

Board Office Use: Legislative File Info.	
File ID Number	19-0094
Introduction Date	February 27, 2019
Enactment Number	19-0270
Enactment Date	3/4/19 os




**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
 Marcus Battle, Chief Business Officer
 Susan Beltz, Chief Technology Officer 

Board Meeting Date February 27, 2019

Subject Approval of Fiscal Year 2019-20 Category 1 E-Rate WAN Contracts
 Contractors: Sonic, AT&T, ACOE
 Services For: July 1, 2019 - April 1, 2025

**Action Requested
and
Recommendation**

Approval by the Board of Education of Fiscal Year 2019-20 Category Contracts between specified vendors listed below and the District.

Vendor	Service	Term	Contract Amount	Projected District Portion*
Sonic	Leased Lit Fiber/WAN	4/1/2020-3/31/2025	\$5,718,000	\$285,900
Sonic	Leased Dark Fiber/WAN	7/1/2019-6/30/2024	\$118,000	\$11,500
AT&T	Transport and ISP Services	7/1/2019-6/30/2022	\$245,384	\$12,269
AT&T	Transport to ACOE	7/1/2019-6/30/2022	\$101,088	\$5,054
ACOE	ISP Services	7/1/2019-6/30/2022	\$98,415	\$9,842

The district is currently funded through Erate at a 90% level with additional 50% funding from the California Teleconnect Fund for telecommunication services.

Staff recommends that these contracts be approved by the Board of Education.

Background

(Why do we need these services? Why have you selected this vendor)

The Schools and Libraries Program of the Universal Service Fund, commonly known as "Erate," is administered by the federal Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) under the direction of the Federal Communications Commission (FCC), and provides discounts to assist most schools and libraries in the United States in obtaining affordable telecommunications and Internet access services. Erate supports connectivity - the conduit or pipeline for communications using telecommunications services and/ or the Internet under two categories of service: Category 1 - data communications services/Internet access, and Category 2 - internal connections and basic maintenance; and provides discounts for communications support depending on the level of poverty and the urban/rural status of the population served, ranging from 20% to 90% of the costs of eligible services to schools, school districts, and libraries. In Erate 2.0 funding, all district schools are eligible at the 90% level for data communications and Internet access under Category 1 and 85% for internal connections under Category 2.

The district's Technology Services Department conducted a request for proposals for WAN, ISP, Transport, Lit and Dark Fiber services between October 31, 2018 and December 7, 2018. Four companies responded to the RFPQ and the listed services were chosen as the lowest cost vendors and were also deemed to provide the largest benefit to our district schools and administrative offices. These contract will result in an overall reduction in the annual cost to provide network infrastructure and internet access to our schools once they are fully implemented.

Competitively Bid

Was this agreement contract competitively bid? Yes
If no, exception:

Fiscal Impact

Funding Resource(s): \$11,200 from Measure J 2019-20 for One Time Fiber Connections, \$5,847 per month plus tax from the General Fund Utility Budget for WAN, ISP, transport and Leased Dark Fiber Fees.

Attachments

- Contracts between Sonic, AT&T, ACOE and OUSD

WAN Contract between Sonic and OUSD



Sonic Service Agreement
Oakland Unified School District Wide-Area Network

I. Customer Information	
Company Name: Oakland Unified School District	
Address: 1000 Broadway	City: Oakland
State: CA	Zip Code: 94607
Officer/Owner: Colleen Calvano	Title: CCTO
Telephone: 510-879-2202	Email: colleen.calvano@ousd.org

Service Description: 100Gbps Loop + Port Speed/CIR	Address:	Speeds:	Monthly:
Oakland USD- Primary Data Center	1050 2nd Avenue	100Gbps	\$3,000.00
Oakland USD- Secondary Data Center	1011 Union St	100Gbps	\$3,000.00
Service Description: 10Gbps Loop + Port Speed/CIR	Address:	Speeds:	Monthly:
ACORN Woodland Elementary/Encompass Academy/ACORN Woodland State CDC	1025 81st Avenue	10Gbps	\$950.00
Allendale Elementary/Allendale State CDC	3670 Penniman Avenue	10Gbps	\$950.00
Bella Vista Elementary	1025 East 28th Street	10Gbps	\$950.00
Bridges Academy at Melrose/Bridges State CDC	1325 53rd Avenue	10Gbps	\$950.00
Brookfield Village Elementary/Brookfield State CDC	401 Jones Avenue	10Gbps	\$950.00
Burckhalter Elementary	3994 Burckhalter Avenue	10Gbps	\$950.00
Carl B. Munck Elementary/Hintil Kuu Ca CDC	11900 Campus Drive	10Gbps	\$950.00
Chabot Elementary	6686 Chabot Road	10Gbps	\$950.00
Cleveland Elementary	745 Cleveland Street	10Gbps	\$950.00

Crocker Highlands Elementary	525 Midcrest Road	10Gbps	\$950.00
East Oakland Pride	8000 Birch Street	10Gbps	\$950.00
Emerson Elementary/Emerson CDC	4803 Lawton Avenue	10Gbps	\$950.00
Esperanza Elementary/Fred T. Korematsu Discovery Academy	10315 E Street	10Gbps	\$950.00
Franklin Elementary	915 Foothill Boulevard	10Gbps	\$950.00
Fruitvale Elementary/Fruitvale State CDC	3200 Boston Avenue	10Gbps	\$950.00
Futures Elementary/Community United Elementary/Lockwood State (CUES) CDC	6701 International Blvd.	10Gbps	\$950.00
Garfield Elementary/Garfield State CDC	1640 22nd Avenue	10Gbps	\$950.00
Glenview Elementary	4215 La Cresta Avenue	10Gbps	\$950.00
Global Family	2035 40th Avenue	10Gbps	\$950.00
Grass Valley Elementary	4720 Dunkirk Avenue	10Gbps	\$950.00
Greenleaf Elementary	6328 East 17th Street	10Gbps	\$950.00
Hillcrest Elementary	30 Marguerite Drive	10Gbps	\$950.00
Hoover Elementary	890 Brockhurst Street	10Gbps	\$950.00
Horace Mann Elementary	5222 Ygnacio Avenue	10Gbps	\$950.00
Howard Elementary/Howard State CDC	8755 Fontaine Street	10Gbps	\$950.00
International Community Elementary/Think College Now/International CDC	2825 International Blvd.	10Gbps	\$950.00
Joaquin Miller Elementary	5525 Ascot Drive	10Gbps	\$950.00
Kaiser Elementary	25 South Hill Court	10Gbps	\$950.00
La Escuelita Elementary/MetWest/United Nation CDC	1050 Second Ave	10Gbps	\$950.00
Laurel Elementary	3750 Brown Avenue	10Gbps	\$950.00
Lincoln Elementary	225 11th Street	10Gbps	\$950.00

Madison Park Academy Lower Campus TK-5	470 El Paseo Drive	10Gbps	\$950.00
Manzanita Community/Manzanita Seed	2409 East 27th Street	10Gbps	\$950.00
Markham Elementary	7220 Krause Avenue	10Gbps	\$950.00
Melrose Leadership Academy	4730 Fleming Avenue	10Gbps	\$950.00
MLK Jr/Lafayette Elementary PK-TK-3/Martin Luther King, Jr. State CDC	960 Tenth Street	10Gbps	\$950.00
MLK/Lafayette Elementary/West Oakland Middle School/Metwest Annex	991 14th Street	10Gbps	\$950.00
Montclair Elementary	1757 Mountain Blvd.	10Gbps	\$950.00
Parker Elementary	7929 Ney Avenue	10Gbps	\$950.00
Peralta Elementary	460 63rd Street	10Gbps	\$950.00
Piedmont Avenue Elementary	4314 Piedmont Avenue	10Gbps	\$950.00
Prescott (was PLACE)/Prescott CDC	920 Campbell Street	10Gbps	\$950.00
Reach Academy/Cox (Reach) CDC	9860 Sunnyside Street	10Gbps	\$950.00
Redwood Heights Elementary	4401 39th Avenue	10Gbps	\$950.00
RISE Community School/New Highland Academy	8521 A Street	10Gbps	\$950.00
Sankofa Academy/Sankofa CDC	581 61st Street	10Gbps	\$950.00
Santa Fe/Glenview Temp	915 54th Street	10Gbps	\$950.00
Sequoia Elementary	3730 Lincoln Avenue	10Gbps	\$950.00
Thornhill Elementary	5880 Thornhill Drive	10Gbps	\$950.00
Castlemont High	8601 MacArthur Boulevard	10Gbps	\$950.00
Fremont High	4610 Foothill Boulevard	10Gbps	\$950.00
Rudsdale Newcomer (Rudsdale Continuation Annex)	2369 84th Ave	10Gbps	\$950.00
Madison Park Upper Campus 6-12	400 Capistrano Drive	10Gbps	\$950.00

McClymonds High	2607 Myrtle Street	10Gbps	\$950.00
Oakland High	1023 MacArthur Blvd.	10Gbps	\$950.00
Oakland International High	4521 Webster Street	10Gbps	\$950.00
Oakland Tech Fashion Academy	5263 Broadway Ter.	10Gbps	\$950.00
Oakland Technical High	4351 Broadway	10Gbps	\$950.00
Skyline High School	12250 Skyline Blvd.	10Gbps	\$950.00
Community Day High School/Middle School	4917 Mountain Blvd.	10Gbps	\$950.00
Dewey Academy	1111 2nd Avenue	10Gbps	\$950.00
PEC Young Adult Program	1011 Union Street	10Gbps	\$950.00
Ralph J. Bunche High	1240 18th Street	10Gbps	\$950.00
Rudsdale Continuation/Sojourner Truth Independent Study	8251 Fontaine Street	10Gbps	\$950.00
Street Academy (Alternative)	417 29th Street	10Gbps	\$950.00
Bret Harte Middle	3700 Coolidge Avenue	10Gbps	\$950.00
Claremont Middle	5750 College Avenue	10Gbps	\$950.00
Edna Brewer Middle	3748 13th Avenue	10Gbps	\$950.00
Elmhurst Community Prep/Alliance Academy	1800 98 th Avenue	10Gbps	\$950.00
Frick Middle	2845 64 th Avenue	10Gbps	\$950.00
Montera Middle	5555 Ascot Drive	10Gbps	\$950.00
Oakland SOL	1180 70th Avenue	10Gbps	\$950.00
Roosevelt Middle	1926 19th Avenue	10Gbps	\$950.00
ROOTS International Academy/'Coliseum College Prep Academy	1390 66th Avenue	10Gbps	\$950.00
United for Success Academy/Life Academy	2101 35th Avenue	10Gbps	\$950.00

Urban Promise Academy	3031 East 18th Street	10Gbps	\$950.00
West Oakland Middle	991 14th Street	10Gbps	\$950.00
Westlake Middle	2629 Harrison Street	10Gbps	\$950.00
Arroyo Viejo CDC	1895 78th Avenue	10Gbps	\$950.00
Bella Vista CDC	2410 10th Avenue	10Gbps	\$950.00
Burbank Preschool Center/Burbank CDC	3550 64th Avenue	10Gbps	\$950.00
Centro Infantil de La Raza CDC	2660 East 16th Street	10Gbps	\$950.00
Harriet Tubman ECE	800 33rd Street	10Gbps	\$950.00
Highland CDC	1322 86th Avenue	10Gbps	\$950.00
Jefferson CDC	1975 40th Avenue	10Gbps	\$950.00
Laurel CDC	3825 California Street	10Gbps	\$950.00
Lockwood CDC	1125 69th Avenue	10Gbps	\$950.00
Manzanita CDC	2618 Grande Vista Avenue	10Gbps	\$950.00
Stonehurst CDC	901 105th Avenue	10Gbps	\$950.00
Yuk Yau CDC	291 10th Street	10Gbps	\$950.00
District Office	1000 Broadway	10Gbps	\$950.00
Lakeview Enrollment Center	746 Grand Ave, Rm A	10Gbps	\$950.00
Oakland USD Buildings and Grounds	955 High Street	10Gbps	\$950.00
Oakland USD-Foster/New Central Kitchen	2850 West Street	10Gbps	\$950.00
			Total Monthly: \$95,300.00

III. Notes

SONIC.

Term: 60-months

Delivery: Sonic will deliver on or around the requested date of April 30, 2020

Additional Information: During the term and any optional renewal periods, any site may be upgraded or downgraded at the following cost schedule.

Speed	10Gbps	20Gbps	40Gbps	80Gbps	100Gbps
Cost	\$950/mo	\$1,000/mo	\$1,100/mo	\$2,000/mo	\$3,000/mo

IV. Acceptance

By initialing here, you acknowledge that you have reviewed and agree to the Additional Terms and Conditions set forth above on the date entered by you below.

By initialing here, you acknowledge that you have reviewed and agreed to the General Service Level Agreement (SLA) set forth at sonic.com/sla on the date entered by you below.

By initialing here, you acknowledge that the service address listed in above in section 1 is correct.

By initialing here, you consent to receiving electronic communications from Sonic via the email address provided in Section 1.

By signing below, the person signing on behalf of Customer personally represents and warrants to Sonic that he or she has the authority and power to sign on behalf of Customer and bind Customer to this Agreement. Sonic agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement, including any services on subsequent Service Agreements and subsequent changes as long as those changes meet Sonic's minimum requirements. THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. This Agreement shall become a binding contract upon execution by Customer and acceptance by Sonic.

3/5/19

Accepted by: Customer Signature

Date

Almee Eng

President, Board of Education

Customer Name (Print)

Kyla R. Johnson-Trammell
Secretary, Board of Education

Sonic Accepted by: Contract Management

Date:

CREDIT INFORMATION

Company Legal Name:

DBA:

OAKLAND UNIFIED SCHOOL DISTRICT

Office of the General Counsel

APPROVED FOR FORM & SUBSTANCE

By:

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Contract Number 15010 Mariah McWilliams, General Counsel



ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions apply to any Service Agreement ("Agreement") made and entered by and between Sonic.net, LLC. ("Sonic") and any customer ("Customer"). Sonic and Customer are collectively referred to as the "Parties," and each individually as a "Party." These additional terms and conditions apply to all of the services described in the Agreement ("Services"). All Services provided under the Agreement are subject to the terms of Sonic's Tariff, which is on file, and available for public inspection, at the California Public Utilities Commission and at Sonic's business office. The Agreement includes and is subject to the additional terms and conditions below, the Sonic Acceptable Use Policy, Service Level Agreements (SLA) and Sonic's Tariff, all of which are incorporated herein by this reference.

1.0 Services. Any unique terms and conditions applicable to the particular Services described in the Agreement are set forth in the Agreement. All Services are subject to the following:

1.1 Commencement of Service. Sonic will make commercially reasonable efforts to deliver the Service within its service territory. On delivery and testing of a Service, if Sonic determines that the Service cannot be provided with the specifications represented, Sonic and the Customer shall each have the right to terminate this Agreement without liability or the Customer may elect to execute a new contract with Sonic for a service that is deliverable at the requested location(s). **1.2 Turn Up by Customer.** A turn-up window will apply to each Service provided, within which the Customer shall initiate the Service and perform any required testing with Sonic's assistance. The turn-up window shall be 30 days for all Services except Fiber SSE, which has a 14 day turn-up window. If the Customer does not connect their equipment for testing and turn-up with Sonic's assistance within the applicable turn-up window, the Customer will be deemed to have unconditionally accepted the Service.

1.3 Service Quality. Subject to the warranty provisions hereof, absent causes beyond its control, Sonic will use reasonable commercial efforts to ensure that the Service meets all represented performance specifications. Please see Sonic's Service Level Agreement, attached.

1.4 Adds Deletions Moves and/or Changes. Sonic will allow Oakland Unified School District to upgrade or downgrade sites to a different bandwidth tier during the term of the contract. The applicable monthly charge for the new bandwidth tier will apply when the change is complete. If Service is moved to a new location, your existing Service will remain active and will continue to be billed at your original rate until Sonic has received an executed Disconnect Form. Failure to sign and return the Disconnect Form will result in monthly recurring charges for both circuits.

2.0 Acceptable Use Policy. Customers, including all associated users, must comply with Sonic's Acceptable Use Policy (AUP). Sonic's AUP shall be as set forth on Sonic's website (<http://www.sonic.com/aup>) as amended from time to time. In addition to Sonic's Acceptable Use Policy,



Sonic Business Fiber Customers are not permitted to resell or ship bandwidth to additional locations or use the bandwidth for commercial data center hosting.

3.0 Payment. Invoices will be issued once each calendar month and payment is due on the 1st day of each succeeding calendar month. If payment of the full amount due is not received by the 5th day of any month, a late fee of 1.5% will be applied to that amount. If full payment is not received by the 30th day of any month, Services will be interrupted until full payment is received. If Sonic, still has not received full payment by the 60th day after invoicing, Services will be disconnected and early termination fees will be applied.

3.1 E-Rate. Upon confirmation of E-Rate approval from the School District, Sonic will apply eligible discounts for services. Sonic will work with USAC on behalf of District to obtain E-Rate funding reimbursement. District must provide Sonic with a copy of their E-Rate approval.

3.2 CTF. For Customers eligible for the California Teleconnect Fund (CTF) discount, Sonic will apply the CTF discount up front. CTF is determined and given on a first come first serve basis by the California Public Utilities Commission. If funds for CTF are suspended or Sonic's claim is denied for Customer's Service the full monthly amount is due from Customer. Customer's first invoice will reflect the full normal amount for the Service for the CTF processing time. When Sonic receives confirmation that the discount is approved, Sonic will make the necessary adjustment to Customer's Service.

3.3 Universal Service Fund (USF) Fee. Customers are responsible for USF payments at the current quarterly rate that the Federal Communications Commission (FCC) set.

4.0 Disputes. All disputes as to any invoiced amount must be submitted in writing within fifteen (15) days of Customer's receipt of each invoice or the right to dispute will be waived in its entirety. Complete documentation setting forth and establishing all bases of the dispute must be provided within this fifteen (15) day period. Notwithstanding any dispute, the full amount of all disputed and undisputed amounts must be paid in full when due. Sonic shall respond with a determination as to the legitimacy of each dispute within thirty (30) days of receipt. Any challenge to Sonic's determination shall be resolved pursuant to the dispute resolution provisions hereof. Disputed amounts deemed correct by Sonic shall be credited by Sonic to Customer on the invoice(s) immediately following the determination by Sonic.

4.1 Arbitration. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the state of California or another location mutually agreeable to the parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in the telecommunications industry and shall include a written record of the



arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. Mediation in lieu of arbitration may also be acceptable with approval of both parties.

5.0 Confidentiality. Each party to this Agreement agrees to hold all confidential information of the other party in strict confidence. As used in this Agreement, Confidential Information shall mean the Agreement and all associated rates, terms and conditions, as well as all information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Confidential Information also includes, without limitation, business plans; business strategies; marketing plans; industry and competitive Information; technology, product and proposed product information; and cost data arrangements and information relating to the identities of Customer's distributors, agents, representatives and End Users or the End Users of its distributors, agents or representatives (the above matters known as "Confidential Information"). This confidentiality obligation shall not apply to any information (i) independently developed by a party, (ii) generally available to the public other than by a party's breach of this Agreement, (iii) already known by a party at time of disclosure, (iv) rightfully received from a third party without restriction on disclosure. Both parties hereby designate the terms, conditions, appendices, exhibits, and schedules of the Agreement to be confidential. The parties agree that all confidential and proprietary information, including without limitation the Confidential Information received pursuant to the Agreement, shall be disclosed only to those employees and other persons on a need-to-know basis and who shall agree to be bound by these confidentiality restrictions, and that the Confidential Information shall be used only for the purposes of performing the obligations of the parties under the Agreement.

6.0 Indemnification. Customer shall defend, indemnify, and hold harmless Sonic, its partners, employees and agents from and against any and all lawsuits, claims, demands, penalties, losses, fines, and liabilities, damages, and expenses (including attorney's fees) of any kind, without limitation, in connection with Customer's operations, installation or maintenance of equipment and facilities contemplated by the Agreement, its use of the Service or otherwise arising out of or in any way connected with Sonic's provision of Service or performance under the Agreement.

7.0 Disclaimer of Warranties and Limitation of Liability. Sonic provides Services hereunder strictly on an "AS IS" and "AS AVAILABLE" basis without any warranty, guarantee or other assurance of quality, reliability or functionality. Except as expressly set forth herein, Customer accepts all risk, including all risk with respect to suitability, use and performance of Services. IN NO EVENT WILL SONIC BE LIABLE TO CUSTOMER OR ANY OTHER PERSON, FIRM OR ENTITY IN ANY RESPECT, INCLUDING, WITHOUT LIMITATION, FOR ANY DAMAGES, EITHER DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY



KIND OR NATURE WHATSOEVER, ARISING OUT OF MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, DELAYS, OR DEFECTS IN TRANSMISSION, INCLUDING THOSE WHICH MAY BE CAUSED BY REGULATORY OR JUDICIAL AUTHORITIES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR SONIC'S OBLIGATIONS UNDER THIS AGREEMENT. SONIC MAKES NO WARRANTY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE SERVICE, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES SONIC HEREBY EXCLUDES AND DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW.

In any instance involving performance or nonperformance by Sonic with respect to Services provided hereunder, Customer's sole remedy shall be a refund of a pro-rated portion of the price paid for Service, which was not provided after the first twenty-four (24) consecutive hours in which the Service failed to meet the quality of service standards represented. Customer acknowledges that the facilities and services of third parties may be used in connection with the Services. Sonic is not liable for any act, omission to act, negligence or defect in the quality or availability of service of any underlying carrier or other service whose facilities or services are used in furnishing any portion of the Service received by the Customer or for any failure of performance that is caused by or the result of any act or omission by customer or any entity other than Sonic that furnishes services, facilities, or equipment used in connection with Sonic's Services or facilities.

Sonic will not be liable for any damage that Customer may suffer arising out of use, or inability to use, the Service. Sonic will not be liable for unauthorized access to Customer's transmission facilities or Customer's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of Sonic's negligence. Sonic shall not be liable for indirect, consequential, incidental or special damages even if advised of the possibility in advance. Sonic shall not be liable for any lost property or data of Customer or Customer's Customers. Sonic's liability for damages to Customer for any cause whatsoever, regardless of form of action, shall be limited to the pro-rated portion of the monthly charge actually paid by the Customer for the period after the first twenty-four (24) consecutive hours in which the Service failed to meet the quality of service standards represented.

8.0 Term and Termination. The term of the Agreement is set forth in the Agreement. The term begins once Service is installed and billing begins. By agreeing to the specified term, Customer is agreeing to pay the full monthly charge due for each month during the term.

8.1 Termination. Termination of the Agreement by Customer without cause, or by Sonic for cause, prior to the end of the initial term or any renewal term shall not release Customer from its obligation to pay the full monthly charge when due for each month of the term. If credits for installation, MPOE extension, IT



vendor services, PBX vendor services, Routers, Switches, Phones, Phone Lines, PRI Cards, referral spiff/commission were granted at contract inception, and the contract terminates with or without cause prior to meeting the full term of the Agreement, Customer will be charged back the full credit amount thereof in addition to an Early Termination Fee.

8.2 Termination Prior to Installation. If Customer terminates the Agreement prior to installation, 100% of Installation Costs will be due and payable by Customer, even if those costs were initially waived.

8.3 Termination without Cause. Services may be terminated at the end of the then current term by submitting a request for termination online at sonic.com/business/cancellation thirty (30) days prior to the requested termination date. In the event that neither party gives such notice prior to the end of the initial or any subsequent term, the Agreement will automatically be renewed for an additional term of 30 days. Absent the written agreement of the parties, pricing during any Renewal Term shall be the current month to month price for Service at the commencement of the Renewal Term.

8.4 Termination for Cause. If any of the events below occur with respect to one party, then the other party may terminate the Agreement effective immediately upon the delivery of written notice:

a. A party becomes insolvent; files a voluntary petition in bankruptcy, proposes any dissolution, liquidation, reorganization or recapitalization; has filed against it an involuntary petition in bankruptcy, or receiver is appointed or takes possession of the party's property, and such petition is not dismissed or stayed within ten (10) calendar days of such filing, appointment or taking possession; makes an assignment for the benefit of creditors, or is adjudicated as bankrupt; or takes any similar action under the law of any jurisdiction.

b. Material breach of the Agreement which is not remedied within ten (10) calendar days after written notice (describing the breach with particularity) has been given.

8.5 Effect of Termination. Upon termination Customer agrees immediately to cease all use of the Service and to return any Sonic-provided equipment, software and Colocation access cards, at Customer's expense and risk, to be received by Sonic within five (5) business days. Notwithstanding any termination hereof, Customer shall be and remain liable to Sonic for the full replacement cost of any equipment, software and Colocation access cards that it fails to return to Sonic within ten (10) business days, as well as the repair or replacement cost of any equipment, software and/or Colocation access cards that are returned in a damaged condition. All equipment and software shall be shipped to: Sonic, Inc., Attention: NOC, 2260 Apollo Way, Santa Rosa, CA 95407.

9.0 Force Majeure. If Sonic is unable to perform its obligations under the Agreement because of any cause which is beyond its reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, shortages of supplies, riots, war, fire, epidemics, delays of common carriers, explosions, equipment breakdowns or any other cause beyond its reasonable control, then Sonic will be excused from



those obligations on a day to day basis. Sonic will recommence performance as soon as possible after the causes are removed or cease. If Sonic's inability to perform continues for 60 days or less, then the Services affected will be continued as-is with a credit allowed. If the period extends for more than 60 days, then Customer may terminate the Agreement without liability.

10.0 Notice and Payment. Any notice required to be given under the Agreement shall be in writing and delivered personally to the other designated party at the addresses specified for notice in the Agreement, or mailed by certified, registered or express mail, return receipt requested or by overnight delivery. Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the requirements described in this paragraph.

11.0 Jurisdiction and Venue. This Agreement shall be governed in accordance with the laws of the State of California. All disputes under this Agreement shall be resolved in the State of California. The Parties all consent to jurisdiction and venue in the State of California, agree to accept service of process by mail, and waive any jurisdiction or venue defenses otherwise available.

12.0 Binding on Successors. The Agreement will be binding on and inure to the benefit of the parties hereto and their respective heirs, successors or assigns provided, however, that Customer may not assign or transfer its rights or obligations under this Agreement without Sonic's prior written consent, which consent will not be unreasonably withheld. Sonic may assign this Agreement as part of a merger, corporate reorganization or sale of assets or to a majority owned or majority-controlled subsidiary or affiliate.

13.0 Attorneys' Fees. The prevailing party in any dispute between the parties relating to the Agreement will be entitled to recover attorney's fees in addition to any other relief that may be recovered.

14.0 Waiver. No waiver by either party of any default shall be deemed as a waiver of a prior or subsequent default of the same or any other provisions of the Agreement.

15.0 Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement. Furthermore, the Services specified in the Agreement are severable. Upon the termination of any one Service (whether by expiration of the term or by cancellation or termination) the other Services will continue unaffected.

16.0 Authority and Consent. By executing the Agreement, each signatory represents and warrants that he/she is authorized to bind the party on whose behalf he/she is signing and that the consents of third parties are not required to perfect this right.

17.0 Integration. This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their



Agreement. This Agreement may not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

18.0 **Other States.** If the Services provided are subject to the rules and regulations of a particular state, then this Agreement will be subject to those rules and regulations and to any addendum to this Agreement relating to those rules and regulations that Sonic delivers to Customer.

Leased Dark Fiber Agreement between Sonic and OUSD

DARK FIBER LEASE AGREEMENT

THIS DARK FIBER LEASE AGREEMENT (the "Agreement") is made and entered into as of this ____ day of July 1, 2019 (the "Effective Date"), by and between Sonic.net, LLC. ("Sonic") and the Oakland Unified School District, OUSD ("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

- 1.1 Capitalized terms used herein are defined in this Agreement or in Addendum 1 hereto.

2. LEASED FIBERS

- 1.2 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.

(a) Leased fiber is subject to approval by individual school districts which are members of the Oakland Unified School District. If some members do not provide Lessee with authorization to lease dark fiber from Sonic, Lessee will notify Sonic, and Sonic will consider a reduction in the number of sites. Sonic may opt to deliver to the reduced scope of sites, or may terminate this Agreement before commencement of any services or payment of fees set forth herein.

3. CONSIDERATION

- 1.1 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 unused portion of the Lease Fee.

- 1.3 For the portion of the Lease Fee not covered by E-Rate, Sonic will accept payment from Lessee as:

- (b) a one-time payment, or
- (c) paid over four (4) years at no additional cost

- 1.4 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

- 1.5 Sonic will use commercially reasonable efforts to Deliver the Leased Fibers by OUSD's desired delivery date of April 30, 2020.
- 1.6 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.
- 1.7 In the event the results of any applicable Fiber Acceptance Test show that the Leased Fibers 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 unused 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.
- 1.8 Sonic will notify Lessee when any applicable segment of the Leased Fibers 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 unused 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

- 1.9 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.

- 1.10 Sonic will offer five, one-year term renewals at a rate of \$0.00 per month per site plus the \$50.00 per month per site maintenance fee. Should Oakland Unified School District elect to renew, Sonic will work with Lessee to achieve any applicable E-rate and CTF funding approval.
- 1.11 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 its sole cost and expense remove any and all equipment associated with the Leased Fibers.

6. MAINTENANCE

- 1.12 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.
- 1.13 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.
- 1.14 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

- 1.15 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.
- 1.16 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.

1.17 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.

1.18 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.

1.19 Relocation pursuant to this Section shall not affect the Term.

8. USE OF SONIC NETWORK

1.20 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.

1.21 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.

1.22 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.

1.23 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

- 1.24 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:

(d) 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;

(e) 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;

(f) 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

(g) 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.

- 1.25 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.

- 1.26 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

- 1.27 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.

- 1.28 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.
- 1.29 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.
- 1.30 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.
- 1.31 LESSEE ACKNOWLEDGES THAT THE WAIVERS OF WARRANTY CONTAINED HEREIN HAVE BEEN CALLED TO ITS ATTENTION.

11. PAYMENT

- 1.32 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.

- 1.33 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.
- 1.34 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

- 1.35 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

- 1.36 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.
- 1.37 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.
- 1.38 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.
- 1.39 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.
- 1.40 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.

- 1.41 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

- 1.42 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: Oakland Unified School District

Attention: Colleen Calvano

Address: 1000 Broadway

Tel: 510-879-2202

Fax: _____

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.

- 1.43 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.

15. CONFIDENTIALITY

- 1.44 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:

(h) Identify information and materials disclosed to the other Party that the disclosing Party believes to be Confidential Information.

(i) 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;

(j) Restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information;

(k) 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

(l) 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.

1.45 Notice of Disclosure.

(m) 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.

(n) 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.

(o) 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.

- 1.46 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.

16. DEFAULT

- 1.47 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.
- 1.48 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.
- 1.49 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.

17. TERMINATION

- 1.50 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.

- 1.51 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).

18. FORCE MAJEURE

- 1.52 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.

19. 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.

20. GOVERNING LAW

- 1.53 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.

21. RULES OF CONSTRUCTION

- 1.54 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.
- 1.55 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.

- 1.56 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.
- 1.57 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.
- 1.58 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.
- 1.59 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.

22. REPRESENTATIONS

- 1.60 Each party represents that:

(p) 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;

(q) 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

(r) At the time of execution, this Agreement does not violate any applicable existing state or federal law.

- 1.61 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.

23. PUBLICITY, NAME AND MARKS

- 1.62 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.

24. ASSIGNMENT

- 1.63 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.
- 1.64 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.

25. NO PERSONAL LIABILITY

- 1.65 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.

26. RELATIONSHIP OF THE PARTIES

- 1.66 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.

27. NO THIRD PARTY BENEFICIARIES

- 1.67 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.

28. SEVERABILITY

- 1.68 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.

29. COUNTERPARTS

- 1.69 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.

30. ENTIRE AGREEMENT; AMENDMENT

- 1.70 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.
- 1.71 The Addendum and Exhibits referred to herein are integral parts hereof and are made a part of this Agreement.
- 1.72 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: Aimee Eng
Aimee Eng
President, Board of Education

Name: Kyla R. Johnson-Trammell
Kyla R. Johnson-Trammell
Title: Secretary, Board of Education

ARMAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
Teresa Williams, General Counsel

SONIC.NET, INC.

By: [Signature]
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 outofpocket expenses on a passthrough 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**

		One-time Dark Fiber Lease Payment	Monthly Maintenance Fee
A Location	Z Location:		
1050 2 nd Avenue, Oakland, CA.	1011 Union Street, Oakland	\$96,000	\$50/month
955 High Street, Oakland, CA.	900 High Street, Oakland	\$16,000	\$50/month

Renewal Options: Five, 1-year options		One-time Dark Fiber Lease Payment	Monthly Maintenance Fee
A Location	Z Location:		
1050 2 nd Avenue, Oakland, CA.	1011 Union Street, Oakland	\$0.00	\$50/month
955 High Street, Oakland, CA.	900 High Street, Oakland	\$0.00	\$50/month

**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;

$(\text{Span length in kilometers} \times 0.30\text{dB/km}) + (\text{number of splices} \times 0.15\text{dB}) + (0.50\text{dB} \times \text{number of mated pair of connectors}) = \text{maximum expected span loss in decibels.}$

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.

Transport Contract between AT&T and OUSD



20190206-7871

at&t

**AT&T DEDICATED ETHERNET (ILEC STATE EXCHANGE)
PRICING SCHEDULE PROVIDED PURSUANT TO CUSTOM SERVICE PUBLICATION RATES AND TERMS**

MA14010741UA

AT&T MA Reference No.

AT&T Contract ID No. ADE-HJVV7P

Customer	AT&T
Oakland Unified School District Street Address: 1000 Broadway, FL 4 City: Oakland State/Province: CA Zip Code: 94607 Country: USA	The applicable AT&T Service-Providing Affiliate(s)
Customer Contact (for Notices)	AT&T Contact (for Notices)
Name: Colleen Calvano Title: Executive Director, Tech Street Address: 1000 Broadway, FL 4 City: Oakland State/Province: CA Zip Code: 94607 Country: USA Telephone: 510-879-2202 Fax: Email: colleen.calvano@ousd.org Customer Account Number or Master Account Number:	Name: Heather Michels Street Address: 5001 Executive Parkway City: San Ramon State/Province: CA Zip Code: 94583 Country: USA Telephone: 925-823-1570 Fax: Email: hw3263@att.com Sales/Branch Manager: Richard Laine SCVP Name: Chris Congo Sales Strata: SLED Sales Region: WEST With a copy (for Notices) to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email:
AT&T Solution Provider or Representative Information (if applicable) <input type="checkbox"/>	
Name: Company Name: Agent Street Address: City: State: Zip Code: Country: USA Telephone: Fax: Email: Agent Code	

This Pricing Schedule for the service(s) identified below ("Service") is part of the Agreement referenced above. Customer requests that its identity be kept confidential and not be publicly disclosed by AT&T or by any regulatory commission, unless required by law.

Customer acknowledges and certifies that the interstate traffic (including Internet and international traffic) constitutes **ten percent (10%) or less** of the total traffic on any Service.

AT&T California currently provides billing and collections services to third parties, which may place charges that Customer authorizes on Customer's bill for intrastate Services. To the extent that AT&T California makes blocking of such charges available, Customer may block third-party charges from its bill at no cost.

If Customer is purchasing new Service hereunder, Customer confirms receipt of the AT&T customer building / site preparation document describing the installation requirements at the Site(s).

This Pricing Schedule signed by AT&T first, is effective upon Customer signature provided that such fully signed Pricing Schedule is returned to AT&T not more than forty-five (45) days after AT&T's signature date. Any change made to this document renders the Pricing Schedule null and void.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By: <i>Aimee Eng</i> Printed or Typed Name: Aimee Eng Title: President, Board of Education	By: <i>Linda Ruesch</i> Printed or Typed Name: Linda Ruesch Title: Sr. Solutions Architect
Date: <i>2/11/2019</i> Office of the General Counsel APPROVED FOR FORM & SUBSTANCE	Date: 2/11/2019
By: <i>Marion McWilliams</i> For AT&T internal use only:	Contract Ordering and Billing Number (CNUM):
Marion McWilliams, General Counsel	

WK# - TCAL and ILEC - Intrastate-TBD	For AT&T Administrative Use Only
Please sign by November 1, 2019	Pricing Schedule No. _____
	Original Effective Date: _____

AT&T DEDICATED ETHERNET (ILEC State Exchange)
Pricing Schedule Provided Pursuant to Custom Terms

1. SERVICE, SERVICE PROVIDER and SERVICE PUBLICATION

Service	AT&T Dedicated Ethernet	
Service Provider	Service Publication (incorporated by reference)	Service Publication Location (URL)
AT&T California	AT&T California Service Publications, including Other Services Tariff, Section D12	http://cpr.att.com/pdf/ca/ca.htm

1.2 Inside Wiring

Service	AT&T Inside Wiring	
Service Provider	Service Publication	Service Publication Location
Same as the AT&T Service Provider for the AT&T Dedicated Ethernet Service	AT&T Inside Wiring Service Guide	http://cpr.att.com/pdf/publications/Inside_Wiring_Service_Guide_Attachment.pdf

2. PRICING SCHEDULE TERM, EFFECTIVE DATES

Pricing Schedule Term	36 months
Start Date of Minimum Payment Period, per Service Component	later of the Effective Date or installation of the Service Component
Rate Stabilization per Service Component	Rates as specified in this Pricing Schedule for each Service Component are stabilized until the end of its Minimum Payment Period.
Pricing following the end of Minimum Payment Period	non-stabilized prices as modified from time to time in applicable Service Publication or, if there is no such pricing, the pricing in this Pricing Schedule
PRICING SCHEDULE TERM AUTO-RENEWAL	Not applicable to this Pricing Schedule

3. MINIMUM PAYMENT PERIOD

Service Components	Percentage of Monthly Recurring Charges Applied for Calculation of Early Termination Charges*	Minimum Payment Period per Service Component
All Service Components	75% and, if AT&T installs Customer Premises Support Structure facilities for AT&T Dedicated Ethernet service at any site, an additional \$9,200 for such site to recover facility costs	36 months
* Early termination charges shall not exceed the total amount of monthly recurring charges for the remainder of the Minimum Payment Period.		

4. ADDS; MOVES

4.1 Adds

Orders for Service Components in excess of quantities listed in Section 5 ("Adds") are not permitted.

4.2 Moves

Per applicable Service Publication

WK# - TCAL and ILEC - Intrastate-TBD

Please sign by November 1, 2019

For AT&T Administrative Use Only

Pricing Schedule No. _____

Original Effective Date: _____

AT&T DEDICATED ETHERNET (ILEC State Exchange)
Pricing Schedule Provided Pursuant to Custom Terms

5. RATES AND CHARGES; QUANTITIES; SITE CONFIGURATION

Applicable to all rate tables in this Pricing Schedule:

- The applicable USOC is the last five (5) characters of the code displayed for each Service Component – the remaining characters are for internal AT&T use only.
- In the event that any total amounts conflict with any per-unit rates in the tables below, the per-unit rates shall control.
- Charges for special construction, if needed, may also apply.
- Prices for AT&T Dedicated Ethernet include any required Customer Premises Support Structure.

5.1 NEW SERVICE

This Pricing Schedule is Customer's order for any new Services shown in the table(s) below.

For each location where collocation is identified per the table(s) below, cross connect charges will apply under the applicable tariffs or other service publications.

Circuit Item #1				
Location A: 313 W Winton Ave, Hay, CA 94544 Port Connection Speed: 10 GE LAN-PHY Collocation (Cross Connects apply): No Optional Diversity Features: N/A			Location Z: 1050 2D Ave, Oak, CA 94606 Port Connection Speed: 10 GE LAN-PHY Collocation (Cross Connects apply): No Optional Diversity Features: N/A	
Circuit Level Options: Port Protection Plus: N/A				

5.2 AT&T INSIDE WIRING

Charges for AT&T Inside Wiring are as set forth in the Service Publication.

End of Document

OAKLAND UNIFIED SCHOOL DISTRICT

Office of the General Counsel

APPROVED FOR FORM & SUBSTANCE

By: 

Marion McWilliams, General Counsel

ATTACHMENT TO AT&T Dedicated Ethernet (ILEC State Exchange) Pricing Schedule Provided Pursuant to Custom Service Publication Rates and Terms ("Agreement") FOR AT&T Corp

SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-Rate") FUNDING

This Attachment ("Attachment"), entered into by AT&T, [Insert name of AT&T affiliate] ("AT&T") and Oakland USD ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to the Agreement. This Attachment shall have the same term as the Agreement. If there are any inconsistencies between the Agreement and this Attachment with respect to the Service for which E-rate funding is sought, the terms and conditions of this Attachment shall control.

This Attachment provides additional terms and conditions that apply if and when the Customer obtains an end-to-end solution involving the use of terminating equipment ("Equipment"). If called for in the applicable Statement of Work, this Attachment also provides additional terms and conditions for the installation of conduit pathway support structure ("CPSS" or "Facilities") installed by AT&T in order to bring Service to Customer's demarcation point.

TERMS AND CONDITIONS APPLICABLE TO E-RATE FUNDED PRODUCTS AND SERVICES

Customer has represented that it intends to seek funding through the Federal Universal Service Fund program known as "E-Rate" for some or all of the Services or Service Components purchased under the Agreement. E-Rate is administered by the Schools and Libraries Division ("SLD") of the Universal Service Fund Administrative Company ("USAC") (sometimes collectively or individually referred to herein as "USAC/SLD"). The Federal Communications Commission ("FCC") has promulgated regulations that govern the participation in the E-Rate program. Both Parties agree to adhere to FCC regulations as well as the rules established by SLD and USAC regarding participation in the E-Rate program. The Parties further agree:

1. Eligibility of Products and Services. The eligibility or ineligibility of products or services for E-Rate funding is solely the responsibility of the USAC/SLD and/or the FCC. AT&T makes no representations or warranties regarding such eligibility.

2. Service Substitutions. Customer acknowledges that USAC/SLD funding commitments are based upon the products, services and locations set forth in the Form 471 and that any modification to the products and services and/or the locations at which the products or services are to be installed and/or provided, requires Customer to file a service substitution with USAC/SLD, seeking permission to receive alternative service or receive the service to an alternative location. AT&T will provide Services and Service Components only as approved by the USAC/SLD and may suspend activities pending approval of service substitution requests.

3. Requested Information. If requested, Customer will promptly provide AT&T with final copies of the following E-Rate-related materials (including all attachments) prepared by or for Customer: (i) Form 471 and Bulk Upload template(s); (ii) Form 486; (iii) Form 500; (iv) Service Substitution Request; (v) Service Certification Form; and, (vi) Form 472-BEAR. If the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.

4. Representations, Warranties and Indemnities. Each Party represents and warrants that it has and will comply with all laws and the requirements applicable to the E-Rate Program. In addition to any indemnification obligations set forth in the Agreement and to the extent permitted by law, each Party agrees to indemnify and hold harmless the other Party (its employees, officers, directors and agents, and its parents and affiliates under common control) from and against all third party claims (including FCC or USAC/SLD claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Attachment.

5. Non-Appropriations. By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Agreement Term. In the event Customer is unable to obtain the necessary appropriations for the Services provided under this Attachment, Customer may terminate the Services without liability for the termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii)

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despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith a revised agreement with AT&T to develop revised services and terms to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Attachment, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring, and/or special construction charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

6. Customer Must Choose A or B

A.) ☐ [OPTION "A" IS AVAILABLE FOR NEW OR EXISTING SERVICES]

CUSTOMER DIRECTS AT&T TO COMMENCE OR CONTINUE SERVICES EVEN IF FUNDING COMMITMENT DECISION LETTER ("FCDL") HAS NOT BEEN RECEIVED FROM USAC/SLD. CUSTOMER ACKNOWLEDGES ITS OBLIGATION TO PAY FOR THE SERVICE IF FUNDING IS DENIED OR USAC/SLD COMMITMENT IS NOT RECEIVED.

(i). Scope: *Customer desires that Services commence on or about July 1 unless a different date is inserted here*. Customer intends to seek funding from the USAC/SLD, but acknowledges that it may not receive an FCDL prior to this date and that it is possible that USAC/SLD may delay, or not approve funding. The Services term begins on the latter of July 1 or installation and delivery of those services, and will continue for the term stated in the Agreement.

(ii). Funding Denial Agreement Termination: CUSTOMER ACKNOWLEDGES THAT THERE IS NO RIGHT TO TERMINATE THE SERVICES OR SERVICE COMPONENTS MADE THE BASIS OF THIS ATTACHMENT IF E-RATE FUNDING IS DELAYED OR DENIED.

B.) ☐ [OPTION "B" IS APPROPRIATE FOR NEW SERVICES]

SERVICES WILL NOT COMMENCE AND/OR EQUIPMENT WILL NOT SHIP UNTIL AT&T RECEIVES NOTIFICATION THAT E-RATE FUNDS HAVE BEEN COMMITTED; IF E-RATE FUNDING FOR SERVICES AND/OR EQUIPMENT IS DENIED, AGREEMENT WILL TERMINATE AS TO THOSE SERVICES AND/OR EQUIPMENT UNLESS AND UNTIL A NEW ATTACHMENT (REPLACING THIS ATTACHMENT) IS EXECUTED.

(i). Scope: Customer agrees to use best efforts to obtain funding from the USAC/SLD. AT&T will not begin work related to the Services and/or equipment (including, without limitation, construction, installation or activation activities) until after AT&T receives Customer notification to proceed with the order, and verification of funding approval, and, for Internal Connections (IC), a verification of Form 486 approval by the USAC/SLD. AT&T will commence Service(s) as soon as is practical following the receipt of the appropriate documentation. The Services term begins on installation and delivery of those services, and will continue for the term stated in the Agreement.

(ii). Funding Denial Agreement Termination: if a funding request is denied by the USAC/SLD, the Agreement, with respect to such Service(s) and/or equipment, shall terminate sixty (60) days from the date of the FCDL in which E-Rate funding is denied or on the 30th day following rejection of the final appeal of such denial, and Customer will not incur termination liability. In the event Services and/or equipment are to be provided pursuant to a multi-year arrangement (whether by contract or tariff), this termination right applies only to the first year of the multi-year agreement.

(iii). IF CUSTOMER WISHES TO CHANGE ITS SELECTION AND WISHES AT&T TO COMMENCE SERVICES REGARDLESS OF FUNDING COMMITMENT FROM THE USAC/SLD, CUSTOMER WILL EXECUTE A NEW (REPLACEMENT) ATTACHMENT, AND AGREE TO THE TERMS SET FORTH IN "A" ABOVE. Upon execution of the Replacement Attachment, the Parties will mutually agree upon a Service Commencement Date.

This provision does not apply to Services that were initially approved for funding and subsequently deemed ineligible by USAC/SLD after commencement of Service.

7. AT&T Owned Equipment - General Terms and Conditions

To the extent provided in the applicable Statement of Work, Customer desires Services to be rendered to its location(s) by placing Equipment (e.g. routers, switches) on the Customer's premises (the "Premises"). Customer does not wish to provide this Equipment itself, but instead requests the placement of the Equipment as part of the installation associated with the delivery of the underlying Service. The Equipment is owned by AT&T. Ownership of the Equipment will not transfer to the Customer in the future, and neither the Master Agreement nor this Attachment includes an option to purchase the Equipment. The Equipment shall not be used by Customer for any purpose other than receipt of the eligible telecommunications or Internet access service of which it is a part.

A. Accordingly, Customer hereby:

- Grants AT&T a license to install, operate, and maintain such Equipment and such additional, supplemental or replacement equipment as AT&T may from time to time deem necessary or desirable for the provision of services contemplated by the Service Agreement) within the Premises at such locations as mutually agreed by the parties at the time of installation, for so long as AT&T is providing the Services.
- Confirms such license shall include a right of access to, from and within the Premises for purposes of installing, operating, maintaining, repairing and replacing such Equipment. All Equipment brought onto the Premises by AT&T will be deemed the personal property of AT&T (regardless of whether such Equipment is attached or affixed to the Premises) and Customer shall have no right to or interest in such Equipment. Customer has no right to exclusive use of the Equipment, and AT&T may use the Equipment to provide service to another customer.
- Agrees to provide adequate space and electric power for the Equipment and keep the Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents. The Equipment will be provided at the prices set forth in the attached Statement of Work.
- Agrees to notify AT&T of any and all issues arising out of or related to such Equipment, including the need for maintenance or repair, and assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the equipment and their location.
- Agrees to indemnify and hold AT&T harmless from any and all liability that may arise out of the presence and placement of such equipment, except for AT&T's gross negligence.
- Grants AT&T the right, but not the obligation, to remove all or any part of such equipment from the Premises at any time after the termination of the Service.

Additionally, overall SLD program rules and eligibility requirements apply, and these requirements may change from time to time.

8. Terms of Equipment Usage – E-Rate Category 1 Funding

Please note that there are some important Customer obligation areas to facilitate timely Equipment installation and service delivery. Accordingly, Customer agrees to provide the following:

A. **PATH** - The Customer is responsible for providing or causing the property owner to provide a path from the property line into the building. A clear underground or aerial path is required from the property line where AT&T ILEC facilities exist, to the equipment room designated to support the entrance fiber.

B. **SPACE** – Customer is responsible for providing appropriate floor space and a properly installed equipment rack of suitable strength and quality to properly support the intended Equipment and the location of the Minimum Point of Entry (MPOE)/ Demarcation Point in compliance with FCC and AT&T service requirements.

The appropriate space and location will be mutually agreed following an AT&T site visit by an authorized AT&T Engineer. Any Demarcation Point location which is further than the closest practicable point to the MPOE in the building will require custom work which may not be eligible for E-Rate Category 1 (C1) funding, and must be paid for by the Customer.

C. **ENVIRONMENTAL** – Operating environment should be between +40° F and 100° F at 0% to 85% relative humidity (RH-Non-Condensing).

D. **POWER - GROUND** - Customer will need to provide permanent, dedicated, 3-prong grounded power for the Equipment being

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installed. Power requirements can consist of nominal -48VDC, +24/-24 VDC, 110V, 125V, 220V, etc. located within 3 feet of the AT&T Equipment. AT&T may require more than one power outlet for some Equipment types, and there are specific amperage requirements for different Equipment types.

Relay racks/cabinets must be properly grounded by placing an exposed #6 or larger grounding wire to the building's ground source. This ground wire will be attached to the closest ground rod (earth ground) or building bus bar available and run to the Network Terminating Equipment location in the room.

Site specific customer obligations will also be provided by AT&T personnel via e-mail upon finalization of this Attachment.

9. Customer Premise Support Structure ("CPSS") - General Terms and Conditions

To the extent provided in the applicable Statement of Work, Customer desires Services to be rendered to its location(s) by placing conduit and/or other conduit pathway support structures ("CPSS" or "Facilities") on the Customer's premises (the "Premises"). Customer does not wish to provide these Facilities itself, but instead requests the placement of the Facilities as part of the construction and installation work associated with the delivery of the underlying Service.

Accordingly, Customer hereby:

- Grants AT&T a license to install and operate -- in accordance with the designs agreed to within the Statement of Work, Scope of Work, or other documents, approved by the parties in connection with this project -- such Facilities and such additional or replacement Facilities as AT&T may from time to time deem necessary or desirable for the provision of the Services contemplated by the Service Agreement.
- Confirms such license shall include a right of access to, from and within the Premises for purposes of installing, repairing and replacing such Facilities. All Facilities brought onto the Premises by AT&T, once installed and functional, will be deemed the property of Customer.
- Confirms that once the Facilities are installed, the Customer shall be responsible for the cost of any installation, maintenance, repair or replacement of the Facilities.
- Assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the Facilities and the location of such Facilities.
- In addition to any early termination charges identified in the Agreement or Pricing Schedule, Customer is also liable for 100% of the cost of \$9200 for each site at which AT&T installs Customer Premise Support Structure facilities (CPSS). All early termination charges, plus recovery of entrance facility costs, shall not exceed the total amount Customer would have been required to pay for the Service if it had not terminated early.

Terms Applicable to CALNET customers with the following services:

If purchasing this Service under a Calnet contract, the following terms shall apply:

- **Metropolitan Area Network (MAN) Ethernet (3.0):** In the event of termination of service within 24 months from the Cutover Date of Service, Customer is liable for 100% of the cost of \$9200 for each site at which AT&T installs Customer Premise Support Structure facilities (CPSS).
- **Managed Internet Services (5.0):** If Customer cancels Service at an eligible Customer Site prior to the service activation date, AT&T is not obligated to complete work on Entrance Facility Construction (EFC), and Customer agrees to compensate AT&T for all of AT&T's costs incurred, up through the date of cancellation associated with providing EFC, regardless of whether the construction thereof has been completed.

10. USAC Invoicing Method

AT&T will follow Service Provider invoicing requirements for the E-Rate Program, and will accommodate either the Service Provider Invoice Form ("SPI") - Form 474 -- or Billed Entity Application Reimbursement ("BEAR") - Form 472 invoice method. Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support requests for payment of Services rendered.

- a. SPI -- Customer must first receive an approved Funding Commitment Decision Letter and Form 486 Notification Letter. In addition, the Customer shall NO LATER THAN 120 days prior to their Last Date to Invoice notify AT&T of its SPI election, provide and certify to AT&T an accurate list of the applicable Billing Accounts Numbers for services per their

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at&t

E-Rate Rider

Form 471 funding application for each Funding Request Number for which the SPI method is sought. Customer understands and agrees that invoices are due and payable in full by their stated due date unless and until these requirements have been met and SPI discounts commence. Where these requirements are not met, Customer agrees to utilize the BEAR disbursement method to request their E-rate funding. See:
<http://usac.org/si/applicants/step06/default.aspx>.

b. BEAR - Under current rules, Service Providers have no involvement in the BEAR invoice process.

11. Reimbursement of USAC/SLD

Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support Form 474 SPI requests for payment of discounted Services. If USAC/SLD (i) seeks recovery from AT&T for disbursed E-Rate funds as a result of Customer's failure to comply with the E-Rate rules or regulations, including Customer delays in submitting required forms or contracts; or (ii) determines that Services which it had previously been approved for discounts are not eligible resulting in a "Notice of Improperly Disbursed Funds" or other request for recovery of funds requests (other than as the result of AT&T's failure to comply with the E-Rate requirements), then AT&T shall reverse any E-rate SPI discounts provided which were denied, any reimbursements demanded, and any funds returned, and Customer shall (a) pay all unfunded, reimbursed, or returned amounts and (b) reimburse AT&T for any funds AT&T must return to USAC/SLD, each within ninety (90) days of notice from USAC/SLD. In addition, Customer agrees and acknowledges that a determination of ineligibility, reduction, or other non-funding by USAC/SLD does not affect the obligations set forth in the Agreement, including those obligations related to payments and early termination fees. This provision shall supersede any other provision with respect to limits on the time period in which charges may be invoiced.

FCC RULES REQUIRE THAT PRIOR TO SUBMISSION OF A FORM 471 APPLICATION FOR FUNDING THE PARTIES MUST HAVE ENTERED INTO A BINDING CONTRACT FOR THE SERVICES MADE THE SUBJECT OF THE APPLICATION. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT STATE LAW REQUIREMENTS FOR A BINDING CONTRACT HAVE BEEN MET PRIOR TO THE SUBMISSION OF A FORM 471.

☐ IF THIS BOX IS CHECKED, THIS ATTACHMENT REPLACES THE ATTACHMENT BETWEEN THE PARTIES DATED <Date of Original Attachment>.

SO AGREED by the Parties' respective authorized signatories:

Customer (by its authorized representative)	AT&T (by its authorized representative)
<i>Aimee Eng</i>	
Aimee Eng By: President, Board of Education	By: <i>Linda Ruesch</i>
Name: <i>Kyla R. Johnson-Trammell</i>	Name: Linda Ruesch
Title: Kyla R. Johnson-Trammell Secretary, Board of Education	Title: Sr. Solutions Architect
Date: 3/5/19	Date: 2/11/2019

OAKLAND UNIFIED SCHOOL DISTRICT
 Office of the General Counsel
 APPROVED FOR FORM & SUBSTANCE
 By: *Marion McWilliams*
 Marion McWilliams, General Counsel

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Internet Agreement between AT&T and OUSD



20190208-8603

AT&T

MA14010741UA
 AT&T MA Reference No. MA14010741UA
 AT&T PS Contract ID MIS14010722

Contract ID: 721151

**AT&T DEDICATED INTERNET
PRICING SCHEDULE**

Customer	AT&T
OAKLAND UNIFIED SCHOOL DIST Street Address: 1000 BROADWAY FL 4 City: OAKLAND State/Province: CA Zip Code: 946074099 Country: US	AT&T Corp.
Customer Contact (for Notices)	AT&T Contact (for Notices)
Name: Colleen Calvano Title: Executive Director, Tech Street Address: 1000 BROADWAY STE 300 City: OAKLAND State/Province: CA Zip Code: 94607 Country: United States Telephone: 510-879-2202 Email: colleen.calvano@ousd.org	Name: HEATHER MICHELS Street Address: 5001 Executive Pkwy City: SAN RAMON State/Province: CA Zip Code: 94583 Country: United States Telephone: 925-823-1570 Email: hw3263@us.att.com Sales/Branch Manager: RICHARD E LAINE SCVP Name: CHRISTOPHER CONGO Sales Strata: Retail Sales Region: USA <u>With a copy (for Notices) to:</u> AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com
AT&T Solution Provider or Representative Information (if applicable) <input type="checkbox"/>	
Name1: Company Name: Agent Street Address: City: State: Zip Code: Country: Telephone: Fax: Email: Agent Code:	

This Pricing Schedule is part of the Agreement between AT&T and Customer referenced above.

This Agreement signed by AT&T first, is effective upon Customer signature provided that such fully signed Agreement is returned to AT&T not more than forty-five (45) days after the AT&T signature date. Any changes made to this document renders the Agreement null and void, expect for changes expressly authorized by the term of this Agreement.

Customer (by its authorized representative)	AT&T (by its authorized representative)
<i>Aimee Eng</i> Aimee Eng President, Board of Education	<i>Linda Ruesch</i> Name: Linda Ruesch
Name: <i>Kyla R. Johnson-Trammell</i> Title: <i>Secretary, Board of Education</i>	Title: Sr. Solutions Architect
Date: 3/5/19	Date: 2/13/2019

OAKLAND UNIFIED SCHOOL DISTRICT
 Office of the General Counsel
 APPROVED FOR FORM & SUBSTANCE

By: *Marion McWilliams*
 Marion McWilliams, General Counsel

AT&T and Customer Confidential Information

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**AT&T DEDICATED INTERNET
PRICING SCHEDULE****1. SERVICES**

Service	Service Publication Location
AT&T Dedicated Internet (ADI)	http://serviceguidenew.att.com/sq_flashPlayerPage/MIS
AT&T Bandwidth Services	http://serviceguidenew.att.com/sq_flashPlayerPage/BWS

2. PRICING SCHEDULE TERM AND EFFECTIVE DATES

Pricing Schedule Term	36 Months
Pricing Schedule Term Start Date	Effective Date of this Pricing Schedule
Effective Date of Rates and Discounts	Effective Date of this Pricing Schedule

3. MINIMUM PAYMENT PERIOD

Service Components	Percent of Monthly Charges Due Upon Termination Prior to Completion of Minimum Payment Period	Minimum Payment Period per Service Component
All Service Components	50%	Longer of 12 months or until the end of the Pricing Schedule Term

4. SERVICE OR SERVICE COMPONENT WITHDRAWAL

AT&T may discontinue a Service or Service Component as provided in the applicable Service Guide and in the case of a Service or Service Component that is supplied to AT&T by a third party service provider upon thirty (30) days written notice.

5. RESALE OF SERVICES (US Mainland, and HI only)

Customer may resell the Service.

6. RATES (US Mainland, and HI only)**Section I: AT&T Dedicated Internet
Access Bandwidth -****Table 1: DNS Services**

Option	Undiscounted MRC
Additional Primary DNS (available in increments of up to 15 zones with a maximum of 150 Kilobytes of zone file data)	\$100 per DNS increment
Additional Secondary DNS (available in increments of up to 15 zones with a maximum of 150 Kilobytes of zone file data)	\$100 per DNS increment

AT&T and Customer Confidential InformationPage 2
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**AT&T DEDICATED INTERNET
PRICING SCHEDULE****Table 2: On-Site Installation**

Discount: 100.00%

ADI Speed	Undiscounted ADI w/ Managed Router Only Installation Fee
56 Kbps	\$999
128 Kbps - 1.5 Mbps	\$999
NxT-1	\$999
Tiered/Full T-3	\$1,000
Tiered OC-3, OC-12, OC-48	\$10,000
Ethernet	\$1,500*
10 Gig Ethernet and up	\$1,500
Nx10Gig Ethernet	\$3,500

* Pricing also applies to Service locations in Alaska.

Table 3: Flexible Bandwidth Billing Option – ADI 10 Gig Ethernet*

ADI & ADI w/Managed Router Discount:89.50% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.			Incremental Usage Fee Discount: 89.50% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.
Tiered Bandwidth Minimum Commitment	Undiscounted ADI MRC	Undiscounted ADI w/ Managed Router MRC	Undiscounted Incremental Usage Fee
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
.5 Gbps	\$5,658	\$7,000	\$70.00
1.0 Gbps	\$6,400	\$9,950	\$49.75
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
1.5 Gbps	\$8,727	\$10,909	\$36.36
2.0 Gbps	\$9,091	\$12,276	\$30.69
2.5 Gbps	\$11,244	\$15,215	\$30.43
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
3.0 Gbps	\$13,309	\$17,981	\$29.97
3.5 Gbps	\$14,400	\$19,462	\$27.80
4.0 Gbps	\$16,015	\$21,591	\$26.99
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
4.5 Gbps	\$16,771	\$22,720	\$25.24
5.0 Gbps	\$18,196	\$24,553	\$24.55
5.5 Gbps	\$19,636	\$26,502	\$24.09
6.0 Gbps	\$21,309	\$28,768	\$23.97
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
6.5 Gbps	\$22,589	\$30,499	\$23.46
7.0 Gbps	\$24,218	\$32,727	\$23.38
7.5 Gbps	\$25,760	\$34,793	\$23.20

AT&T and Customer Confidential Information

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**AT&T DEDICATED INTERNET
PRICING SCHEDULE**

ADI & ADI w/Managed Router Discount:89.50% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.			Incremental Usage Fee Discount: 89.50% Applies to all Tiered Bandwidth Minimum Commitments in this table unless an override discount is indicated.
Tiered Bandwidth Minimum Commitment	Undiscounted ADI MRC	Undiscounted ADI w/ Managed Router MRC	Undiscounted Incremental Usage Fee
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
8.0 Gbps	\$26,953	\$36,387	\$22.74
ADI Discount for the following:			Incremental Usage Fee Discount for the following:
8.5 Gbps	\$28,233	\$38,115	\$22.42
9.0 Gbps	\$28,931	\$39,069	\$21.71
9.5 Gbps	\$29,527	\$39,855	\$20.98
10.0 Gbps	\$30,909	\$41,716	\$20.86

* Service not available with MPLS PNT.

Pricing also applies to Service locations in Alaska (Override discounts are not applicable to Service locations in Alaska).

Table 4: Local Access

NPA/NXX	Location	Access Bandwidth	Local Access Non-Recurring Charge	Local Access Net Monthly Recurring Charge
510208	1011 UNION ST, OAKLAND, CA, US, 946072236	MIS Ethernet Access 10.0 Gbps	\$0.00	\$1300.00

Section II: Additional Service Fees

Moving Fee (during hours)	\$1,000 per location*
Additional Moving Fee (outside standard operating hours – 8:00 a.m. to 5:00 p.m. Monday through Friday)	Additional \$500 per location*

*Subject to availability, pricing also applies to Service locations in Alaska.

This is the last page of the Pricing Document.

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ATTACHMENT TO AT&T DEDICATED INTERNET (Agreement") FOR SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING

This Attachment ("Attachment"), entered into by AT&T Corp. ("AT&T") and OAKLAND UNIFIED SCHOOL DIST ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to the Agreement. This Attachment shall have the same term as the Agreement. If there are any inconsistencies between the Agreement and this Attachment with respect to the Service for which E-rate funding is sought, the terms and conditions of this Attachment shall control.

This Attachment provides additional terms and conditions that apply if and when the Customer obtains an end-to-end solution involving the use of terminating equipment ("Equipment"). If called for in the applicable Statement of Work, this Attachment also provides additional terms and conditions for the installation of conduit premises support structure ("CPSS" or "Facilities") installed by AT&T in order to bring Service to Customer's demarcation point.

TERMS AND CONDITIONS APPLICABLE TO E-RATE FUNDED PRODUCTS AND SERVICES

Customer has represented that it intends to seek funding through the Federal Universal Service Fund program known as "E-Rate" for some or all of the Services or Service Components purchased under the Agreement. E-Rate is administered by the Schools and Libraries Division ("SLD") of the Universal Service Fund Administrative Company ("USAC") (sometimes collectively or individually referred to herein as "USAC/SLD"). The Federal Communications Commission ("FCC") has promulgated regulations that govern the participation in the E-Rate program. Both Parties agree to adhere to FCC regulations as well as the rules established by SLD and USAC regarding participation in the E-Rate program. The Parties further agree:

1. Eligibility of Products and Services. The eligibility or ineligibility of products or services for E-Rate funding is solely the responsibility of the USAC/SLD and/or the FCC. AT&T makes no representations or warranties regarding such eligibility.
2. Service Substitutions. Customer acknowledges that USAC/SLD funding commitments are based upon the products, services and locations set forth in the Form 471 and that any modification to the products and services and/or the locations at which the products or services are to be installed and/or provided, requires Customer to file a service substitution with USAC/SLD, seeking permission to receive alternative service or receive the service to an alternative location. AT&T will provide Services and Service Components only as approved by the USAC/SLD and may suspend activities pending approval of service substitution requests.
3. Requested Information. If requested, Customer will promptly provide AT&T with final copies of the following E-Rate-related materials (including all attachments) prepared by or for Customer: (i) Form 471 and Bulk Upload Template(s); (ii) Form 486; (iii) Form 500; (iv) Service Substitution Request; (v) Service Certification Form; and, (vi) Form 472-BEAR. If the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.
4. Representations, Warranties and Indemnities. Each Party represents and warrants that it has and will comply with all laws and the requirements applicable to the E-Rate Program. In addition to any indemnification obligations set forth in the Agreement and to the extent permitted by law, each Party agrees to indemnify and hold harmless the other Party (its employees, officers, directors and agents, and its parents and affiliates under common control) from and against all third party claims (including FCC or USAC/SLD claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Attachment.
5. Non-Appropriations. By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Agreement Term. In the event Customer is unable to obtain the necessary appropriations for the Services provided under this Attachment, Customer may terminate the Services without liability for the termination charges upon

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the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with AT&T to develop revised terms, an alternative payment schedule or a new agreement to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Attachment, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

6. Customer Must Choose A or B

A.) ☒ [OPTION "A" IS AVAILABLE FOR NEW OR EXISTING SERVICES]

CUSTOMER DIRECTS AT&T TO COMMENCE OR CONTINUE SERVICES EVEN IF FUNDING COMMITMENT DECISION LETTER ("FCDL") HAS NOT BEEN RECEIVED FROM USAC/SLD. CUSTOMER ACKNOWLEDGES ITS OBLIGATION TO PAY FOR THE SERVICE IF FUNDING IS DENIED OR USAC/SLD COMMITMENT IS NOT RECEIVED.

(i) Scope: **Customer desires that Services commence on or about July 1 unless a different date is inserted here 07-01-2019.** Customer intends to seek funding from the USAC/SLD, but acknowledges that it may not receive an FCDL prior to this date and that it is possible that USAC/SLD may delay, or not approve funding. The Services term begins on the latter of July 1 or installation or delivery of those services, and will continue for the term stated in the Agreement

(ii) Funding Denial Agreement Termination: CUSTOMER ACKNOWLEDGES THAT THERE IS NO RIGHT TO TERMINATE THE SERVICES OR SERVICE COMPONENTS MADE THE BASIS OF THIS ATTACHMENT IF E-RATE FUNDING IS DELAYED OR DENIED.

B.) ☐ [OPTION "B" IS APPROPRIATE FOR NEW SERVICES]

SERVICES WILL NOT COMMENCE AND/OR EQUIPMENT WILL NOT SHIP UNTIL AT&T RECEIVES NOTIFICATION THAT E-RATE FUNDS HAVE BEEN COMMITTED; IF E-RATE FUNDING FOR SERVICES AND/OR EQUIPMENT IS DENIED, AGREEMENT WILL TERMINATE AS TO THOSE SERVICES AND/OR EQUIPMENT UNLESS AND UNTIL A NEW ATTACHMENT (REPLACING THIS ATTACHMENT) IS EXECUTED.

(i) Scope: Customer agrees to use best efforts to obtain funding from the USAC/SLD AT&T will not begin work related to the Services and/or equipment (including, without limitation, construction, installation or activation activities) until after AT&T receives Customer notification to proceed with the order, and verification of funding approval, and, for Internal Connections (IC), a verification of Form 486 approval by the USAC/SLD. AT&T will commence Service(s) as soon as is practical following the receipt of the appropriate documentation. The Services term begins on installation and delivery of those services, and will continue for the term stated in the Agreement.

(ii) Funding Denial Agreement Termination: if a funding request is denied by the USAC/SLD, the Agreement, with respect to such Service(s) and/or equipment, shall terminate sixty (60) days from the date of the FCDL in which E-Rate funding is denied or on the 30th day following the final appeal of such denial, and Customer will not incur termination liability. In the event Services and/or equipment are to be provided pursuant to a multi-year arrangement (whether by contract or tariff), this termination right applies only to the first year of the multi-year agreement.

(iii) IF CUSTOMER WISHES TO CHANGE ITS SELECTION AND WISHES AT&T TO COMMENCE SERVICES REGARDLESS OF FUNDING COMMITMENT FROM THE USAC/SLD, CUSTOMER WILL EXECUTE A NEW (REPLACEMENT) ATTACHMENT, AND AGREE TO THE TERMS SET FORTH IN "A" ABOVE. Upon execution of the Replacement Attachment, the Parties will mutually agree upon a Service Commencement Date.

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This provision does not apply to Services that were initially approved for funding and subsequently deemed ineligible by USAC/SLD after commencement of Service

7. AT&T Owned Equipment - General Terms and Conditions

To the extent provided in the applicable Statement of Work, Customer desires Services to be rendered to its location(s) by placing Equipment (e.g. routers, switches) on the Customer's premises (the "Premises"). Customer does not wish to provide this Equipment itself, but instead requests the placement of the Equipment as part of the installation associated with the delivery of the underlying Service. The equipment is owned by AT&T. Ownership of the equipment will not transfer to the Customer in the future, and neither the Master Agreement nor this Attachment includes an option to purchase the Equipment. The Equipment shall not be used by the Customer for any purpose other than the receipt of eligible telecommunications or Internet access service of which it is a part.

Accordingly, Customer hereby:

- Grants AT&T a license to install, operate, and maintain such Equipment and such additional, supplemental or replacement equipment as AT&T may from time to time deem necessary or desirable for the provision of services contemplated by the Service Agreement) within the Premises at such locations as mutually agreed by the parties at the time of installation, for so long as AT&T is providing the Services.
- Confirms such license shall include a right of access to, from and within the Premises for purposes of installing, , operating, maintaining, repairing and replacing such Equipment. All Equipment brought onto the Premises by AT&T will be deemed the personal property of AT&T (regardless of whether such Equipment is attached or affixed to the Premises) and Customer shall have no right to or interest in such Equipment. Customer has no right to exclusive use of the Equipment, and AT&T may use the Equipment to provide service to another customer.
- Agrees to provide adequate space and electric power for the Equipment and keep the Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents. The Equipment will be provided at the prices set forth in the attached Statement of Work.
- Agrees to notify AT&T of any and all issues arising out of or related to such Equipment, including the need for maintenance or repair, and assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the equipment and their location.
- Agrees to indemnify and hold AT&T harmless from any and all liability that may arise out of the presence and placement of such equipment , except for AT&T's gross negligence.
- Grants AT&T the right, but not the obligation, to remove all or any part of such equipment from the Premises at any time after the termination of, the Service.

Additionally, overall SLD program rules and eligibility requirements apply, and these requirements may change from time to time.

8. Terms of Equipment Usage – E-Rate Category 1 Funding

Please note that there are some important Customer obligation areas to facilitate timely Equipment installation and service delivery. Accordingly, Customer agrees to provide the following:

A. **PATH** - The Customer is responsible for providing or causing the property owner to provide a path from the property line into the building. A clear underground or aerial path is required from the property line where AT&T ILEC facilities exist, to the equipment room designated to support the entrance fiber.

B. **SPACE** - Customer is responsible for providing appropriate floor space and a properly installed equipment rack of suitable strength and quality to properly support the intended Equipment and the location of the Minimum Point of Entry (MPOE)/ Demarcation Point in compliance with FCC and AT&T service requirements.

The appropriate space and location will be mutually agreed following an AT&T site visit by an authorized AT&T Engineer. Any

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Demarcation Point location which is further than the closest practicable point to the MPOE in the building will require custom work which may not be eligible for E-Rate Category 1 (C1) funding, and must be paid for by the Customer.

C. **ENVIRONMENTAL** – Operating environment should be between +40° F and 100° F at 0% to 85% relative humidity (RH-Non-Condensing).

D. **POWER - GROUND** - Customer will need to provide permanent, dedicated, 3-prong grounded power for the Equipment being installed. Power requirements can consist of nominal –48VDC, +24/-24 VDC, 110V, 125V, 220V, etc. located within 3 feet of the AT&T Equipment. AT&T may require more than one power outlet for some Equipment types, and there are specific amperage requirements for different Equipment types.

Relay racks/cabinets must be properly grounded by placing an exposed #6 or larger grounding wire to the building's ground source. This ground wire will be attached to the closest ground rod (earth ground) or building bus bar available and run to the Network Terminating Equipment location in the room.

Site specific customer obligations will also be provided by AT&T personnel via e-mail upon finalization of this Attachment.

9. **Customer Premises Support Structure ("CPSS") – General Terms and Conditions.**

To the extent provided in the applicable Statement of Work, Customer desires Services to be rendered to its location(s) by placing conduit and/or other conduit premises support structures ("CPSS" or "Facilities") on the Customer's premises (the "Premises"). Customer does not wish to provide these Facilities itself, but instead requests the placement of the Facilities as part of the construction and installation work associated with the delivery of the underlying Service.

Accordingly, Customer hereby:

- Grants AT&T a license to install and operate -- in accordance with the designs agreed to within the Statement of Work, Scope of Work, or other documents, approved by the parties in connection with this project -- such Facilities and such additional or replacement Facilities as AT&T may from time to time deem necessary or desirable for the provision of the Services contemplated by the Service Agreement.
- Confirms such license shall include a right of access to, from and within the Premises for purposes of installing, repairing and replacing such Facilities. All Facilities brought onto the Premises by AT&T, once installed and functional, will be deemed the property of Customer.
- Confirms that once the facilities are installed, the Customer shall be responsible for the cost of any installation, maintenance, repair or replacement of the Facilities.
- Assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the Facilities and the location of such Facilities;
- In addition to any early termination charges identified in the Agreement or Pricing Schedule, Customer is also liable for 100% of the cost of \$9200 for each site at which AT&T installs Customer Premise Support Structure facilities (CPSS). All early termination charges, plus recovery of entrance facility costs, shall not exceed the total amount Customer would have been required to pay for the Service if it had not terminated early.

Terms Applicable to CALNET customers with the following services:

If purchasing this Service under a Calnet contract, the following terms shall apply:

- **Metropolitan Area Network (MAN) Ethernet (3.0):** In the event of termination of service within 24 months from the Cutover Date of Service, Customer is liable for 100% of the cost of \$9200 for each site at which AT&T installs Customer Premises Support Structure facilities (CPSS).
- **Managed Internet Services (5.0):** If Customer cancels Service at an eligible Customer Site prior to the service activation date, AT&T is not obligated to complete work on Entrance Facility Construction (EFC), and Customer agrees to compensate AT&T for all of AT&T's costs incurred, up through the date of cancellation associated with providing EFC, regardless of whether the construction thereof has been completed.

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10. USAC Invoicing Method

AT&T will follow Service Provider invoicing requirements for the E-Rate Program, and will accommodate either the Service Provider Invoice Form ("SPI") - Form 474 - or Billed Entity Application Reimbursement ("BEAR") - Form 472 invoice method. Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support requests for payment of Services rendered.

- a. SPI - Customer must first receive an approved Funding Commitment Decision Letter and Form 486 Notification Letter. In addition, the Customer shall NO LATER THAN 120 days prior to their Last Date to Invoice notify AT&T of its SPI election, provide and certify to AT&T an accurate list of the applicable Billing Accounts Numbers for services per their Form 471 funding application for each Funding Request Number for which the SPI method is sought. Customer understands and agrees that invoices are due and payable in full by their stated due date unless and until these requirements have been met and SPI discounts commence. Where these requirements are not met, Customer agrees to utilize the BEAR disbursement method to request their E-rate funding. See:
<http://usac.org/sl/applicants/step06/default.aspx>.
- b. BEAR - Under current rules, Service Providers have no involvement in the BEAR invoice process.

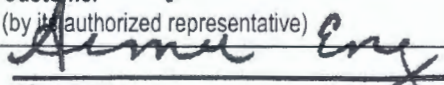
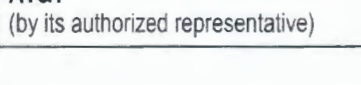
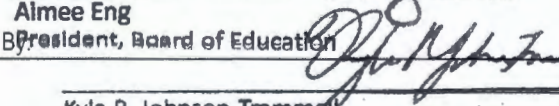
11. Reimbursement of USAC/SLD.

Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support Form 474 SPI requests for payment of discounted Services. If USAC/SLD (i) seeks recovery from AT&T for disbursed E-Rate funds as a result of Customer's failure to comply with the E-Rate rules or regulations, including Customer delays in submitting required forms or contracts; or (ii) determines that Services which it had previously been approved for discounts are not eligible resulting in a "Notice of Improperly Disbursed Funds" or other request for recovery of funds requests (other than as the result of AT&T's failure to comply with the E-Rate requirements), then AT&T shall reverse any E-rate SPI discounts provided which were denied, any reimbursements demanded, and any funds returned, and Customer shall (a) pay all unfunded, reimbursed, or returned amounts and (b) reimburse AT&T for any funds AT&T must return to USAC/SLD, each within ninety (90) days of notice from USAC/SLD. In addition, Customer agrees and acknowledges that a determination of ineligibility, reduction, or other non-funding by USAC/SLD does not affect the obligations set forth in the Agreement, including those obligations related to payments and early termination fees. This provision shall supersede any other provision with respect to limits on the time period in which charges may be invoiced.

FCC RULES REQUIRE THAT PRIOR TO SUBMISSION OF A FORM 471 APPLICATION FOR FUNDING THE PARTIES MUST HAVE ENTERED INTO A BINDING CONTRACT FOR THE SERVICES MADE THE SUBJECT OF THE APPLICATION. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT STATE LAW REQUIREMENTS FOR A BINDING CONTRACT HAVE BEEN MET PRIOR TO THE SUBMISSION OF A FORM 471.

☐ THIS ATTACHMENT REPLACES THE ATTACHMENT BETWEEN THE PARTIES DATED . 07-01-2019

SO AGREED by the Parties' respective authorized signatories:

Customer (by its authorized representative)	AT&T (by its authorized representative)
	
Almee Eng President, Board of Education	By: Linda Ruesch
	
Kyla R. Johnson-Trammel Name: Secretary, Board of Education 3/5/19	Name: Linda Ruesch

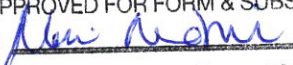
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**E-Rate Rider**

Title:	Title: Sr. Solutions Architect
Date:	Date: 2/13/2019

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: 
Marion McWilliams, General Counsel

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MASTER AGREEMENT

Customer	AT&T
Oakland Unified School District Street Address: 1000 Broadway, FL 4 City: Oakland State/Province: CA Zip Code: 94607 Country: USA	AT&T Corp.
Customer Contact (for notices)	AT&T Contact (for notices)
Name: Colleen Calvano Title: Executive Director, Tech Street Address: 1000 Broadway STE 300 City: Oakland State/Province: CA Zip Code: 94607 Country: USA Telephone: 510-879-2202 Fax: Email: colleen.calvano@ousd.org	Street Address: 5001 Executive Parkway City: San Ramon State/Province: CA Zip Code: 94583 Country: USA With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com

This Master Agreement ("Master Agreement"), between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is effective when signed by both Customer and AT&T.

This Master Agreement signed by AT&T first, is effective upon Customer signature provided that such fully signed Master Agreement is returned to AT&T not more than forty-five (45) days after AT&T's signature date. Any change made to this document renders the Master Agreement null and void.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By: <u>Almee Eng</u> President, Board of Education	By: <u>Linda Ruesch</u>
Name: <u>Kyla R. Johnson-Trammell</u> Secretary, Board of Education	Name: Linda Ruesch
Title: <u>Secretary, Board of Education</u>	Title: Sr. Solutions Architect
Date: 3/5/19	Date: 2/13/2019 rt228m

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: Marion McWilliams
Marion McWilliams, General Counsel

1. INTRODUCTION

1.1 Overview of Documents. This Master Agreement and the following additional documents (collectively, the "Agreement") shall apply to all products and services AT&T provides Customer pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under this Agreement:

- (a) **Pricing Schedules.** A "Pricing Schedule" means a pricing schedule (including related attachments) or other document that is attached to or is later executed by the parties and references this Master Agreement. A Pricing Schedule includes the Services, the pricing (including discounts and commitments, if applicable) and the pricing schedule term ("Pricing Schedule Term").
- (b) **Tariffs and Guidebooks.** "Tariffs" are documents containing the descriptions, pricing and other terms and conditions for a Service that AT&T or its Affiliates file with regulatory authorities. "Guidebooks" are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Tariffs and Guidebooks can be found at att.com/servicepublications or other locations AT&T may designate.
- (c) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to (i) Services provided over or accessing the Internet and (ii) wireless (i.e., cellular) data and messaging Services. The AUP can be found at att.com/aup or other locations AT&T may designate.
- (d) **Service Guides.** The descriptions, pricing and other terms and conditions for a Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which can be found at att.com/servicepublications or other locations AT&T may designate.

1.2 Priority of Documents. The order of priority of the documents that form this Agreement is: the applicable Pricing Schedule or Order; this Master Agreement, the AUP; and Tariffs, Guidebooks and Service Guides; provided that Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

1.3 Revisions to Documents. Subject to Section 8.2(b) (Materially Adverse Impact), AT&T may revise Service Publications at any time.

1.4 Execution by Affiliates. An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule in its own name, and such Affiliate contract will be a separate but associated contract incorporating the terms of this Agreement. Customer and AT&T will cause their respective Affiliates to comply with any such separate and associated contract.

2. AT&T DELIVERABLES

2.1 Services. AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Customer and its Users, subject to the availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider. If an applicable Service Publication expressly permits placement of an order for a Service under this Master Agreement without the execution of a Pricing Schedule, Customer may place such an order using AT&T's standard ordering processes (an "Order"), and upon acceptance by AT&T, the Order shall otherwise be deemed a Pricing Schedule under this Master Agreement for the Service ordered.

2.2 AT&T Equipment. Services may be provided using equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide adequate space and electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the AT&T Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents.

2.3 Purchased Equipment. Except as specified in a Service Publication, title to and risk of loss of Purchased Equipment shall pass to Customer on delivery to the transport carrier for shipment to Customer's designated location.

2.4 License and Other Terms. Software, Purchased Equipment and Third-Party Services may be provided subject to the terms of a separate license or other agreement between Customer and either the licensor, the third-party service provider or the manufacturer. Customer's execution of the Pricing Schedule for or placement of an Order for Software, Purchased Equipment or Third-Party Services is Customer's agreement to comply with such separate agreement. Unless a Service Publication specifies otherwise, AT&T's sole responsibility with respect to Third-Party Services is to place Customer's orders for Third-Party Services, except that AT&T may invoice and collect payment from Customer for the Third-Party Services.

3. CUSTOMER'S COOPERATION

3.1 Access Right. Customer will in a timely manner allow AT&T access as reasonably required for the Services to property and equipment that Customer controls and will obtain at Customer's expense timely access for AT&T as reasonably required for the Services to property controlled by third parties such as Customer's landlord. AT&T will coordinate with and, except in an emergency, obtain Customer's consent to enter upon Customer's property and premises, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires for the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 Safe Working Environment. Customer will ensure that the location at which AT&T installs, maintains or provides Services is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. AT&T shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

3.3 Users. "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

3.4 Resale of Services. Customer may not resell the Services or rebrand the Services for resale to third parties without AT&T's prior written consent.

4. PRICING AND BILLING

4.1 Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term. The prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit, discount or waiver set forth in a Service Publication will apply. Unless the Pricing Schedule states otherwise, at the end of the Pricing Schedule Term, Customer may continue Service (subject to any applicable notice or other requirements in a Service Publication for Customer to terminate a Service Component) under a month-to-month service arrangement at the prices, terms and conditions in effect on the last day of the Pricing Schedule Term. AT&T may change such prices, terms or conditions on 30 days' prior notice to Customer.

4.2 Additional Charges and Taxes. Prices set forth in a Pricing Schedule are exclusive of and Customer will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, Customer may withhold or deduct any applicable taxes from payments due to AT&T, provided that Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

4.3 Billing. Unless a Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer. Customer will pay AT&T without deduction, setoff or delay for any reason (except for withholding taxes as provided in Section 4.2 - Additional Charges and Taxes or in Section 4.5 - Delayed Billing; Disputed Charges). At Customer's request, but subject to AT&T's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced separately, and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or its Affiliates are not creditworthy, and AT&T may apply such deposit to any charges owed.

4.4 Payments. Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum), (b) for Services contained in a Tariff or Guidebook at the rate specified therein, or (c) the maximum rate allowed by law for overdue payments.

4.5 Delayed Billing; Disputed Charges. Customer will not be required to pay charges for Services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute, but Customer may incur late payment fees in accordance with Section 4.4 (Payments). Following AT&T's notice of the results of its investigation to Customer, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days. AT&T will reverse any late payment fees that were invoiced in error.

4.6 Credit Terms. AT&T retains a lien and purchase money security interest in each item of Purchased Equipment and Vendor Software until Customer pays all sums due. AT&T is authorized to sign and file a financing statement to perfect such security interest.

4.7 MARC. Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment set forth in a Pricing Schedule that Customer agrees to satisfy during each 12-consecutive-month period of the Pricing Schedule Term. If Customer fails to satisfy the MARC for any such 12-month period, Customer will pay a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during such 12-month period, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

4.8 Adjustments to MARC.

- (a) In the event of a business downturn beyond Customer's control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer's business, or network optimization using other Services, or a reduction of AT&T's prices, or a force majeure event, any of which significantly impairs Customer's ability to meet a MARC, AT&T will offer to adjust the affected MARC to reflect Customer's reduced usage of Services (with a corresponding adjustment to the prices, credits or discounts available at the reduced MARC level). If the parties reach agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.8 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T notice of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges, Customer incurs prior to amendment of the affected Pricing Schedule.
- (b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may agree in writing to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer's MARC or other volume or growth discounts and on Customer's attainment thereof.

5. CONFIDENTIAL INFORMATION

5.1 Confidential Information. Confidential Information means: (a) information the parties or their Affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other proposals), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement.

5.2 Obligations. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Agreement (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and enhance the network and Services).

5.3 Exceptions. The restrictions in this Section 5 will not apply to any information that (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 Privacy. Each party is responsible for complying with the privacy laws applicable to its business. AT&T shall require its personnel, agents and contractors around the world who process Customer Personal Data to protect Customer Personal Data in accordance with the data protection laws and regulations applicable to AT&T's business. If Customer does not want AT&T to comprehend Customer data to which it may have access in performing Services, Customer must encrypt such data so that it will be unintelligible. Customer is responsible for obtaining consent from and giving notice to its Users, employees and agents regarding Customer's and AT&T's collection and use of the User, employee or agent information in connection with a Service. Customer will only make accessible or provide Customer Personal Data to AT&T when it has the legal authority to do so. Unless otherwise directed by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information to any employee or agent of Customer without a need for further authentication or authorization.

6. LIMITATIONS OF LIABILITY AND DISCLAIMERS

6.1 Limitation of Liability.

- (a) EITHER PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS AGREEMENT SHALL BE:
 - (i) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, PROVEN DIRECT DAMAGES;
 - (ii) FOR BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity) OR SECTION 10.2 (Trademarks), PROVEN DIRECT DAMAGES;
 - (iii) FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER SECTION 7 (Third Party Claims);
 - (iv) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR
 - (v) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 6.1(a)(i)-(iv), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY CUSTOMER FOR THE AFFECTED SERVICE IN THE RELEVANT COUNTRY DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE.

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- (b) EXCEPT AS SET FORTH IN SECTION 7 (Third Party Claims) OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS.
- (c) THE LIMITATIONS IN THIS SECTION 6 SHALL NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

6.2 Disclaimer of Liability. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS AGREEMENT); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

6.3 Purchased Equipment and Vendor Software Warranty. AT&T shall pass through to Customer any warranties for Purchased Equipment and Vendor Software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL SOFTWARE AND PURCHASED EQUIPMENT IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

6.4 Disclaimer of Warranties. AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION.

6.5 Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its Affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 AT&T's Obligations. AT&T agrees at its expense to defend and either to settle any third-party claim against Customer, its Affiliates and its and their respective employees and directors or to pay all damages that a court finally awards against such parties for a claim alleging that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliate or a third party, or combinations of the Service with any non-AT&T services or products by Customer or others; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

7.2 Customer's Obligations. Customer agrees at its expense to defend and either to settle any third-party claim against AT&T, its Affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all damages that a court finally awards against such parties for a claim that: (a) arises out of Customer's, its Affiliate's or a User's access to or use of the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliate or a User of a Software license agreement.

7.3 Infringing Services. Whenever AT&T is liable under Section 7.1, AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the Service so that it is non-infringing.

7.4 Notice and Cooperation. The party seeking defense or settlement of a third-party claim under this Section 7 will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 7.

7.5 AT&T's obligations under Section 7.1 shall not extend to actual or alleged infringement or misappropriation of intellectual property based on Purchased Equipment, Software, or Third-Party Services.

8. SUSPENSION AND TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.

8.2 Termination or Suspension. The following additional termination provisions apply:

- (a) **Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate (and AT&T may suspend and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Agreement, terminate (and AT&T may suspend and later terminate) the entire Agreement.
- (b) **Materially Adverse Impact.** If AT&T revises a Service Publication, the revision has a materially adverse impact on Customer and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after receipt of notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.
- (c) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the affected Service Components. AT&T reserves the right, however, to suspend or terminate immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of AT&T's network or networks with which AT&T is interconnected or may interfere with another customer's use of AT&T services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to AT&T, AT&T's customers or its or their respective employees.
- (d) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service or Service Component and, if the activity materially and adversely affects the entire Agreement, terminate or suspend the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer, in the course of breaching the Agreement: (i) commits a fraud upon AT&T; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services.
- (e) **Infringing Services.** If the options described in Section 7.3 (Infringing Services) are not reasonably available, AT&T may at its option terminate the affected Services or Service Components without liability other than as stated in Section 7.1 (AT&T's Obligations).
- (f) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at the Site, AT&T may terminate the affected Services or Service Components or may suspend performance until Customer removes and remediates the Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 Effect of Termination.

- (a) Termination or suspension by either party of a Service or Service Component does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component.
- (b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

8.4 Termination Charges.

- (a) If Customer terminates this Agreement or an affected Service or Service Component for cause in accordance with the Agreement or if AT&T terminates a Service or Service Component other than for cause, Customer will not be liable for the termination charges set forth in this Section 8.4.
- (b) If Customer or AT&T terminates a Service or Service Component prior to Cutover other than as set forth in Section 8.4(a), Customer (i) will pay any pre-Cutover termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.
- (c) If Customer or AT&T terminates a Service or Service Component after Cutover other than as set forth in Section 8.4(a), Customer will pay applicable termination charges as follows: (i) 50% (unless a different amount is specified in the Pricing Schedule) of any unpaid recurring charges for the terminated Service or Service Component attributable to the unexpired portion of an applicable Minimum Payment Period; (ii) if termination occurs before the end of an applicable Minimum Retention Period, any associated credits or waived or unpaid non-recurring charges; and (iii) any charges incurred by AT&T from a third party (i.e.,

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not an AT&T Affiliate) due to the termination. The charges set forth in Sections 8.4(c)(i) and (ii) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if the Minimum Payment Period or Minimum Retention Period, as applicable, (the "Minimum Period") and associated charge for the replacement Service Component are equal to or greater than the corresponding Minimum Period and associated charge for the terminated Service Component, respectively, and if the upgrade is not restricted in the applicable Service Publication.

- (d) In addition, if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC for the balance of the Pricing Schedule Term.

9. IMPORT/EXPORT CONTROL

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

10. MISCELLANEOUS PROVISIONS

10.1 **Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or to the provision of Services without the prior written consent of the other party.

10.2 **Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 **Independent Contractor.** Each party is an independent contractor. Neither party controls the other, and neither party nor its Affiliates, employees, agents or contractors are Affiliates, employees, agents or contractors of the other party.

10.4 **Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.

10.5 **Amendments and Waivers.** Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.6 **Assignment and Subcontracting.**

- (a) Customer may, without AT&T's consent but upon notice to AT&T, assign in whole or relevant part its rights and obligations under this Agreement to a Customer Affiliate. AT&T may, without Customer's consent, assign in whole or relevant part its rights and obligations under this Agreement to an AT&T Affiliate. In no other case may this Agreement be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). In the case of any assignment, the assigning party shall remain financially responsible for the performance of the assigned obligations.
- (b) AT&T may subcontract to an Affiliate or a third party work to be performed under this Agreement but will remain financially responsible for the performance of such obligations.
- (c) In countries where AT&T does not have an Affiliate to provide a Service, AT&T may assign its rights and obligations related to such Service to a local service provider, but AT&T will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

10.7 **Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.11 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.8 **Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.

10.9 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within two (2) years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.10 **Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.

10.11 **Governing Law.** This Agreement will be governed by the law of the State of New York, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply.

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10.12 Compliance with Laws. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

10.13 No Third Party Beneficiaries. This Agreement is for the benefit of Customer and AT&T and does not provide any third party (including Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

10.14 Survival. The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including the obligations set forth in Section 5 (Confidential Information), Section 6 (Limitations of Liability and Disclaimers) and Section 7 (Third Party Claims), will survive such termination or expiration.

10.15 Agreement Language. The language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.16 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. Except as provided in Section 2.4 (License and Other Terms), this Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

"Affiliate" of a party means any entity that controls, is controlled by or is under common control with such party.

"API" means an application program interface used to make a resources request from a remote implementer program. An API may include coding, specifications for routines, data structures, object classes, and protocols used to communicate between programs.

"AT&T Software" means software, including APIs, and all associated written and electronic documentation and data owned by AT&T and licensed by AT&T to Customer. AT&T Software does not include software that is not furnished to Customer.

"Customer Personal Data" means information that identifies an individual, that Customer directly or indirectly makes accessible to AT&T and that AT&T collects, holds or uses in the course of providing the Services.

"Cutover" means the date Customer's obligation to pay for Services begins.

"Effective Date" of a Pricing Schedule means the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"MARC-Eligible Charges" means the recurring and usage charges (including amounts calculated from unpaid charges that are owed under Section 8.4(c)(i)), after deducting applicable discounts and credits (other than outage or SLA credits), that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer's purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

"Minimum Payment Period" means the Minimum Payment Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to pay recurring charges for the Service Component.

"Minimum Retention Period" means the Minimum Retention Period identified for a Service Component in a Pricing Schedule or Service Publication during which Customer is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

"Purchased Equipment" means equipment or other tangible products Customer purchases under this Agreement, including any replacements of Purchased Equipment provided to Customer. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Customer on which Software is stored.

"Service Component" means an individual component of a Service provided under this Agreement.

"Service Publications" means Tariffs, Guidebooks, Service Guides and the AUP.

"Site" means a physical location, including Customer's collocation space on AT&T's or its Affiliate's or subcontractor's property, where AT&T installs or provides a Service.

"Software" means AT&T Software and Vendor Software.

"Third-Party Service" means a service provided directly to Customer by a third party under a separate agreement between Customer and the third party.

"Vendor Software" means software, including APIs, and all associated written and electronic documentation and data AT&T furnishes to Customer, other than AT&T Software.

ISP Contract between ACOE and OUSD



Memorandum of Understanding with Oakland USD for Access Service

7/1/2019 to 6/30/2022

This agreement is between Oakland Unified School District (hereinafter, "Client") and Alameda County Office of Education Network (hereinafter, "ACOENet") for connection service to the statewide K-20 network ("K12 Highspeed Network") and related maintenance and support. Client wishes to contract with ACOENet for connection service to the K12 Highspeed Network ("K12 HSN") and ACOENet is willing to supply the connection to Client. ACOENet and Client agree as follows:

1. SERVICES

Services provided by ACOENet are described in Appendix A. Any changes to specified circuit type/speed detailed in Appendix A must be made before the signed contract date.

2. PAYMENT

In consideration of the services set forth above to be performed by ACOENet, Client shall pay ACOENet the amount according to the options selected in Schedule A. Client agrees to be billed and pay annually for Internet access and miscellaneous access-related service fees according to the rates established by this agreement. Client agrees to pay invoices 30 days from the date of receipt. Late payment will be grounds for termination of service. If this agreement is terminated, the Client is still responsible for any charges on the Client's account.

3. TERM

The services outlined above shall be provided from 7/1/2019 to 6/30/2022.

4. ALTERATION OF AGREEMENT

This agreement may be modified or terminated only by mutual agreement of the parties where the changes are in a writing that is signed by both parties.

5. ASSIGNABILITY

Any product or service provided to the Client and may not be assigned, transferred or resold without written authorization from ACOENet.

6. INDEMNIFICATION

Client shall instruct its personnel and students about copyright laws and the proper use of the Internet. Client shall ensure that personnel and students abide by the policies and regulations of ACOENet (See Appendix B). Client shall indemnify and hold harmless ACOENet, its officers, elected Board, employees, and agents against any losses, claims, damages, judgments, liabilities or expenses (including reasonable legal counsel fees and expenses) resulting from use of ACOENet which may occur to persons or property as a result of its use of ACOENet or permitted by ACOENet, in good faith with due care and without negligence in reliance upon instructions or orders received from Client as to anything arising in connection with this agreement. ACOENet shall be without liability to Client with respect to anything done or omitted to be done, in accordance with the terms of this agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct.

Contract # _____ 2020001 _____ fiscal/calendar

Initial service date: 7/1/2019

Final service date: 6/30/2022

Client agrees to use ACOENet at its own risk and develop and implement policies and procedures to prevent illegal, libelous, or inappropriate use of ACOENet services. ACOENet specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. In no event shall ACOENet be liable for any loss or other commercial damage, including, but not limited to, special, incidental, consequential or other damages.

Client agrees to protect and indemnify ACOENet against any and all liability, loss, or expense arising from claims including, but not limited to, financial liability for commercial use of the Internet, libel, unfair competition, unfair trademarks, trade names or patents, violations of constitutional rights or rights of privacy and infringement of copyrights and property rights resulting from Client's use of ACOENet.

ACOENet shall indemnify and hold harmless Client, its officers, elected Board, employees, and agents against any losses, claims, damages, judgments, liabilities or expenses (including reasonable legal counsel fees and expenses) resulting from action taken or permitted by Client in good faith with due care and without negligence in reliance upon instructions or orders received from ACOENet as to anything arising in connection with its performance under this agreement. Client shall be without liability to ACOENet with respect to anything done or omitted to be done, in accordance with the terms of this agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct.

The Parties agree that the Laws of the State of California govern this agreement. The Parties agree that the County of Alameda, in which ACOENet and Client are located, shall be the forum for any legal action relating to this agreement and the services provided by ACOENet to Client thereunder.

7. **PRIVACY**

ACOENet provides virtual services that could house client school district student data. Any client school district student records residing on ACOENet technology platforms will remain the property of the client. Client district student data will not be used for any commercial gain. Furthermore, any student data residing on ACOENet platforms will be removed within 90 days of the termination of this agreement.

8. **PENALTIES FOR IMPROPER USES**

Any Client violating ACOENet Acceptable Use Policy is subject to loss of network privileges. In addition, pursuant to California law, any unauthorized access, attempted access, or use of any state computing and/or network system is a violation of Section 502 of the California Penal Code and/or other applicable federal laws, and is subject to criminal prosecution. All clients are required to adopt, at a minimum, the ACOENet Acceptable Use Policy ("AUP") and are encouraged to create their own.

9. **NOTICES**

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the day of deposit in the U.S. Mail, postage pre-paid, certified or registered, return receipt requested, and addressed as follows:

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Initial service date: 7/1/2019

Final service date: 6/30/2022

Alameda County Office of Education Attn: Business Services 313 West Winton Avenue, Hayward, CA 94544	Oakland Unified School District Attn: Chief Technology Officer 1000 Broadway, Suite 300 Oakland, CA 94607
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10. SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

11. INTERPRETATION/CONSTRUCTION

The headings set forth in this agreement are for convenience only and shall not be used in interpreting this agreement. This agreement has been drafted by both Parties hereto. Therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed against either party in the interpretation of this agreement.

12. ENTIRE AGREEMENT

Each party acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.

13. EXECUTION IN COUNTERPARTS

This agreement may be executed in multiple counterparts by way of facsimile or Adobe pdf format, each of which shall be deemed an original and all of which together shall constitute one agreement.

14. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

ACOENet certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this Agreement certifies that ACOENet does not appear on the Excluded Parties List (<https://www.sam.gov/>).

15. INCORPORATION BY REFERENCE

1. Appendix A is incorporated into this agreement as if fully set forth herein for the purposes of describing the services offered, setting forth the fee schedule, and determining the amount Client must pay for selected services.

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2. The AUP outlined in Appendix B is local policy for ACOENet. ACOENet is an official Node Site for the K12 High-speed Network and is governed by their Acceptable Use Policies. In matters pertaining to use of K12 HSN (K12 High-speed Network) the K12 HSN AUP supersedes local policies.

We, the undersigned, agree to the above terms and conditions and we are authorized to sign on behalf of our organizations.

ORGANIZATION: Oakland Unified School District and ACOENet

Aimee Eng
Aimee Eng
President, Board of Education

Doug D'Amour
Doug D'Amour
Printed name and title

Kyla R. Johnson-Trammell
Secretary, Board of Education

3/5/19
Date

[Signature]
Signature

2/5/2019
Date

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

BY: [Signature]
Marion McWilliams, General Counsel

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Schedule A

Schedule of Services

ACOENet reserves the right to refuse service to anyone at any time for violation of this agreement.

Organization: Oakland Unified School District

Item	Qty.	Description	One Time Cost	Annual Cost
Access Type/Speed	1	Access / 10 Gbps		\$32,805
DNS				\$0
Domain Name				\$0
Other				
TOTAL COST				\$32,805.00

Initials:

AE/KJT

ORGANIZATION


ACOENet

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Appendix A

ACOENet Access Services List

Access

ACOENet provides secure, monitored and managed Internet Access to its clients. As part of this service, ACOENet will help match Client's need for service with available funds. ACOENet can also provide for an additional fee: e-mail hosting, web hosting, consulting services in areas such as desktop maintenance, server maintenance, router maintenance, security and firewall configuration, and many other services.

Included:

- Secure, monitored and managed K12HSN access
- Connection to the Statewide K-20 network (K12 High Speed Network), Internet2 and the commodity Internet by enabling Client to connect data circuit(s) to the ACOE Network Operations Center (NOC)
- Appropriate IP address space (if needed) from ACOENet's address pool (ACOE-owned)
- Primary or secondary domain name hosting service
- Network monitoring from the ACOE NOC to the Client border router
- Coordination of circuit support between the local carrier and Client's IT personnel
- Bandwidth usage reports for districts
- Assistance with circuit selection and provisioning

ACOENet Access Fees *(based on a 12 month commitment)*

Port-Speed	Annual Cost
500 Mbps	\$8,550
1 Gbps	(1) \$9,000/(2) \$15,000
2 Gbps	(1) \$14,850/(2) \$20,850
5 Gbps	(1) \$28,800/(2) n/a
10 Gbps	(1) \$36,450/(2) n/a

- (1) For point to point network connection
(2) For cloud-based connection

The pricing contained in this agreement is contingent upon the full funding of the K12 High Speed Network (K12 HSN) in the California State budget. Revised pricing will be made available in the event K12 HSN is not fully funded or K12 HSN changes its pricing schedule.

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Appendix B

Acceptable Use Policy

General Acceptable Use

Network Etiquette:

All users are expected to abide by the generally accepted rules to network etiquette. These include, but are not limited to the following:

- (a) Be polite. Do not get abusive in your messages to others.
- (b) Use appropriate language. Do not swear, use vulgarities or any other inappropriate language. Do not engage in activities, which are prohibited under state or federal law.
- (c) Do not reveal your personal address or phone numbers of students or colleagues.
- (d) Do not use the network in such a way that you would disrupt the use of the network by other users.
- (e) All communications and information accessible via the network should assumed to be private property.

Acceptable Uses:

- Activities that are part of the support infrastructure needed for instruction, scholarship and institutional management of the participant institutions.
- Instructional applications engaged in by students, faculty and staff.
- Communication and exchange for professional development, to maintain currency, or to debate issues in a field or sub-field of knowledge.
- Subject matters/discipline associations, government-advisory, or standard activities related to the user's research, instructional and/or administrative activities.
- Applying for or administering grants or contracts for instruction, professional infrastructure upgrades and student support services.
- Announcements of new products or services used in instruction and institutional research.
- Access to information resources, computers, and people throughout the world.
- Interaction with students, faculty, and staff by electronic mail and other means of electronic communication.
- Access to libraries, information resources, databases, and news from commercial, and non-commercial sources.

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- Importation of licensed software or other copyrighted material for fair use or with appropriate permission.
- Administrative, academic, and research-related discussion groups.
- E-commerce activities in support of the administrative and academic programs of participant institutions.

Unacceptable Uses:

Examples of unacceptable use include, but are not limited to, the following:

- Any illegal use of ACOENet, or use in support of illegal activities, is prohibited. Illegal use shall be defined as use that violates local, state and/or federal law. This includes, but is not limited to, the following: stalking others, transmitting or originating any unlawful, fraudulent or defamatory communications, transmitting copyrighted material beyond the scope of fair use without permission of the copyright owner, or any communications where the message or its transmission or distribution, would constitute or would encourage conduct that is a criminal offense.
- Activities that interfere with or disrupt network users, services, or equipment. Such interference or disruption includes, but is not limited to, distribution of unsolicited advertising or mass mailings; "spamming;" propagation of computer worms or viruses; and using ACOENet to make or attempt to make unauthorized entry to other computational, informational or communications devices or resources. For the purpose of this AUP, "unsolicited advertising" includes any transmission that describes goods, products, or services that is initiated by a vendor, provider, retailer, or manufacturer of the described goods, products, or services, or by a third party retained by, affiliated with, or related to the vendor, providers, retailers, or manufacturer.
- Use in furtherance of profit-making activities (consulting for pay, sales or distribution of commercial products or services for profit, etc.) or use by for-profit companies, unless specifically authorized by ACOENet, the K12 HSN Program Steering Committee and CENIC Board of Directors.
- Use in support of partisan political activities.
- Use for private or personal activities that exceed ACOENet related research, instruction, or administrative applications, or when there is personal monetary gain.

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