



Service Agreement 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.

1.4 Adds Deletions Moves and/or Changes. Sonic may add, delete and/or change the Service, in its sole discretion and without liability, by providing thirty (30) days prior written notice to Customer. Customer will be charged a fee of at least \$1,000.00 by Sonic if Customer elects to move any Service, in whole or part, during the term of this Agreement (“Move Fee”). If Service is moved to a new location, Service at your prior location 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.

a. Customers with Fiber SSE will be charged a Move Fee of at least \$3,075.00 by Sonic if Customer elects to change or move its Internet Access Services, in whole or part, during the term of this

Agreement. Termination remedies will apply for Fiber SSE moves except where all the following conditions apply:

- The existing and new Service locations must be served by the same serving wire center.
- The Customer's existing Service must have been in place for at least twelve (12) months.
- The Customer must select a new contract term of either one (1) or three (3) years that is greater than or equal to the remainder of the existing contract term. The selected term may result in higher monthly recurring charge.
- Orders from the Customer to disconnect the existing Service and reestablish Service at the new location must be placed by the Customer and received by Sonic on the same date.
- No lapse in billing will occur for moves of Service under a contract term. If a Customer requests that both the existing Service and the new Service be in service at the same time, such "overlapping" service shall be provided for no more than 30 days, and all applicable charges will be billed for both Services during the period of overlapping service.

b. At any point during the term, Customer has the option to upgrade their Sonic Business Phone Equipment (e.g. from a VVX 301 phone to a VVX 401 phone). Customer will be charged a one-time upgrade fee of \$150.00 per phone and the remaining months of the term will need to be fulfilled. If customer opts to downgrade their phone(s), Customer will be charged 100% of the Monthly Recurring Charge (MRC) for the remaining months left in the term. Phone(s) will be coterminous with the original contract.

1.5 Sonic reserves the right to increase any rate or to change any term or condition on a prospective basis in its discretion and without liability on thirty (30) days prior written notice to Customer. In the event that Sonic makes a material change to rates, terms and conditions associated with the Service, Customer may terminate the Agreement as provided for in Section 8.0 below without further liability.

2.0 Acceptable Use Policy. Customers, including all associated users, must comply with Sonic's Acceptable Use Policy (AUP) and all accepted Internet access policies of all upstream networks, including but not limited to, UUNet, NLayer, and Global Crossing. 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 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 1.0% 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, Inc. still has not received full payment by the 60th day after invoicing, Services will be disconnected and early termination fees will be applied. Customer must submit monthly payment by Automatic Clearing House (ACH) for all applicable fees and email ach-notify@sonic.com when the ACH payment has been made. If a Service is disconnected due to non-payment and Sonic

decides in its discretion to reinstate the Service, Customer will be assessed an administrative fee which must be paid in full prior to the reinstatement.

3.1 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.

4.0 **Disputes.** All disputes as to any invoiced amount must be submitted in writing within thirty (30) 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 thirty (30) day period. Notwithstanding any dispute, the full amount of all 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, except to the extent otherwise required by law, including, but not limited to the California Public Records Act or valid subpoena or court order. 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; pricing 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, to the extent due to Customer's operations, installation or maintenance of equipment and facilities contemplated by the Agreement by Customer, its use of the Service under the Agreement. Sonic shall defend, indemnify, and hold harmless Customer, its 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, to the extent due Sonic's performance hereunder or breach of its obligations hereunder.

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, except to the extent such damage occurs as a result of Sonic's negligent acts, errors or omissions. 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 Customers, except to the extent due to Sonic's negligent acts, errors or omissions. Sonic's liability for damages to Customer for any cause whatsoever, but excluding indemnification and defense obligations, shall be limited to the annual charges paid by the Customer for the period 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 entire initial term or any Renewal Term ("Contracted Price.")

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 entire Contracted Price. If the Agreement is terminated by Customer without cause or by Sonic for cause prior to the end of the initial term or any Renewal Term, Customer shall pay an early termination fee consisting of the prior month's fees paid by Customer to Sonic within 30 days of termination ("Early Termination Fee.") Customer's deletions or cancellations of Service at any contracted location shall not relieve the Customer of its obligation to pay this Early Termination Fee; however, Sonic may at its discretion offer Customer the ability to pay a pro-rated Early Termination Fee for such deletions or cancellations. 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 without cause prior to meeting the full term of the Agreement, Customer may be charged back the full credit amount thereof.

8.2 Additional Charges for Termination Prior to Installation. If Customer terminates the Agreement prior to installation, 100% of Installation Charges incurred as of the date of the notice of termination will be due and payable by Customer, even if those charges were initially waived.

a. For Customers with Fiber SSE: When a Customer cancels an order for a new Fiber SSE circuit, cancellation charges will apply, even when non-recurring installation charges would otherwise be waived. Applicable cancellation charges will be calculated based on the number of calendar days between Sonic's receipt of the order and the Cancellation date. A cancellation charge will apply on a per Port Connection basis as shown below.

(Per Port Connection)

0-30 days \$1,000.00

31-61 \$3,000.00

61+ \$4,000.00

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. 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.

c. Customer is merged into or acquired by another entity, or there is a substantial change in Customer's direct or indirect ownership or control of its voting securities or the sale of substantially all of its assets.

d. Sonic increases the total amount due from Customer, either in a single or multiple events, by more than five percent (5%) during the initial term or any subsequent one (1) year period thereafter.

e. Customers with FlexLink DMT Service can terminate service within the first thirty (30) days of installation without penalty if the circuit is not performing at 4Mbps upload or more.

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 condition arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, natural calamities and other acts of God; war, terrorism, sabotage, riot, or other civil or military disturbance; earthquake, fire, flood, hurricane,

tornado, lightning, severe weather, or explosion; national or regional emergency; epidemic or pandemic; strike, lockout, labor stoppage or slowdown, or other industrial disturbance; power outage or failure; equipment or computer malfunction or failure; inability to obtain labor, material, equipment or transportation; change to the federal, state or local regulatory environment that make it impossible or commercially infeasible for Sonic, in Sonic's sole judgment, to continue to perform its obligations, such as the discontinuance of the obligation of Incumbent Local Exchange Carriers to offer and provide one or more Unbundled Network Elements, the allowance of price increase(s) for one or more Unbundled Network Elements, and/or changes in the terms and conditions under which Unbundled Network Elements are offered and provided; change to the availability, prices, and/or terms and conditions of services or facilities offered or provided by Sonic's suppliers and used by Sonic to perform its obligations, that make it impossible or commercially infeasible for Sonic, in Sonic's sole judgment, to continue to perform such obligations; change to or termination of license or lease agreements, easements, encroachment permits, excavation permits, facilities attachment arrangements, and/or other means by which Sonic deploys its facilities and equipment in public and private rights-of-way and easements or in or on private property or buildings thereon, that make it impossible or commercially infeasible for Sonic, in Sonic's sole judgment, to continue to perform its obligations; or any other event or circumstance not within Sonic's reasonable control, whether similar or dissimilar to any of the foregoing, 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 this period extends for more than 60 days, then Sonic 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.

19.0 IP-Enabled Voice Services. The IP-Enabled Voice Services are available only as part of a bundle of services, which Customer agrees to purchase. Customer shall not use the IP-Enabled Voice Services to provide voice content related services, including, without limitation, chat lines. Customer shall indemnify and hold Sonic harmless from all claims, demands, costs, damages, losses, liabilities and expenses of every kind arising from or related to Customer's breach of this provision, including all costs and attorney fees incurred by Sonic. Customer shall not use the IP-Enabled Voice Services as a substitute for carrier interconnection or switched access services. If Customer uses the IP-Enabled Voice Services to support prepaid calling cards, Customer shall comply with all applicable state and federal laws and rules applicable to such services. Sonic does not support resale of switched services to end-users including, without limitation, support for E911 addressing, local number portability, calling name delivery, end user billing, and directory listings. The IP-Enabled Voice Services are not designed for and may not be compatible with remote metering, supervisory control, and alarm signaling purposes. To the extent that Customer uses the IP-Enabled voice services for these or similar purposes, Customer is solely responsible for ensuring and maintaining compatibility. Except as otherwise specified in this Agreement, international long distance calls are charged at the rates specified in Sonic's international price list found at www.sonic.com. If Customer exceeds the plan minute allowance Customer is responsible for the per minute overage rate. Unused minute allowances cannot be carried over to the next billing month. Customer shall execute the attached Letter of Authorization authorizing Sonic to change its Inter LATA and Intra LATA Primary Exchange Carrier for all the IP-Enabled Voice Services. IP-Enabled

Voice Services may be or become subject to regulatory authority of state and federal government agencies, and to the extent that any provision of this Agreement is inconsistent with applicable laws, rules or regulations of such governments or government agencies, those laws, rules and regulations shall apply.

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