

**SUBLEASE BETWEEN  
OPENCAPE CORPORATION  
AND  
BARNSTABLE COUNTY**

This Sublease is made and executed this 14<sup>th</sup> day of September, 2015, by and between OpenCape Corporation, a Massachusetts nonprofit corporation, with a principal office at Barnstable County Complex, 3195 Main Street, P.O. Box 1148, Barnstable, Massachusetts 02630 (hereinafter referred to as "OpenCape") and Barnstable County, a body politic and corporate existing pursuant to the provisions of Chapter 163 of the Acts of 1988, having a usual place of business at Superior Court House, 3195 Main Street, P.O. Box 427, Barnstable, Massachusetts 02630 (hereinafter referred to as the "County").

WHEREAS, the County is the owner of the property known as and numbered 3195 Main Street in Barnstable, Massachusetts (the "Property"), containing an approximately 11, 000 square foot building formerly known as the Barnstable County Public Safety Building (the "Building");

WHEREAS, pursuant to a Lease dated February 16, 2011 (the "Lease"), the County leased portions of the Building to OpenCape, as more particularly set forth in Exhibit A to the Lease, together with rights, in common with others, to use the parking lot(s) on the Property and on adjacent land owned by the County, to use other land owned by the County to access the Property and the Building, and to install cables, conduits, utilities and other similar items on the Property and other adjacent land of the County to connect a Collocation Center (as such term is defined in the Lease) in the Building to a broader telecommunications network (collectively, the "Leased Premises");

WHEREAS, the County now desires to sublease a portion of the Leased Premises for additional office space for the County upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

**1. DEMISE; DESCRIPTION OF SUBLEASED PREMISES; PERMITTED USES**

OpenCape subleases to County and the County subleases from OpenCape approximately 666 square feet of space located on the first floor of the Building commonly referred to as the "Network Operation Room" and the "Data Center Operations Room" (collectively, the "Subleased Premises"). The Subleased Premises are demised for office and administrative uses only in compliance with all federal, state and local laws and for no other purpose (the "Permitted Uses").

**2. TERM**

The term of this Sublease shall be for eighteen (18) months, commencing on July 1, 2015 (the "Commencement Date"), and ending on December 31, 2016 (the "Initial Term"), unless extended or sooner terminated in accordance with this Sublease. So long as the County is not in default, County may extend the Initial Term by two (2) addition one (1) year extension terms (each, an "Extension Term") by delivering written notice to OpenCape at least six (6) months prior to the expiration of the Initial Term or the first Extension Term. The Initial Term as it may be extended by the Extension Terms is known as the "Term." Notwithstanding anything to the contrary in this Sublease, OpenCape may terminate this Sublease for any reason upon six (6) months written notice to the County.

### **3. RENT**

County shall pay to OpenCape a base rent at the rate of One Dollar (\$1.00) per month during the Term (the "Rent"). In addition, County shall pay for custodial, maintenance and other services as described in Exhibit "A" attached hereto and incorporated herein, which shall be deemed additional rent ("Additional Rent").

### **4. UTILITIES**

The County shall place utilities and supporting service contracts that service the Building in County's name, including, without limitation, natural gas, electric, water, sewer, alarms and related phone lines, and elevator and related phone lines and the County agrees to pay promptly, as and when the same become due and payable, all charges for such utilities supplied to the Building. County shall be entitled to reimbursement from OpenCape for Opencape's pro rata share of such utility costs and service contracts based on the following:

- (a) Fifty percent (50%) of alarm and elevator service contracts and associated telephone lines and inspection services;
- (b) Fifty percent (50%) of natural gas distribution and supply costs;
- (c) Fifty percent (50%) of the electric distribution and supply charges associated with the Meet-Me-Room;
- (d) Twenty-five percent (25%) of water and sewer charges;
- (e) 0% of electric distribution and supply charges associated with the electrical loads servicing the Barnstable County Sheriff Radio Room recorded at electrical sub-meter *1446TMCD5048* ("E-Mon A"), for electrical panel circuit PB2.
- (f) 50% of electric distribution and supply charges associated with the electrical loads servicing the Meet Me Room recorded at electrical sub-meter *1446TMCD5047* ("E-Mon B").
- (g) 25% of electric distribution and supply charges associated with the electrical loads servicing office spaces and associated lighting and HVAC systems recorded at electrical sub-meter *1446TMCD5046* ("E-Mon C") for electrical panel circuits P11, P12, PB1 and Elevator.
- (h) 100% of electric distribution and supply charges associated with the OpenCape Data Center.

The County may pursue with the electric distribution company the installation of new electric meters so that the electric load associated with the main/first and second floors will be on the new meter. All costs associated with new electric meters shall be paid by County and such work shall be subject to review by OpenCape.

## **5. INSURANCE**

OpenCape shall maintain insurance on the Building and Property as set forth in Section 20 of the Lease. County shall not permit any use of the Subleased Premises, Building or the Property which will make void or voidable any insurance on the Property on which the Subleased Premises are a part, or on the contents of said Property or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its powers. County shall on demand reimburse OpenCape for any extra insurance premiums cause by the County's use of the premises.

As required by Section 20(A) of the Lease, County shall continue to include the Property, including the Subleased Premises and the Building, in its coverages for all County-owned properties and shall continue to name OpenCape as an additional insured therein in proportion to OpenCape's interest in the Property.

The County shall maintain in effect throughout the Term of this Sublease personal injury insurance covering the Subleased Premises in the amount of \$1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000. Such insurance shall include OpenCape as an additional insured and notice of any change shall be provided to OpenCape within thirty (30) days of any such material change and the insurance policy shall provide that such policy shall not be canceled without at least ten (10) days prior written notice to OpenCape.

All insurance required by this section shall be obtained from responsible companies qualified to do business in Massachusetts and in good standing. OpenCape reserves the right to require additional insurance from County or the construction manager or general contractor of the County during any periods of construction or renovation of the Subleased Premises by the County.

## **6. MAINTENANCE**

County, at County's cost, agrees to provide custodial services to the entire Building. County agrees to maintain the Subleased Premises in good condition, damage by fire and other casualty only exception, and whenever necessary, to replace plate glass and other glass therein, acknowledging that the Subleased Premises are now in good order and the glass whole. County shall not permit the Subleased Premises or the Building to be overloaded, damaged, stripped, or defaced, nor suffer any waste. County shall obtain the written consent of OpenCape, not to be unreasonably withheld, before erecting any sign on the Building or the Property. Nothing in this Section shall be deemed or construed to modify County's maintenance requirements under Section 7 of the Lease; provided, however, that if repairs set forth under Section 7(C) of the

Lease are required due to the fault or negligence of County, such repairs shall be the responsibility of County.

OpenCape shall continue to maintain the fire suppression system for the Collocation Center pursuant to the requirements reflected in Exhibit B, page 18. of the adopted Lease dated February 16, 2011 between the OpenCape Corporation and Barnstable County.

#### **7. ALTERATIONS/ADDITIONS**

County shall not make alterations (structural or non-structural) or additions to the Subleased Premises or the Building without OpenCape's consent in writing, which consent shall not be unreasonably withheld or delayed. OpenCape consents to the installation of two windows in the Data Center Operations Room by County, and County also consents to the installation of the two windows to the extent the County's consent was required under the Lease. All allowed alterations or additions shall be at County's expense and shall be in quality at least equal to the present construction. County shall be responsible for obtaining any and all permits and approvals for such work. County shall not permit any mechanics' liens, or similar liens, to remain upon the Subleased Premises, the Building or the Property for labor or material furnished to County or claimed to have been furnished to County in connection with work of any character performed or claimed to have been performed at the direction of County and shall cause any such lien to be released of record forthwith at no cost to Opencape. Any alterations or additions made by County shall become the property of OpenCape at the termination of occupancy as provided herein, or in the alternative, OpenCape can request County to remove all alterations and additions, at County's cost, and return the Subleased Premises to original condition.

#### **8. ASSIGNMENT/SUBLETTING**

County shall not assign or sublet the whole or any part of the Subleased Premises without OpenCape's prior written consent, which consent shall not be unreasonably withheld if the assignee or Subtenant is a federal, state, county or local governmental agency. Notwithstanding such consent, County shall remain liable to OpenCape for the payment of all Rent and Additional Rent and for the full performance of the covenants and conditions of the Sublease for the full Term of this Sublease.

#### **9. SUBORDINATION**

This Sublease shall be subjected and subordinate to any and all mortgages and other instruments in the nature of a mortgage, now or any time hereafter, a lien or liens on the Property of which the Subleased Premises are a part and the County shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Sublease to said mortgages or other instrument in the nature of a mortgage.

#### **10. INDEMNIFICATION AND LIABILITY**



Barnstable, MA 02630  
Attention: Executive Director  
Fax: 888-253-2561  
Email: [info@opencape.com](mailto:info@opencape.com)

Together with a copy sent to:

Nutter McClennen & Fish LLP  
1471 Iyannough Road  
P.O. Box 1630  
Hyannis, MA 02601-1630  
Attention: Michael E. Scott, Esq.  
Fax: 508-771-8079  
Email: [msscott@nutter.com](mailto:msscott@nutter.com)

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by the party as above provided.

**13. SURRENDER**

County shall pay Rent and Additional Rent and all other sums required to be paid by the County under this Sublease in the amounts, at the times, and in the manner provided in this Sublease, and shall keep and perform all the terms and conditions on its part to be kept and performed hereunder. At the expiration or earlier termination of this Sublease, the County shall peaceably and quietly quit and surrender to OpenCape the Subleased Premises, including such improvements the County elects not to retain and remove from the Subleased Premises, without delay and in good order and condition subject to the other provisions of this Sublease. In the event of the nonperformance by the County of any of the covenants of this Sublease, this Sublease may be terminated as provided elsewhere in this instrument. The Subleased Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of this Sublease, and shall be surrendered without any obligation of OpenCape for payment on account of improvements remaining at the Subleased Premises.

**14. CONDITION OF PREMISES**

OpenCape will provide the Subleased Premises in broom-swept condition.

**15. WAIVER**

The waiver by OpenCape of, or the failure of OpenCape to take action with respect to, any breach of any term, covenant, or condition contained in this Sublease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition contained in this Lease.

**16. NOTICE OF DEFAULT**

County shall not be deemed to be in default under this Sublease unless OpenCape shall first give to the County written notice of the default, and the County fails to cure the default within the sixty (60) day period after receipt of such notice, or, if the default is of such a nature that it cannot be cured within sixty (60) days, County fails to commence to cure the default within the period of sixty (60) days or fails thereafter to proceed to the curing of the default with all possible diligence.

#### **17. FIRE, CASUALTY AND EMINENT DOMAIN**

In the event the Lease is terminated pursuant to Section 25 of the Lease (Fire, Casualty and Eminent Domain), this Sublease shall automatically terminate simultaneous with the termination of the Lease. In the event County is required to rebuild or repair the Leased Premises pursuant to Section 25 of the Lease, County shall also be obligated to proceed with reasonable diligence to repair and restore the Subleased Premises, or what remains thereof in the case of a partial taking, to their condition prior to such damage, destruction or taking.

#### **18. SUBLANDLORD'S RIGHT OF ENTRY AND SUBTENANT'S RIGHT OF ACCESS**

County shall permit OpenCape and the agents and employees of OpenCape to enter into and on the Subleased Premises at all reasonable times and upon reasonable notice for the purpose of inspecting the Subleased Premises; provided, however, that OpenCape shall not be permitted to access secure or restricted areas within the Subleased Premises unless accompanied by a representative of County.

The County and its employees shall be allowed access to the Subleased Premises 365 days a year. OpenCape shall issue keyless entry FOBs to up to seventeen (17) personnel of County.

#### **19. BROKERAGE**

Each party represents and warrants to the other that it has not dealt with any real estate brokers, agents or other persons entitled to a commission in connection with this transaction. Each party agrees to defend, indemnify and hold the other harmless from and against any damages arising out of the failure of the foregoing representation and warranty. This Section shall survive the termination of this Sublease.

#### **20. MISCELLANEOUS**

A. Parties Bound. The covenants and conditions contained in this Sublease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to the Sublease.

B. Time of the Essence. Time is of the essence in this Sublease, and in each and every covenant, term, condition, and provision of this Sublease.

C. Section Captions. The captions appearing under the section number designations of this Sublease are for convenience only and are not a part of this Sublease and do not in any way limit or amplify the terms and provisions of this Sublease.

D. Governing Law. It is agreed that this Sublease shall be governed by, construed, and enforced in accordance of the laws of Massachusetts.

E. Entire Agreement. This Sublease, together with the Lease, shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind prior to the date of this Sublease, other than the Lease and the representations contained therein, shall not be binding on either party.

F. Modification of Sublease. Any modifications of this Sublease or additional obligation assumed by either party in connection with this Sublease shall be binding only if such modification is documented in writing and signed by each party or an authorized representative of each party.

G. Additional Documents. The parties agree to execute whatever reasonable papers and documents may be necessary to effectuate the terms of this Sublease.

H. Counterparts. This Sublease may be executed in counterparts. A signature transmitted by facsimile or electronic mail shall have the effect of an original.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the said parties hereto set their hands and seals this \_\_\_\_ day of July, 2015.

OPENCAPE CORPORATION

By:  \_\_\_\_\_

Name: Steven Johnston

Title: Executive Director

BARNSTABLE COUNTY

By: \_\_\_\_\_  
Sheila R. Lyons, Chair, duly authorized

By: \_\_\_\_\_  
Mary Pat Flynn, Vice -Chair, duly authorized

By: \_\_\_\_\_  
Leo G. Cakounes, Commissioner, duly authorized

## EXHIBIT A

1. As noted in Section 4 of the Sublease, pursue with the electric distribution company the installation of new electric meters so that the electric loads associated with the main/first and second floors will be on the new meter. All costs associated with new electric meters shall be paid by County and such work shall be subject to review and comment by OpenCape.
2. County to switch all utilities servicing the Building from OpenCape's name to County's name, County shall pay all such utility bills, and County shall seek reimbursement from OpenCape for OpenCape's proportionate share all as set forth in Section 4 of the Sublease.
3. County to provide maintenance and custodial services, at County's sole cost, for the entire Building and all systems therein, with the exception of all equipment and systems located in or associated with the OpenCape Ground Floor Data Center.
4. County to assume responsibility for scheduling the First Floor Conference Room (referred to as the Innovation Room), with priority rights given to occupants of the Building.
5. County, at County's cost, to create approximately 220 square feet of office space in the Ground Floor Assembly Room in an area identified by OpenCape to be used by OpenCape. The space will be carpeted and include a six foot style cubicle style wall and door along the length of the office. County shall also install two dual pole electrical outlets and two data ports in the adjoining wall. The office shall be removed at the County's expense upon vacation the 660 square foot office on the second floor.
6. County, at County's cost, to install an Airphone video buzzer at the main entry doors.