

16213

July 16, 2008

Attachment A.

■ _____ ■

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 _____ day of _____, 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 120th 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 (12th) 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 (13th) month through the twenty-fourth (24th) month shall mean Twenty-seven Thousand Seven Hundred Eighty-two and 83/100 Dollars (\$27,782.83) per month.

"Data Center Base Rent" from the twenty-fifth (25th) month through the thirty-sixth (36th) 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 (37th) month through the forty-eighth (48th) 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 (49th) month through the sixtieth (60th) month shall mean Thirty Thousand Three Hundred Sixty-seven and 57/100 Dollars (\$30,367.57) per month.

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

"Data Center Base Rent" from the seventy-third (73rd) month through the eighty-fourth (84th) 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 (85th) month through the ninety-sixth (96th) 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 (97th) month through the one hundred eighth (108th) 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 (109th) month through the one hundred twentieth (120th) 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 (121st) month through the one hundred thirty-second (132nd) 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 (133rd) 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 (12th) 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 (13th) month through the twenty-fourth (24th) 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 (25th) month through the thirty-sixth (36th) 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 (37th) month through the forty-eighth (48th) 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 (49th) month through the sixtieth (60th) 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 (61st) month through the seventy-second (72nd) month shall mean Nine Thousand-five and 47/100 Dollars (\$9,005.47) per month.

"Office Space Base Rent" from the seventy-third (73rd) month through the eighty-fourth (84th) 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 (85th) month through the ninety-sixth (96th) 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 (97th) month through the one hundred eighth (108th) 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 (109th) month through the one hundred twentieth (120th) 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 (121st) month through the one hundred thirty-second (132nd) 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 (133rd) 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 Additional Rent 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

