



PEAK 10 LEASE AND SERVICES AGREEMENT WITH BROWARD COUNTY

This Lease and Services Agreement ("Lease") is made by and between: Peak 10 1 Vault, Inc., a Florida corporation (hereinafter referred to as "Landlord"); and Broward County, a political subdivision of the state of Florida, by its Board of County Commissioners (hereinafter referred to as "Tenant" or "County") (Landlord and Tenant or County are collectively referred to as the "Parties").

In consideration of the mutual covenants hereinafter contained, it is hereby mutually agreed by and between the parties as follows:

1. DESCRIPTION, TERM AND RENT

A. Landlord hereby leases unto County "Raised Floor Space" and "Office Space" as is described in Exhibit A and Exhibit B attached hereto and made a part hereof at the address of 5301 NW 33rd Ave., Ft. Lauderdale, Florida 33309 (the "Premises"), for the term of three (3) years and two months commencing upon the date of a written Notice to Proceed has been issued by County (the "Effective Date") and terminating on the third (3rd) anniversary of the Rent Commencement Date (which shall begin two months after the Effective Date). Rent shall be due in accordance with the terms of this Lease in the amounts set forth in the Rental Payment Schedule attached as Exhibit B.

B. County may, at County's sole option, add to the term of the Lease up to twelve (12) additional one (1) year renewal terms, provided that for extension period(s) after December 31, 2025, the agreement of Landlord will be required for each such extension. Each extension may be exercised pursuant to paragraph 17 herein, for the total rental which County covenants to pay to Landlord or its duly authorized agent, payable in equal monthly installments as set forth in Exhibit B, at its office located at 5301 NW 33rd Ave., Ft. Lauderdale, FL 33309, or at such other place as may be designated in writing by Landlord to County, in advance, without demand, on the first day of each month during said term. Rent shall begin to accrue on the Rent Commencement Date and the first payment of rent shall be due on the Rent Commencement Date, as defined in Paragraph 1.A herein, and shall be prorated for the period of time from the Rent Commencement Date to the end of that month.

C. Landlord acknowledges and agrees that County has the right to occupy the Premises upon the Effective Date. Landlord further agrees that in the event Landlord enters into any lease during the term of this Lease with another tenant within the Premises for like space and services on any terms more favorable than the terms of this Lease, this Lease shall automatically be amended to reflect the more favorable terms of the other lease. It is the intent of this section to provide to County a "most favored nations" provision so that County enjoys a Lease with terms as favorable as any other tenant leasing any facilities within the Premises. Landlord agrees that it shall be obligated to notify County within thirty (30) days in the event it enters into a more favorable lease term with another tenant. County shall have the right to review other leases within the Premises at any reasonable time for the purpose of

determining Landlord's compliance with this provision. Landlord may redact or remove any confidential information contained in the leases of other tenants.

D. CHANGES TO RAISED FLOOR SPACE

D.1. County may increase or decrease the dimensions or layout of its use of raised floor space (Floor Change). The authority to request a Floor Change, which does not increase Rent, shall reside with the County's Contract Administrator (defined as County's Information Systems Director or equivalent). The authority to request a Floor Change, which does increase rent, shall reside with the County's Director of Purchasing.

D.2. County shall give Landlord two (2) months' Notice that it intends a Floor Change. Landlord shall not unreasonably deny County's request for a Floor Change nor shall Landlord charge a penalty for the change, and County shall pay any services that are required from Landlord to accommodate the change request.

E. OTHER GOODS AND SERVICES

E.1. Ongoing monthly charges may be incurred according to County's electric circuit configuration. The charges are defined in Exhibit D, attached here and made a part hereof.

E.2. On Demand Services such as those shown in Exhibit E attached hereto, may from time to time and at the County's sole discretion be requested by County from Landlord. The available services and their non-recurring charges and their recurring charges, if any, are detailed in Exhibit E, attached hereto and made a part hereof. County may request on demand services by completing and submitting a Landlord Service Order as shown in Exhibit F, attached hereto and made a part hereof. Landlord shall not accept a Service Order not approved by the County's Contract Administrator or designee.

F. Landlord agrees that County's obligation to commence the payment of rent is subject to Landlord performing all of the conditions set forth below on or before the Effective Date as indicated in County's Notice to Proceed. The remedy for nonperformance of the conditions precedent shall be, at the option of County, the termination of this Lease. Rent shall not commence until all of the conditions precedent set forth in this Section are satisfied as evidenced by written letter executed by Landlord and County so as to establish the satisfaction of the conditions precedent and the Rent Commencement Date of this lease.

2. **PARKING FACILITIES.** Landlord warrants that it will provide parking facilities at the location of the Premises to accommodate County's clients, employees, invitees and guests.

3. **USE OF PREMISES.** County may use and occupy the Premises for operation and storage of County's data center or for any lawful purpose not inconsistent with the general operations

of County government, its various subdivisions, agencies, boards, councils, authorities, and departments. County covenants that County will not, without the written consent of Landlord, said consent not to be unreasonably withheld, permit the Premises to be occupied by any person, firm, or corporation other than County and its employees or any equipment not necessary for the operating of County's data center. County further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on in or upon said premises, no act or thing shall be permitted and no thing shall be kept in or about said Premises which will increase the risk of hazard of fire, and no waste shall be permitted or committed upon or any damage done to the Premises, and County shall not use or occupy or permit the Premises to be used or occupied in any manner which will violate any laws or regulations of any governmental authority.

4. UTILITIES. The following utilities, services and expenses shall be paid by the party identified:

	<u>LANDLORD</u>	<u>TENANT</u>
Air conditioning unit maintenance	X	
A/C filter maintenance and replacement when obsolete	X	
Electricity Raised Floor – (paid on per circuit basis)		X
Electricity Office Space	X	
Janitorial services and supplies on a 5-day/week basis	X	
Water and sewer service	X	
Heat	X	
Pest Control	X	
Trash removal	X	

5. OTHER SERVICES. In addition to the basic services listed above Landlord further agrees that it shall provide to County the following additional services which are included as a part of this Lease for the rental amounts stated in paragraph 1 herein. The Preparation Phase and the Move-In Phase services shall be completed by Landlord prior to the Rent Commencement Date.

A. PREPARATION PHASE. Landlord will be responsible for the following actions during the Preparation Phase:

A.1. Providing certification or inspection results showing that the facility is built to survive a Category 5 hurricane, based on the Saffir-Simpson scale.

A.2. Providing site infrastructure power and environmental standards consistent with the 90th percentile of an Uptime Institute Tier III level standard (Fault Tolerant).

A.3. Identifying the physical placement of County's Data Center secured caged area and the office space.

A.4. Provide County with a copy of Standard Operating Procedures (SOP) as related to activities allowed and disallowed within the Data Center secured area.

A.5. Providing to-scale diagrams (MS Visio) that identifies the location of the Power Distribution Units (PDUs) servicing County's Data Center caged area, the layout of the caged area, and the location and layout of the office space. Landlord will maintain these diagrams throughout the life of the lease.

A.6. Constructing the security cage and either extending a facility-wide access system or providing a physical key entry to the County's security cage doors.

A.7. Extending their facility-wide access system to the office space provided to County.

A.8. Extending their Uninterruptible Power System (UPS) to County's security cage.

A.9. Extending County's data communications circuits from Landlord's communications rooms to County's security cage.

A.10. Extending County's data communications circuit from County's security cage to County's office space.

A.11. Providing secure access for County's staff and third party vendors that will assist in the move-in phase (list of staff to be provided by the Broward County Project Manager).

A.12. Identifying and preparing a staging area for County to use during the move-in phase.

A.13. Accepting shipments of equipment for County from common carriers upon notification of Broward County Project Manager.

A.14. Assisting County's Data Communications personnel in getting data communications circuits installed.

A.15. Providing a copy of their employee background check policy to County's ETS Security Director.

A.16. Landlord will assist County or third party vendor hired by the County to install data communications fiber or cable within the County's caged area as directed by Landlord.

B. MOVE-IN PHASE. This phase of the relocation project will require Landlord to provide the following services:

B.1. Landlord will issue County and their third party vendor personnel involved in the move-in phase access cards that will allow access to the Broward County's caged, office space, loading docks, the designated staging area and any common areas (kitchen, break rooms, restrooms, etc.).

B.2. Landlord will provide carts for movement of equipment and tools between the loading dock, staging area and the Broward County caged, office space.

B.3. Landlord will connect or assist in the connection of power and data communications feeds to County's equipment as it is installed in the caged, office space.

B.4. Landlord will assist County or third party vendor hired by the County to install data communications fiber or cable under the raised floor within the County's caged area as directed by Landlord.

B.5. Landlord will identify temperature hot spots and arrange for proper air flow to accommodate a hot and cold aisle within County's caged area.

C. NORMAL OCCUPANCY PHASE. Landlord will provide the following services set forth herein and in Exhibits G, H, and I throughout the Normal Occupancy Phase of this Lease and Services Agreement (collectively referred to as "Services"):

C.1. Landlord shall provide Services in accordance with the Service Level Agreement attached hereto as Exhibit G, the Support and Maintenance Standards attached hereto as Exhibit H, and the Specifications attached hereto as Exhibit I.

C.2. Landlord as the "Facilities Manager" will provide day-to-day facilities operations, including critical building infrastructure and systems, security, maintenance, repair, cleaning, lighting and grounds maintenance.

C.3. Landlord will allow County to inspect and validate Landlord's structural capabilities at any time upon reasonable notice (one-week minimum).

C.4. Landlord will provide its maintenance schedule and updates to County.

C.5. In addition to the obligations set forth in the Service Level Agreement and the Support and Maintenance Services exhibits, Landlord will not schedule maintenance downtime or run tests that carry a high probability of downtime during critical County activities. (Critical activity schedule will be provided by County on an annual basis).

C.6. Electrical power will be supplied by Landlord based upon the number of circuits provided. The cost associated with this service is payable on a monthly basis. Landlord will add or reduce the number of circuits at County's request and those changes will be reflected in the monthly billing. The time required to add circuits is 48 hours.

C.7. Landlord will provide information concerning any planned remodeling, expansion or additional customer installations to County.

C.8. Within 30 days of the Effective Date and thereafter as may be requested by County, Landlord will provide certification to County that all of its current employees and any full-time contract support personnel have undergone and passed a background check.

C.9. Landlord will ensure that security personnel are on-site 24 hours a day seven days a week.

C.10. Landlord will accept drop shipment of hardware, software, tools, and other material by common carriers and the United States Postal Service (USPS) addressed to County's Data Center.

C.11. Landlord will allow County to securely store its inbound and outbound crates in or near the shipping dock for a period not to exceed 15 days.

C.12. Landlord shall make available upon request with reasonable notice, a Server Lift at no cost with a capability of lifting 500 pounds for installation of equipment in an eight-foot rack height.

C.13. Landlord will issue additional access cards to County's personnel as requested by the County. County's employees that normally work at Landlord's facility will be issued cards to carry with them at all times. County's employees that have occasion to frequently visit the facility will pick up and drop off their badges for each visit from the security desk.

C.14. Landlord's personnel will not have unescorted access to County's caged and office space areas unless an emergency occurs when County's personnel are not on site. Landlord will document emergency access and documentation will be forwarded to County.

C.15. Landlord will ensure that the temperature and humidity at designated cold aisles as measured in the aisle will meet or exceed the then-current recommended limits set by American Society of Heating and Refrigerating and Air Conditioning Engineers TC9.9 for a Class 1 data center (currently temperature between 64.4°F to 80.6°F and currently humidity between 41.9°F dew point to 49° dew point).

C.16. Landlord will provide power to County's County caged area 100% of the time.

C.17. Landlord will assist County or third party vendors hired by County to install data communications fiber or cable under the raised floor within County's caged area upon the consultation as directed by Landlord.

C.18. Landlord shall, upon County's request, provide to County evidence that Landlord continues to pass the American Institute of Certified Public Accountants' (AICPA) SSAE 16 (formerly SAS 70) audits on no less than an annual basis.

D. ADDITIONAL OFFICE AREA SERVICES REQUIRED. Landlord will provide the following normal facility services:

- i. Housekeeping
- ii. Restrooms
- iii. Break room
- iv. Kitchenette
- v. Parking spaces
- vi. Scheduled use of conference room

E. LOCK-DOWN PHASE. During any lock-down of Landlord's facility, which will happen upon a hurricane warning or other emergency as may be declared by County or Landlord, Landlord will continue to provide all Services identified in the "Normal Occupancy" phase and in addition will provide the following services:

E.1 During lock-downs, Landlord will provide access to additional County personnel as requested by County.

E.2 During lock-downs of up to seven (7) days, Landlord will provide equitable accommodations and provisions for County's personnel working in the caged, office space. Landlord may request reasonable reimbursement for these accommodations, which must be submitted to County. Such request shall not be denied without reasonable cause.

F. MOVE-OUT PHASE

F.1 Landlord will issue additional County and third party vendor personnel involved in the move-out phase access cards that will allow access to County's caged, office space, loading docks, the designated staging area and any common areas (kitchen, break rooms, restrooms, etc.).

F.2 Landlord will provide carts for movement of equipment and tools between the loading dock, staging area and the caged, office space.

F.3 Landlord will disconnect or assist in the disconnection of power and data communications feeds to County's equipment in the caged, office space.

6. REPRESENTATIONS AND WARRANTIES; DAMAGES: REMEDIES

A. Landlord represents that Landlord has the right and authority to lease the Premises to Tenant pursuant to the terms of this Lease, and that Landlord has obtained any and all necessary consents and approvals, including from the real property owner and any other necessary third parties, to enter into this Lease.

B. Landlord represents and warrants that the Premises and Raised Floor Space is consistent within the 90th percentile of Tier III qualifications or better with the structural integrity to survive a Category 5 hurricane, based on the Saffir-Simpson scale, consistent with the terms of this Lease including specifically the Service Level Agreement attached hereto as Exhibit G.

C. Landlord represents and warrants that at all times during this Lease and Services Agreement, the Premises and Raised Office Space meet or exceed the Specifications attached hereto as Exhibit I.

D. Landlord acknowledges it is required to provide a 100% reliable data center facility infrastructure, with 0% of Downtime. "System Downtime" is defined as a failure of power distribution, environmental systems, or any other cause, which causes County to be unable to use its computer systems that are housed in Landlord's facilities; System Downtime begins at the time that County cannot use its equipment and ends when all of County's equipment is back to full use, including, but not limited to, the time necessary for an orderly restart of systems services. Landlord agrees that should System Downtime occur, County shall be entitled to a credit for the month in which the System Downtime occurred and applied to the first month following the System Downtime (hereafter called Credit). The calculation for the Credit shall be one-thirtieth (1/30) of the Monthly Invoiced Total (defined as the total billable rent and services for the month in which the downtime occurred) for each thirty (30) minutes (or part thereof) of System Downtime, provided the total amount of Credits shall not exceed one month's rent and services for each incident. In addition, the Credits are the only

remedy for System Downtime/service failure other than termination in accordance with the terms of this Lease.

E. In addition to the specific and limited rent and services credit in the event of loss of power, nothing herein is intended to limit the remedies of County to assert a claim for damages of any nature because of the negligence, omission, or other conduct of Landlord.

7. ALTERATIONS AND IMPROVEMENTS. Unless otherwise prohibited by the terms of this Lease, County may, at its own expense and with Landlord's prior written approval, make such non-structural changes, alterations, additions and improvements to the Premises, as it may deem necessary or expedient in its operation. If it is necessary, County may make structural alterations or additions with Landlord's written consent and such consent will not be unreasonably withheld or delayed. Landlord reserves the right to require any structural changes, alterations, additions, and improvements requested by County to be made by Landlord at County's expense. All such alterations and/or new construction, which are easily severable from the premises, shall, at the sole option of County, be considered personalty and remain the exclusive property of County. County may, in its sole discretion, remove all such property from the Premises upon the termination of this Lease.

8. HOLD OVER BY TENANT. County may hold over and remain in possession of the Premises after the expiration of this lease only with the approval of Landlord and shall, in no event, be deemed or construed to be a renewal or extension of this Lease but shall only operate to create a month-to-month tenancy, including rent and service charges, upon the same terms and conditions as are set forth in this Lease, which may be terminated by either party at the end of any month upon thirty (30) days' prior written notice by certified U.S. mail to the other.

9. RECOVERY OF POSSESSION ON DEFAULT. In the event any rent shall be in default and unpaid after thirty (30) days from due date, Landlord may give County notice thereof, by certified U.S. mail, and only if County shall fail to remedy such default within thirty (30) days after receipt of such notice shall Landlord have the right to institute proceedings for the recovery of possession of the Premises. Landlord may not withhold the removal of, or take possession of County equipment within the premises as a means to remedy default.

10. CHANGE IN OWNERSHIP/SUB-CONTRACTING SERVICES. Subject to the provisions of paragraph 26, Landlord shall not assign sell, or transfer this Lease without the notice to County. If County elects not to consent to the assignment, sale or transfer by Landlord based on County's reasonable review of the financial and operating history of the new owner County shall be entitled to terminate the lease upon sixty (60) days' notice and shall have no obligation to pay rent or for services after the date of termination. Should Landlord assign, sell or transfer this Lease with the consent of County, it shall immediately, together with the new owners, notify County to whom and where future rentals and services shall be paid. Should either Landlord or the new owners fail to notify County, County shall withhold payment of rentals and services until such notice is received from both Landlord and new owner. The

withholding of such rental and services shall not be construed as a default under the Lease. Landlord agrees that it shall not outsource or subcontract security services or any other service, which may have access to County's information systems without County's consent.

11. DAMAGE TO PREMISES. County shall give Landlord, or to its agent, prompt written notice of any accident to, or defect in, the roof, outside walls, foundations, sidewalks, interior walls, skylights, floors, windows, ceilings, sprinkler and hot water systems, elevators, heating units, air conditioning units, plumbing and electrical wiring, utilities or other building components, and the same will be remedied by Landlord with due diligence, subject to the provisions of this Lease dealing with repairs and exterior maintenance.

12. INSPECTION. Landlord or its duly authorized agent may enter said Premises during regular business hours to examine same and persons authorized by Landlord to make repairs, alterations or improvements may enter at any time in the event of emergency or otherwise as Landlord may reasonably deem necessary. Landlord shall use good faith efforts to notify Tenant of any entry to the Raised Floor Space in advance, when commercially reasonable, or as soon as practical in the event advance notice is not commercially reasonable.

13. FIRE OR OTHER CASUALTY. In the event of injury to the Premises or any part thereof during said term by fire or other cause, County shall give immediate notice thereof to Landlord. If the fire or injury was not caused through the fault or negligence of County, its visitors, agents or servants, the Premises shall be repaired immediately at the expense of Landlord. If some or all the Premises required for provision of all services to County consistent with the terms of this Agreement are rendered untenable by the elements or any other cause, all rental payments and other fees shall cease until the same shall be repaired as aforesaid. If the Premises shall be destroyed by the elements or any other cause, or so nearly destroyed as to require substantial rebuilding, rent and other fees shall be paid up to the time of such destruction and from thenceforth this Lease shall cease and come to an end, and County shall have no further liability.

14. REPAIRS. Landlord covenants to keep the said Premises in good structural repair, so far as concerns County. Landlord shall maintain and keep in good repair the roof, skylights, outside walls, foundations, sidewalks, interior walls, floors, windows, ceilings, sprinkler and hot water systems, elevators, heating plants, air conditioning plants, plumbing, and electrical wiring. Landlord shall also make any repairs necessitated by water seepage or by other causes not under County's control. Landlord shall also make all repairs or changes which may be necessary to make the Premises and the use herein contemplated comply with applicable laws, ordinances, orders or regulations of any federal, state, County or municipal authority now or hereafter in effect unless specifically exempted therefrom. If Landlord fails, within a reasonable time after request, to make such repairs or changes to the Raised Floor Space including to the extent necessitated by fire or other casualty, then (a) Landlord shall be liable for any damages to property or loss thereby sustained by County, and (b) County may have such repairs made at the expense of Landlord, and deduct it from future rental payment upon presentation of a

certified invoice detailing the repairs made and the expense incurred. Any property insurance coverage for the premises shall be at Landlord's sole option and expense.

15. EXTERIOR MAINTENANCE. Exterior maintenance, including without limitation, routine gardening, cutting, mulching, pruning and similar maintenance of all foliage; routine and non-routine maintenance of parking areas, common exterior areas, swale areas within the property line (including cleaning, painting, striping, paving, and repairs) shall be done by Landlord, at its expense.

16. WAIVER. Failure of either party to insist upon strict performance of any covenant or condition of this Lease, or to exercise any right or option herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right of election; but the same shall remain in full force and effect. None of the conditions, covenants, and provisions of this Lease shall be waived or modified except by the Parties hereto in writing.

17. RENEWALS. The term of this Lease may be extended, at the option of County, acting through its Director of Purchasing or duly authorized designee, for twelve (12) successive period(s) of one (1) year(s) each, with the agreement of Landlord to the extent required by Section 1.B. Such option to extend shall be exercised by County by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the then existing term. Each extended renewal term shall be upon the same terms and conditions as provided in this Lease for the initial term.

18. INSURANCE. The parties hereto acknowledge that County is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. County shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Lease in accordance with the provisions of Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of County's sovereign immunity. County shall provide proof of its self-insured status upon execution of this Lease. County agrees that any personal property owned by County stored at, or for use, in the Raised Floor Space shall be at the sole risk of County.

19. ENVIRONMENTAL CONTAMINATION. Landlord represents and warrants to County that as of the date of execution of this Lease, neither Landlord, nor to the best of Landlord's knowledge, any third party has used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under or about the Premises during the time in which Landlord owned the Premises.

20. HEALTHY ENVIRONMENT. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines (Excessive Radon Gas) have been found in buildings in Florida. Landlord represents and warrants to County that the occupied building shall be kept free of Excessive Radon Gas.

Landlord represents and warrants to County that the occupied building shall be kept free of Other Health Issues as may be defined by State Guidelines as amended.

21. NOTICES. Any notice or demand, which, under the terms of this Lease or by any statute or ordinance, must or may be given or made by a Party hereto, shall be in writing and shall be given by certified or registered U.S. mail, with a simultaneous copy via electronic mail, sent to the other Party at the address listed below or to such other address as such Party may from time to time designate by notice.

Notice to County shall be addressed to:

County Administrator
Broward County Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
bhenry@broward.org

With copies to:

Real Property Section
Attn: Ronald Pasternak
Broward County Governmental Center, Room 326
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
rpasternak@broward.org

Chief Financial Officer
Broward County Governmental Center, Room 513
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
bmiracle@broward.org

Notice to Landlord shall be addressed to:

Peak 10
Attn: CFO
8809 Lenox Pointe Drive, Suite G
Charlotte, NC 28273
legal@peak10.com

22. TERMS. Every term of this Lease shall be deemed and construed to be of the essence thereof, and any breach shall be deemed and construed to be the very substance of this Lease.

23. SUCCESSORS; ASSIGNS. This Lease shall inure to and be binding upon the successors and authorized assigns of the Parties.

24. FACILITY TOUR. Upon prior request by Tenant, representatives of Tenant (including any of Tenant's consultants, contractors or other third parties authorized by Tenant, upon prior notice to Landlord) may inspect and tour the Premises. The parties shall cooperate to coordinate agreed upon times and dates for any such inspection and tour.

25. MULTIPLE ORIGINALS. Multiple copies of this Lease may be executed by all parties, each copy of which, bearing original signatures, is to have the force and effect of an original document.

26. PRIOR AGREEMENTS. This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Lease that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

27. JURISDICTION, VENUE. This Lease shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this lease and any action involving the enforcement or interpretation of any rights hereunder, shall be in Broward County, Florida, and venue for litigation arising out of this Lease shall be exclusively in Broward County state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency, or other jurisdictional device.

28. CONDEMNATION. Landlord reserves unto itself, and County assigns to Landlord, all right to damages accruing on account of any taking or condemnation of all or any part of the Premises, or by reason of any act of any public or quasi-public authority for which damages are payable. County agrees to execute such instruments of assignments as may be required by Landlord, to join with Landlord in any petition for the recovery of damages, if requested by Landlord, and to turn over to Landlord any such damages that may be recovered in any such proceeding. Landlord does not reserve to itself, and County does not assign to Landlord, any damages payable for any trade fixtures installed by County at its cost and expense which are not part of the realty, or for any damages for interruption to the business of County which do not compensate loss of real property or any interest therein.

29. PUBLIC ENTITY CRIMES ACT. Landlord represents that the execution of this Lease will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to County and may not submit bids on leases of real property to County for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Lease and recovery of all monies paid hereto.

In addition to the foregoing, Landlord further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Landlord has been placed on the convicted vendor list.

30. INDEPENDENT CONTRACTOR. Landlord is an independent contractor under this Lease. Services provided by Landlord pursuant to this Lease shall be subject to the supervision of Landlord. In providing such services, neither Landlord nor its agents, shall act as officers, employees, or agents of County. No partnership, joint venture, or other joint relationship is created hereby. County does not extend to Landlord or Landlord's agents any authority of any kind to bind County in any respect whatsoever.

31. THIRD PARTY BENEFICIARIES. Neither Landlord nor County intends to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease.

32. CONFLICTS. Neither Landlord nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Landlord's loyal and conscientious exercise of judgment related to its performance under this Lease.

Landlord further agrees that none of its officers or employees shall, during the term of this Lease, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Landlord is not a party, unless compelled by court process. Further, Landlord agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Landlord is permitted to utilize subcontractors to perform any services required by this Lease, Landlord agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

33. COMPLIANCE WITH LAWS. Landlord shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Lease.

34. SEVERANCE. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective

unless County or Landlord elects to terminate this Lease. Any election to terminate this Lease based upon this section shall be made within seven (7) days after the finding by the court becomes final.

35. JOINT PREPARATION. The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete and complete understanding of all rights and obligations herein and that the preparation of this Lease has been their joint effort. The language agreed to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

36. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the County's governing body (such as the Board of County Commissioners) and Landlord or others delegated authority to or otherwise authorize to execute same on their behalf.

37. REPRESENTATION OF AUTHORITY. Each individual executing this Lease on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Lease, duly authorized by all necessary and appropriate action to execute this Lease on behalf of such party.

38. PRIORITY OF PROVISIONS. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Lease by reference and a term, statement, requirement, or provision of Sections 1 through 41 of this Lease, the term, statement, requirement, or provision contained in Sections 1 through 41 shall prevail and be given effect.

39. CONFIDENTIAL INFORMATION. Both parties hereby acknowledge that each may be exposed to confidential information of the other or third parties that is exempt from disclosure or prevented from being disclosed by reason of law. Confidential information must be expressly identified in writing by the party claiming such confidentiality and such party must provide the other party with a written statement of the nature of such claim. Confidential information does not include the following:

- a. Information already known or independently developed by Landlord or County;
- b. Information in the public domain through no wrongful act of Landlord or County;
- c. Information received by Landlord or County from a third party who was free to disclose it; or
- d. Information required to be disclosed by law or an order of court.

With respect to the confidential information, both parties hereby agree that during the term of this Lease and at all times thereafter as permitted by law, neither shall use, commercialize or

disclose such confidential information obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.

40. PUBLIC RECORDS. To the extent Provider is acting on behalf of the County as stated in Section 119.0701, Florida Statutes, the Provider shall:

a. Keep and maintain public records that ordinarily and necessarily would be kept and maintained by County were County performing the services under this Lease;

b. Provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

d. Meet all requirements for retaining public records and transfer to County, at no cost, all public records in possession of Provider upon termination of this Lease and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County.

The failure of Provider to comply with the provisions of this Section shall constitute a material breach of this Lease entitling the County to exercise any remedy provided in this Lease or under applicable law.

41. OTHER PROVISIONS.

41.1 The General Terms and Conditions of this Lease shall apply to any services provided by Landlord under the Lease or an amendment thereto. These terms and conditions shall not apply to the lease provisions of the Lease.

41.2 Payment for services shall not be considered rent under the Lease.

41.3 Method of Payment

a) Landlord may submit invoices for compensation for services no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month. Invoices shall designate the nature of the services performed and/or the expenses incurred.

b) County shall pay Landlord within thirty (30) calendar days of receipt of Landlord's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time).

c) County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work (other than relating to System Downtime or Internet Uptime Guarantee) which has not been remedied or resolved in a manner satisfactory to Contract Administrator. The amount withheld shall not be subject to payment of interest by County.

41.4 Indemnification. Landlord shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney (provided such attorney is reasonably acceptable to Landlord) to defend County, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Landlord, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Lease including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Lease. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Landlord under this Lease may be retained by County until all of County's claims for indemnification pursuant to this Lease have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by County.

41.5 Termination

41.5.1. This Lease may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Lease may also be terminated for convenience by the County's Board upon providing written notice to Landlord of the termination date, which shall be not less than one hundred twenty (120) days after the date such written notice is provided. This Lease may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. An erroneous termination for cause shall be considered a termination for convenience.

41.5.2. Termination of this Lease for cause by County shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Lease, or multiple breach of this Lease which has a material adverse effect

on the efficient administration of this Lease and Services Agreement, notwithstanding whether any such breach was previously waived or cured.

41.5.3. Notice of termination shall be provided in accordance with the "NOTICES" section of the Lease except that notice of termination by County Administrator which County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of the Lease.

41.5.4. In the event this Lease is terminated for convenience, Landlord shall be paid for any services properly performed to the date the Lease is terminated; however, upon being notified of County's election to terminate, Landlord acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by County, the receipt and adequacy of which is hereby acknowledged by Landlord, is given as specific consideration to Landlord for County's right to terminate this Lease for convenience.

41.6 Audit Right and Retention of Records. County shall have the right to audit the books, records, and accounts of Landlord that are related to the services provided under the Agreement, as amended. Landlord shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to such services. All books, records, and accounts of Landlord shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Landlord shall make same available at no cost to County in written form.

Landlord shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to the Lease for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of the Lease. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Landlord's records, Landlord shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Landlord. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

41.7 Assignment and Performance. Neither this Lease nor any interest herein shall be assigned, transferred, or encumbered by Landlord except as expressly permitted herein or as authorized by the Contract Administrator in writing, and Landlord shall not subcontract any portion of the work required by this Lease, except as authorized by the Contract Administrator in writing. Landlord may subcontract any portion of the work required by this Lease for Services to a wholly owned subsidiary of Landlord.

Landlord represents that all persons delivering the services required by this Lease have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Lease and Services Agreement, and to provide and perform such services to County's satisfaction for the agreed compensation.

Landlord shall render all services under this Lease in a professional manner. The standards to be applied in the performance of services by Landlord shall be measured as that deemed reasonable for Landlord's employee category applicable to the service being performed and not that of a reasonable person. Landlord shall perform its duties, obligations, and work under this Lease in a skillful and respectable manner. The quality of Landlord's performance and all interim and final product(s) provided to or on behalf of County shall be comparable to the best local and national standards.

41.8 Any additional provisions entered into any the time of execution of this Lease shall require approval of the parties by initialing at the bottom of any additional page(s), which must be affixed to the Lease.

41.9 TRUTH-IN-NEGOTIATION CERTIFICATE. Signature of this Lease by Landlord shall act as the execution of a truth-in-negotiation certificate stating that rates, fees, other factual costs, and representations supporting the compensation of this Lease are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent rates, fees, other factual costs, and representations. All such contract adjustments shall be made within one (1) year following the expiration or earlier termination of the term of this Lease.

41.10 HIPAA COMPLIANCE. It is expressly understood by the Parties that County personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 CFR §160, 162, and 164 and related regulations. Landlord is considered by County to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), and Landlord shall fully protect individually identifiable health information as required by HIPAA. Landlord agrees to abide by the terms of the Business Associate Agreement attached hereto as Exhibit J, which is incorporated as part of this Lease. Where required, Landlord shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of Landlord's and County's uses of client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Lease. Landlord shall ensure that the requirements of this Article are included in all agreements with its subcontractors.

41.11 Other Eligible Purchasers. Other Constitutional offices of Broward County, municipalities or special districts within Broward County, and other counties in Florida

(collectively "Eligible Purchaser") may, if they so elect, purchase goods or services from provider under the terms and conditions of this Lease, provided that any such Eligible Purchaser shall be solely responsible for all payment and performance with respect to any such purchased goods or services and shall separately execute an appropriate ordering document, which ordering document shall not be binding in any way upon the County and shall have no effect upon the performance, duration, or enforcement of this Lease.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Lease: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 19th day of May CFO, 2015, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

[Signature]
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By [Signature]
Mayor

19th day of May, 2015

Insurance requirements
approved by Broward County
Risk Management Division

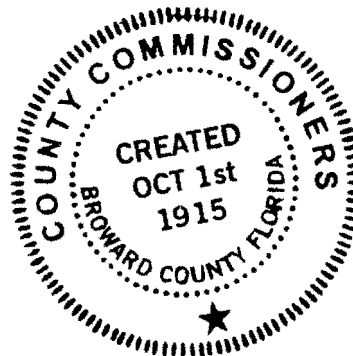
By [Signature] 3/30/15
Signature (Date)

Print Name and Title above

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By [Signature] 3/30/15
René D. Harrod (Date)
Assistant County Attorney

RDH
03/23/15
2015-03-23 Peak 10 Data Center Lease
#15-070.01



LANDLORD

WITNESSES:

Peak 10 1 Vault, Inc.

David A. Keon
Signature

DAVID A. KEON
Print Name of Witness above

Patricia Ory
Signature

Patricia Ory
Print Name of Witness above

By: *Brian J. Noonan*
Authorized Signor

BRIAN J. NOONAN - CFO
Print Name and Title

26 day of MARCH, 2015

ATTEST
David Gonsky
Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

EXHIBIT A **DESCRIPTION OF THE LEASED PREMISES** **Broward County Raised Floor Layout**

1/29/2015

Kevin Carosella



- Total of three cold and two hot zones
- Structured cable (APC) length below cabinet ID
- Two cage doors, each 4' in width
- Total size = 1184 sq feet
- By the Numbers
 - Total Rows = 8
 - Cabinets = 40
 - Perf Tiles = 41 to 53
 - Cable Trays = 50

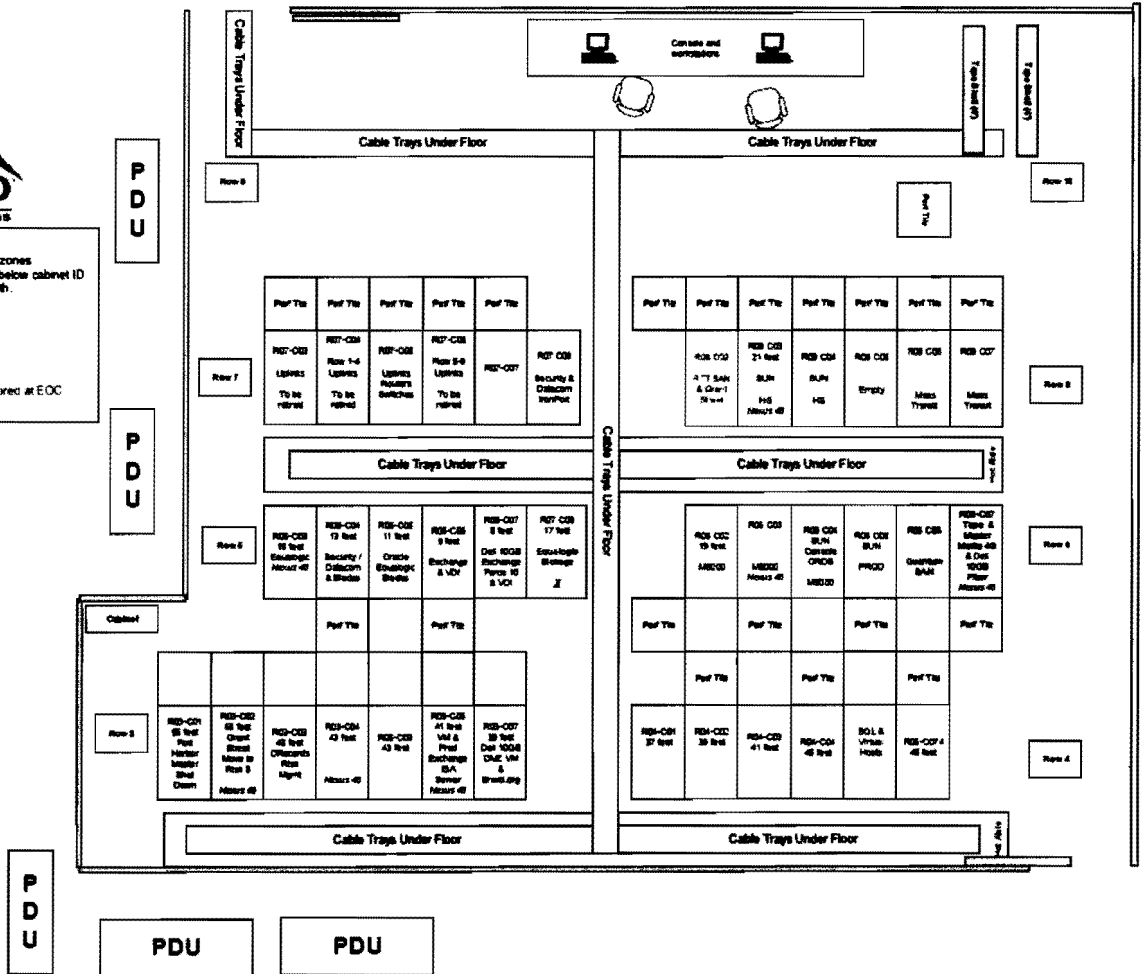
* 4 stored at EOC

- ☐ Occupied APC Racks
- ☐ Empty APC Racks

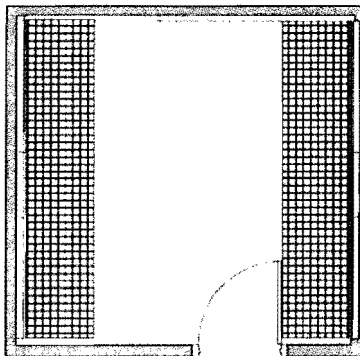
Legend

- ☐ Hot Aisle
- ☐ Cold Aisle
- ☐ Cable Tray
- ☐ Tape Shelf

X = Decommissioned
 N = Nexus 1 GB Switch
 S = Surplus



**Peak10 Storage Space
10X10**



**Peak10 Office Space
10X10**

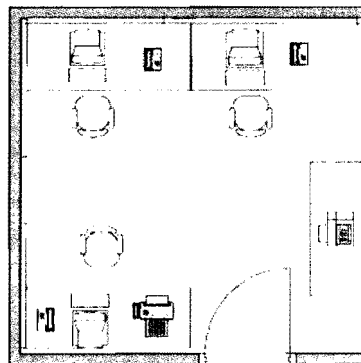


EXHIBIT B

MONTHLY SQUARE FOOT CHARGE

Floor Space	Quantity	A Unit	B Unit Cost
Raised Floor Data Center		SQ. FT.	\$24.29
Daily Operational Office / Storage Space		SQ. FT.	\$6.27

Cost per square foot per month remains constant throughout the term of the Lease, including any renewal terms. Floor space is variable depending upon County's need.

County also agrees to pay monthly for any services utilized by County pursuant to the fee scheduled contained in Exhibits D and E.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/14/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Commercial Lines - 800-868-8834 Wells Fargo Insurance Services USA, Inc. 6100 Fairview Road Charlotte, NC 28210	CONTACT NAME Elizabeth Younits PHONE FAX 866-332-3051 E-MAIL elizabeth.younits@wellsfargo.com INSURER(S) AFFORDING COVERAGE INSURER A Travelers Indemnity Company INSURER B Travelers Property Casualty Co of America INSURER C Travelers Casualty and Surety Co. of America INSURER D Lloyd's of London INSURER E INSURER F	NAIC # 25658 25674 31194
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COVERAGES

CERTIFICATE NUMBER: 6879621

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

PROD LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC.	630241M0838	11/01/2013	11/01/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Other commercial) \$ 300,000 MED EXP* (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOUND AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X HIRE/AUTO SCHEDULED AUTOS NON-OWNED AUTOS	BA251M7550	11/01/2013	11/01/2014	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	X UMBRELLA LIA EXCESS LIA RETENTION \$ 10,000	CUP241M0838	11/1/2013	11/1/2014	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? (Worksheet in 904) If yes, describe under DESCRIPTION OF OPERATIONS below	UB0276T700	11/1/2013	11/1/2014	X WC STATUS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - E.A. EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Crime	105518282	11/01/2013	11/01/2014	1,000,000 25,000 Ded

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if space is required)

INFORMATIONAL PURPOSES ONLY

CERTIFICATE HOLDER

INFORMATIONAL PURPOSES ONLY

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

James Smith

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EXHIBIT D
MONTHLY ELECTRIC CAPACITY CHARGE

The cost schedule below identifies the Landlord imposed installation cost for each circuit, the cost of a primary circuit and the cost of redundant power circuits based on the capacity of the circuit. Landlord will not charge for removal of a circuit.

MONTHLY ELECTRIC CAPACITY CHARGE

Collocation Power Services – Pricing	Quantity	A Unit	B Unit Cost
Circuit Provisioning Fees		EA	\$0.00
120 Volt, Single Phase			
20 AMP 120 Volt Single Phase - Primary		EA	\$278.35
20 AMP 120 Volt Single Phase - Secondary		EA	\$69.59
30 AMP 120 Volt Single Phase - Primary		EA	\$385.70
30 AMP 120 Volt Single Phase - Secondary		EA	\$96.43
50 AMP 120 Volt Single Phase - Primary		EA	\$608.95
50 AMP 120 Volt Single Phase - Secondary		EA	\$152.24
208 Volt, Single Phase			
20 AMP 208 Volt Single Phase – Primary		EA	\$551.95
20 AMP 208 Volt Single Phase – Secondary – Balanced Power (A&B)		EA	\$137.99
30 AMP 208 Volt Single Phase – Primary		EA	\$771.40
30 AMP 208 Volt Single Phase – Secondary – Balanced Power (A&B)		EA	\$192.85
50 AMP 208 Volt Single Phase – Primary		EA	\$1,218.85
50 AMP 208 Volt Single Phase – Secondary – Balanced Power (A&B)		EA	\$304.72
208 Volt, Three Phase			
20 AMP, 208 Volt Three Phase – Primary		EA	\$828.40
20 AMP, 208 Volt Three Phase – Secondary – Balanced Power (A&B)		EA	\$207.10
30 AMP, 208 Volt Three Phase – Primary		EA	\$1,157.10
20 AMP, 208 Volt Three Phase – Secondary – Balanced Power (A&B)		EA	\$289.28
50 AMP, 208 Volt Three Phase – Primary		EA	\$1,826.85
20 AMP, 208 Volt Three Phase – Secondary – Balanced Power (A&B)		EA	\$456.71
APC PDU's			
APC 20 AMP 120V Switched Power Stick		EA	\$ included in the power cost
APC 30 AMP 120V Switched Power Stick		EA	\$ included in the power cost
APC 50 AMP 120V Switched Power Stick		EA	\$ included in the power cost

EXHIBIT E
TABLE OF RATES FOR OTHER AVAILABLE SERVICES

Landlord shall make the following other services available to the County on an as required basis. County may request any of the services below by submitting a Service Order (Exhibit F). Landlord shall only accept Service Orders signed by the Broward County ETS Infrastructure Services Director or designee.

OPTIONAL SERVICES PRICING

Optional Services	A Unit	B Unit Cost
Raised Floor Secure Cage		
Custom Cage Construction	SQ. FT.	\$0.00
Disaster Recovery Reserved Seats and Suites		
12' x 9' Disaster Suite with Conference Phone	EA	\$712.50/monthly
Cubicle w/Phone, Workstation	EA	\$118.75/monthly
Declaration Usage Fee Per Seat / Suite	EA	\$237.50 one time per seat/suite
Cross Connections		
POTS Cross Connect	EA	\$23.75
Category 6E Copper Cross Connect	EA	\$23.75
Fiber Cross Connect	EA	\$47.50
Redundant Uplink (VRRP)	EA	\$71.25
POTS Line (Not a Cross Connect)	EA	\$23.75
Onsite Systems Support-Within Cage		
2 Hours of Labor / Technical Support	EA	\$190.00
4 Hours of Labor / Technical Support	EA	\$380.00
8 Hours of Labor / Technical Support	EA	\$760.00
Dedicated Per Hour Labor / Technical Support	HR	\$95.00
Backup, File Storage, Retention and Archive Services to a Virtual Tape Library		
01TB-14TB Onsite Backup – Onsite Data Protection - Daily with 7 Day Retention Onsite Data Protection - Daily with 14 Day Retention Onsite Data Protection - Daily with 30 Day Retention	TB	Price per GB \$0.50 \$0.70 \$0.90
15TB-30TB Onsite Backup – Onsite Data Protection - Daily with 7 Day Retention Onsite Data Protection - Daily with 14 Day Retention Onsite Data Protection - Daily with 30 Day Retention	TB	Price per GB \$0.40 \$0.63 \$0.80
01TB-14TB Offsite Backup –	TB	Price per GB

Onsite Data Protection - Daily with 7 Day Retention		\$0.50
Onsite Data Protection - Daily with 14 Day Retention		\$0.70
Onsite Data Protection - Daily with 30 Day Retention		\$0.90
15TB-30TB Offsite Backup –		Price per GB
Onsite Data Protection - Daily with 7 Day Retention	TB	\$0.40
Onsite Data Protection - Daily with 14 Day Retention		\$0.63
Onsite Data Protection - Daily with 30 Day Retention		\$0.80
Data Storage and Archive		
Storage Area Network Onsite, Active Drives – Performance Tier	GB	\$0.50
Storage Area Network Onsite, Archive Drives – Capacity Tier	GB	\$0.18
Disaster Recovery Services		
Virtual “Cloud” Equipment Services – Outside State of Florida		
Mid-Range Unix Sun system (including, without limitation, M5000 w/Solaris 9/10, 32GB Ram (2) SPARC 64 VII (4) Core 2.66Ghz, 5TB SAN w/Licensing, or equivalent or better)	EA	Current market rate (pass-through only; no mark up)
Alternate Data Center Raised Floor Space – Outside State of Florida		
Raised Floor w/Secure Cage	Per Sq. Ft.	\$24.29/monthly
Full 42U Server Cabinet at the Disaster Recovery Remote Site	EA	\$481.75/monthly
208V Single Phase, 30 Amp - Primary	EA	\$844.92
208V Single Phase, 30 Amp – Secondary – Balanced Power (A&B)	EA	\$1335.89
208V Three Phase, 30 Amp - Primary	EA	\$1084.78
208V Three Phase, 30 Amp – Secondary – Balanced Power (A&B)	EA	\$1842.69

**INTERNET SERVICES BANDWIDTH
TIER ONE PROVIDER WITH PEERING AGREEMENTS**

Bandwidth Fees (Capped) with 1 Gigabyte Port		
Item	A Unit	B Unit Cost
100MB	MB	\$9.50
250MB	MB	\$6.65
500MB	MB	\$6.65
750MB	MB	\$6.65
Bandwidth Fees (with Burst Capability - 95th Percentile, Higher of Inbound or Outbound Usage) With 1 Gigabyte Port		
100MB w/1GB Burstable	MB	\$9.50
250MB w/1GB Burstable	MB	\$6.65
500MB w/2GB Burstable	MB	\$6.65
1GB w/5GB Burstable	MB	\$6.65
1GB w/10GB Burstable	MB	\$6.65
Private Circuits to Atlanta or Charlotte Datacenters		
50MB w/1GB Burstable	MB	\$30.00
100MB w/1GB Burstable	MB	\$25.00
250MB w/1GB Burstable	MB	\$25.00
500MB w/2GB Burstable	MB	\$25.00
1GB w/5GB Burstable	MB	\$25.00
1GB w/10GB Burstable	MB	\$25.00



EXHIBIT F - SERVICE ORDER
Peak10 Service Request

Peak10 SERVICE ORDER FORM											
<input type="checkbox"/> New Service		<input checked="" type="checkbox"/> Change of Service		<input type="checkbox"/> Exchange		<input type="checkbox"/> Upgrade		<input type="checkbox"/> Add-On			
Services Ordered (see attachment for detail)											
<input type="checkbox"/> Colocation		<input type="checkbox"/> Power		<input type="checkbox"/> Networks		<input type="checkbox"/> Business Continuity		<input type="checkbox"/> Managed Services		<input type="checkbox"/> Cross Connects	
Company Contact Information											
Company Name			Broward County Enterprise Technology Services			Account #		19816			
Contact Name			Keith Wolf			Address		1 North University Drive - Suite 4003A			
Email			kawolf@broward.org			City		Fort Lauderdale			
Phone			(954) 357-5918			State		FL		Zip 33324	
Fax			(954) 357-5601			Country		USA			
Billing Contact Information											
Contact Name			Broward County Accounting Division- Accounts Payable			Address		115 S. Andrews Avenue Room 203			
Email			boffice@broward.org			City		Fort Lauderdale			
Phone			954-357-7193			State		FL		Zip 33301-4800	
Fax						Country		USA			
Technical Contact Information											
Contact Name			Del Harper			Address		1 North University Drive - Suite 4003A			
Email			dharper@broward.org			City		Fort Lauderdale			
Phone			954-357-6628			State		FL		Zip 33324	
Fax						Country		USA			
Service Term and Charges											
Term Commitment			3 year			Billing Frequency		Monthly			
Total One Time Charges						\$					
Total Monthly Recurring Charges						\$					
Payment Information											
<input type="checkbox"/> Check											
<input type="checkbox"/> Wire Transfer											
<input type="checkbox"/> Credit Card			Type? <input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/>								
See Notes Below – Billing Account						Amex					
Cardholder Name				CC Number		Type		Exp. Date			
Peak 10 Information											
Sales Rep		Robert Allison		Email		Robert.allison@peak10.com		Date Submitted			
Please review and sign the Service Order Form and the attached appropriate contract(s). The Service Order Form is not effective until the appropriate contract(s) has been signed by Customer and accepted by Peak 10 as provided in the contract(s). In the event of a conflict between the Service Order Form and the contract(s), the contract(s) shall govern.											
Customer Signature		John Bruno, Chief Information Office				Date					

Peak 10 SERVICE ORDER ATTACHMENT

Customer Name:

Account #

X

Dei Harper
Data Center Operations Manager

Exhibit G - Service Level Agreement

In connection with all Services provided under the Agreement, Landlord shall, at no additional cost to County, meet or exceed the requirements below. The standards set forth herein are intended to reflect the current industry best practices for the Services. If and to the extent industry best practices evolve to impose higher standards than set forth herein, this Service Level Agreement ("SLA") shall be deemed to impose the new, higher standards upon Landlord. Landlord shall notify County in writing of any material change to its standards.

Any item addressed in this SLA that requires approval by County must be approved in writing. The Contract Administrator and Director of the County's Division of Enterprise Technology Services ("ETS") are authorized to approve those items on behalf of County.

1. Security

1.1. Provider will provide County a copy of their annual SSAE16 SOC 2 Type 2 report (or succeeding audit report) prior to execution of this Agreement. Provider must provide annual SSAE16 SOC 2 Type reports throughout the life of the Agreement and agrees to make it available to the County's Security and Compliance team.

1.2. For any cloud services or managed services, Provider shall maintain controls that establish separation of County data, confidential information, and security information from that of Provider's other clients. Provider agrees to protect the confidentiality of any County information, such as diagrams, routing information, and any personal information provided to Provider.

1.3. Provider shall maintain industry best practices to reasonably protect the physical security of any County equipment housed in the Raised Floor Space. Upon reasonable request (or as otherwise provide in this SLA), Provider shall provide County with documentation of such procedures and practices to County; such documentation may be provided to County via electronic access.

1.4. Provider shall conduct a disaster recovery test in coordination with County at least twice per year. The timing and duration of the test will be subject to the approval of County, and shall be coordinated and timed so as to cause minimal or no disruption to the Services or the regular business of County. For clarification, this provision requires Provider to assist County with a test of County's disaster recovery plan and is not intended to cover Provider's disaster recovery plan testing.

1.5. Provider shall report to County if any unauthorized parties are successful in physically or otherwise accessing any of the servers (including fail over servers) where County's data/files are housed, within 24 hours of becoming aware of the incident. Provider shall provide County with a detailed incident report within five (5) days of the breach including

remedial measures instituted and any law enforcement involvement. Provider must follow and abide by the Provider's incident response policy then in effect. Provider will fully cooperate with County on incident response, forensics, and investigations that involve the Provider's physical resources or the services provided under this Lease.

1.6. Provider shall comply with HIPAA and HITECH laws and regulations (42 CFR and 45 CFR) and agrees to comply with the Business Associate Agreement (BAA) attached as Exhibit J.

1.7. Provider shall require that its service providers, subconsultants, and any third party performing any services relating to this Agreement comply in all material respects with all terms and conditions specified in this Agreement unless County, in writing, excuses any specific compliance with any such term or condition. Provider is responsible for all service providers, subconsultants, and any third parties performing any services relating to this Agreement, and Provider is responsible for ensuring that all such services comply with the terms of this Agreement as if Provider were performing the services itself. Provider shall provide County at County's request, with list of third-party vendors that Provider relies on to provide Services to County.

1.8. Provider shall connect its hosting site through at least two independent Internet Service Providers (ISPs) with separate entry points with full redundancy (dual entrance to facility on redundant equipment).

1.9. Provider shall ensure adequate background checks have been performed on any personnel having access to County data/files. Provider shall deny convicted felons, and other persons deemed by Provider to be a security risk, access to any County data/files. County acknowledges that as of the Effective Date of this Lease, while the services provided relate to the maintenance of County information on County equipment, Provider does not access, use, disclose or transfer County information nor does Provider have logical access to such information, unless expressly agreed by the Parties in writing.

1.10. Provider shall provide County with the names and contact information for a security point of contact and a backup security point of contact to assist County with security incidents that require Provider's assistance.

1.11. If County subscribes to Provider's Payment Card Industry ("PCI") secured services, Provider will provide infrastructure to support the secure transmission of credit card information and shall comply with the most recent version of the Security Standards Council's PCI Payment Application Data Security Standard. Provider will support information requests to respond to questions related to any PCI Audits.

2. Service Availability

2.1 Internet Uptime Guarantee. Landlord guarantees that Internet uptime for the County will be 99.99% (when subscribed to redundant network connections) excluding Scheduled Maintenance as defined herein ("Internet Uptime Guarantee"). Internet uptime requires proper functioning of all network infrastructure, including routers, switches and cabling, affecting the County's ability to reliably transmit or receive data. Internet downtime is measured from the time the trouble ticket is opened to the time the Network uptime is fully restored.

As long as the System is available over the Internet to at least some third parties (i.e., the System is functioning properly and there are no technical issues with Landlord's or its Internet service provider's hardware or software), any inability on the part of County to access the System as a result of a general Internet outage will not be counted toward any unavailability time period.

Landlord will refund to County five percent (5%) of the monthly fees for Internet access (or monthly pro rata equivalent, if recurring fees under the Agreement are charged other than monthly) under the Agreement for each 30 minutes of Internet downtime in excess of that permitted under the Internet Uptime Guarantee (up to 100% of County's monthly fee), measured on a calendar month basis. Such refunds will be paid within 10 days of the applicable Monthly Report or, at County's option, may be credited against amounts due under any unpaid invoice.

2.2 Scheduled Maintenance. Uptime of County operations is expected twenty-four (24) hours per day, seven (7) days per week. Unanticipated downtime of County operations related to scheduled maintenance requires County to be immediately notified by mass distribution email or call tree as soon as physically possible. Downtime maintenance credits will apply. Landlord may conduct Scheduled Uptime Maintenance through automated notice; County reserves the right to delay the scheduled maintenance if County believes operational Uptime may be impacted.

All changes that are expected to take more than four (4) hours to implement or are likely to impact user workflow requires at least five (5) business days' advance written notice to County. Landlord requires County's prior written approval, which will not be unreasonably withheld.

2.3 The County will have 24/7 access to reporting via Provider's client portal to gauge SLA network compliance.

2.4 Hardware Guarantee. Landlord guarantees the functioning of all hardware components necessary for Landlord to provide the Services and Service Availability herein under a redundant design, and will replace any failed or defective component at no cost to County to maintain redundancy.

2.5 **Network Bandwidth/Response Times.** Landlord shall ensure packet loss of less than 1% and less than 80 milliseconds domestic latency within Landlord's network. Landlord shall maintain sufficient bandwidth to the hosting sites and ensure the server processing time to provide millisecond response times from the server. County and Landlord recognize that end user response times are dependent on intermittent Internet service provider network connectivity, and in the case of County's users, dependent on County's internal network health.

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EXHIBIT H
SUPPORT AND MAINTENANCE STANDARDS

Landlord shall provide County with support and maintenance services so as to ensure and maintain optimal performance of the Data Center, which services shall include the following:

- a) Timely response and resolution of any errors, defects, malfunctions or other issues affecting the availability of the Data Center (collectively, "Events") in keeping with the Required Response Times stated below;
- b) On-call availability via telephone and e-mail during normal business hours to receive and respond to inquiries or questions from County regarding use, operation, or functionality of the Data Center;
- c) Emergency availability via telephone and e-mail after hours to receive and respond to specific technical problems and questions relating to the operation or availability of the Data Center;

Support and Maintenance Services shall be provided via telephone, electronic communication, on-site, or as otherwise appropriate to address the issue. Landlord agrees that its personnel shall be suitably trained in the operation, support and maintenance of the Data Center. If in the reasonable opinion of County, the personnel provided are not acceptable, Landlord agrees to provide suitable replacements.

Required Response Times. Upon notice by County of an Event, Landlord shall address and resolve the Event consistent with the following priority, response, and resolution levels:

Priority Description	Definition	Response Time After Notice	Resolution Time after Notice
Critical	Event that renders the Data Center and/or interfaces inoperable.	Immediate response by onsite personnel for any time during a 7/24/365 period	Work until corrected
Severe	Event that results in a significant impairment of performance of the Data Center or impairs essential operations.	Immediate response by onsite personnel for any time during a 7/24/365 period	Work until corrected
Minor	Event that has minor impact to County's business and that does not impact normal operation of the Data Center.	2 hours during normal business hours	Work until corrected during normal business hours
Minimal	Event that has minimal impact or no impact on	2 hours during normal business hours; or next	Work until corrected

	County's Data Center.	business day if outside of normal business hours	during normal business hours
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Notwithstanding the above-stated schedule, Landlord shall use its continuing best efforts to correct the Event as expeditiously as it can. The Priority Description for each error or issue shall be reasonably determined by the Contract Administrator.

Records and Reports. Landlord will maintain records of its Support and Maintenance Services, which shall include at least the following:

- a) Date, time, and name of contact for each Event;
- b) Date and time of response by Landlord;
- c) Description of Event and analysis of error, defect, or other issue causing Event;
- d) All steps and actions taken to resolve the Event;
- e) Determination of root cause;
- f) Date and time of resolution and County representative notified of resolution; and
- g) All equipment and/or labor costs associated with resolution.

At the request of County, Landlord shall provide monthly reports of the foregoing records and statistics of Landlord's average monthly compliance with the Required Response Times.

EXHIBIT I SPECIFICATIONS

1. The Data Center must support a diverse path for Fiber Optic connection. Landlord must provide the necessary entry point into the proposed facility supporting the ability to route Broward County private Fiber Optic cable onto the property. Landlord, through use of diversity design, must support Broward's contracted connection of third party Fiber Optics offered by "tier one" companies such as AT&T, FiberNet, etc. Path diversity requires independent entry points into the building in which no supporting infrastructure are shared between the paths (i.e., each operating as single circuits).
2. Broward County may elect to utilize Landlord-provided onsite technical staff working within the Data Center facility. Landlord must provide evidence of the capability to respond to a technical priority request from Broward County within 30 minutes or less. Landlord must possess and provide resumes, certifications, and specialized training of relevant staff. Certifications shall show evidence of senior level in the following areas: Networking, Microsoft Server Technology, VMware, and Active Directory.
3. The Data Center computer room (Raised Floor) shall utilize construction allowing a minimum of 150 floor-loading pounds per feet in a side-by-side, row configuration. This configuration will allow for a "cold" aisle and a "hot" aisle. Landlord will mitigate load density hot spots within the equipment placement.
4. Landlord must utilize a video camera recording system for the Premises with 30 days of recorded archiving. Video recording shall include the external grounds, entrance to the building, and entrance to the computer room, as well as strategically located positions within the Computer room (Raised Floor) to record and archive movement and actions of tenants, equipment vendors, and Data Center personnel.
5. Landlord will provide certification documentation demonstrating compliance with either American Institute of Certified Public Accountants (AICPA) SSAE-16 or SAS70 Audit compliance (or any succeeding standard).
6. The Data Center must provide emergency technical support engineers for facility infrastructure on a 24 hour, 7 day a week schedule. Landlord shall provide a Network Operations Center (NOC) for the monitoring of all Landlord infrastructure systems within the Data Center, and provide a web-based portal for Broward County to use for technical support, problem reporting, service requests, etc. Landlord shall notify the County within 24 hours of any planned, routine maintenance to any building infrastructure which may affect County operations, and provide notice as soon as reasonably possible for emergency changes to the infrastructure that may affect County operations.
7. Landlord will provide evidence of fire certification as related to fire suppression within the computer room (Raised Floor). Landlord must provide technical information on type of

systems and gaseous chemicals used. Halon technology is not an accepted solution for Broward County.

8. Landlord will provide a design layout of the current electrical plant infrastructure including utility electrical feeds, generator plant, switch technology, and UPS design and capacity.

9. Landlord will provide a design layout of an N+1 redundancy as defined "*N+1 ensures system availability in the event of component failure. Components (N) have at least one independent backup component (+1).*" Landlord shall demonstrate compliance in N+1 showing independent distribution paths regarding utility power, generators, network connectivity, and water supply for HVAC components as applicable.

10. Landlord shall maintain spare parts on hand to address critical component parts for UPS systems, Generator systems, HVAC Systems, Water Regulation Systems, Fire Suppression systems.

11. Landlord shall provide documentation that demonstrates a schedule of inspections and maintenance logs for all critical facilities infrastructure. In addition, Landlord shall provide a service plan documenting generator maintenance specifically outlining age, hours of run-time, maintenance and testing plans. Landlord shall also include the fuel plan to include, type of fuel, onsite storage capacity as related to run-time, and provide documentation on the active vendor contracts to provide fuel.

12. Landlord must maintain a facility consistent within the 90th percentile of Tier III qualifications or better rated (Concurrently Maintainable Site Infrastructure) for the Premises.

13. Landlord shall provide evidence of the following: Data Center location as related to a FEMA defined flood zone.

14. Landlord will maintain shielding barriers for external critical utility infrastructure components from outside elements in particular, heavy winds, and flying objects resulting from a substantial and sustained weather event.

15. Landlord provide documentation and capability for the Premises and Data Center to operate for a period of 14 continuous days "off the grid" in a self-sustaining mode.

16. Landlord shall ensure the Data Center will accommodate space for up to five (5) mobile command vehicles at 28 feet in length during a County, State or Federal declared emergency or disaster in the relevant geographical area supported by the Data Center. Landlord will identify a means to provide data connectivity to the command vehicles from the Data Center, and provide the Local Mean Sea Level (LMSL) of the specific location(s) reserved for command vehicle(s) operation. The Data Center grounds shall support sufficient drainage to maintain

operations during a rainfall measuring up to twenty (20) inches over a 36-hour period within the general postal zip code area of the proposed Data Center.

17. Landlord will provide the building's most recent roof inspection. Landlord must provide a listing of all equipment that is roof mounted on the Data Center facility for County staff evaluation regarding infrastructure or building integrity failure during a wind event.

18. Landlord will provide the Standard Operating Procedure (SOP) of the proposed Data Center outlining procedures for securing the Data Center in anticipation of a weather related event, lockdown policies, proactive measures to enable redundant systems, and procedures for housing Broward County staff (up to four personnel) within the Data Center during periods of lockdown or declared emergencies.

19. Landlord shall make available at the Data Center a Server Lift at no cost with a capability of lifting 500 pounds for installation of equipment in an eight-foot rack height.

20. The Data Center must possess the capability to supply all Voltage, Amperage, and Phasing configurations (this includes 120/208 Volt, 30-50Amp, single and three phase circuits). The Data Center shall be structured in such a way that Broward County can retrieve power from a minimum of four (4) power distribution units (PDUs) utilizing primary and secondary circuit configurations.

EXHIBIT J
BUSINESS ASSOCIATE AGREEMENT BETWEEN
BROWARD COUNTY, FLORIDA AND PEAK 10 1 VAULT, INC.

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and Peak 10 1 Vault, Inc., a Florida corporation ("Business Associate") in connection with the Peak 10 Lease And Services Agreement With Broward County (the "Agreement").

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");

2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");

3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and

4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Definitions

1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 CFR Parts 160, 162, 164, and 42 U.S.C. § 17921; provided that "PHI" shall mean Protected Health Information limited to the information Business Associate received from, or created, maintained transmitted, or received on behalf of Covered Entity.

1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 CFR Part 2 (if applicable), and the related regulations and amendments.

1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "E PHI."

1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:

- a. the nature and extent of the violation;
- b. the nature and extent of harm resulting from such violation;
- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI, as applicable. Business Associate will comply with the Security Rule codified at 45 C.F.R. Part 160 and Part 164, subparts A and C. To the extent Business Associate is to carry out any of County's obligations under the Privacy Rule codified at 45 C.F.R. Part 160 and Part 164, subparts A and E, Business Associate will comply with the requirements of the Privacy Rule that would apply to County in the performance of such obligations.
- 2.2 ☒ If this box is checked, the County and Business Associate are required to comply with 42 CFR Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
- a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of

Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;

- d. Use PHI to provide data aggregation activities relating to the operations of the County; and
- e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.

3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.

3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

3.4 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.

3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate with respect to its treatment of PHI pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

3.6 Business Associate shall make available to the County all PHI in Designated Record Sets

within ten (10) days of the County's request for the County to meet the requirements under 45 CFR § 164.524.

- 3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in the time and manner reasonably designated by the County.
- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent reasonably possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within three (3) business days of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate (other than the individual committing the breach).

- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document, to the extent reasonably possible, the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;
 - b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
 - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.)
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable County to ask questions or learn additional information; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, reasonably assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable given the nature of the services, any harmful effect of such breach known to Business Associate.
- 3.15 The County shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media. Business Associate will reasonably cooperate with County to determine whether the breach requires notice and the content of any required notice.
- a. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County. Business Associate will indemnify and defend the County from and against reasonable costs incurred by County to the extent caused by Business Associate's breach of this BAA.

Business Associate also agrees to pay the reasonable costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.

- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws to the extent such civil penalties arise from violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available for inspection by the County Contract Administrator within a reasonable period of time under the circumstances, not to exceed fifteen (15) business days of the request by County
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the Secretary of HHS or its designee as requested by the Secretary of HHS for the purposes of determining the Business Associate's or County's compliance with HIPAA Laws.

Section 4: Obligations of the County

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect the Business Associate's use of PHI.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use of PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all Parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon a party knowledge of a material breach of this BAA by the other party, the non-breaching party shall either:
- a. Provide an opportunity for the breaching party to cure the breach or terminate this BAA and the Agreement if the breaching party does not cure the breach within the time specified by the non-breaching party;
 - b. Immediately terminate this BAA and the Agreement if the breaching party has breached a material term of this BAA and a cure is not possible; or
 - c. If neither termination nor cure is feasible, the non-breaching may report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. Except as set forth in Section 5.4 below, no PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this Section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the parties to comply with HIPAA Laws.
- 6.3 Limit on Liability. Notwithstanding anything to the contrary in the Agreement or this BAA, the entire liability of Business Associate arising out of its obligations under this BAA will be limited to \$2,000,000. In no event will Business Associate be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including, but not limited to, damages for lost profits or lost revenues), regardless of whether County has been informed of the likelihood or possibility of such damages. County acknowledges this limitation forms an essential basis of the bargain between the parties and that this limitation on liability survives any remedy's failure of essential purpose.
- 6.4 Encryption. Except as specified below, County will use reasonable measures to encrypt ePHI to the extent technically and commercially reasonable that is stored or contained by or in, or accessed by, the systems, equipment, hardware, or other infrastructure provided, owned, managed, or maintained by, or located on the property of, Business Associate that store, contain, or access ePHI of County (the "Storage Infrastructure"), software, or other items or services provided by Business Associate in accordance with guidelines for the encryption of ePHI promulgated by the U.S. Department of Health & Human Services, as such guidance may be amended from time to time. Nothing contained in this BAA shall require Business Associate to encrypt or ensure encryption of any PHI stored in or by Storage Infrastructure and/or software or other items or services provided or maintained by Business Associate unless the Agreement specifically requires Business Associate to encrypt or ensure encryption of PHI. In such case, Business Associate is only obligated to encrypt or ensure encryption of PHI as specified in the Agreement.

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