, any contractor, mechanic or laborer in the Building, whether in connection with any Tenant alterations or otherwise, if in Landlord's good faith judgment such employment could materially interfere or cause any conflict with other contractors, mechanics, or laborers engaged in the construction, maintenance or operation of the Property or any part thereof by Landlord, Tenant or, any other customer or occupant or any other party or materially and adversely affect the use and occupancy of any part of the Property by Landlord or any other customer or occupant.

8. Provision of Services; Marketing. All requests for Communication Services ordered by the individual tenant(s) of the Premises shall be delineated and agreed to under separate service orders with Tenant. Tenant(s) shall be charged and billed individually by Tenant for services at the monthly rates and installation charges applicable to the Communications Services ordered. All Communications Services offered to the Premises pursuant to this Agreement are subject to change and may be modified accordingly by Tenant. Landlord agrees that Tenant shall have the right to market and contract with individual tenant(s) of the Building for Communications Services.

9. Tenant's Covenants. During the Term, Tenant hereby covenants and agrees: (a) to keep the Premises in good order and condition throughout the term of this Lease and to promptly report any damage to the Premise to the Landlord; (b) to pay Landlord for the cost of repairs related to any damage to the Premises caused by Tenant's negligence or willful misconduct; (c) to comply with all federal, state and municipal laws, orders, rules and regulations applicable to the Premises in relation to Tenant's particular use; (d) to maintain insurance, including commercial general liability insurance with a combined single limit of \$5,000,000; and provide Landlord with a Certificate of Insurance reasonably acceptable to Landlord; and (e) not to disrupt, affect or interfere with other providers of services in the Property or with any other tenant's use and enjoyment of their leased premises or the common areas of the Property. Notwithstanding the foregoing, the King County (and not its assigns) may meet the insurance requirements under this Section 9 via self-insurance.

10. Landlord's Covenants. Landlord hereby covenants and agrees: (a) to maintain and repair the Building; (b) that Landlord is the owner of the Building, or the authorized agent of such owner, with full authority to bind such owner to the terms and conditions of this Lease; (c) that Landlord has complied and during the Term of this Lease shall comply with all laws, rules and regulations, including, without limitation, environmental laws, rules and regulations, applicable to the Premises; that Landlord is presently unaware, and during the Term of this Lease shall notify Tenant, of any violations of any such laws, rules or

regulations; and that the Premises is and during the Term of this Lease shall be free of all known environmental hazards, including, without limitation, asbestos, that are not in compliance with law. If Landlord or Tenant becomes aware of any suspected environmental condition, such party shall so notify the other in writing.

11. Casualty or Condemnation. If the Premises are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving written notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Access.

a. Landlord shall provide Tenant, Tenant's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Tenant. Landlord represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Tenant to the extent required to use the Premises as provided herein, subject to Landlord's standard operating and security procedures.

b. Tenant shall have the right to install utilities including but not limited to fiber telecommunications connectivity, at Tenant's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Landlord's approval of the location, which approval shall not be unreasonably withheld, Tenant shall have the right to place utilities and fiber telecommunications connectivity on (or to bring utilities and fiber telecommunications connectivity across) Landlord's Property in order to service the Premises. Landlord must provide approval of location and statement of work prior to commencement of any work. Approval will not be unreasonable withheld. Tenant will be responsible for any additional expense incurred by Landlord for review of project.

c. Tenant shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of the Premises.

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) the negligent acts or omission of Tenant's agents, officers, and employees; (b) any labor dispute involving Tenant or its agents or contractors (but excluding labor disputes involving Landlord or its contractors, subcontractors, or agents); (c) the construction, repair, alteration, improvement, use, occupancy or enjoyment of the Premises by Tenant its contractors, agents, employees and/or customers, licensees, or invitees; (d) 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 Tenant's contractors, agents, or employees; (e) Tenant's breach of this Lease; (f) 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 (g) 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 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) the negligent acts or omission of Landlord's agents, officers, and employees; (b) any labor dispute involving Landlord or its agents or contractors (but excluding labor disputes involving Tenant or its contractors, subcontractors, or agents); (c) the construction, repair, alteration, improvement, use, occupancy or enjoyment of the Building by Landlord its contractors, agents, or employees; (d) 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, or employees; or (e) Landlord's breach of this Lease (the "Tenant 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 Tenant 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.

14. Utilities. Landlord shall provide Tenant with electricity during the Term of this Lease within Base rent. Tenant will not exceed 80 amps without Landlord's prior written consent and Tenant's agreement to pay for additional power.

15. Interference. Tenant will not use the Premises in any way which materially interferes with Landlord's or its tenants' use of the Building for data center, or telecommunications space. Additionally, Tenant will not interfere with Landlord's or its tenants' current authorized use of telecommunications or office equipment located in the NODE room as of the date of this Lease. Subsequent to the date of this Lease, Landlord shall not use, nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease within 5 days, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

15. Maintenance. Tenant shall maintain the Premises and its equipment in good condition at Tenant's cost. Landlord shall maintain the Building and the Property in good repair at Landlord's cost.

16. Default. Tenant will be in default if it fails to pay Rent when due and such failure continues for ten (10) days following written notice thereof. Additionally, either party will be in default for failure to perform their obligations hereunder, if such failure continues for thirty (30) days following written notice thereof, provided, however, if the nature of the default is such that more than thirty (30) days are required for performance, the party will not be in default if it commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

17. Termination. Either party may terminate this Lease on ten (10) days notice to the other party in the event of a default, which is not cured within any applicable cure period. Additionally, Tenant may terminate the Lease on thirty (30) days notice, and without further obligation hereunder, if (i) the Property or the Premises are condemned or damaged so that, in Tenant's reasonable judgment, Tenant cannot effectively use the Premises; or (ii) a determination or act by the FCC or other entity with appropriate jurisdiction materially affects Tenant's use of the Premises as intended. At the termination of this Lease, Tenant may, at its sole cost and expense, remove its personal property from the Premises, and repair all damage caused by such removal. Any property not so removed within ninety (90) days after the expiration of this Lease shall be deemed the property of Landlord. Further, the Tenant's obligations to Landlord, if any, that extend beyond a current year are contingent upon approval of the lease by the King County Council or appropriation by the King County Council of sufficient funds to pay such obligations. Should such approval or appropriation not occur, this lease and all County obligations hereunder will terminate at the end of the calendar year in which such approval or appropriation expires and any costs associated with such termination shall not exceed the appropriation for the year in which the termination occurs.

18. Insurance. 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 thereof, Tenant shall carry at its sole cost and expense, the insurance coverages as set forth below:

18.1 Worker's Compensation. All required worker's compensation coverages, including employer's liability at a limit of not less than One Million Dollars (\$1,000,000).

18.2. Liability Insurance. A policy of commercial general liability ("CGL") insurance on an occurrence form, at least as broad as ISO CG00 001 form 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. Tenant shall ensure that International Gateway East LLC, Sabey Data Center Asset Holdings LLC, Sabey Data Center Properties LLC, National Data Center Holdings, LLC Sabey Properties LLC and Sabey Corporation, and others as required by Landlord are included as additional insureds to the CGL policy.

18.3. Property Insurance. All risk or 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

18.4. Automobile Liability Insurance Requirements. 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.

18.5. Insurance Policy Requirements. All policies of insurance required under this Section 18 shall be with companies reasonably approved by Landlord. No insurance policy required under this Section 18 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 18 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 18 be required under this Section 18 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.

18.6. Self-Insurance. Notwithstanding any provision in this Lease to the contrary, Landlord hereby consents to Tenant's right to comply with and satisfy the obligations contained in this Section 18 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 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 18 above.

In the event that Tenant self-insures under this Section, then as to matters covered by Section 18.10, the waiver of claims and rights of subrogation apply as if Tenant had maintained the insurance coverage required under this Lease.

18.7. 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 18, 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.

18.8. 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 reasonable 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. Landlord shall deliver bills for such additional premiums to Tenant at such times as Landlord may elect, and, if undisputed by Tenant, Tenant shall promptly reimburse Landlord, therefore.

18.9 Landlord Insurance Obligations

18.9.1 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.

18.9.2 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.

18.10. 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.

19. Assignment. Tenant shall not assign or transfer this Lease or any portion of the Premises without the prior written consent of Landlord. However, Tenant may, upon written notice to Landlord, assign this Lease to any party controlling, controlled by or under common control with Tenant, to any party, which acquires substantially all of the assets of, or a controlling interest in Tenant, provided that the net worth of the resulting company is greater or equal to the net worth of the company just prior to such merger or acquisition or to a lender as security for financing purposes.

20. Compliance with Laws. Each party assumes responsibility for compliance with all laws, ordinances, rules and regulations applicable to their ownership, use and occupation the Premises and the Property,

including, but not limited to, laws governing hazardous materials. Landlord shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Landlord shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of the Lease and may result in ineligibility for further agreements with King County. Notwithstanding anything to the contrary, Tenant shall be entitled to terminate this Lease effective upon written notice to Landlord in the event that Landlord violates the requirements of this Section 20.

21. Governing Law. This Lease shall be governed by the laws of the state of Washington as to interpretation, construction and performance.

22. 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.

23. Counterparts. This Lease may be executed in counterparts and each counterpart constitutes an original document.

24. Amendments. This Lease may be amended, changed or modified only by written amendment executed by the parties hereto. No waiver of any provision of this Lease shall be valid unless in writing signed by the party charged.

25. Notices. All notices must be in writing and will be deemed given upon (i) receipt if hand delivered; (ii) the day after being sent by a recognized overnight courier; or (iii) the earlier of receipt or three (3) days after being deposited in the U.S. mail, certified mail, return receipt requested, to the addresses listed below

If to Landlord:

International Gateway East LLC
c/o Sabey Corporation,
12201 Tukwila International Blvd,
Fourth Floor
Seattle, WA 98168-5121,
Attn: Legal Department

With a copy to:

Sabey Corporation,
12201 Tukwila International Blvd,
Fourth Floor
Seattle, WA
98168-5121, Attn: Sr. VP Property Operations

If to Tenant:

Tenant Name, Address, Contact Person, Phone Number, Fax Number

King County Facilities Management Division (FMD)
ADM-ES-0830
500 Fourth Avenue, Ste 830

Seattle, WA 98104
(206) 477-9400

With a copy to:

Tenant Name, Address, Contact Person, Phone Number, Fax Number

King County Information and Telecommunications Services Division (KCIT)
CNK-IT-0600
401 5th Avenue, Ste. 600
Seattle, WA 98104

26. Hazardous Materials.

26.1 For purposes of this Lease, the term “Environmental Law” shall mean: any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602 et seq. (“CERCLA”); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. (“RCRA”); the Washington State Model Toxics Control Act, RCW ch. 70.105D (“MTCA”); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks. For the purposes of this Lease, the term “Hazardous Material” shall mean: any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Law.

26.2 Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Real Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except in strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees, incurred either during or after the Lease term to the extent that said claims arise in connection with any Hazardous Materials which are brought on the Premises or the Property by Tenant, Tenant’s employees, agents, vendors, contractors, or invitees. Tenant shall promptly notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises or the Real Property.

26.3 Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Real Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any release of any Hazardous Material on the Premises or the Real Property, Tenant shall be solely responsible, at its sole cost, for promptly remediating the same to the extent required by Environmental Law. Landlord’s approval of such remediation shall first be obtained, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that Tenant shall be entitled to respond immediately to an emergency without prior approval from Landlord, including but not limited to taking actions necessary to prevent the release from migrating, leaching or otherwise spreading, and actions necessary to respond to any immediate obligations imposed on Tenant by Environmental Law. To the extent such Hazardous Material becomes comingled with Hazardous Material released by Landlord or other parties, nothing in this Lease shall prevent Tenant from seeking to recover costs, expenses or any other damages incurred as a result of the presence of such Hazardous Material that was released by Landlord or other parties.

26.5 Each of the parties agrees that its obligations under this Section 26 extend to any claim, demand, cause of action and judgment brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to each of the other party’s only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW.

26.6 The provisions of this Section 26 shall survive expiration or earlier termination of this Lease.

26.7 All claims, judgements, damages, penalties, fines, costs, liabilities and losses involving the release or presence of Hazardous Material shall be subject to this Section 26, and not the indemnity and liability provisions of Section 13.

27. Relocation or Termination. If Landlord determines that it is reasonably necessary or desirable that Tenant vacate the Premises, or that the Premises be altered, in connection with Landlord's expansion, leasing, reduction, removal, renovation or construction of new or existing improvements, then Landlord may terminate this Lease, provided Landlord leases Tenant other reasonably comparable premises, within the Building or Property, on the same terms and conditions as those contained in this Lease. Landlord's ability to relocate Tenant shall be conditioned on Landlord providing space (i) of approximately equivalent size to the original Premises; (ii) at the same or lesser monthly rent; (iii) with comparable access; and (iv) with comparable build-out and Tenant improvements at Landlord's expense. Landlord shall also be required to pay for all moving costs and incidental costs, including but not limited to the costs for transferring utility and telephone service, change of stationery and change of address notices.

28. Miscellaneous.

- (a) Any consent required under this Lease shall not be unreasonably withheld, conditioned or delayed.
- (b) If any term of this Lease is found to be invalid, the balance of the Lease shall remain in full force and effect.
- (c) This Lease (including Exhibits) represents the entire agreement between the parties and supersedes all other agreements. Any amendments must be in writing and executed by both parties.
- (d) The prevailing party in any litigation between the parties in connection with this Lease shall be entitled to recover its reasonable attorney's fees and costs.
- (e) Landlord and Tenant each represent that the persons executing this Lease on their behalf have full power and authority to execute the Lease and that the entity executing the Lease has full power and authority to enter into the Lease and that entering into the Lease will not violate any other contract to which they are a party.
- (f) So long as Tenant is not in default hereunder, Tenant is entitled to the quiet possession of the Premises.
- (g) 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. Each party agrees to execute for the other, within ten (10) days of written request, estoppels, memoranda of this Lease and subordinations (including non-disturbance clauses), as may be reasonably requested.
- (h) This Lease will be binding upon and inure to the benefit of the parties, their successors and assigns.
- (i) The effectiveness of this Lease is contingent upon Landlord receiving the consent of its lender.
- (j) Time is of the essence of each and every provision of this Lease.
- (k) 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. 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. If all or any portion of Landlord's estate in the Building is sold, assigned or conveyed to any person, firm or corporation upon the exercise of any remedy provided for in any mortgage, deed of trust, or by law or equity, such person, firm or corporation and each person, firm or corporation thereafter succeeding to its interest in the Building: (a) shall not be liable for any act or omission of Landlord under this Lease occurring prior to such sale or conveyance, (b) shall not be subject to any offset, defense or counterclaim accruing prior to such sale or conveyance, (c) shall not be bound by any payment prior to such sale or conveyance of Base Rent, Additional Rent or other payments for more than one month in advance, and (d) shall be liable for the keeping, observance and performance of the other covenants, agreements, terms, provisions and conditions to be kept, observed and performed by Landlord under this Lease only during the period such person, firm or corporation shall hold such interest. In no event shall any incidental, consequential, special, exemplary, speculative, or punitive

damages, including without limitation any claims for loss or imputed revenues, profits, and/or business opportunities be part of any Landlord liability. Any Landlord liabilities will also be limited to the amount of Base Rent received from Tenant over the Term of this Lease.

The rest of this page is intentionally left blank. Signatures are on the following page.

Signatures

Tenant

King County, Washington

By: _____
Its: _____
Date: _____

Landlord

INTERNATIONAL GATEWAY EAST LLC, by
Sabey Data Center Asset Holdings LLC, Manager

By: Patricia L. Jewell
Its: Chief Financial Officer
Date: 5/7/2019

APPROVED AS TO FORM ONLY:

By: _____ Name: _____
Senior Deputy Prosecuting Atty.

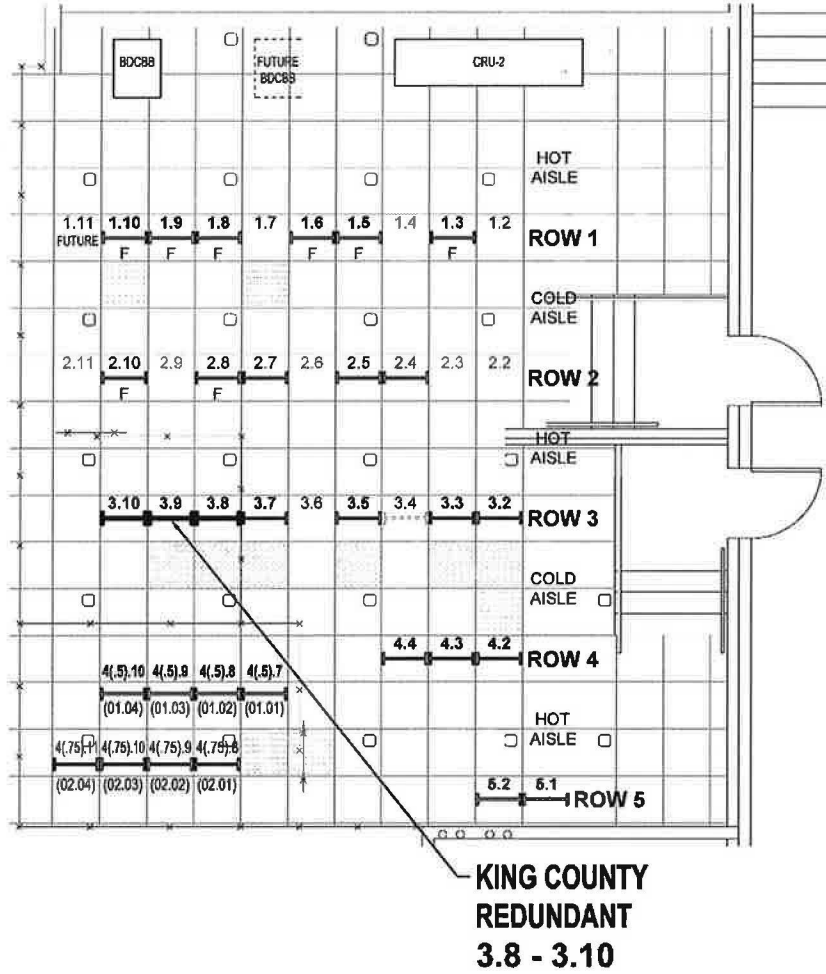
Date _____

King County Information and Telecommunications Services Division

By: _____
Name: _____
Date _____

SCHEDULE A

LOCATION OF PREMISES



SABEY

INTERGATE.EAST
3311 S 120TH PLACE, TUKWILA, WA 98168



IGE-2 CARRIER RM.

DATE: 08/19/18
SCALE: 3/16" = 1'-0"
DRAWN: BH

SABEY ARCHITECTURE

12201 Tukwila Int'l Blvd - 4th Floor, Seattle, WA 98168 T 206.281.8700 F 206.281.8920 W sabey.com

SCHEDULE B

Legal Description

PARCEL B:

LOT 2 OF BOUNDARY LINE ADJUSTMENT NO. L2000-072, AS RECORDED UNDER RECORDING NO. 20001213900008, RECORDS OF KING COUNTY, WASHINGTON.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Patricia A. Sewell is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Chief Financial Officer of Sabey Data Center Asset Holdings LLC, as Manager of International Gateway East LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 7, 2019



(Use this space for notary stamp/seal)

Erin C. Dempster
Notary Public
Print Name Erin C. Dempster
My commission expires 6/19/21

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____