

## RIGHT OF ENTRY AGREEMENT

This Right of Entry Permit (“**Agreement**” or “**Permit**”) is entered into effective as of January 4, 2022 (“**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”) and Sail Internet, Inc. (“**Company**”). City and Company are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. City is the owner of that certain property located at 15301 Wicks Blvd in the City of San Leandro, known as Alameda County Assessor’s APN No. 80G-1320-3-28 and more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the “**Permit Property**”).

B. Company has requested access to use a portion of the Permit Property, specifically, the roof of the Permit Property, as described in Exhibit B, attached hereto and incorporated herein by reference (the “**Roof Space**”) for the purposes of installing, operating and maintaining the communications equipment described in Exhibit C attached hereto and incorporated herein by reference (the “**Equipment**”). City is willing to grant a right to Company for such purpose subject to the terms and conditions set forth herein.

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

1. Grant of Permit, fees. City hereby grants to Company, its contractors, subcontractors, employees and agents (collectively, the “**Company Parties**”) a revocable right of entry permit to the Permit Property for the purpose of, and limited to, the use of the Roof Space to install, operate, maintain, replace and remove (subject to the limitations set forth in this Agreement) the Equipment (“**Permitted Activities**”). Subject to the terms and conditions of this Agreement, the rights of entry granted under this Permit include the right of access for the Company Parties onto and through areas of the Permit Property as required to perform the Permitted Activities. Company shall not bring in or permit the placement of any property within the Roof Space any property of a weight in excess of the design capacity of the Roof Space.

- a. Permit Fee. On or before the first day of each month during the Term of this Agreement, Company shall pay to City a fee (the “**Permit Fee**”) in the amount of FOUR HUNDRED AND FIFTY DOLLARS (\$450) per month for Company’s access and use of the Permit Property. For any partial month at the beginning or end of the term of this Agreement, the Permit Fee shall be prorated based on the actual number of days in such month to be prorated. This Agreement is not intended to, nor shall it be interpreted to, create or vest in Company any leasehold or any other property rights or interests in the Permit Property or the improvements located thereon, or any part thereof. The Permit Fee for shall increase by three percent (3%) upon the one-year anniversary of this Agreement and annually thereafter.

- b. Electricity. It is understood and agreed that Company requires electricity to the Roof Space twenty-four (24) hours per day for the maintenance and operation of the Equipment. Subject to those conditions set forth herein and if required for operation of the Equipment, said provision of electricity shall be provided to Company twenty-four (24) hours per day, three hundred sixty five (365) days per year. City agrees to use reasonable diligence in providing Company with access to electric service and ingress or egress; it being understood that City reserves the right to temporarily discontinue electric service, or ingress or egress, at such times as may be necessary when, by reason of accident, unavailability of employees, repairs, alterations or improvements, or whenever by reason of strikes, walkouts, riots, acts of God, or any other happening beyond the control of City, City is unable to provide the same. City shall use best efforts to provide Company with prior written notice of any such discontinuance that is within City's control. If the cost of electricity solely attributed to the Equipment exceeds five percent (5%) of the Permit Fee, each on an annualized basis, Company shall be responsible for payment of such excess amount which shall be included with the invoice from City to Company for the subsequent Permit Fee payment.

1.1 Late Charge. Company acknowledges that the late payment of the Permit Fee or License Fee will cause City to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Company and City agree that if City does not receive any such payment within ten (10) calendar days after such payment is due, Company shall pay to City an amount equal to ten percent (10%) of the overdue amount as a late charge for each month or partial month that such amount remains unpaid. The Parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that City will incur by reason of the late payment by Company, but the payment of such late charge shall not excuse or cure any default by Company under this Agreement. The Parties further agree that the payment of late charges pursuant to this Section 1.1 and the payment of interest pursuant to Section 1.2 are distinct and separate from one another in that the payment of interest is to compensate City for the use of City's money by Company, while the payment of a late charge is to compensate City for the additional administrative expense incurred by City in handling and processing delinquent payments, but excluding attorneys' fees and costs incurred with respect to such delinquent payments. Acceptance of any late fees and late charges shall not prevent City from exercising any of the other rights and remedies available to City under this Agreement for any other default by Company.

1.2 Interest. Any amount due from Company to City which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate which City is permitted by law to charge, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure any default by Company under this Agreement.

1.3 Costs. The Parties shall be solely responsible for their own costs to prepare and review this Agreement, including but not limited to attorneys' and any consultants' or experts' fees, costs or expenses.

2. Nonexclusiveness of Permit. This Permit is nonexclusive and nonpossessory. The Company Parties must allow access to Permit Property representatives of City and any other parties possessing prior rights, unless separate arrangements are made with such parties. This Agreement is not intended to, nor shall it be interpreted to, create or vest in Company any leasehold or any other property rights or interests in the Permit Property.

3. Prior Rights. This Permit is made subject and subordinate to the prior and continuing right of City to use the Permit Property for any uses in which City is engaged on the Permit Property as of the Effective Date.

4. Term of Permit. The term of this Permit and right of entry granted hereby, shall commence on the Effective Date and shall terminate on June 15, 2031 (“**Term**”). City may immediately terminate or suspend this Permit by notice to Company following Company’s breach of its obligations under this Agreement. Additionally, City may terminate this Agreement without cause upon ninety (90) days’ notice to Company. Company’s indemnity obligations set forth in this Agreement survive termination of this Permit for any reason. Company may terminate this Agreement at any time after the first annual anniversary of the Effective Date upon ninety (90) days’ notice to the City and payment of a one-time termination fee equivalent to three (3) months’ of Permit Fees and License Fees as set forth in Section 1 of this Agreement.

5. Conditions of Access. The Company Parties’ entry onto the Permit Property shall be limited to performing the Permitted Activities. Additionally, the Company Parties’ use of the Permit Property shall be consistent with this Agreement. Without limiting the foregoing, the Company Parties will adhere to the following specific requirements:

a. Company covenants that it shall enter the Permit Property in such manner and at such time as shall not interfere with any other existing use of the Permit Property. City covenants that it shall reasonably cooperate with Company so that the Company Parties’ entry may be handled in an efficient manner and so as to avoid any unreasonable delays with respect to the Permit or the Permitted Activities. Company hereby waives and releases City for any claim for damages against City in the event that Company’s entry onto the Permit Property, or any of the Permitted Activities are delayed for any reason whatsoever, except and to the extent caused by the gross negligence or willful misconduct of any representatives of City.

b. The Company Parties shall be liable for any damage to the Permit Property or other City Property (“**City Property**”) and non-City property (“**Non-City Property**”) that occurs as a result of this Permit and the Permitted Activities, except and to the extent: 1) such damage is required as a condition to Company’s completion of the Permitted Activities, in which case Company shall, to the extent necessary and feasible, promptly restore City Property to its condition existing prior to the commencement of such activities; and 2) the damage is caused by the gross negligence or willful misconduct of City. Any damage to City Property caused by the Company Parties in violation of this Agreement shall be promptly, as determined by the City, repaired to the satisfaction of City at Company’s sole cost and expense.

c. Company shall not encroach on the public right of way adjacent to the Permit Property unless Company has applied for and received any necessary approvals and/or

permits. All equipment and material storage shall be secured by Company on the Permit Property.

d. Company shall at all times keep the Permit Property free and clear of all liens and encumbrances affecting title to the Permit Property in connection with any work performed by the Company Parties under this Agreement. Upon notice of any such lien or claim, Company may bond and contest in good faith the validity and the amount of such lien, but Company shall immediately pay any judgment rendered, shall pay all proper costs and charges, and shall have the lien or claim released at its sole expense.

e. Company shall comply with all applicable state, federal and local laws, regulations, rules and orders, with respect to this Permit and the Permitted Activities, including, without limitation, all Environmental Laws (defined in Exhibit D, attached hereto and incorporated herein by reference). Company shall not cause or permit any Hazardous Material (defined in Exhibit D, attached hereto and incorporated herein by reference) to be generated, brought onto, used, stored, or disposed of in or about the Permit Property. Company shall provide evidence of such compliance to City upon request.

f. Company shall, at Company's own cost and expense during the term of this Agreement, keep and maintain the Permit Property in good order and repair, as determined by City in City's sole discretion, and free of any environmental contamination (including without limitation gas, oil, diesel, and other hydrocarbon contamination from vehicles, equipment and property brought onto the Permit Property during the term of this Agreement); and shall remove any such contamination at Company's sole cost and expense.

g. Company shall comply with all requirements as specified in Exhibit E, attached hereto and incorporated herein by reference.

6. Indemnification. Company agrees to defend (with Counsel approved by City) and hold City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing collectively "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing collectively "**Claims**") resulting from or arising in connection with entry upon the Permit Property by Company or Company's agents, employees, consultants, contractors or subcontractors pursuant to this Permit; except and to the extent caused by the gross negligence or willful misconduct of Indemnitees. This indemnity includes any claims, actions, or costs related to defense of any copyright, trademark, or software infringement that may occur due to or over the Permit Property. Company agrees to indemnify and hold City harmless for all environmental contamination or damage that may be caused by Company's usage of the Permit Property. Company's indemnification obligations set forth in this section shall survive the termination of this Agreement.

7. Release of Claims. Company hereby waives, releases, and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with entry upon the Permit Property by Company or Company's agents, employees, consultants, contractors

or subcontractors pursuant to this Permit, except and to the extent caused by the gross negligence or willful misconduct of Indemnitees.

8. Insurance. Throughout the Term of this Permit, Company and all contractors working on behalf of Company with respect to this Permit shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, or such other policy limit as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Permit, Company and all contractors, including subcontractors of every tier, working on behalf of Company with respect to this Permit shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Company and any contractor with whom Company has contracted for the performance of work on the Permit Property pursuant to this Permit carries workers' compensation insurance as required by law. Automobile liability policies shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds.

Throughout the Term of this Permit, Company shall maintain worker's compensation insurance in the amount required under applicable state law, covering Company's employees, if any, at work upon the Permit Property or engaged in services or operations in connection with the Permitted Activities or the Permit Property. Company shall require that any contract entered into by Company with respect to this Permit or the Permitted Activities include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

Companies writing the insurance required hereunder shall be licensed "on an Admitted or Non-Admitted bases" to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The deductibles under each of the policies issued for the required insurance shall be reasonable in amount and in no event shall exceed the sum of Ten Thousand Dollars (\$10,000.00) under each such policy. Prior to the Effective Date, Company shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal, except in the event of non-payment of premium a ten (10) day notice will be provided. Coverage provided by Company shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of City. Company shall provide City with certified copies of the required insurance policies upon City's request.

9. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant hereto shall be made in writing, and sent to the Parties at the addresses specified below, or such other address as a Party may designate by written notice delivered to the other Party in accordance with this section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- d. facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof; or
- e. email using the email addresses provided below, in which case notice shall be deemed delivered when receiver acknowledges receipt via email response, email read receipt option, or other method, such as by telephone; if receiver fails to acknowledge receipt within 72 business hours of delivery timestamp, sender may use other methods described in this Section to satisfy Notice requirement.

**City:** City of San Leandro  
835 East 14<sup>th</sup> St  
San Leandro, CA 94577  
it\_invoices@sanleandro.org

**Company:** Sail Internet, Inc.  
115 Everett Avenue  
Palo Alto, CA 94301  
Attn: Legal Department  
sailsupport@sailinternet.com

10. Entire Agreement; Amendments. This Agreement together with Exhibits A through E attached hereto and incorporated herein by reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statement with respect thereto. This Agreement may be amended only by a written instrument executed by the Parties hereto.

11. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

12. Waiver. A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall the delay or forbearance by either Party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning, and not strictly for or against any party, in order to achieve the objectives and purposes of the Parties.

14. Attorney's Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover reasonable attorney's fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

16. Governing Law and Venue. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

17. Assignment. Company shall have no right to sublicense, assign or transfer this Agreement, or rights arising under this Agreement, except, Company shall have the right to assign this Agreement (a) to an entity who controls, is under common control of, or is controlled by Company, or (b) any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of Company used to serve customers in the City of San Leandro.

**SIGNATURES ON THE NEXT PAGE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**COMPANY NAME: SAIL INTERNET, INC.**

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

Print Name: Kevin Fisher

Title: Chief Executive Officer

**CITY OF SAN LEANDRO:**

\_\_\_\_\_  
Fran Robustelli, City Manager

Attest

\_\_\_\_\_  
Leticia Miguel, City Clerk

Approved As To Form:

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

Exhibit A

**PERMIT PROPERTY**

(Attach legal description and map of Permit Property.)

The land referred to is situated in the County of Alameda, City of San Leandro, State of California, and is described as follows:

Exhibits B and C

ROOF SPACE and EQUIPMENT

See Installation Proposal Attachment. All equipment described herein may be replaced and upgraded from time to time pursuant to this Agreement.

**Installation Proposal Requires Approval from Public Works Director Prior to Installation**

## Exhibit D

### **DEFINITION OF HAZARDOUS MATERIAL, ENVIRONMENTAL LAWS**

As used in this Permit, the term “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

As used in this Permit, the term "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

### Exhibit E

- (a) Company shall be responsible, at its sole cost, for the construction, installation, and maintenance of the Equipment to be placed on the Roof Space. The area for the placement of the Equipment shall be as set forth on Exhibit B. No property other than the Equipment, and replacements thereof, shall be installed on the Roof Space. Company will install and operate the Equipment in compliance with City's technical standards, rules, and regulations and any other federal, state, or municipal agency having jurisdiction with respect to the Permit Property.
  
- (b) Company, at its expense, shall obtain all necessary governmental permits and certificates required for the construction, installation, authorization and use of the Equipment. City shall permit Company to arrange for the installation of telephonic and electrical connections, to be done at Company's expense (the "Connecting Equipment"). All such Connecting Equipment shall be installed in accordance with the engineering and design of the base building systems located at the Permit Property, as determined by City in its sole discretion. All construction, installations, alterations, repair and maintenance work shall be performed in a manner which will not unreasonably interfere with, delay or impose any additional expense upon City in the maintenance or operation of the Permit Property.
  
- (c) Company shall maintain the Equipment and keep it in good repair and shall keep the Roof Space free from all trash, debris and waste resulting from use of the Roof Space by its employees, contractors or agents.
  
- (d) Company agrees that the Equipment shall be of such types and frequencies that will not cause interference with: (1) the other communications equipment on the Permit Property (including replacements thereof of the same power and frequency) existing as of the Effective Date, (2) the basic telecommunications services of City or any of the other tenants located on the Permit Property, or (3) the business of City. In the event the Equipment causes such interference, notwithstanding any other provision in this Agreement to the contrary, Company shall promptly, as determined by the City, upon having notice of such interference (whether such notice, in writing or otherwise, is from City or other persons) take all steps necessary to correct and eliminate the interference in a reasonable and timely manner, including temporary disconnection and shut down of the Equipment causing the interference (except for intermittent operation for the purpose of correcting such interference) until such interference is eliminated. Company agrees that it will (with the assistance of consultants or employees with expertise in electronic communications) arbitrate any disputes between Company and other tenants concerning alleged interference by Company with other tenants caused by the Equipment, whether claimed to be caused by Company or such other tenants.

- (e) Company shall have access to the Roof Space and the Permit Property as agreed upon by City. Company shall give City reasonable prior notice of the need for access the Permit Property subject to such reasonable rules as City may adopt in its sole discretion, including, but not limited to, the requirement that an agent of City accompany persons during such access. Such access, by or on behalf of Company, shall in each case be arranged with City and shall be limited to persons expressly authorized by Company.

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