

ORDINANCE 2020-09-17-0663

**AUTHORIZING THE CITY OF SAN ANTONIO TO ENTER INTO A
LEASE AGREEMENT WITH CPS ENERGY FOR 2,400 SQUARE
FEET OF DATA CENTER FLOOR SPACE.**

* * * * *

WHEREAS, the City has two data centers, the Downtown Data Center and the South Data Center, that support the City's broadband network and provide the City with internet connectivity, computing and network infrastructure; and

WHEREAS, the data centers are mission critical sites operated and maintained by the Information Technology Services Department (ITSD) that support Public Safety systems, critical business systems such as SAP, BuildSA, and 311, as well as day-to-day operations for all City departments; and

WHEREAS, in 2018, ITSD assessed the feasibility of remodeling the Downtown Data Center, building a data center in a new location or leasing data center space; and due to the anticipated expansion along Frio street by UTSA-Downtown, remodeling the current data center was not recommended; and

WHEREAS, the assessment also determined that building a data center at City Towers would have required extensive renovation to the building to add uninterruptible power systems, cooling systems, and redundant generators and fuel tanks; ITSD also assessed commercially available data center leasing options; and

WHEREAS, CPS Energy's data center was identified as the optimal site as it met the City's criteria; and

WHEREAS, this ordinance will authorize a lease agreement between the City and CPS Energy for the lease of 2,400 square feet of data center floor space in CPS Energy's Data Center; and

WHEREAS, upon lease signing, a one-time lump sum for contribution towards construction of the space in the amount of \$650,000 is due; funding for construction is available from Tax Notes and is included in the FY 2020 – FY 2025 Capital Improvement program; in FY 2021, 10 months of rent will be incurred for a total of \$568,304; funding for lease costs is included in the FY 2020 ITSD Operating Budget; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Lease Agreement between the City of San Antonio and CPS Energy for the lease of 2,400 square feet of data center floor space in CPS Energy's Data Center is approved. The Lease Agreement is attached and as **Exhibit A** and incorporated to this ordinance for all purposes.


RP
09/17/2020
Item No. 23

SECTION 2. The City Manager or designee is authorized to execute any and all documents necessary to fulfill the purpose and intent of this Ordinance.

SECTION 3. Funding for construction is available from Tax Notes and is included in the FY 2020 – FY 2025 Capital Improvement program. In FY 2021, 10 months of rent will be incurred for a total of \$568,304. The annual recurring costs are \$723,360 with a yearly 1.5% escalation fee. Funding for lease costs is included in the FY 2020 Information Technology Services Department Operating Budget. Additional annual recurring costs will be an operating expense funded from the Information Technology Services Department Operating Budget and is subject to City Council appropriation through the annual budget process.

SECTION 4. This Ordinance shall be effective immediately upon the passage by eight (8) votes or the 10th day after its passage by less than eight (8) affirmative votes.

PASSED AND APPROVED this 17th day of September 2020.




M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:

For 

Andrew Segovia, City Attorney

CITY COUNCIL MEETING

VOTESLIP

Item 23.-ConsentAgenda

DATE: September 17, 2020

Enactment No:

2020-09-17-0663

NAME	MOTION	SECOND	Recuse	AYE	NAY	ABSENT
Roberto C. Treviño DISTRICT 1				X		
Jada Andrews-Sullivan DISTRICT 2				X		
Rebecca J. Viagran DISTRICT 3				X		
Dr. Adriana Rocha Garcia DISTRICT 4				X		
Shirley Gonzales DISTRICT 5				X		
Melissa Cabello Havrda DISTRICT 6				X		
Ana E. Sandoval DISTRICT 7				X		
Manny Peláez DISTRICT 8				X		
John Courage DISTRICT 9		X		X		
Clayton H. Perry DISTRICT 10	X			X		
Ron Nirenberg MAYOR				X		

COMMENTS: Motion Prevailed

Does not include the following items heard individually:

4A, 4B, 4C, 4D, 4E, 4F, 5A, 5B, 8, 18, 25, Z-1, P-2 & Z-3, Z-9, P-4 & Z-10, Z-13, Z-15, and P-7 & Z-17

RP
09/17/2020
Item No. 23

Exhibit A



CPS ENERGY'S ECHO DATA CENTER

DATA CENTER LEASE

Between

CPS ENERGY
as Landlord

and

CITY OF SAN ANTONIO
as Tenant

Dated

Month [], 2020

DATA CENTER LEASE

This Data Center Lease (this "**Lease**") is entered into as of the Early Occupancy Date specified in Item 4 of the Basic Lease Information (the "**Effective Date**");

RECITALS

WHEREAS, Landlord is the owner of the Land on which the ECHO Data Center (the "**Building**") is constructed, which houses Landlord's personal property for operation of the facility (collectively referred to herein as the "**Property**").

WHEREAS, Tenant desires to lease 2,400 square feet of floor space in the Building (the "**Premises**") that will include forty (40) equipment cabinets (the "**Leased Cabinets**"), which Landlord will isolate from other tenants within the Premises during the contract Term.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, Landlord and Tenant agree as follows:

BASIC LEASE INFORMATION

- | | | | |
|------------------------------|---|--------------------------|--|
| 1. <u>Landlord</u> : | The City of San Antonio, action by and through the Public Service Board of San Antonio a/k/a CPS Energy (" Landlord ") | | |
| 2. <u>Tenant</u> : | The City of San Antonio, a home rule Texas city (" Tenant ") | | |
| 3. <u>Tenant Addresses</u> : | <u>Tenant Address for Notices</u> : | With copies to: | |
| | Information Technology Services | City Attorney's Office | |
| | Department | 506 Dolorosa, Building 1 | |
| | P.O. Box 839966 | San Antonio, TX 78205 | |
| | San Antonio, TX 78283-3966 | Attn: City Attorney | |
| | Attn: Chief Information Officer | Phone No: (210) 207-8940 | |



Tenant Address for Invoice of Rent:

and

By Mail:

By Delivery service:

City of San Antonio
Finance Department / Accounts Payable
P.O. Box 839976
San Antonio, TX 78283-3976

City of San Antonio
Finance Department / Accounts Payable
111 Soledad, 4th Floor
San Antonio, TX 78205

4. Lease Dates:

Effective Date: Month , 2020 (being the latest date of execution shown on the signature page hereto).
(Sign Date)

Early Occupancy Date: The "**Early Occupancy Date**" shall be the same date as the Effective Date. Landlord agrees to permit Tenant to install its data center equipment in the Leased Cabinets beginning on the Early Occupancy Date and continuing for a period not to exceed one hundred eighty (180) days (the "**Early Occupancy Period**").

Commencement Date: The Commencement Date shall begin on the earlier of the end of the Early Occupancy
(Lease Start) Period or the on the date when the first piece of equipment is installed at a Leased Cabinet, whichever occurs first.

5. Term: The Term shall be for one hundred twenty (120) months beginning on the Commencement Date (expiring on Month , 2030 (Lease End)

6. Renewal Term: Two automatic Renewal Terms of sixty (60) months each.

7. Tenant Space: The Leased Cabinets, Premises, and Tenant Conduit to which Tenant shall have exclusive use; and Common Areas subject to non-exclusive use.

(a) Premises: The 2,400 square feet of floor space within a steel fencing enclosure segregating the Leased Cabinets (the "Premises") from other cabinets within the 1st floor of the Building, as shown on Exhibit C. Landlord shall be responsible for the installation of the steel fencing and the Leased Cabinets, both of which shall be permanent fixtures of the Building. Installation of steel fencing enclosure shall be subject to CIAC Payment.

(b) Leased Cabinets: Forty (40) Leased Cabinets shall be installed within the Premises for the exclusive use of Tenant. At no time during the Term shall the number of Leased Cabinets be reduced below forty (40). Tenant may increase the number of Leased Cabinets during a Renewal Term subject to space availability and facilities capacity. Installation of additional Leased Cabinets shall be subject to CIAC Payment.

8. Conduit Space:

(a) Tenant Conduit: Two four-inch (4") conduits diversely routed from the Premises to the Point of Entry ("POE") Meet-Me-Rooms North and South (the "**North POE**" and "**South POE**" as described on Exhibit B, the "**Tenant Conduits**"), which will be installed by Landlord subject to CIAC Payment.

The communications lines delivered to the Premises from the North POE and South POE shall be the responsibility of the Tenant.

(b) Added Conduit: In the event that Tenant requests the use of additional dedicated conduit (the "**Added Conduit**"), Tenant shall (i) make a CIAC Payment to cover the cost of conduit construction, and (ii) execute an amendment to this Lease describing the Added Conduit and any increase in the Base Rent to ensure Landlord's cost recovery.



9. Interconnections: No monthly charges will apply for Tenant network interconnections at the North and South POEs. Communications lines shall enter the Building at the North and South POEs and terminate at Tenant's data center equipment.
10. Base Rent: The purpose of the **Base Rent** is to recover Landlord's operating costs for hosting Tenant's equipment. The monthly Base Rent is intended to recover Tenant's lease of the Premises (including Leased Cabinets) based on a cost recovery formula that takes into account the (1) pro-rata share cost allocation for the Property and Building; (2) electricity usage; and (3) pro-rata share cost allocation for Property and Building operating and maintenance expenses. The Based Rent shall be assessed on a per-cabinet-basis based on the **Occupied Rate** and the **Reservation Rate** for Leased Cabinets as provided in the Rate Schedule attached to this Lease as Exhibit H. Currently, Landlord does not have the ability to submeter Tenant's data center equipment, but should this change the Parties may negotiate an amendment to the Lease to reflect actual energy consumption. Such amendment to this Lease would become effective at the beginning of any subsequent Renewal Term.
- The Base Rent will be subject to adjustment with any additions to Tenant's equipment requirements.
11. CIAC Payment: Prior to move-in, Landlord will provide Tenant a cost estimate for the construction of the steel fence enclosure and any other upfront construction costs that will create the Premises and installation of the Tenant Conduits. Construction will begin within ten (10) business days of receipt of the CIAC Payment. Tenant shall be required to pay an upfront payment in the form of a contribution in aid of construction ("**CIAC Payment**") for construction of the Premises steel fencing enclosure. The amount of the CIAC Payment will be based upon the bid that Landlord accepts for construction of the Premises enclosure, installation of Leased Cabinets, and deployment of Tenant Conduits. Tenant will have input on bid specifications, and Landlord must assure that contract for construction complies with City of San Antonio SBEDA guidelines.
12. Prepaid Rent: Prepaid Rent: \$51,656.00 due and payable upon Commencement Date of this Lease, consisting of the first month's Base Rent.
13. Building Rules and Regulations: Tenant shall follow Landlord's rules and regulations for the Building (the "**Building Rules and Regulations**"), including entry and escort protocols, which may be amended from time to time by Landlord. The current version of the Building Rules and Regulations is attached hereto as Exhibit D.
14. Tenant's Equipment: To accommodate Tenant's power needs for data center equipment installed in the Leased Cabinets, Tenant shall provide Landlord with the number of cabinets that will require power using the form provided in Exhibit E. Exhibit E-1 shall provide the cabinet power consumption need at the commencement of the Lease. Any subsequent change in Tenant's cabinet power consumption requirements resulting from equipment additions or upgrades must be reported to Landlord using Exhibit E, in successively numbered exhibits.
15. Electricity: Landlord shall provide electricity, which cost shall be incorporated into the Base Rent based on Tenant's Leased Cabinet power consumption requirements reported on Exhibit E. The Base Rent shall be adjusted based on the number of Leased Cabinets utilized at the Occupied Rate and at the Reservation Rate, subject to the monthly minimum requirements outlined in Exhibit H.
16. Landlord's Address for Notices: CPS Energy
Attn: Information Technology
145 Navarro Street
San Antonio, TX 78205
- With copies to:
CPS Energy
Attn: General Counsel
145 Navarro Street



San Antonio, TX 78205

17. Land: The land ("**Land**") located at:
1110 Richland Hills, San Antonio, TX 78251
18. Building: The ECHO Data Center is a single-story building consisting of approximately 16,000 square feet of data center floor space (the "**Building**")
19. Common Areas: That part of the Property outside the Building designated by Landlord from time to time for the common use by tenants, including among other facilities, the sidewalks, curbs, truck-ways, loading areas, private streets and alleys, parking areas, landscaping; and inside the Building the entry patio, lobby, hallway corridors, break room, restrooms, drinking fountains, Storage Area, off-loading deck, North POE, South POE, and Burn-in-Room. Certain common areas are subject to escort protocols as provided in Exhibit C.
20. Meet-Me Rooms: The North POE and South POE, which will serve as the common interconnection areas for Tenant to interface with communications facilities coming into, and out of, the Building.

This Lease shall consist of the foregoing Basic Lease Information, and the provisions of the Standard Provisions for Data Center Lease (the "**Standard Lease Provisions**") and Exhibits A through H, inclusive, all of which are incorporated herein by this reference as of the Effective Date. In the event of any conflict between the provisions of the Basic Lease Information and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control. Any initially capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Standard Lease Provisions.

[No further text on this page.]

STANDARD PROVISIONS FOR DATA CENTER LEASE

1. LEASE OF PREMISES.

1.1 Tenant Space. Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord for the Term, (i) the Premises and Leased Cabinets in the approximate locations depicted on Exhibit "A" attached hereto; (ii) the Tenant Conduits as depicted in Exhibit "B"; and (iii) the Common Areas. The Leased Cabinets, Premises, Tenant Conduits, and the Common Areas shall be referred to herein collectively as the "Tenant Space."

1.2 Condition of Premises. Tenant has inspected the Premises and accepts its "AS IS, WHERE IS" condition. Tenant acknowledges and agrees that (i) no representation or warranty (express or implied) has been made by Landlord as to the condition of the Premises or its suitability or fitness for the conduct of Tenant's Permitted Use, its business or for any other purpose, and (ii) except as specifically set forth herein, Landlord shall have no obligation to construct or install any improvements in or to make any other alterations or modifications to the Premises. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good order and clean condition.

1.3 Interconnections. Interconnections between Tenant equipment and any communications lines from any network must be made in the North POE and South POE, which will serve as entrance facilities for such communications lines terminating at Tenant's equipment. During the Term of this Lease and subject to availability, Tenant shall have the right to lease Added Conduits between the Premises and the North and South POEs based on the terms agreed to by the parties.

1.4 Common Areas. The Common Areas, shall be subject to Landlord's sole management and control and shall be operated and maintained at Landlord's discretion. Landlord reserves the right to change from time to time the dimensions and location of the Common Areas, to construct or erect new structures or other improvements on any part of the Building or Land without the consent of Tenant. Tenant, and Tenant's employees, invitees and Permitted Licensees shall have the nonexclusive right to use the Common Areas as constituted from time to time, such use to be in common with Landlord, other tenants of the Building and other persons entitled to use the same, and subject to the Building Rules and Regulations. Tenant shall not take any action which would interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close any part of the Common Areas for such periods of time as may be necessary to make repairs or alterations.

1.5 Quiet Enjoyment; Landlord Access. Tenant shall be entitled to the quietly enjoyment of the Premises, subject to Landlord's right of access to the Premises and Leased Cabinets as provide in this Lease and except for the requirement to be escorted when accessing the Storage Area, Burn-in-Room, North POE, and South POE. Tenant shall have access to the Tenant Space twenty-four (24) hours per day, seven (7) days per week, and to all unescorted Common Areas.

2. TERM.

2.1 Term. The term of this Lease, and Tenant's obligation to pay Rent under this Lease, shall commence on the Commencement Date and shall continue in effect for one hundred twenty (120) calendar months (the "Term"), unless this Lease is earlier terminated as provided herein.

2.2 Delivery of Premises. Landlord shall deliver possession of the Premises to Tenant on the Early Occupancy Date for the purpose of installing data center equipment.

2.3 Renewal Options.

2.3.1 In accordance with the terms and conditions of this Section 2.3, the Term of this Lease will automatically renew for two additional sixty (60) calendar months (each a "Renewal Term"), upon the same terms, conditions and provisions applicable to the then current Term of this Lease, unless Tenant provides Landlord written notice of the intent not to renew ninety (90) days prior to the end of the Term or first Renewal Term.

2.3.2 Each automatic Renewal Term shall apply only with respect to the entire Premises and number of Leased Cabinets.

2.4 Early Termination. The Tenant shall have the right to terminate this Lease by providing Landlord advanced written notice and paying the certain costs as follows: (a) 180-days prior written notice; (b) Base Rent through the date that all Tenant equipment and communications lines are removed from the Premises and North and South POEs; and (c) actual cost of returning the Premises to its original pre-lease condition.

2.5 City Council Appropriations. Tenant's payment obligations under this Lease are subject to the appropriation of funds from the San Antonio City Council during each budget cycle in which the Lease is in effect. If the City Council fails to appropriate funds for this Lease during any annual budget, such lack of funds shall be considered an Early Termination under Section 2.4 and Tenant shall be liable for the minimum Base Rent only for as long as previously appropriated funds are available. However, irrespective of the availability of appropriated funds, Tenant shall be liable for Base Rent for as long as it continues to operate data center equipment installed in Leased Cabinets.

3. BASE RENT AND OTHER CHARGES.

3.1 Base Rent. Commencing on the Commencement Date, Tenant shall pay the Base Rent for the Tenant Space in the amount set forth in the Rate Schedule appearing in Exhibit H. Thereafter, Base Rent shall be paid to Landlord in monthly installments on the first day of each month throughout the Term of this Lease; provided, however, that (a) the first full monthly installment of Base Rent shall be payable on Commencement Date, and (b) if the Term of this Lease does not commence on the first day of a calendar month, the Base Rent for such partial calendar month shall be calculated on a per diem basis based on the number of days remaining in such calendar month starting with the Commencement Date. This Section 3.1 does not affect Tenant's obligation to pay the Prepaid Rent.

3.1.1 Annual Escalation of Base Rent. The Base Rent shall escalate on an annual basis at the rate of 1.5% annually.

3.2 Payments Generally. Base Rent, any forms of Additional Rent, and all other amounts, fees, payments or charges payable hereunder by Tenant shall constitute rent payable hereunder (and shall sometimes collectively be referred to herein as "**Rent**") and shall be payable to Landlord when due in full without any prior notice or demand. No receipt of money by Landlord from Tenant after the termination of this Lease shall reinstate, continue or extend the Term of this Lease. No partial payment by Tenant shall be deemed to be other than on account of the full amount otherwise due. In the event the Commencement Date or the Expiration Date (or the date of early termination of this Lease) falls on a date other than the first or last day of a calendar month, respectively, the Rent payable for such partial calendar month shall be prorated based on a per diem basis. For purposes of this Lease, other than Base Rent, all amounts payable by Tenant to Landlord pursuant to this Lease shall constitute "**Additional Rent**." Tenant shall have the right to contest any billing error in monthly Base Rent or Additional Rent by providing Landlord written notice of the alleged billing error within ten (10) business days of receipt of an invoice. Landlord will investigate the billing claim promptly and respond in writing within ten (10) business days of receipt of Tenant's written notice of the billing dispute. Should Landlord need additional time to investigate the billing dispute, it shall so notice the Tenant within the ten (10) day response period and include the additional time necessary to complete its investigation. If additional time is necessary to complete the investigation of the billing dispute, Landlord will respond in writing to Tenant by the extension date specified in the initial written response explaining the results of the internal investigation. Should the billing inquiry uncover that a billing error did occur, Tenant shall be given Rent credit on the next monthly invoice(s) in the appropriate amount. Under no circumstances will a billing dispute result in a credit beyond the amount of the billing error. In the event of a billing dispute, the City shall pay the undisputed amount of the invoice and protest the disputed amount in writing, setting out the nature of the alleged billing dispute. CPS Energy and City will make a reasonable effort to resolve the unresolved dispute within thirty (30) days of receipt of the written notice of dispute.

3.3. Electrical Consumption Threshold. Tenant's cabinet power consumption needs will be calculated starting on the Effective Date based the Power Distribution Unit ("PDU") requirement for each Leased Cabinet. The sum of Tenant's cabinet power consumption requirements for all Leased Cabinets shall be referred to as the "**Electrical Consumption Threshold**." The Electrical Consumption Threshold will change every time Tenant reports an adjustment to the cabinet power consumption requirements under Exhibit E. Landlord will calculate the Electrical Consumption Threshold every time Exhibit E is updated by Tenant. Tenant shall use the Exhibit E schedule to report

any conversion from a Leased Cabinet subject to the Reservation Rate to one subject to the Occupied Rate, or vice-versa.

3.4 Power Contribution to Base Rent. Tenant's equipment installed in the Leased Cabinets will not be metered at the commencement of this Lease, but Tenant will provide its cabinet power consumption requirements under Exhibit E, which Landlord will use to calculate Tenant's Electrical Consumption Threshold. The Base Rent will include a contribution for the cost of electricity based on Tenant's Electrical Consumption Threshold (the "**Power Contribution**"). The Power Contribution component of the Base Rent will be incorporated into twenty (20) Leased Cabinets (the "**Occupied Rate**" per cabinet). The remaining twenty (20) Leased Cabinets will not include a Power Contribution (the "**Reservation Rate**" per cabinet). Tenant will be required to pay the monthly **Minimum Base Rent** calculated by multiplying twenty (20) Leased Cabinets by the Occupied Rate and the remaining twenty (20) by the Reservation Rate, as illustrated in the Rate Schedule (Exhibit H). Provided, however, that the twenty (20) Leased Cabinets charged at the Occupied Rate will include the cabinets with the highest power consumption requirements as reported in Exhibit E.

3.5 Potential Submetering Option. Should Landlord subsequently install submetering equipment, Landlord will remove the Power Contribution from the Base Rent and thereafter Tenant shall make monthly payments that include the Base Rent and the actual cost for electricity consumption. Such adjustment to the Base Rent shall require an amendment to this Lease and may occur at any time during the Term or Renewal Term.

3.6 Late Payments. Tenant hereby acknowledges and agrees that the late payment by Tenant to Landlord of Base Rent or any Additional Rent will cause Landlord to incur administrative costs not contemplated under this Lease. Landlord and Tenant agree that if Landlord does not receive any such payment on or before the date that is thirty business days after the date on which such payment is due, Tenant shall be liable for late payment interest on all such delinquent amounts at an interest rate equal to the maximum lawful rate authorized by the Prompt Payment Act, Chapter 2251, Texas Government Code, from the date such amounts are first delinquent until the date the same are paid.

4. USE.

4.1 Permitted Use. Subject to the terms of this Lease to the contrary, Tenant shall use the Premises only for the installation, placement, operation, and maintenance of computer, switch, transmission and/or communications equipment and connections and/or provision of managed hosting and IP services, and in any case for all purposes necessary or appropriate for data center and/or telecommunications center purposes (including without limitation (a) designated use of Storage Room and (b) use of Common Areas, including the Burn-in-Room (collectively, the "**Permitted Use**"). Any other use of the Premises, Storage Room, and Burn-in-Room is subject to Landlord's prior written consent, which consent may be withheld or conditioned in Landlord's sole and absolute discretion.

4.2 Building Rules and Regulations. Tenant's Permitted Use shall be subject to, and Tenant, and Tenant's agents, employees and invitees shall comply fully with all requirements of the Building Rules and Regulations, which Landlord may amend or supplement from time-to-time in Landlord's sole but good faith discretion advisable for the safety, regulatory compliance, care, and cleanliness of the Tenant Space, the Building, and the Property and for preservation of good order therein; provided, however, that such changes to the Building Rules and Regulations may not increase Tenant's monetary obligations under this Lease or restrict in any way Tenant's operation in the Premises twenty-four (24) hours per day seven (7) days per week during the Term, except with regard for escort service when Tenant is accessing the Storage Room, Burn-in-Room, North POE, and South POE. In the event of a conflict between the Building Rules and Regulations and the terms of this Lease, the terms of this Lease shall govern. Tenant shall further be responsible for the compliance with such Building Rules and Regulations by the employees, agents and invitees of Tenant. Landlord shall apply the Building Rules and Regulations uniformly to the tenants of the Building.

4.3 Compliance with Laws; Hazardous Materials.

4.3.1 Compliance with Laws. Tenant, at its sole cost and expense, shall timely take all action required to cause the Premises to comply in all respects with all laws, ordinances, building codes, rules, regulations, orders and directives of any governmental authority having jurisdiction (including without limitation any certificate of occupancy), and all covenants, conditions and restrictions affecting the Property now or in the future applicable to the Premises (collectively, "**Applicable Laws**") and with all rules, orders, regulations and requirements of any applicable fire rating bureau or other organization performing a similar function.

Tenant shall not use the Premises in any manner, or engage in any conduct in or about the Premises, which:

- (i) Violates or conflicts with any Applicable Law;
- (ii) Causes or is reasonably likely to cause damage to the Premises or Leased Cabinets, or the Building and/or Building systems and equipment, including, without limitation, all fire/life safety, electrical, HVAC, plumbing or sprinkler, access control (including, without limitation, Landlord's Access Control Systems), mechanical, telecommunications, and equipment (collectively, the "**Building Systems**");
- (iii) Will invalidate or otherwise violates a requirement or condition of any fire, extended coverage or any other insurance policy covering the Premises, or the Building, or the property located therein, or will increase the cost of any of the same;
- (iv) Constitutes or is reasonably likely to constitute a nuisance, annoyance or inconvenience to Landlord or other tenant of the Building, or to any equipment, facilities or systems of Landlord or other tenant;
- (v) Interferes with, or is reasonably likely to interfere with, the transmission or reception of radio or wire communication signals by antennae or other facilities located at the Building;
- (vi) Amounts to or results in the commission of waste in the Premises;
- (vii) Violates any of the Building Rules and Regulations;
- (viii) Allow Tenant to run a data center from the Premises for any third-parties); or
- (ix) Other than the Permitted Use.

Subject to the provisions of Section 7.1.5, Tenant shall be responsible for any losses, costs or damages in the event unauthorized parties gain access to the Premises or the Building through access cards, keys or other access devices provided to Tenant by Landlord. Tenant shall promptly upon demand reimburse Landlord as additional rent for any damage to the Building, Premises, or Landlord's personal property by reason of Tenant's failure to comply with the provisions of this Section 4.3, subject to the notice and cure period described in Section 11.1.2 hereof.

4.3.2 Hazardous Materials. No Hazardous Materials (as defined below) shall be Handled (as defined below) upon, about, in, at, or above the Premises or any portion of the Building by or on behalf of Tenant or its contractors, employees, representatives, licensees, agents, or invitees (the "**Tenant Parties**"). Notwithstanding the foregoing and excluding batteries or similar corrosive materials, normal quantities of those Hazardous Materials customarily used in the conduct of the Permitted Use may be used at the Premises without Landlord's prior written consent, but only in compliance with all applicable Environmental Laws (as defined below) and only in a manner consistent with the Building Rules and Regulations.

"**Environmental Laws**" shall mean and include all now and hereafter existing Applicable Laws regulating, relating to, or imposing liability or standards of conduct concerning public health and safety or the environment.

"**Hazardous Materials**" shall mean and include: (1) any material or substance: (i) which is defined or becomes defined as a "hazardous substance," "hazardous waste," "infectious waste," "chemical mixture or substance," or "air pollutant" under Environmental Laws; (ii) containing petroleum, crude oil or any fraction thereof; (iii) containing polychlorinated biphenyls (PCB's); (iv) asbestos, asbestos-containing materials or presumed asbestos-containing materials (collectively, "**ACM**"); (v) which is radioactive; (vi) which is infectious; or (2) any other material or substance displaying toxic, reactive, ignitable or corrosive characteristics, and are defined, or become defined by any Environmental Law.

"**Handle**," "**Handled**," or "**Handling**" shall mean any installation, handling, generation, storage, treatment, use, disposal, discharge, release, manufacture, refinement, presence, migration, emission, abatement, removal, transportation, or any other activity of any type in connection with or involving Hazardous Materials. Landlord hereby represents and warrants that to the best of Landlord's actual knowledge, neither the Building nor the Land contain any Hazardous Materials at levels or in conditions that are in violation of applicable Environmental Laws. As used herein, the phrase "**Landlord's actual knowledge**", or similar phrases, shall mean the actual current knowledge as of the date of this Lease by Landlord personnel. In the event that Environmental Laws require Landlord to remove Hazardous Materials from any part of the Building or Land, that obligation shall be at Landlord's sole cost and shall be limited to removal of Hazardous Materials which are in excess of the legal levels permitted by Environmental Laws, and which were not placed on the Premises by Tenant (the prompt cleanup of which, in accordance with Environmental Laws, shall be the responsibility of Tenant hereunder).

5. SERVICES TO BE PROVIDED TO THE TENANT SPACE.

5.1 Access Control. Landlord will provide access control as follows:

- (i) Landlord will operate a check-in desk at the Building's main entrance twenty-four (24) hours per day, seven (7) days per week for gate entry into the Property and identification upon entering the Building;
- (ii) Landlord will provide an electronic "key card" system to control access to the Building under which Tenant will have unescorted access to the Common Areas identified in Exhibit C;
- (iii) Landlord will provide escorted access to the Storage Room, Burn-in-Room, North POE, and South POE;
- (iv) Landlord will provide three (3) escorted accesses through or to restricted areas subject to 24-hour advanced notice and availability per month; and additional escorted visits shall be subject to the escort fee applicable at the time; and
- (v) Landlord will provide a video surveillance system in the Building (collectively, "**Landlord's Access Control Systems**").

Landlord disclaims any and all other responsibility or, obligation to provide additional access control (or any security) to the Building, the Tenant Space, or any portion of any of the above. Landlord reserves the right to institute additional access control measures in order to further control and regulate access to the Building, or any part thereof. Landlord shall not, under any circumstances, be responsible for providing or supplying security services to the Premises or any part of the Building in excess of the Landlord's Access Control Systems expressly set forth in this Section 5.1. Subject to Landlord's approval of the plans and specifications therefore and the contractors who will perform such work, Tenant may install, at its sole cost and expense, its own security system ("**Tenant's Security System**") to Premises and specified Leased Cabinets. Tenant shall furnish Landlord with a copy of all key codes, access cards and other entry means and ensure that Landlord shall have access to the Premises at all times, subject to Landlord's compliance with Tenant's security procedures in accordance with the terms of Section 13.14. Additionally, Tenant shall ensure that Tenant's Security System shall comply with all Applicable Laws, and in no event shall Landlord be held liable for the malfunctioning of Tenant's Security System. Tenant acknowledges and agrees that it understands that all persons in the Building and the activities of all such persons are and shall be subject to surveillance by video camera and/or otherwise by Landlord's agents and employees.

5.2 Provision of Electricity. Landlord shall furnish electricity to the Premises up to the Electrical Consumption Threshold for the Premises. Tenant shall not exceed the electricity consumption for the Premises above the Electrical Consumption Threshold, provided that Tenant may adjust the Electrical Consumption Threshold by adjusting its cabinet power consumption requirements using the schedule provided in Exhibit E.

5.3 Redundant Electric Service. Tenant will enjoy the benefits of redundant electric service provided to the Building. The Building is serviced by duplicative electrical circuits originating from separate substations. In addition, Landlord will provide back-up power supply in the event both electrical circuits fail at the same time in the form if a Building UPS system supported by two hours of battery supplies that is immediately engaged upon the loss of both electrical circuits as the bridge to a 1.65 MW diesel back-up generator with a 1,600 gallon fuel tank and a spare 10,000 gallon fuel tank. The Landlord's obligations in providing electricity end at the PDU. Tenant will be responsible for the installation of any device within each Leased Cabinet to protect its equipment in the event of an electrical surge or loss in power.

5.4 Access to North and South POEs. Landlord shall provide Tenant access to the North and South POEs where the entrance communications facilities of private carriers will enter the Building to connect to Tenant's equipment located in the Leased Cabinets at the Premises. Carriers shall connect their communications facilities at a cross-connect panel, or similar device provided by the carrier, located and made accessible by Landlord at the North and South POEs. From each POE, each carrier will extend its communications facilities to connect to Tenant's equipment installed in Leased Cabinets at the Premises via the Tenant's Conduits. The point of demarcation for Tenant's network communications lines shall be at the cross-connect panel located at the North and South POEs.

5.5. Steel Enclosure at Premises. Landlord will be responsible for the construction of the steel enclosure to segregate the Premises from the rest of the Building and isolate the Leased Cabinets reserved by Tenant.

5.6. Leased Cabinets. Landlord will install forty (40) Leased Cabinets in the Premises steel fenced enclosure for Tenant's use with the dimensions and specifications found in Exhibit G.

5.7 Security Hardware. Landlord will supply and install all necessary security hardware for the enclosure.

5.8 Fire Safety Hardware. In addition to in-building fire suppression and life safety systems, Landlord will install fire safety hardware for the Premises.

5.9 Cooling. In addition to the Building's HVAC cooling system, CPS Energy will install eighty (80) Opti-Cool Heat Extraction systems (2 per Leased Cabinet) and Opti-Cool rear cabinet doors for all forty (40) Leased Cabinets.

5.10 Burn-in-Room. Two (2) cabinets that are replicas of the Leased Cabinets will be made available to Tenant to test installation parameters and functionality of equipment and to allow vendors to install software in hardware equipment prior to full scale equipment installation in the Premises. Tenant at its discretion and expense may secure the cabinets with authorization from the Landlord.

5.11 Storage Room. In a designated area, Tenant shall have one storage rack system with three shelves for the storage of spare hardware and miscellaneous supplies. Tenant at its discretion and expense may secure storage space.

5.12 Water. Landlord shall furnish hot and cold water at those points of supply provided for general use therein.

5.13 Janitorial Service. Landlord shall furnish janitorial service in and about the Common Areas of the Building, as may, in the judgment of Landlord, be reasonably required; but shall not be required to furnish janitorial services to the Premises.

5.14 Loading Dock. Tenant shall have reasonable access to a loading dock at all times (in common with other tenants of the Building), subject to the Building Rules and Regulations.

5.15 Life Safety. Landlord shall maintain the fire suppression and life safety systems of the Building in accordance with Applicable Law.

5.16 Interruption of Services. Landlord shall not be liable or responsible to Tenant for any loss, damage or expense of any type which Tenant may sustain or incur if the quantity or character of electric service is experienced. No interruption or malfunction of any electrical or other service (including, without limitation, heating ventilation and air conditioning "HVAC") to the Premises (or to any other portion of the Building) shall, in any event,

- (i) Constitute an eviction or disturbance of Tenant's use and possession of the Premises,
- (ii) Constitute a breach by Landlord of any of Landlord's obligations under this Lease,
- (iii) Render Landlord liable for damages of any type or entitle Tenant to be relieved from any of Tenant's obligations under this Lease (including the obligation to pay Base Rent, Additional Rent, or other charges),
- (iv) Grant Tenant any right of setoff or recoupment,
- (v) Provide Tenant with any right to terminate this Lease, or
- (vi) Make Landlord liable for any injury to or interference with Tenant's business or any punitive, incidental or consequential damages (of any type), whether foreseeable or not, whether arising from or relating to the making of or failure to make any repairs, alterations or improvements, or whether arising from or related to the provision of or failure to provide for or to restore any service in or to any portion of the Premises or the Building. In the event of any interruption, however, Landlord shall employ commercially reasonable efforts to restore such service or cause the same to be restored in any circumstances in which such restoration is within the reasonable control of the Landlord and the interruption at issue was not caused in whole or in part by any action of Tenant.

6. MAINTENANCE; ALTERATIONS.

6.1 Landlord Maintenance. Except as provided in this Section 6.1, Landlord shall have no obligation to repair and/or maintain the Tenant Space. Landlord will maintain and keep in good repair and first class condition, consistent with industry standards, the steel fenced enclosure that established the footprint of the Premises that is structural in nature, as well as the foundation, steel structure, exterior walls, windows, and roof of the Building, the Common Areas within and outside of the Building, the Building's life safety system, the Building's water and sewer system, the Building's electrical grounding system, the Building's electrical system, the heating, air conditioning and ventilation system within the Building's Common Area, Landlord's Access Control Systems, the Building switch gear, the

telecommunications conduits, risers, cables, vaults and manholes including the redundant multi-carrier multi-location access point for communication lines and power services (North and South POEs), all equipment, furnishings, fixtures and other personal property used by Landlord in the operation of the Building, the Building's fire sprinkler system, the Building's fire alarm system, and the parking and grounds adjacent to the Building (the "**Base Building**"). Landlord shall use commercially reasonable efforts to schedule, perform (and cause others to schedule and perform) all work related to its maintenance obligations in a manner that minimizes unreasonable interruption or disruption of Tenant's use of Premises, or the operations performed therein. For the purposes of this Lease, (i) the term "**Electrical Repair**" shall mean and refer to the repair by Landlord of the Building's electrical systems and facilities necessitated by their malfunction or "break-down"; and (ii) the term "**Water Repair**" shall mean and refer to the repair by Landlord of a water leak in the Building, including a roof leak, window leak, foundation leak, exterior wall leak or the Building's plumbing system within the Common Area.

6.2 Tenant's Maintenance. During the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain the Premises and Tenant's equipment therein in a safe, good order, and clean condition (and in at least as good order and clean condition as when Tenant took possession of Premises), ordinary wear and tear and damage by Casualty excepted. If Tenant fails to perform its covenants of maintenance and repair hereunder, or if Tenant or any of Tenant's technicians or representatives physically damages the Property, Building, Premises, or any portion of any of the above, or the personal property of any other tenant or occupant, Landlord may, but shall not be obligated to (after notice by Landlord to Tenant and failure by Tenant to cure within ten (10) days after such notice) perform all necessary or appropriate maintenance and repair, and any amounts expended by Landlord in connection therewith, plus an administrative charge of ten percent (10%), shall be reimbursed by Tenant to Landlord as additional rent within thirty (30) days after Landlord's demand therefore.

6.3 Alterations. Notwithstanding any provision in this Lease to the contrary, Tenant shall not make or cause to be made any alterations, additions, improvements or replacements to the Premises, or any other portion of the Building or Property (collectively, "**Alterations**") without the prior written consent and approval of Landlord, which consent and approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord's consent shall not be required for any usual and customary installations, repairs, maintenance, and removals of equipment and telecommunication cables within the Premises if and to the extent that such installations, repairs, maintenance, and removals (i) are usual and customary within the industry, (ii) are in compliance with the Building Rules and Regulations, and (iii) will not affect the Building's structure, the provision of services to other Building tenants, or the Building's electrical, plumbing, HVAC, life safety or mechanical systems. After taking possession of the Premises, regarding any request for an Alteration, Tenant shall provide Landlord a full set of drawings in .pdf electronic format for Landlord's review, consideration, and consent at its sole discretion.

6.4 Removal of Cable, Wiring, Connecting Lines, Equipment, Personal Property and Alterations.

6.4.1 Tenant agrees that, upon the expiration or earlier termination of this Lease, Tenant (or, failing which, a contractor designated by Landlord) shall, to the extent required by Applicable Law, and at Tenant's sole cost and expense, promptly remove Tenant's Personal Property (as defined below) and Alterations, and shall restore those portions of the Building and/or the Premises damaged by such removal of such Tenant's Personal Property and Alterations to their condition immediately prior to the installation or placement of such items, ordinary wear and tear and damage by Casualty excepted.

6.4.2 Remedies Related to Partial Removal. If Tenant removes some, but not all, of Tenant's Personal Property (the "**Leftover Personal Property**"), or Tenant removes some, but not all, of the Alterations (the "**Leftover Alterations**"), but fails to promptly remove the balance of the Leftover Personal Property or the Leftover Alterations, as applicable, pursuant to this Section 6.4, Landlord shall have the right to remove such Leftover Personal Property and such Leftover Alterations and to restore those portions of the Building and/or the Premises damaged by such removal to their condition immediately prior to the installation or placement of such Leftover Personal Property and Leftover Alterations, in which case Tenant agrees to reimburse Landlord within thirty (30) days of Landlord's demand therefor, for all of Landlord's costs of removal and restoration plus an administrative fee equal to ten percent (10%) of such cost.

6.4.3 For purposes hereof, "**Tenant's Personal Property**" shall mean, collectively, all communications cable, wiring and connecting lines, and all furniture, servers, security cages, computing and network gear, cable

management system, including ladder racks and fiber trays, and other equipment installed, supporting or placed by or for on behalf of Tenant anywhere in the Building and/or the Premises, but not including any items contained within the description of "Alterations" hereunder.

7. CASUALTY; INSURANCE.

7.1 Casualty.

7.1.1 If at any time during the Term of this Lease, a material portion of the Building or the Premises shall be (i) damaged or destroyed by fire or other casualty (a "**Casualty**"), then Landlord and Tenant shall have the right to elect, in each party's sole and absolute discretion, to either (a) terminate this Lease by delivery of written notice (a "**Termination Notice**") thereof to the non-terminating party or (b) to continue this Lease, in which case, Landlord shall repair and reconstruct the Building and Premises to substantially the same condition in which they existed immediately prior to such Casualty (except for the Premises, which must only be restored to its Commencement Date condition). If as a result of the Casualty, the Premises is unfit for use by Tenant in the ordinary conduct of Tenant's business and actually is not used by Tenant, then Landlord shall provide written notice (the "**Restoration Notice**") to Tenant as soon as practicable after the Casualty of the period of time (the "**Stated Restoration Period**") which shall be required for the repair and restoration of the Building to permit use of the Premises in the ordinary conduct of Tenant's business and Tenant shall have the right, at its election, to terminate this Lease if either (i) the Stated Restoration Period shall be in excess of ninety (90) days following the Casualty and Tenant terminates this Lease with written notice thereof to Landlord within thirty (30) days following delivery of the Restoration Notice, or (ii) Landlord shall fail within the Stated Restoration Period to complete the repair and restoration of the Building necessary to allow Tenant's use of the Premises in the ordinary conduct of Tenant's business and Tenant delivers written notice of such termination to Landlord within thirty (30) business days following the expiration of the restoration deadline.

7.1.2 **Base Rent Abatement** In the event that this Lease is terminated as herein permitted, all Rent abates as of the date of such Casualty and Landlord shall refund to Tenant any prepaid Base Rent less any sum then owing Landlord by Tenant. Landlord shall not be obligated to carry insurance on Tenant's personal property within the Premises. If the Lease shall not have been terminated in accordance with Section 7.1.1, above, Base Rent shall abate proportionately during the period and to the extent that the Premises is unfit for use by Tenant in the ordinary conduct of Tenant's business and actually is not used by Tenant, this Lease shall continue in full force and effect, and such repairs shall be made within a reasonable time thereafter, subject to Force Majeure, including, without limitation, delays arising from shortages of labor or material, delay in obtaining government approvals or other conditions beyond Landlord's reasonable control.

7.1.3 **Tenant's Remedy.** Tenant's termination right and Base Rent abatement, to the extent provided above in this Article 7, shall be Tenant's sole remedies in the event of a Casualty, and Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Building resulting from any such damage, repair, reconstruction or restoration; provided, however, that notwithstanding anything to the contrary herein, if any Casualty is caused by any negligent act or omission or willful misconduct of Tenant or any Tenant Party, Tenant shall not be entitled to terminate this Lease under Section 7.1.1 and, once and if Tenant's Rental Loss Insurance is exhausted, there shall be no abatement of any Base Rent (or any other Rent or other amounts) due hereunder.

7.1.4 **Waiver.** Landlord and Tenant agree that the provisions of this Article 7 and the remaining provisions of this Lease shall exclusively govern the rights and obligations of the parties with respect to any and all damage to, or destruction of, all or any portion of the Premises, the Building or the Property, and each Landlord and Tenant hereby waive and release each and all of their respective common law and statutory rights inconsistent herewith, whether now or hereinafter in effect.

7.1.5 **Subrogation.** Notwithstanding any provision to the contrary contained herein, whenever (a) any loss, cost, damage or expense resulting from damage to or destruction of tangible property attributable to fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Premises or the Building, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or would be covered in whole or in part by insurance required to be carried under the terms of this Lease, then such party hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance, or which would have been recovered under the insurance required to be carried under the terms of this Lease, and waives any right of

subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage.

7.2 Tenant's Insurance. Tenant shall procure and maintain throughout the Term of this Lease a policy of insurance in accordance with the terms and requirements set forth in **Exhibit "F"** to this Lease. Tenant hereby waives its rights against the Landlord with respect to any claims or damages or losses (including any claims for bodily injury to persons and/or damage to property) which are caused by or result from (i) risks insured against under any insurance policy carried by Tenant at the time of such claim, damage, loss or injury, or (ii) risks which would have been covered under any insurance required to be obtained and maintained by Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

7.3 Landlord's Insurance. Landlord shall procure and maintain throughout the Term of this Lease (a) a policy of insurance insuring the Building and the Property and all of Landlord's equipment and fixtures installed therein against loss due to fire and other casualties included in standard extended coverage insurance policies, in an amount equal to the replacement cost thereof with a commercially reasonable deductible; and (b) a commercially reasonable amount of commercial general liability insurance with a commercially reasonable deductible.

8. ASSIGNMENT AND SUBLETTING.

8.1 No Transfer or Subletting. Tenant shall not sublease any part of the Premises, nor assign this Lease, nor enter any other agreement permitting a third-party to occupy or use any portion of the Premises, or otherwise assigning, transferring, mortgaging, pledging, hypothecating, encumbering or permitting a lien to attach to its interest under this Lease.

9. SURRENDER OF PREMISES; HOLDING OVER.

9.1 Tenant's Method of Surrender. Upon the expiration of the Term of this Lease, or upon any earlier termination of Tenant's right to possess the Premises, Tenant shall, subject to the provisions of Section 6.4 and this Article 9, quit and surrender possession of the Premises to Landlord in good order and clean condition, reasonable wear and tear and damage by Casualty excepted.

If Tenant fails to surrender the Premises upon the expiration or any earlier termination of this Lease or the termination of Tenant's right to possess the Premises in accordance with the terms of this Lease, then Tenant shall hold Landlord harmless from, and shall reimburse Landlord for losses or costs and expenses in connection with, all Claims (including, without limitation, costs and expenses incurred by Landlord in returning the Premises to the condition in which Tenant was to surrender) arising out of or in any manner relating to such failure to quit and surrender possession of the Premises to Landlord in the condition required hereunder upon such date.

9.2 Disposal of Tenant's Personal Property. If any property not belonging to Landlord remains in the Premises after the expiration of or any earlier termination of the Term of this Lease or the termination of Tenant's right to possess the Premises, and Tenant fails to remove such property within fifteen (15) business days after written notice to Tenant, Tenant shall be deemed to have authorized Landlord to make such disposition of such property as Landlord may desire without liability for compensation or damages to Tenant in the event that such property is the property of Tenant; and in the event that such property is the property of someone other than Tenant, Tenant shall hold Landlord harmless from all Claims arising out of, in connection with, or in any manner related to any removal, exercise or dominion over and/or disposition of such property by Landlord.

9.3 Holding Over. If Tenant should remain in possession of all or any portion of the Premises after the expiration of the Term of this Lease or the early termination of this Lease Tenant's right to possess the Premises, without the execution by Landlord and Tenant of a new lease or an extension of the Term of this Lease, then Tenant shall be deemed to be occupying the entire Premises as a tenant-at-sufferance, upon all of the terms contained herein, except as to term and Base Rent and any other provision reasonably determined by Landlord to be inapplicable.

During any such holdover period, Tenant shall pay to Landlord (a) monthly Base Rent in an amount equal to

- (i) One hundred fifteen percent (115%) with respect to the first sixty (60) days of holdover,
- (ii) One hundred twenty-five percent (125%) with respect to the next sixty (60) days of holdover, and

- (iii) One hundred fifty percent (150%) thereafter. The monthly rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Neither any provision hereof nor any acceptance by Landlord of any rent after any such expiration or earlier termination shall be deemed a consent to any holdover hereunder or result in a renewal of this Lease or an extension of the Term, or any waiver of any of Landlord's rights or remedies with respect to such holdover. In the event holdover extends beyond one hundred twenty (120) days, Landlord agrees to work with Tenant on a transition of Tenant's equipment to another data center facility.

9.4 Survival. The provisions of this Article 9 shall survive the expiration or early termination of this Lease.

10. WAIVER OF CLAIMS; INDEMNITY.

10.1 Waiver. To the fullest extent permitted by law, Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of, and waives all claims it may have against Landlord for damage to or loss of property or personal injury or loss of life or other damages of any kind resulting from the Tenant's use of the Property, Building, or Premises or any part thereof becoming out of repair, by reason of any repair or alteration thereof, or resulting from any accident within the Property, Building or Premises.

Tenant agrees that Landlord will not have any responsibility or liability for any damage to Tenant's equipment or interruption of Tenant's operations which is caused by any other tenant of the Building or the Property or the employees, agents, contractors, technicians, representatives, co-locators or invitees of any such tenant or occupant. In that connection, Tenant agrees that in no event shall Landlord be deemed to have been negligent or engaged in intentional misconduct merely because Landlord failed to enforce the terms of any other agreement with any other party or tenant in the Building, or failed to cause any such party or tenant to maintain its premises or cure any damages caused by such party or tenant or meet any obligations that such party or tenant had failed to satisfy.

10.2 Indemnification. As governmental entities, the parties recognize that the Texas Constitution prohibits the parties from indemnifying each other, unless an annual fund is established to cover the future contingency or otherwise allowed by law. Therefore, the parties agree to self-insure and in the case of Tenant, carry sufficient insurance coverage to protect its equipment from damage or loss.

10.3 Liens. Notwithstanding anything to the contrary herein, (i) in no event shall Tenant have any right (express or implied) to create or permit there to be established any mechanic's or materialman's lien of any nature against the Premises, Building or the Property or against Landlord's or Tenant's interest therein or hereunder, including, without limitation, for any improvement or improvements by Tenant, and Tenant shall fully pay the cost of any improvement or improvements made or contracted for by Tenant. Any mechanic's lien filed against the Premises, Building or the Property, or any portion of any of the above, for work claimed to have been done, or materials claimed to have been furnished to Tenant, shall be duly discharged, bonded-off or insured over by Tenant (or on Tenant's behalf) within twenty (20) days after the filing of the lien.

10.4 Consequential Damages. Notwithstanding any other provision of this Lease (including any exhibits hereto) to the contrary, in no event shall either party hereto be liable for any consequential damages. The foregoing notwithstanding, Landlord and Tenant hereby agree that, in no event, shall any portion of the holdover Rent described in Section 9.3 hereof be deemed to represent any type of consequential damages

11. TENANT DEFAULT.

11.1 Events of Default by Tenant. Each of the following acts or omissions of Tenant or occurrences shall constitute an "Event of Default":

11.1.1 Any failure or refusal by Tenant to timely pay the monthly Base Rent, make a CIAC Payment, or any other payments or charges required to be paid hereunder, or any portion thereof, within ten (10) business days of notice that the same is due.

11.1.2 Any failure by Tenant to perform or observe any other covenant or condition of this Lease (including, without limitation, in the Building Rules and Regulations) to be performed or observed by Tenant if such failure continues for a period of thirty (30) days following written notice to Tenant of such failure; provided, however, that in the event Tenant's failure to perform or observe any covenant or condition of this Lease to be performed or

observed by Tenant cannot reasonably be cured within thirty (30) days following written notice to Tenant, Tenant shall not be in default if Tenant commences to cure same within the thirty (30) day period and thereafter diligently prosecutes the curing thereof to completion within ninety (90) days following such written notice.

11.1.3. The parties hereto acknowledge that all notice periods provided in this Section 11.1 are in lieu of, and not in addition to, the notice requirements of any Applicable Laws.

12. LIMITATION OF LANDLORD'S LIABILITY.

12.1 **Landlord Default.** In the event that Landlord fails to perform any obligation under this Lease, Tenant's sole and exclusive remedies for any such failure shall be specific performance, or granting Tenant a right to terminate this Lease upon a default by Landlord; provided, however, that Landlord shall not be in default hereunder unless and until Tenant shall have delivered to Landlord a written notice specifying such default with particularity, and Landlord shall thereafter have failed to cure such default within thirty (30) days (or, if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then not unless Landlord shall have failed to commence such performance of such cure within a thirty (30) day period and thereafter diligently pursue the same to completion within ninety (90) days). The foregoing notwithstanding, Landlord agrees to commence Switch Gear Repairs and Water Repairs within twenty-four (24) hours following receipt of written notice from Tenant of the need for same and shall diligently pursue the curing thereof to completion. Unless and until Landlord shall have so failed to so cure any such failure after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions.

12.2 **Transfer of Landlord's Interest.** Landlord shall only have the right to transfer or assign its interest in this Lease pursuant to the bond covenants associated with issued City of San Antonio Electric and Gas System Utility Bonds.

13. MISCELLANEOUS PROVISIONS.

13.1 **Severability.** If any provision of this Lease is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease shall not be affected thereby.

13.2 **Performance.** Tenant's performance of each of its obligations under this Lease shall be a condition precedent to the duty of Landlord to perform its obligations hereunder.

13.3 **Headings; Time; Survival.** The headings of the Articles, Sections and Exhibits of this Lease are for convenience only and do not define, limit or construe the contents thereof. Words in the singular number shall be held to include the plural, unless the context otherwise requires. Tenant obligations accruing prior to the expiration or termination of this Lease shall survive the expiration or termination of this Lease.

13.4 **Notices.** Any notice provided under this Lease shall be in writing and may be delivered by (i) hand delivery or personal courier, (ii) overnight courier service which provides evidence of delivery, or (iii) by email, provided written confirmation is forwarded by overnight courier service within twenty-four (24) hours. Notice shall be deemed given, when (a) delivered by hand or personal courier; (b) sent by overnight courier service, on the business day immediately following the business day on which it was sent; or (c) the date of email transmission, provided written confirmation follows.

13.5 **Governing Law.** This Lease shall be governed by, and construed in accordance with, the laws of the state of Texas.

13.6 **Incorporation; Amendment; Merger.** This Lease, along with any exhibits and attachments or other documents referred to herein, all of which are hereby incorporated into this Lease by this reference, constitutes the entire and exclusive agreement between Landlord and Tenant relating to the Premises, and each of the aforementioned documents may be altered, amended or revoked only by an instrument in writing signed by both Parties. All prior or contemporaneous oral agreements, understandings and/or practices relative to the leasing or use of the Premises are merged herein or revoked hereby.

13.7 **Examination of Lease.** This Lease shall not be binding or effective until each of the parties hereto have executed and delivered an original or counterpart hereof to each other.

13.8 Recordation. Neither Tenant nor any person or entity acting through, under or on behalf of Tenant shall record or cause the recordation of this Lease, a short form memorandum of this Lease or any reference to this Lease.

13.9 Authority. The persons executing this Lease on behalf of Landlord and Tenant represent to the other party that they are duly authorized to execute and deliver this Lease pursuant to their respective internal policies and regulations, resolutions, ordinances, or other legally sufficient authority. Further, each party and the persons executing this Lease on their behalf represent to the other party that this Lease is being executed on its behalf and for its benefit.

13.10 No Third-Party Beneficiaries. All covenants, conditions, and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and not to any third-party.

13.11 Force Majeure. A party shall incur no liability to the other party with respect to, and shall not be responsible for any failure to perform, any of its obligations hereunder (other than payment obligations or obligations that may be cured by the payment of money (e.g., maintaining insurance)) if such failure is caused by any reason beyond the control of the party obligated to perform such obligations, including, but not limited to, strike, labor trouble, governmental rule, regulations, ordinance, statute or interpretation, or by fire, earthquake, civil commotion, or failure or disruption of utility services (collectively, "**Force Majeure**"). The amount of time for a party to perform any of its obligations (other than payment obligations) shall be extended by the amount of time it is delayed in performing such obligation by reason or any Force Majeure occurrence.

13.12 No Partnership or Joint Venture. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent, or partnership, or joint venture, or any other relationship between Landlord and Tenant other than landlord and tenant.

13.14 Access by Landlord. Landlord, Landlord's agents and employees shall have the right to enter upon any part of the Premises at any reasonable time upon prior reasonable written notice accompanied by a Tenant representative (except in the case of an emergency when no prior notice or accompaniment shall be required) to examine the condition thereof, to clean, to make any repairs, alterations or additions required to be made by Landlord hereunder, to comply with legal or regulatory requirements, to determine whether Tenant is complying with all of its obligations under this Lease. In connection with Landlord's rights hereunder, Landlord shall at all times have and retain a key or card access with which to unlock all of the doors in, on or about the Premises, and Landlord shall have the right to use any and all means by which Landlord may deem proper to open such doors to obtain entry to the Premises. No such entry to the Premises shall be deemed or construed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from any part of the Premises; provided, however, that Landlord shall be liable with regard to bodily injury or physical damage to Tenant's Personal Property or Alterations that occurs during any such entry, which is the direct result of the negligence of Landlord or its employees or agents. Notwithstanding anything herein to the contrary, Landlord shall use reasonable efforts to minimize disruption of Tenant's personal property and occupancy during such entries.

13.15 Counterparts; Execution by Facsimile. This Lease may be executed simultaneously in two counterparts each of which shall be deemed an original, but both shall constitute one and the same Lease. Landlord and Tenant agree that the delivery of an executed copy of this Lease by email shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Lease had been delivered.

13.16 Confidentiality/Financial Information. The parties acknowledge and agree that all records, documents, drawings, plans, specifications, and other materials in their possession, including materials submitted by a party to the other party, are subject to the provisions of the Public Information Act, Texas Government Code, Chapter 552, except as protected from disclosure under the Public Information Act. If a party believes information or materials submitted to the other party constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Public Information Act, the submitting party shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate.

[SIGNATURES APPEAR ON NEXT PAGE]



IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the Effective Date.

LANDLORD:

The City of San Antonio, Acting By and
Through City Public Service Board of San
Antonio a/k/a CPS Energy

By: 

Name:

Title:

Date:

Vivian Bayet
Chief Information officer
6/29/2020

TENANT:

City of San Antonio, a Texas Home Rule City

By: _____

Name: _____

Title: _____

City: _____

Date: _____

Exhibit A

Depiction of Tenant's Premises

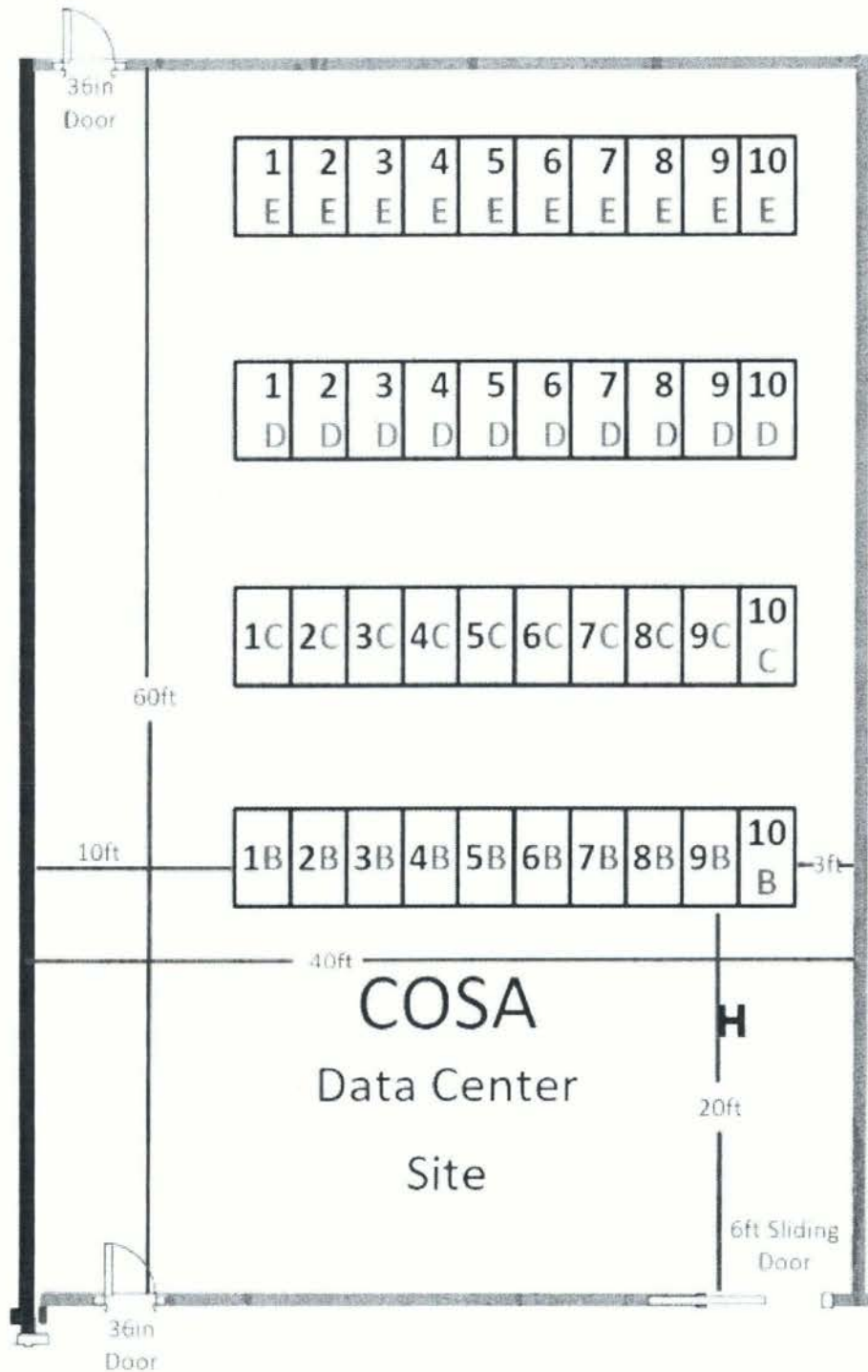


Exhibit B **Tenant's Conduit Paths**

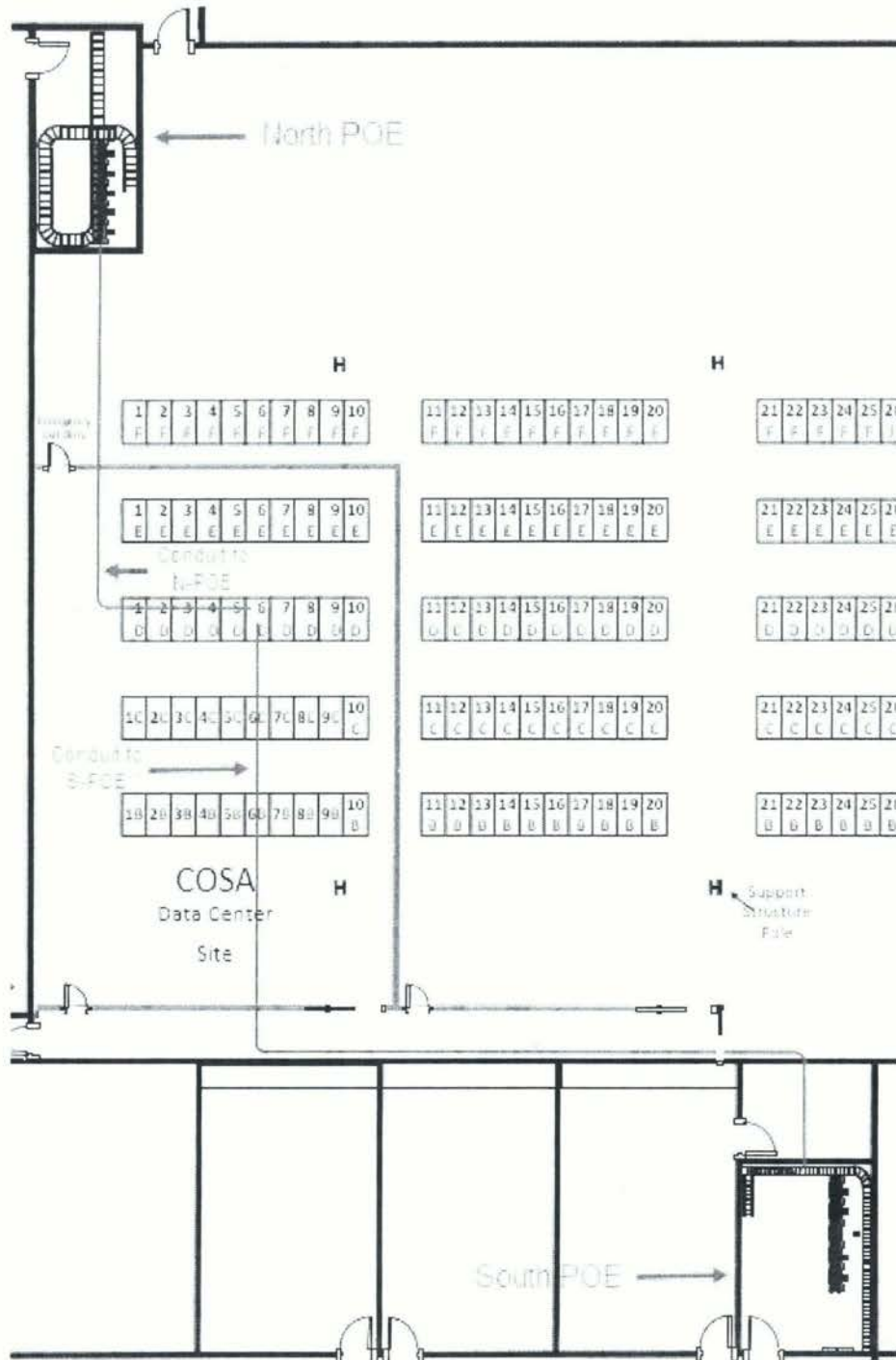


Exhibit D

Echo Data Center Rules and Regulations

1. Access

1.1. PROPERTY ACCESS

- 1.1.1. Anyone visiting the Property must have government issued ID on their person that has their photo and name.
- 1.1.2. All vehicles must meet current state inspection standards.
 - 1.1.2.1. Driver must have proof of insurance for vehicle.
- 1.1.3. If the driver or a passenger has a CPS Energy issued key card ID ("**Badge**") he/she must scan it to gain entrance to the Property.
 - 1.1.3.1. If no one in the vehicle has a CPS Energy issued Badge, the driver must contact CPS Energy Security for entrance (call button located at scanner pole outside the gated area).
- 1.1.4. After entering or exiting the Property the driver must wait for the gate to close behind the vehicle.
- 1.1.5. **NO TAILGATING ALLOWED**
 - 1.1.5.1. No tailgating of vehicles and personnel is allowed when entering the Property. Each authorized personnel must enter one at a time using an issued Badge to establish identity and gain proper entry into the Property grounds. The same applies to all visitors, who must identify themselves at the gate and proceed one at a time if access is granted.
 - 1.1.5.2. Exception: To streamline the entry of an authorized group, authorized personnel that have scanned their CPS Energy issued Badge and are waiting to enter or exit may proceed as a group.
 - 1.1.5.3. In the event that the gate does not close after successfully gaining entry into the Property, please contact CPS Energy Security at (210-353-4000) and inform them of the situation.

1.1.6. Deliveries

- 1.1.6.1. All delivery drivers that have gained entry into the Property **must** check in with the security guard located in the main lobby.
 - 1.1.6.1.1. Exception: This does not apply to a delivery driver with a CPS Energy issued Badge.
- 1.1.6.2. All vehicles must park in the front parking lot and only "back-in" parking is allowed in the parking lot.
 - 1.1.6.2.1. Exception: All large deliveries of packages and materials must be offloaded in the dock area.

1.1.7. Foot Traffic

- 1.1.7.1. Foot traffic is restricted through the pedestrian gate to authorized personnel with a CPS Energy issued Badge.
- 1.1.7.2. Gate must close and lock behind after every entry or exit.
- 1.1.7.3. In the event the gate fails to lock upon gaining entry or upon exiting, please contact CPS Energy Security and inform them at (210-353-4000).

1.2. BUILDING ACCESS

- 1.2.1. All visitors and delivery personnel entering the Building **must** check in with the security guard located in the main lobby.
 - 1.2.1.1. Exception: This does not apply to authorized personnel with a CPS Energy issued Badge.
- 1.2.2. **Badge Readers**
 - 1.2.2.1. Authorized personnel are strictly required to use their CPS Energy issued Badge at **each** badge reader station.
 - 1.2.2.1.1. Pin codes must be used if applicable.
 - 1.2.2.1.2. Visitors must use "0000" as a pin code.

1.3. VISITORS

- 1.3.1. Any person visiting or working onsite must view the Safety and Security Video located in the entry lobby prior to entering the rest of the Building.
- 1.3.2. All deliveries **MUST** be met by an authorized Tenant representative at the time of the delivery

- 1.3.3. NO unscheduled deliveries will be accepted.
 - 1.3.3.1. CPS Energy personnel are not authorized to receive any delivery on behalf of Tenant.
- 1.3.4. The Tenant representative must contact the CPS Energy Security Guard Station and inform them of the delivery and expected time of arrival before the delivery service appears onsite.
 - 1.3.4.1. The Tenant's contact number should be given to the CPS Energy Security Guard Station so that once the delivery person is onsite Tenant can be contacted.
- 1.3.5. The delivery driver and any assisting personnel must check in with CPS Energy Security and show government issued IDs before any delivery may be made or any individuals granted entry into the Building.
- 1.3.6. Anyone coming into the Building must watch the Safety and Security Video.

1.4. ACCESS TO TENANT SPACE

- 1.4.1. Authorized Tenant personnel shall have unescorted access to the Common Areas, including:
 - 1.4.1.1. Entrance Lobby
 - 1.4.1.2. Building Lobby, Restrooms and all access hallways
 - 1.4.1.3. Loading Dock
 - 1.4.1.4. Premises
- 1.4.2. Tenant shall have escorted access by NERC authorized CPS Energy representative to Common Area of the Building:
 - 1.4.2.1. North POE
 - 1.4.2.2. South POE
 - 1.4.2.3. UPS-3 Room (Storage Room)
 - 1.4.2.4. Burn-In Room
 - 1.4.2.5. Main Data Center Floor (other than the Premises)

Tenant shall not enter any designated NERC restricted area unless escorted by authorized personnel and previous authorization.

1.5. ESCORTING

- 1.5.1. CPS Energy staff will be available from 7:30 am to 4:00 pm Monday through Friday to escort Tenant staff or vendors through requested areas.
 - 1.5.1.1.1. Additional time and access will need to be requested through the Data Center Operations Manager at least 24 hours in advance.
 - 1.5.1.1.2. Holidays and CPS Energy activities may reduce the time available for escort.
 - 1.5.1.1.3. There should be no more than five escorted individuals to each escort, if the group is to exceed five, previous notification to the Data Center Operations Manager must be given so that arrangements can be made for the adequate number of authorized escort personnel to be present.
- 1.5.1.2. Once the security hardware has been installed at appropriate Leased Cabinets and Tenant staff have met all the CPS Energy security requirements, including NERC training, authorized Tenant personnel will have unlimited access to the Tenant Premises.
 - 1.5.1.2.1. All vendors must be escorted at all times by either authorized Tenant personnel or an authorized CPS Energy representative.
 - 1.5.1.2.2. All Tenant personnel that have not gone through the CPS Energy security training process, but otherwise are considered approved Tenant personnel must be escorted at all times by either authorized Tenant personnel that have successfully completed security training or by an authorized CPS Energy representative.
- 1.5.1.3. Anyone being escorted must stay within sight of the individual escorting them at all times when in a restricted area.
- 1.5.1.4. The applicable escort fee shall be \$150.00 per hour.

2. STORAGE

- 2.1. Storage within the Premises is prohibited. Tenant will have dedicated storage space in a designated area.
 - 2.1.1. All storage devices must be preapproved with the CPS Energy Data Center Operations Manager (shelving, cabinets, etc.).
 - 2.1.2. Items must be stored in plastic bins and anti-static bags where possible.

- 2.1.3. Any stored materials cannot block or obscure any doorway or security device.
- 2.1.4. No hazardous, corrosive or flammable materials can be stored in the Building at any time.
- 2.1.5. No wood, cloth or paper products may be stored within the Premises.
- 2.1.6. No equipment that can produce smoke, ash, fog, shaved paper, or other airborne contaminants that will or can produce debris can be brought into the Premises.
- 2.1.7. The Burn-In Room or dock area should be used to unbox or assemble any equipment.
- 2.1.8. Two cabinets will be made available for Tenant to use in the Burn-In Room to test new hardware or allow vendors to install software (to "burn-in" equipment) before the system is installed in the Premises.

3. **BUILDING RULES**

- 3.1. Proper Personal Protective Equipment ("PPE") must be worn or used at all times.
 - 3.1.1. Ladders and equipment must be approved by an authorized CPS Energy representative and meet the proper standard for the work being done.
- 3.2. No photography or filming is allowed anywhere on CPS Energy Property without prior consent from CPS Energy management.
- 3.3. No portable media storage devices are allowed within the Building without prior consent from an authorized CPS Energy representative.
- 3.4. Phone use within the Building or any NERC area is restricted without prior consent from an authorized CPS Energy representative.
- 3.5. Plugging into an unauthorized power source is prohibited.
 - 3.5.1. Phones, laptops, vacuums, etc. should only be plugged in to wall or pole mounted outlets.
- 3.6. Nothing may be hung on or attached to the Building or Premises walls, floor or ceiling without prior authorization from an authorized CPS Energy representative.
- 3.7. No hazardous materials may be brought into the Premises.
 - 3.7.1. No Batteries (excluding phone or laptop device batteries) are allowed in the Building.
 - 3.7.2. No corrosive or flammable material are allowed in the Building.
- 3.8. It is the Tenant's responsibility to remove from the Building all trash brought or created by Tenant personnel.
 - 3.8.1. Trash dumpsters are provided near the dock area for business use only.



Exhibit E

Form for Reporting Tenant's Cabinet Consumption Requirements

Tenant's Cabinet Consumption Requirements:

1. Number of Leased Cabinets with 30-amp Power Distribution Units: 18 Cabinets with 2 PDUs Each
2. Number of Leased Cabinets with 60-amp Power Distribution Units: 22 Cabinets with 2 PDUs Each

Exhibit F
Tenant's Insurance Requirements

1. Tenant shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

The City of San Antonio maintains self-insurance for Workers' Compensation, General Liability, and Business Automobile as a political subdivision of the State of Texas. Tenant is subject to the Texas Tort Claims Act and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act. Tenant, upon request from Landlord, can provide evidence of self-insurance. See Exhibit I for The City of San Antonio Letter of Insurance dated April 17, 2020.

- a. Commercial Crime
\$100,000.00

2. Tenant shall not commence Services under this Agreement until Tenant has obtained all required insurance and until such insurance has been received and approved by Landlord. Tenant's failure to fulfill these insurance requirements within ten (10) days after receipt of Landlord's notice to proceed shall not be considered cause for any adjustment to Tenant's compensation or schedule. Landlord's approval of Tenant's insurance shall not relieve or decrease the liability of Tenant hereunder.
3. If Tenant fails to obtain or renew the above required insurance and furnish to the Landlord acceptable evidence thereof, Landlord shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Agreement amount by the cost thereof; or (2) deem as material breach of this Agreement the Tenant's failure to do so.
4. Nothing herein shall reduce or alter any obligation Tenant has to indemnify, defend or hold harmless identified parties as provided in the Agreement.
5. In the event Tenant enters into a subcontract with a Subcontractor, the Tenant will require the Subcontractor to procure at a minimum all insurance specified to be carried by the Tenant, in the like form specified herein.

Tenant and, as applicable, its Subcontractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Tenant, Subcontractor and/or Landlord.

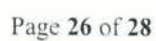


Exhibit H

Rate Schedule

Occupied Cabinet Base Rent Rate:

30-amp Cabinet Rate: \$1,419 per Month

60-amp Cabinet Rate: \$1,595 per Month

Reservation Cabinet Base Rent Rate:

30-amp Cabinet Rate: \$1,067 per Month

60-amp Cabinet Rate: \$1,067 per Month

Minimum Base Rate:

[Occupied Cabinet Base Rent x 11 (60-amp Cabinet Rate)] + [Occupied Cabinet Base Rate x 9 (30-amp Cabinet Rate)] + [Reservation Cabinet Base Rent x 20]

\$51,656 per Month

Exhibit I
Evidence of Self-Insurance



City of San Antonio

April 17, 2020

Evan O'Mahoney
Vice President, Technology Services
145 Navarro St. San Antonio, Texas 78205

Re: Evidence of Self-Insurance

Dear Mr. O'Mahoney,

This letter is provided to your organization as evidence that the City of San Antonio maintains insurance and a fully funded reserve account which meets or exceeds your insurance requirements with respect to the Workers' Compensation, General Liability and Business Automotive coverages. This fund, as designated by City Council, is solely for the purpose of providing relief from third party legal liability claims, for which the City may become liable. All claims against the City are governed by the Statutes of the State of Texas, including the Texas Tort Claims Act and Section 150 of the City Charter, with which the City is in full compliance.

With that in mind, we are certain that this letter will fulfill your requirements regarding the City of San Antonio's CPS Energy Data Center Lease Agreement, lease of data center space inside CPS-E data center in San Antonio, TX. The term of the lease is 20 years.

Please do not hesitate to contact Jacob Munoz, Senior Risk Analyst at (210) 207-2017 if you have any questions or need further assistance.

Sincerely,

Matthew Nielsen

Matthew Nielsen
Claims Administrator

Office of Risk Management
100 W. Houston, Suite 1800
San Antonio, TX 78205