DARK FIBER LEASE AGREEMENT

**THIS DARK FIBER LEASE AGREEMENT** (the “Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022 (the “Effective Date”), by and between Sonic.net, LLC. (“Sonic”) and the Santa Rosa City School District, (“Lessee”).

RECITALS:

**WHEREAS,** Sonic, through ownership or other arrangement, possesses the right to use or operate a fiber optic telecommunication network between various points within the United States; and

**WHEREAS,** Lessee desires to obtain from Sonic, and Sonic desires to lease to Lessee, rights to use certain optical dark fibers in the Sonic Network under the terms and conditions set forth herein.

**NOW THEREFORE,** in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

* 1. definitions
     1. Capitalized terms used herein are defined in this Agreement or in Addendum 1 hereto.
  2. Leased Fibers
     1. Sonic hereby leases to Lessee the Leased Fibers described in Exhibit A on the terms of, and subject to, the covenants and conditions set forth in this Agreement, including all Exhibits hereto.
  3. CONSIDERATION
     1. In consideration of the lease by Sonic to Lessee, Lessee agrees to pay to Sonic a one-time lease fee as described in Exhibit A (the “Lease Fee”), The Lease Fee shall not be refundable, except as set forth in this paragraph. Upon confirmation of E-Rate approval, Sonic will apply eligible discounts for services. The E-Rate discount will be applied, and Sonic will work with the Universal Service Administration Company (“USAC”) to obtain payment for E-Rate funded portion. If Federal E-Rate funding is not received or becomes unavailable, Lessee shall have the right to immediately terminate this Agreement upon written notice to Sonic, Inc. Upon termination by Lessee based on lack of Federal E-Rate funding, Lessee shall compensate Sonic for all services satisfactorily rendered through the date of termination, and Sonic shall refund a pro-rated unusued portion of the Lease Fee.
     2. For the portion of the Lease Fee not covered by E-Rate, Sonic will accept payment from Lessee as:
        1. a one-time payment, or
        2. paid over four (4) years at no additional cost, or
        3. paid over the term of this Agreement, at an interest rate of 3% applied for years four (4) through five (5).
     3. Sonic will coordinate with Lessee for reimbursement to Sonic of any additional eligible funding, including funding available from the California Teleconnect Fund (“CTF”). Where available, these funds will offset costs of eligible services.
  4. DELIVERY aND ACCEPTANCE TESTING
     1. Sonic will use commercially reasonable efforts to Deliver the Leased Fiber within one-year of USAC approval.
     2. Upon Delivery and, to the extent commercially reasonable, each segment of the Leased Fiber shall comply with the specifications set forth in Exhibit B hereto. Sonic shall test each segment in accordance with the procedures specified in Exhibit B to verify that it is operating in accordance with the specifications in Exhibit B (“Fiber Acceptance Test”). Sonic shall provide Lessee with reasonable advance notice of the date and time of each applicable acceptance test so that Lessee shall have the right, but not the obligation, to have a person or persons present to observe the tests. Upon Lessee’s request, Sonic shall promptly provide Lessee with a copy of the test results.
     3. In the event the results of any applicable Fiber Acceptance Test show that the Leased Fiber are not operating in accordance with the applicable specifications in Exhibit B, Sonic shall promptly take commercially reasonable action to bring the segment of the Leased Fibers that is not operating within the applicable specifications into compliance with such standards. If Sonic is unable to remedy such nonconformance, Lessee shall be permitted to immediately terminate this Agreement and Sonic shall refund the pro-rated unusued portion of the Lease Fee. In no event shall the unavailability, incompatibility, delay in installation, or other impairment of any of Lessee’s interconnection facilities or any other customer controlled facilities including Lessee’s suppliers (e.g., a local access telephone service provider) be used as a basis for rejecting any portion of the Leased Fibers granted hereunder.
     4. Sonic will notify Lessee when any applicable segment of the Leased Fiber has met the specifications in Exhibit B. Within thirty (30) days of receipt of such notice, Lessee shall sign and deliver to Sonic an acceptance letter acknowledging the Delivery of each segment in the System Route. By signing the acceptance letter, Lessee acknowledges that each Leased Fiber segment listed in the acceptance letter complies with the applicable specifications. If Lessee determines that any Leased Fiber segment does not comply with these specifications, it shall notify Sonic in writing within the thirty (30) day period. Such notice shall specify in detail how the applicable Leased Fiber segment does not conform. If within the thirty (30) day period Lessee fails to provide such notice, or if the notice does not provide reasonable specificity, or if Lessee fails to deliver an acceptance letter, Lessee shall be deemed to have accepted the applicable Leased Fiber segments on the thirty-first (31st) day. If Lessee does properly provide a notice to Sonic that the applicable Leased Fibers does not conform, Sonic shall use its commercially reasonable efforts to remedy such nonconformance as soon as practicable. If Sonic is unable to remedy such nonconformance, Lessee shall be permitted to immediately terminate this Agreement and Sonic shall refund the pro-rated unusued portion of the Lease Fee. For the purposes hereof, the "Acceptance Date" shall be the date the acceptance letter is executed or the date the Lessee has been deemed to have accepted the applicable Leased Fiber segments.
  5. TERM
     1. Subject to Section 5.2 below, the term of this Agreement (the “Term”) shall begin on the Effective Date and shall continue until Five (5) years pass from the Effective Date.
     2. At the expiration of this Agreement, the lease of the Leased Fibers shall immediately terminate, and all rights of Lessee to use the Sonic Network, or any part thereof, shall cease. At the end of the Term, Lessee shall immediately cease using the Leased Fibers that are the subject hereof. Sonic will at it’s sole cost and expense remove any and all equipment associated with the Leased Fibers.
  6. MAINTENANCE
     1. Lessee shall have no right to use any portion of the Sonic Network or any property associated therewith except as expressly set forth herein. The Leased Fibers are subject to and provisioned in accordance with the specifications in Exhibit B hereto, which may be modified from time to time by Sonic.
     2. Sonic will use commercially reasonable efforts to maintain the Leased Fibers in accordance with the specifications in Exhibit B hereto. All maintenance charges for Scheduled Maintenance are included with the Lease and Service Fees and all charges for Unscheduled Maintenance are set forth in Exhibit B.
     3. This Agreement does not obligate Sonic to supply to Lessee any optical or electrical equipment, or other facilities, including without limitation, Local Distribution Facilities, collocation space, regeneration facilities, generators, batteries, air conditioners, fire protection equipment, monitoring equipment and testing equipment, all of which are the sole responsibility of Lessee. Sonic is not responsible for performing any work or providing any service other than as specifically set forth in this Agreement.
  7. PERMITS; UNDERLYING RIGHTS; RELOCATION
     1. The Leased Fibers are subject and subordinate to the terms of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The Leased Fibers are further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for other business activities, including railroad operations, telecommunications uses, pipeline operations or any other purposes, and to the prior right of Sonic to use its rights granted under the Underlying Rights. The rights granted herein are expressly made subject and subordinate to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed to be a representation, warranty or covenant of Sonic’s right, title or interest with respect to the right of way or the Underlying Rights.
     2. If Sonic, upon expiration or other termination of an Underlying Right, is unable to renew or obtain alternative Underlying Rights using its commercially reasonable efforts, Sonic shall not be deemed in breach hereof and Lessee’s remedy shall be a refund of the pro-rated unused portion of any Lease Fee pro-rated to the portion of the System Route materially and adversely affected by the Underlying Rights which were not renewed or obtained, and the Agreement as it pertains to that portion of the System Route shall terminate.
     3. If Sonic determines, in its reasonable discretion, or is required to relocate any part of the Sonic Network during the Term, including any of the facilities used or required in providing the Leased Fibers, Sonic shall reasonably determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall be constructed and tested in accordance with the specifications set forth in Exhibit B, and incorporate fiber meeting the specifications outlined in Exhibit B. In the event of relocation, Sonic shall use commercially reasonable efforts to minimize the disruption of Lessee’s use of the Leased Fibers. All costs of such relocation shall be paid by Sonic.
     4. In the event of a relocation, Sonic may, at its sole discretion, route the Leased Fibers through additional terminals, end links, POPs or regeneration facilities. In this event, Sonic shall be responsible for all additional Costs associated solely with these additional, non-required facilities.
     5. Relocation pursuant to this Section shall not affect the Term.
  8. USE OF SONIC NETWORK
     1. This Agreement grants to Lessee no right to use any element of the Sonic Network other than the right to use the Leased Fibers pursuant to the terms hereof. Lessee shall keep any and all portions of the Sonic Network, including the Leased Fibers, free from any liens, rights or claims of any third party that can be attributed to Lessee.
     2. Lessee shall be responsible for the configuration and operation of Lessee’s network using the Leased Fibers, including the provisioning of all Local Distribution Facilities, interconnection facilities, lateral facilities, network equipment, testing equipment and procedures, maintenance (other than maintenance of the Leased Fibers or any portion of the Sonic Network), and other facilities or actions necessary to use the Leased Fibers. Local Distribution Facilities shall be separately acquired by Lessee and may be provided by a local telephone company or other third party, and must comply with Sonic applicable engineering and operations requirements. Local Distribution Facilities are not part of the Leased Fibers, and Lessee’s acceptance of the Leased Fibers may not be conditioned upon the availability of such Local Distribution Facilities. Lessee shall conduct all operations and use of the Leased Fibers in a manner that does not interfere with the Sonic Network or the use thereof by Sonic or any other customer of Sonic. Lessee shall at all times comply with Sonic operating procedures and interconnection requirements.
     3. Lessee and Sonic agree to cooperate and support each other in complying with any requirements applicable to their respective rights and obligations under this Agreement that are imposed by any governmental agency, regulatory agency or authority.
     4. This Agreement does not grant Lessee any right, title or interest in any portion of the Sonic Network. Lessee shall not have the right to possess, control, hold title to, change, replace, upgrade, modify, sell, salvage or encumber the Leased Fibers or any other Sonic equipment or fiber. Sonic retains the exclusive right to provide services or sell or lease fibers to other customers or end users, or otherwise profit from the Sonic Network and any property associated therewith, and Lessee shall have no right to receive income, proceeds, profits or otherwise benefit from or interfere with those activities. The Lessee acknowledges that interruptions, outages, or degradations in the actual transmission capability of the Leased Fibers may occur from time to time.
  9. INDEMNIFICATION
     1. Lessee agrees to release, indemnify, defend, protect, and hold harmless Sonic, its employees, officers, directors, agents, shareholders and Affiliates, from and against, and assumes liability for the following:
        1. Any injury, loss or damage to any person, tangible property or facilities of any third person or entity or Sonic (including reasonable attorneys’ fees and costs) to the extent arising out of or resulting from either: (i) the acts or omissions, caused by the active negligence, sole negligence, or willful misconduct of Lessee, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees or vendors; or (ii) acts and omissions of Lessee constituting a default under this Agreement caused by active negligence, sole negligence, or willful misconduct;
        2. Any claims, liabilities or damages arising out of any violation by Lessee of any regulation, rule, statute or order of any local, state or federal governmental agency, court or body in connection with the use of the Leased Fibers hereunder caused by active negligence, sole negligence, or willful misconduct;
        3. Any claims, liabilities or damages arising out of any interference with or infringement of the rights of any third party as a result of Lessee’s use of the Leased Fibers hereunder not in accordance with the provisions of this Agreement caused by active negligence, sole negligence, or willful misconduct; and
        4. Any claims, liabilities or damages arising out of the use, resale, sharing or modification of the Leased Fibers or any other portion of the Sonic Network by Lessee and/or its customers or end users caused by active negligence, sole negligence, or willful misconduct.
     2. Nothing contained herein shall operate as a limitation on Sonic’s right to bring an action for damages against any third party, such damages to include, but not be limited to, direct, indirect, statutory, special, consequential or punitive damages, based on any acts or omissions of a third party that may affect the construction, operation or use of the Leased Fibers or the Sonic Network; provided, however, that Lessee agrees to promptly assign any such rights, actions, or claims to Sonic and execute documents and take any other action reasonably necessary to enable Sonic to pursue any right, action or claim against a third party.
     3. Sonic shall defend with counsel acceptable to Lessee, indemnify and hold harmless to the full extent permitted by law, Lessee and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with this Agreement or its failure to comply with any of its obligations contained in these contract documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of Lessee as described in Section 9.1.
  10. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTies
      1. WITH THE EXCEPTION OF OBLIGATIONs TO INDEMNIFY as described in section 9 of this agreement, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, AND PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES. ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED.
      2. DAMAGES PROHIBITED UNDER THIS AGREEMENT INCLUDE, BUT ARE NOT LIMITED TO, DAMAGE TO PROPERTY, DAMAGE TO EQUIPMENT, LOST PROFITS OR REVENUE (WHETHER ARISING OUT OF OUTAGES, TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR FUNCTIONAL DEGRADATION, LOSS OF UNDERLYING RIGHTS, OR ANY OTHER REASON), COST OF CAPITAL, OPPORTUNITY COSTS, COST OF REPLACEMENT SERVICES OR PROPERTY, COVER DAMAGES, OR CLAIMS OF LESSEE’S CUSTOMERS, END USERS OR THIRD PARTIES, CLAIMS RELATING TO CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR OR MAINTENANCE, OR ANY OTHER CAUSE WHATSOEVER.
      3. LESSEE ACKNOWLEDGES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SONIC MAKES NO WARRANTY REPRESENTATION OR INDEMNITY WITH RESPECT TO THE LEASED FIBERS, THE SONIC NETWORK, THE ASSOCIATED PROPERTY AND SERVICES, THE FACILITIES, OR ANY WORK PERFORMED UNDER THIS AGREEMENT, INCLUDING ANY AND ALL WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, AND LESSEE HEREBY EXPRESSLY WAIVES AND DISCLAIMS ALL SUCH WARRANTIES, REPRESENTATIONS AND INDEMNITIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT CONSTITUTE THE ONLY WARRANTIES MADE BY SONIC TO LESSEE WITH RESPECT TO THIS AGREEMENT AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES MADE BY SONIC TO LESSEE WITH RESPECT TO THIS AGREEMENT AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED.
      4. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SONIC DISCLAIMS (AND LESSEE WAIVES) ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED FIBERS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTY AGAINST ANY VICE OR DEFECT IN THE THING LEASED, NOW EXISTING OR HEREAFTER ARISING.
      5. LESSEE AKNOWLEDGES THAT THE WAIVERS OF WARRANTY CONTAINED HEREIN HAVE BEEN CALLED TO ITS ATTENTION.
  11. PAYMENT
      1. Other than the initial Lease Fee, all other payments due hereunder, if any, shall be due thirty (30) days after the date of Sonic’s invoice. All payments shall be made by wire transfer consistent the wire transfer instructions that Sonic provides to Lessee. If any amount due under this Agreement is not received within sixty (60) days of its respective due date Sonic may impose a late payment charge pursuant to Section 11.3. All disputes or requests for billing adjustments must be submitted in writing by the due date and submitted with payment of all undisputed amounts due. Any amounts that are determined by Sonic to be in error or not in compliance with this Agreement shall be adjusted on the next month’s invoice. Any disputed amounts that are deemed by Sonic to be correct as billed and in compliance with this Agreement, shall be due and payable by Lessee upon notification and demand by Sonic, along with any late payment charges that Sonic may impose pursuant to Section 11.3. Disputes shall not be cause for Lessee to delay payment to Sonic of the undisputed balance according to the terms outlined in this Section. Invoices submitted to Lessee by Sonic shall conform to Sonic’s standard billing format and content, as modified by Sonic from time to time.
      2. Upon confirmation of E-Rate approval from the Lessee, Sonic will apply eligible discounts. Sonic will work with USAC on behalf of the Lessee to obtain reimbursement. Lessee must provide Sonic with a copy of their E-Rate approval.
      3. In the event a party shall fail to make any payment under this Agreement when due, such delinquent amounts shall accrue interest, from sixty (60) days after the date such payment is due until paid in full (including accrued interest) at the highest percentage allowed by law. In addition, Sonic may offset any amounts not paid when due, thereby reducing any amounts that Sonic or its Affiliates may owe to Lessee or Lessee’s Affiliate under any other agreements between the parties or their respective Affiliates.
  12. CHARACTERIZATION OF TRANSACTION
      1. This Agreement is a lease of Leased Fibers and does not grant to Lessee any ownership interest in the Leased Fibers or any ownership, license or other possessory interests in the Sonic Network. Further, it is not the intention of the parties to create a loan or other financing arrangement between the parties.
  13. TAXES, FEES AND OTHER GOVERNMENTAL IMPOSITIONS
      1. Sonic is responsible for, and shall pay, all governmental assessments of a similar character that are included within the definition of Imposition, franchise taxes, right-of-way fees, and property taxes with respect to the construction, ownership, or operation of the Sonic Network which are imposed or assessed for periods prior to the Effective Date.
      2. Except as set forth in Section 13.1 herein, Lessee shall be solely responsible throughout the Term for any Impositions properly payable with respect to the lease granted hereunder. The parties agree that they will cooperate with each other to minimize all Impositions and to coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the activities or transactions arising from or under this Agreement, which originate from an authorized governmental tax authority.
      3. The parties agree that the lease of the Leased Fibers in the Sonic Network hereunder shall be treated for federal, state, and local tax purposes as a lease of a portion of the Sonic Network pursuant to, and in accordance with, §467 of the Internal Revenue Code of 1986, and as set forth on Exhibit C hereto. The parties further agree to file their respective income and other tax returns and reports on such basis and, except as otherwise required by law, not to take any positions inconsistent therewith.
      4. In the event an Imposition is made directly upon Lessee, Lessee shall: (i) directly make and administer the appropriate payment, or (ii) finance and administer any protest of such Imposition, provided the protest does not interfere with the rights and operations of Sonic.
      5. In the event an Imposition is made upon Sonic, either by audit or other means, that is solely the responsibility of Lessee and Lessee desires to protest such Imposition, Lessee shall submit to Sonic a statement of the issues and arguments requesting that Sonic grant Lessee the authority to prosecute the protest in Sonic’s name. Sonic’s authorization shall not be unreasonably withheld, and shall be periodically reviewed by Sonic to determine any adverse impact upon Sonic. In the event Sonic withdraws such authority, Lessee shall expeditiously terminate all proceedings. Lessee shall finance, manage, control and determine the strategy for such protest, keeping Sonic informed of the proceedings.
      6. In the event Lessee’s Imposition is included as part of a larger assessment made upon Sonic, (“Common Imposition”) and either party desires to protest its respective portion of the Common Imposition, such party shall give written notice to the other party. The party receiving notice shall timely respond whether it desires to join in such protest. All joint protests shall be financed in proportion to each party’s respective share of the protested amount, and any reduction in the Common Imposition shall be shared in the same ratio. All protests of Common Impositions shall be controlled and managed by Sonic with consideration given to the input by Lessee. In the event either party chooses not to participate in a protest of a Common Imposition, such party shall timely notify the other party of such decision. Thereafter, if the party desiring to protest chooses to proceed, such party shall be solely responsible for financing, controlling, managing, and determining the strategy of the protest. All reductions from the protest shall accrue to the benefit of the party financing such protest. If Sonic is the non-participating party in a protest of a Common Imposition, Lessee shall submit to Sonic a statement of the issues and arguments requesting that Sonic grant Lessee the authority to prosecute the protest in Sonic’s name. Sonic’s authorization shall not be unreasonably withheld, and shall be periodically reviewed by Sonic to determine any adverse impact upon Sonic. In the event Sonic withdraws such authority, Lessee shall expeditiously terminate all proceedings. Lessee shall finance, manage, control and determine the strategy for such protest keeping Sonic informed of the proceedings.
  14. NOTICE
      1. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

If to Lessee:

School District: Santa Rosa City School District

Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

Tel:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

With a copy to:

If to Sonic:

Sonic.net,Inc.   
Attention: Dane Jasper   
2260 Apollo Way, Santa Rosa, CA 95407

Telephone No.: 707-522-1000  
Facsimile No.: 707-595-4620

Or at such other address as either party may designate from time to time in writing to the other party.

* + 1. Except as otherwise provided herein, all required notices shall be in writing, transmitted to the parties’ addresses specified in this Section, and will be considered given when received or refused: (i) when delivered by facsimile, so long as duplicate notification is sent immediately via overnight delivery; (ii) when delivered in person to the recipient named on the signature page; (iii) when delivered either registered or certified U.S. Mail, return receipt requested, postage prepaid; or (iv) when delivered by an overnight courier service.
  1. CONFIDENTIALITY
     1. The Parties will use reasonable efforts to avoid sharing Confidential Information with each other. However, during the term of this Agreement, the Parties may provide each other with Confidential Information. Each Party will:
        1. Identify information and materials disclosed to the other Party that the disclosing Party believes to be Confidential Information.
        2. Maintain the confidentiality of the other Party’s Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction;
        3. Restrict disclosure of the Confidential Information to its employees who have a “need to know” and not copy or reproduce the Confidential Information;
        4. Take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential Information and will not be less than reasonable care; and
        5. Use the Confidential Information only in furtherance of the performance of this Agreement.

Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Sonic acknowledges that Lessee is a public agency that is subject to document requests pursuant to the California Public Records Act (the “Act”). The Lessee shall notify Sonic within ten (10) business days of receiving a request under the Act for any records which would constitute Confidential Information and to the extent allowed by law, Lessee shall apply exceptions to disclosure of the Confidential Information that are applicable under the Act, including but not limited to the confidential trade secrets exception to disclosure, provided by law. If a suit is filed by a member of the public with respect to any such request, Lessee will cooperate in any action to intervene filed by Sonic, by providing any necessary documentation and Information pertinent to this Agreement and its execution. Notwithstanding any provision in this Agreement to the contrary, Sonic will indemnify and hold harmless Lessee for any and all costs and attorney fees awarded to a prevailing plaintiff arising out of or related to a suit which result from Lessee’s actions, taken at Sonic’s request, in compliance with the provision in protecting the Confidential Information from public disclosure, but only to the extent that the Lessee is required to pay the prevailing Party’s costs and attorney fees.

* + 1. Notice of Disclosure.
       1. In the event either party has a legal obligation which requires disclosure of the terms and conditions of this Agreement or any Proprietary Information (including, without limitation, with the Securities and Exchange Commission or other regulatory agencies), the party having the obligation shall immediately notify the other party in writing of the nature, scope, and source of such obligation so as to enable the other party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement. At least ten (10) business days advance written notice under this Section 17 shall be provided to the other party, whenever possible.
       2. Notwithstanding anything to the contrary contained herein, in the event that Lessee or Sonic commences a voluntary case under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) or consents to entry of an order for relief in an involuntary case, and Lessee or Sonic files a motion (the “Section 365 Motion”) or a plan of reorganization (the “Plan”) seeking to assume or reject this Agreement under section 365 of the Bankruptcy Code, unless ordered by the court having jurisdiction over such bankruptcy case (the “Court”) or otherwise required by applicable, non-bankruptcy law, it shall not attach to the Section 365 Motion or the Plan or this Agreement or describe in the Section 365 Motion or the Plan the details of this Agreement, unless, (a) prior to attaching this Agreement or any related agreements to a motion or plan of reorganization or otherwise disclosing the contents of the Agreement, Lessee or Sonic shall use its best efforts to obtain entry of an order of the Court in form and substance reasonably acceptable to the other party (i) authorizing the filing of this Agreement with the Clerk of the Court under seal, (ii) limiting the provision and dissemination of copies of this Agreement, marked “Highly Confidential Proprietary Information,” to counsel for any official committees appointed in Lessee’s bankruptcy case; to committee members on any such committee and to counsel for any banks or institutions that are parties to debtor-in-possession financing agreements, and to the United States Trustee and such other persons as the Court may direct, and (iii) prohibiting all such parties from disclosing the substance of such Agreement to any other person or entity or in open court without the consent of the parties or order of the Court obtained after a hearing held on reasonable notice to the parties; provided, however, that a copy of this Agreement may be disclosed to (i) the Court on a confidential basis in connection with obtaining any such order, and (ii) such persons, including, without limitation, any such official committees and their members and professionals as shall have executed and delivered to Lessee or Sonic (with a copy simultaneously delivered to the other party) a confidentiality agreement in form and substance reasonably acceptable to the other party.
       3. Notwithstanding anything to the contrary contained herein, in the event that either party initiates or participates in an arbitration, litigation or other legal proceeding relating to this Agreement other than as described in subsection (b) above, unless ordered by the presiding court or otherwise required by applicable, non-bankruptcy law, it shall not attach this Agreement to any filings, documents or disclosures provided in connection with such arbitration, litigation or legal proceeding, or describe the details of this Agreement in such filings, documents or disclosures unless, prior to attaching this Agreement thereto otherwise disclosing the contents of the Agreement, the party seeking to disclose the contents of this Agreement shall use its best efforts to obtain entry of an order of the court presiding over such litigation or proceeding or a ruling of the arbitrator in form and substance reasonably acceptable to the other party (i) authorizing the filing of this Agreement with the Clerk of the presiding court under seal or with the arbitrator, provided that the arbitrator has agreed to maintain the confidentiality thereof, (ii) limiting the provision and dissemination of copies of this Agreement and any related agreements, marked “Highly Confidential Proprietary Information,” to opposing counsel in such arbitration, litigation or other proceeding and such other persons as the arbitrator or court may direct, and (iii) prohibiting all such parties from disclosing the substance of the Agreement to any other person or entity or in open court or in any other venue or medium without the consent of the parties or order of the court or ruling of the arbitrator obtained after a hearing held on reasonable notice to the parties; provided, however, that a copy or detailed description of this Agreement may be disclosed to (i) the court or arbitrator on a confidential basis in connection with obtaining any such order or ruling, and (ii) such persons as shall have executed and delivered to the party seeking disclosure (with a copy simultaneously delivered to the other party) a confidentiality agreement in form and substance reasonably acceptable to the non-disclosing party.
    2. The provisions of this Section 15 shall survive for a period of two (2) years from the date of the expiration or termination of this Agreement. The parties agree that the provisions of this Section 15 are an essential element of this Agreement. The parties agree that a breach of this Section 15 will materially harm the other party in a manner that cannot be compensated by monetary damages, and that in the event of such breach the prerequisites for an injunction have been met.
  1. DEFAULT
     1. A party shall be in default under this Agreement upon the occurrence of an Event of Default. Upon the occurrence of an Event of Default, other than an Event of Default based upon non-payment of any amounts owed under this Agreement, the defaulting party shall have thirty (30) days after the non-defaulting party gives written notice of default to the defaulting party to cure the default (unless the default is waived in writing by the non-defaulting party within the thirty (30) day period). However, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable efforts, the party in default must cure the default within ninety (90) days after the non-defaulting party gives its notice. When an Event of Default arises from the non-payment of any amounts owed by the defaulting party, the non-defaulting party is not required to send a written notice of default to the defaulting party.
     2. An Event of Default shall mean the following: (i) failure to make any payment under the terms of this Agreement within sixty (60) days from the date payment is due; (ii) breach of any material provision; or (iii) Lessee or Sonic is or becomes Insolvent.
     3. In addition to the specific remedies provided in this Agreement, upon giving notice of default, the non-defaulting party may: (i) accelerate future lease payments (if any) through the remainder of the Term and recover such amounts from the Lessee; (ii) take any action it determines to be necessary to correct the default; and (iii) pursue any other legal or equitable remedies it may have under applicable law that are consistent with the terms of this Agreement.
  2. TERMINATION
     1. Either party may terminate this Agreement upon the failure of the other party to cure an Event of Default before the expiration of the applicable cure period, if any, as required by Section 16. In the event either party terminates this Agreement in its entirety or as to any portion of the System Route, the aggrieved party may, subject to the dispute resolution provisions herein, pursue any legal or equitable remedy available to it under applicable law.
     2. The following sections shall survive the termination or expiration of the Agreement: 9 (Indemnification), 10 (Limitation of Liability, Disclaimer of Warranties), 13 (Taxes), 15 (Confidentiality), 23 (Publicity) and 25 (Personal Liability).
  3. FORCE MAJEURE
     1. Neither party shall be in default under this Agreement if its failure to perform is caused by any of the following conditions: act of God; fire; flood; sabotage; power outages; material shortages or unavailability or other delay in delivery not resulting from the responsible party’s failure to timely place orders; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations, orders approvals or restrictions (collectively, “Regulations”); war or civil disorder; acts of terrorism; labor unrest or strike; failure of a third party to grant or recognize a required right-of-way permit, easement, Underlying Right, or other required authorization for use of the intended right-of-way; or any other cause beyond the commercially reasonable control of the affected party. The party claiming relief under this Section shall promptly notify the other in writing of the existence of the force majeure event relied upon and the cessation or termination of that event. For the duration of any valid force majeure event, the performance or nonperformance of the affected party shall be excused.
  4. DISPUTE RESOLUTION

19.1 The parties express their intent to resolve all disputes, to the greatest extent possible by mutual discussion, or, in appropriate circumstances, by mediation. Nothing in this provision, however, shall prevent either party from instituting litigation with regard to this contract, or require discussion, negotiation or mediation prior to the institution of such litigation.

19.2 The failure of either party to enforce any provision of this Agreement, or conduct by a party that purports to waive any provision, shall not be construed as a general or specific waiver or relinquishment of any provision of this Agreement. A waiver of any provision of or right or obligation arising under this Agreement shall be valid only if in writing and executed by an authorized representative of the waiving party, specifically identifying the subject of the waiver, and clearly and unequivocally waiving the provision, right or obligation that is the subject of the waiver.

* 1. GOVERNING LAW
     1. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the substantive laws of the state of California without regard to any choice of law rules that would require the application of the law of any other jurisdiction, with venue in the County of Sonoma, and no other place.
  2. RULES OF CONSTRUCTION
     1. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.
     2. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
     3. Except as set forth to the contrary herein, any right or remedy of Lessee or Sonic shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
     4. This Agreement has been fully negotiated between and jointly drafted by the parties, each of whom had full opportunity to consult with counsel before execution.
     5. In the event of a conflict between the provisions of this Agreement and those of any Addendum or Exhibit, the provisions of this Agreement shall prevail and such Addendum or Exhibit shall be corrected accordingly.
     6. All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date certain or within a time period specified herein. Except as specifically set forth herein, for the purpose of this Section the normal standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a party’s performance is reasonable and timely.
  3. REPRESENTATIONS
     1. Each party represents that:
        1. It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and this Agreement does not violate, conflict with, or otherwise constitute a breach of any agreement or arrangement to which it is a party or by which it is bound;
        2. This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors’ rights and general equitable principles; and
        3. At the time of execution, this Agreement does not violate any applicable existing state or federal law.
     2. Lessee represents that it is entering into and has negotiated this Agreement at arm’s-length, that Sonic has acted in good faith, and that Lessee has been represented in connection with this Agreement and the transactions contemplated hereunder by competent counsel familiar with agreements of this nature. Lessee further represents that it has been advised by its counsel with respect to the terms and enforceability of this Agreement and understands and acknowledges that (i) the prepaid Lease Fees provided for herein are not refundable, except as set forth in this Agreement, (ii) by prepaying such Lease Fees, Lessee’s total cost for the Leased Fibers is less than it would be if Lessee had not prepaid in full, and (iii) Lessee’s sole remedies for Sonic’s failure to perform its obligations are as set forth in Sections 9, 10 and 16 herein.
  4. PUBLICITY, NAME AND MARKS
     1. No publicity regarding the existence and/or terms of this Agreement may occur without Sonic’s prior express written consent, and such written consent, if granted, may be granted only by Sonic’s Chief Marketing Officer or his designee. The content and timing of any press releases and all other publicity regarding the subject matter of this Agreement or Lessee’s relationship with Sonic, if authorized, shall be mutually agreed upon by the parties in advance. Notwithstanding anything to the contrary herein, Lessee may not make any disclosure to any other person or any public announcement regarding the existence and the terms of this Agreement or any relationship between Lessee and Sonic, without Sonic prior written consent. In addition, neither party shall use any trademark, service mark, brand name, copyright, patent, trade secret or any other intellectual property of the other party or its respective Affiliates without the other party’s prior written consent and in the case of Sonic, without the prior written consent of the Chief Marketing Officer or his designee.
  5. ASSIGNMENT
     1. This Agreement shall be binding on Lessee and its respective Affiliates, successors, and assigns. Lessee shall not assign, sell or transfer this Agreement or the right to receive the lease hereunder, whether by operation of law or otherwise, without the prior written consent of Sonic. Any attempted assignment in violation hereof shall be null and void.
     2. This Agreement shall be binding on Sonic and its respective Affiliates, successors, and assigns. Sonic shall not assign, sell, or transfer this Agreement or its rights to the Leased Fibers, whether by operation of law or otherwise, without the prior written consent of Lessee. Any attempted assignment in violation hereof shall be null and void.
  6. NO PERSONAL LIABILITY
     1. Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer director, or trustee of the other party.
  7. RELATIONSHIP OF THE PARTIES
     1. The relationship between Lessee and Sonic shall not be that of partners, agents, or joint ventures. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency agreement between the parties for any purposes, including but not limited to federal income tax purposes. Lessee and Sonic, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
  8. NO THIRD PARTY BENEFICIARIES
     1. This Agreement does not provide, and is not intended to provide, any third party beneficiaries, including, but not limited to, Lessee’s end users or customers, with any remedy, claim, reimbursement, cause of action or other right or privilege.
  9. SEVERABILITY
     1. If any term, covenant or condition contained herein shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
  10. COUNTERPARTS
      1. This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Facsimile signatures shall be treated as original signatures for the purpose of enforcing this Agreement. The parties agree to exchange original signature pages as soon as practicable following exchange of the facsimile signature pages (if that occurs), but the original signatures are not required in order to enforce the Agreement.
  11. ENTIRE AGREEMENT; AMENDMENT
      1. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, relating to the subject matter hereof, which are of no further force or effect.
      2. The Addendum and Exhibits referred to herein are integral parts hereof and are made a part of this Agreement.
      3. This Agreement may only be modified or supplemented by an instrument in writing that is executed by a duly authorized representative of each party.

In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written.

**School District**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SONIC.NET, INC.**   
  
  
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: Dane Jasper   
Title: CEO

ADDENDUM 1:  
DEFINITIONS

The following terms shall have the meanings set forth in this Addendum when used in this Agreement, unless explicitly stated to the contrary:

“Affiliate” means: (i) any individual, corporation, partnership, limited liability company, limited liability partnership, practice, association, joint stock company, trust, unincorporated organization or other venture or business vehicle (each an “Entity”) in which a party owns a twenty percent (20%) or greater equity interest; or (ii) any Entity which, directly or indirectly, is in Control of, is Controlled by or is under common Control with a party, as applicable, after applying the attribution rules of Section 318 of the U.S. Internal Revenue Code. For the purpose of this definition, “Control” of an Entity shall also include the power, directly or indirectly, whether or not exercised to vote fifty percent (50%) (or such lesser percentage as is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) or more of the securities or other interests having ordinary voting power for the election of directors or other managing authority of such Entity.

“Collateral” is defined in Section 14.1 herein.

“Connecting Points” means the mutually agreed upon splice points in Sonic manholes, handholes, or fiber distribution panels which can be used to access the Leased Fibers.

“Costs” means all actual, direct costs paid or payable in accordance with the established accounting procedures generally used by Sonic and which it utilizes in billing third parties for reimbursable projects which costs shall include, without limitation, the following: (i) internal labor costs, including wages and salaries, and benefits, and overhead allocable to such labor costs, and (ii) other direct costs and out‑of‑pocket expenses on a pass‑through basis (e.g., equipment, materials, supplies, contract services, etc.).

“Cross-Connect Panel” means the piece of equipment designated by Sonic in a POP at which the Leased Fibers are terminated and at which location Lessee may have access to and interconnect with the Leased Fibers through use of Local Distribution Facilities or other facilities acceptable to Sonic.

“Deliver” or “Delivery” of Leased Fibers and Leased Fibers “Delivered” mean that the applicable Leased Fibers will be available for use at the Cross-Connect Panels designated by Sonic hereunder.

“Disclosing party” is defined in Section 15.1 herein.

“Event of Default” is defined in Section 16.2 herein.

“Effective Date” is defined in the first paragraph of this Agreement.

“Fiber Acceptance Test” is defined in Section 4.2 herein.

“Impositions” means all taxes, fees, levies, imposts, duties, contributions, withholdings or charges of a similar nature (including, without limitation, sales and use taxes), assessed by any federal, state or local government or taxing authority by reason of the lease transaction entered into pursuant to this Agreement assessed for any period during the Term of the Agreement and subsequent to the Effective Date. Impositions shall also include any penalties, fines, or interest thereon. Specifically excluded from such term are all taxes based upon ownership, including, without limitation, property taxes and other taxes the measure of which is net income or net worth.

“Insolvent” means the occurrence of any of the following events, whereby Lessee or Sonic (i) becomes or is declared insolvent or files a petition under Title 11 of the United States Code or is subject to an order for relief thereunder; (ii) is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations.

“Interest Holder” is defined in Section 2.8(b) of Exhibit B herein.

“Leased Fibers” means the specific dark fibers described in Exhibit A.

“Local Distribution Facilities” means those telecommunications transmission facilities that interconnect with the applicable Leased Fibers at a Cross-Connect Panel and extend each System Route of the applicable Leased Fibers to a location outside of the Sonic POP.

“NOC” means the Sonic’s Network Operation Center as described in Section 2.3(a) of Exhibit B herein.

“Outage” is defined in Section 2.8(a) of Exhibit B herein.

“Planned System Work Period” or “PSWP” means a prearranged period of time reserved for performing certain work on the Sonic Network that may potentially impact traffic. Generally, this will be restricted to weekends, avoiding the first and last weekend of each month and high-traffic weekends. The PSWP shall be agreed upon pursuant to Exhibit B.

“POP” means the Sonic terminal facility (point of presence) where the Leased Fibers are Delivered to Lessee.

“Proprietary Information” is defined in Section 15.1 herein.

“Sonic Network” means the fiber optic telecommunications network operated by Sonic in California, including at the election of Sonic, such telecommunications capacity as Sonic may obtain from another network provider and integrate into its own network for purposes of providing services or leased fibers to its customers.

“Regulations” is defined in Section 18.1 herein.

“Scheduled Maintenance” is defined in Section 2.2(a) of Exhibit B herein.

“System Route” means the physical route along which the Leased Fibers are placed by Sonic on the Sonic Network, as more particularly described in Exhibit A hereto. For maintenance purposes only, Sonic reserves the right to alter temporarily each applicable System Route, provided that such alterations do not result in changes to the endpoints (POPs) of the applicable System Route.

“Term” is defined in Section 5.1 herein.

“Underlying Rights” means certain rights of way and other agreements obtained by Sonic for construction and operation of the Sonic Network in accordance with this Agreement.

“Unscheduled Maintenance” is defined in Section 2.2(b) of Exhibit B herein and consists of Emergency Unscheduled Maintenance and Non-Emergency Unscheduled Maintenance.

**EXHIBIT A:   
DESCRIPTION OF LOCATIONS, TERMS and FEES**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | | | | |
| Dark Fiber Pair (singlemode optical fibers) 5-year IRU  A Location: | | | Z Location: | One-time  Dark Fiber Up-Front Lease  Payment | Renewal  option, additional 5-year Lease |
| **3.1.1 Santa Rosa City School’s’ District Office**  211 Ridgway Avenue, Santa Rosa 95401 | | **3.1.2 Santa Rosa High School Agricultural Annex**  4260 Alba Lane, Santa Rosa, CA. 95403 | | $57,000.00 | $600.00/mo |
| **3.1.1 Santa Rosa City School’s’ District Office**  211 Ridgway Avenue, Santa Rosa 95401 | | **3.1.3 Maintenance and Operations Lewis Campus (NIF)**  2230 Lomitas Avenue, Santa Rosa, CA. 95404 | | $48,000.00 | $600.00/mo |
|  |  | | | | |

**EXHIBIT B:  
TECHNICAL SPECIFICATIONS**

**1.0 FIBER CABLE SPLICING, TESTING AND ACCEPTANCE PROCEDURES**

1.1 All splices will be performed with an industry-accepted fusion-splicing machine.

1.2 Splice loss acceptance testing will be provided as follows:

(a) Sonic will provide a Bi-directional Splice Loss Report for each individual splice, in a span of fiber optic cable, from FDP to FDP, or from FDP to bare end of cable, which ever applies. This report will provide the actual splice loss (calculated by averaging the uni-directional readings from each direction) of each individual splice, on each individual fiber, in the given fiber optic cable span. There is no maximum attenuation specification for an individual splice.

(b) Sonic will also provide a Fiber Acceptance Report, containing the bi-directional splice loss span average for all the splices in each individual fiber, in a given span of fiber optic cable. The actual splice loss span average for each fiber in a span will not exceed .15dB. All splice loss testing will be performed at 1550nm wavelength.

1.3 Power Loss Span Testing will be provided as follows:

(a) All power loss readings will be bi-directional at 1550nm wavelength.

(b) Sonic will provide end-to-end power loss test readings for each fiber, in each fiber optic cable span, from FDP to End of Cable, using the Sonic Bi-directional Power Loss Data Report.

(c) Power loss readings will be measured in decibels, and qualified by comparison to the calculated, maximum expected loss, in decibels, of the fiber optic cable span. The power loss test readings shall not exceed the calculated maximum expected loss of the fiber optic cable span under test. The maximum expected loss will be calculated by the following formula;

(Span length in kilometers X 0.30dB/km) + (number of splices X 0.15dB) + (0.50dB X number of mated pair of connectors) = maximum expected span loss in decibels.

1.4 Optical Return Loss (ORL), as calculated by an OTDR, will be provided on the Fiber Acceptance Report.

1.5 The fibers shall be terminated to the FDP, if any, with SC connectors, unless another type of connector is specified.

**2.0 MAINTENANCE SPECIFICATIONS AND PROCEDURES**

2.1 All other terms not otherwise defined herein shall have their respective meanings as set forth in the Agreement of which this Exhibit forms a part.

2.2 Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair of the Leased Fibers described in this section (“Scheduled Maintenance”) shall be performed by or under the direction of Sonic, at Sonic’s reasonable discretion or at Lessee’s request. Scheduled Maintenance of a Leased Fiber segment shall commence when Lessee executes an acceptance letter of that segment. Scheduled Maintenance shall include the following activities:

1) Patrol of System Route on a regularly scheduled basis.

2) Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates;

(b) Unscheduled Maintenance. Non-routine maintenance and repair of the Leased Fibers that is not included as Scheduled Maintenance (“Unscheduled Maintenance”), shall be performed by or under the direction of Sonic. Unscheduled Maintenance of a Leased Fiber segment shall commence when Lessee executes an acceptance letter of that segment. Unscheduled Maintenance shall consist of:

1) “Emergency Unscheduled Maintenance” in response to an alarm identification by Sonic’s Network Operations Center, notification by Lessee or notification by any third party of any failure, interruption or impairment in the operation of the Leased Fibers, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Leased Fibers.

2) “Non-Emergency Unscheduled Maintenance” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Sonic System.

(c) Lessee shall immediately report the need for Unscheduled Maintenance to Sonic in accordance with procedures promulgated by Sonic from time-to-time. Sonic will log the time of Lessee’s report, verify the problem and dispatch personnel immediately to take corrective action.

2.3 Network Operations Center.

(a) Sonic shall operate and maintain a Network Operations Center (“NOC”) staffed twenty-four hours a day, seven days a week by trained and qualified personnel. Sonic’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Sonic shall have its first maintenance employee at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time Sonic becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Sonic. Sonic shall maintain a toll-free telephone number to contact personnel at the NOC. Sonic’s NOC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected in the Leased Fibers, (i) through the Lessee’s remote surveillance equipment and upon notification by Lessee to Sonic, or (ii) upon notification by a third party.

2.4 Cooperation and Coordination.

(a) Lessee shall utilize an operations escalation list, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Sonic in meeting maintenance service objectives.

(b) Lessee will, as necessary, arrange for unescorted access for Sonic to all Leased Fibers sites in the System Route, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In performing its services hereunder, Sonic shall take reasonable care to prevent impairment to the signal continuity and performance of the Leased Fibers. The precautions to be taken by Sonic shall include notifications to Lessee. In addition, Sonic shall reasonably cooperate with Lessee in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Lessee, then Lessee shall, at Sonic’s reasonable request, make such personnel of Lessee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Sonic in performing such maintenance as required of Sonic hereunder.

(d) Sonic shall use its best efforts to notify Lessee at least ten (10) business days prior to the date in connection with any PSWP of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Lessee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Sonic’s ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Sonic shall use its best efforts to notify Lessee at Sonic’s earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

2.5 Facilities.

(a) Except to the extent otherwise expressly provided in the Agreement, Lessee will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Lessee in connection with the operation of the Leased Fibers, none of which is included in the maintenance services to be provided hereunder.

2.6 Cable/Fibers.

(a) Sonic shall perform appropriate Scheduled Maintenance on the cable contained in the System Route in accordance with good utility practice.

(b) Sonic shall have qualified representatives on site any time Sonic has reasonable advance knowledge that another person or entity is engaging in high risk construction activities or otherwise digging within five (5) feet of the cable.

(c) Sonic shall use commercially reasonable efforts to maintain sufficient capability to teleconference with Lessee during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Sonic shall use reasonable efforts to repair traffic-affecting discontinuity within four (4) hours after the Sonic maintenance employee’s arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Sonic shall commence its planning for permanent repair, and thereafter promptly shall notify Lessee of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available Planned Service Work Period (PSWP).

(d) In performing repairs, Sonic shall comply with the splicing specifications as set forth in Section 1.0 of this Exhibit. Sonic shall provide to Lessee any modifications to these specifications as may be necessary or appropriate.

(e) Sonic’s representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible.

2.7 Planned Service Work Period (PSWP).

(a) Scheduled maintenance service work which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends. The intent is to avoid, to the extent commercially reasonable, jeopardy work on the first and last weekends of the month and high-traffic holidays.

2.8 Restoration.

(a) Sonic shall respond to any interruption of service or a failure of the Leased Fibers to operate in accordance with the specifications set forth in this Exhibit (in any event, an “Outage”) as quickly as reasonably possible (allowing for delays caused by circumstances beyond the reasonable control of Sonic) in accordance with the procedures set forth herein.

(b) When restoring a cut cable in the System Route, the parties agree to work together to restore all traffic as quickly as possible. Sonic, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Sonic shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, rotating between tubes or ribbons operated by the separate Interest Holders, including Lessee, in accordance with the following described priority and rotation mechanics; provided that, lit fibers in all buffer tubes or ribbons or fiber bundles shall have priority over any dark fibers in order to allow transmission systems to come back on line; and provided further that, Sonic will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. For the purpose of this Exhibit, the term “Interest Holder” means any party who leases, owns, or has a right to use fibers on the System Route. In general, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration and segment-by-segment basis, to provide fair and equitable restoration priority to all Interest Holders, subject only to such restoration priority to which Sonic is contractually obligated prior to the date of the Agreement. Sonic shall use all reasonable efforts to implement a Sonic Network-wide rotation mechanism on a segment-by-segment basis so that the initial rotation order of the Interest Holders in each segment is varied (from earlier to later in the order), such that as restorations occur, each Interest Holder has approximately equivalent rotation order positions across the Sonic Network. Additional participants in the Sonic’s Network that become Interest Holders after the date hereof shall be added to the restoration rotation mechanism.

(c) The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the “3M Fiber Lock” to complete the temporary restoration. Permanent restorations will take place as soon as possible after the temporary splice is complete.

2.9 Subcontracting.

(a) Sonic may subcontract any of the maintenance services hereunder; provided that Sonic shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Sonic of any of its obligations hereunder.

2.10 Fees and Costs.

(a) Scheduled Service Fees. The fees payable for any and all Scheduled Service hereunder are set as $85 per month per site, as described in Exhibit A. Scheduled Service Fees are to be paid annually in advance with the first payment due on or before the Acceptance Date and subsequent annual payments due on or before the anniversary of the Acceptance Date.

2.11 Term.

(a) Sonic’s obligation to perform maintenance on the relevant portion of the Sonic Network shall be for the Term, and any subsequent renewals.

**EXHIBIT C:  
PAYMENT ALLOCATION SCHEDULE**

For tax purposes only, the Lease Fee paid hereunder shall be allocated one/fifth (1/5th) per annual period beginning with the Effective Date.