

RESOLUTION 2018-14
VILLAGE OF NEW RICHMOND, OHIO

Council for the Village of New Richmond, Ohio met in regular session this 9th day of OCT 2018 with the following members present:

Richard Feldkamp,
Melanie Slade,

Gary Skeene ,
~~Amanda Davidson,~~

Paul Vanderbosch,
Mary Allen

Councilperson Gary Skeene moved for adoption of the following:

A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO A SERVICES AGREEMENT WITH CINCINNATI BELL FOR PHONE AND FIBER OPTIC INTERNET SERVICES

Whereas: The Village of New Richmond desires to have fast and reliable phone and internet services for Police Department and Administrative offices at 102 Willow Street, and

Whereas: Cincinnati Bell was the lowest most responsive bidder with a bid in the amount of \$985.74 per month.

NOW THEREFORE BE IT RESOLVED, by the Council of the Village of New Richmond, State of Ohio a majority of the members concurring:

1. Authorizes the Village Administrator to execute a services agreement with Cincinnati Bell Telephone Company LLC in the amount of \$985.74 per month for a term of 36 months as further described in attached Services Agreement marked "Exhibit A"
2. That Council finds and determines that all formal actions relative to the passage of this resolution were taken in an open meeting and that all deliberations of Council which resulted in the passage of this resolution were taken in meetings open to the public, in full compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Councilperson Mary Allen seconded the motion to adopt the foregoing resolution and upon roll call the vote was as follows:

Paul Vanderbosch Yes
Melanie Slade Yes
Amanda Davidson ABSENT
Mary Allen Yes
Gary Skeene Yes
Richard Feldkamp Yes

Adopted:

Date: 10-09-18

ATTEST:

Theresa A. Leigh
CLERK of COUNCIL, Theresa Leigh

Ramona Carr
MAYOR, Ramona Carr

Approved as to form and content:

SS
SOLICITOR, Scott Sollmann

SERVICES AGREEMENT

EXHIBIT "A"

Resolution 2018-14

Agreement Number: 01570638

Customer			Service Provider		
Village Of New Richmond			Cincinnati Bell Telephone Company LLC ("Cincinnati Bell")		
Address			Address		
102 Willow Street			221 East Fourth Street P.O. Box 2301		
City	State	Zip Code	City	State	Zip Code
New Richmond	OH	45157	Cincinnati	OH	45201


THIS CINCINNATI BELL SERVICES AGREEMENT IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND APPLICABLE SERVICES SUPPLEMENTS ATTACHED HERETO (COLLECTIVELY "TERMS AND CONDITIONS"). CINCINNATI BELL'S STANDARD TERMS AND CONDITIONS AND SUPPLEMENTS ARE AVAILABLE AT WWW.CINCINNATIBELL.COM/BUSINESS/LEGAL. BY EXECUTING THIS CINCINNATI BELL SERVICES AGREEMENT WHERE INDICATED BELOW, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ, UNDERSTANDS, ACCEPTS AND AGREES TO BE BOUND BY ALL SUCH TERMS AND CONDITIONS. CUSTOMER'S SIGNATURE ACKNOWLEDGES AUTHORIZATION FOR CINCINNATI BELL TO REQUEST CREDIT INFORMATION FROM ANY CREDIT REPORTING AGENCY OR SOURCE.

NOTES:

- The term "Cincinnati Bell" shall be deemed to mean the Service Provider on behalf of itself and its' affiliates.
- The Agreement shall become effective on the latter of the provisioning or activation date ("Effective Date").
- In addition to the Services Agreement charges, Customers will incur all regulated charges mandated by the Regulatory Commissions with jurisdiction over Cincinnati Bell. ADSL, Dedicated FUSE Internet Access, Everage and Emerge services are not subject to Regulatory Commission jurisdiction.
- All prices and rates are exclusive of any surcharges and taxes.
- Installation/One-time charge does not cover premise technician work outside of the hours of 8 a.m. to 5 p.m.
- The service products, prices and terms identified on this Services Agreement constitutes Cincinnati Bell's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate above, Cincinnati Bell reserves the right to rescind this offer at any time, at its' sole discretion.
- Facsimile signatures to this Services Agreement and any additional documents incorporated herein shall be deemed to be binding upon the parties.

VILLAGE OF NEW RICHMOND

CINCINNATI BELL

Signature of Authorized Representative:	Signature of Authorized Representative:
	
Printed Name: Ramona Carr	Printed Name:
Title: Mayor	Title:
Date: 10-09-18	Date:

SERVICE PRICING

ID	Service	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
1	Service Address: 102 Willow St., NEW RICHMOND, OH 45157USA					
1.1	Product: Metro Ethernet Order Type: Migration Contract Term:36 months					
1.1.1	CB Ethernet Services 10 Mbps Initial	1	\$250	\$0	\$250.00	\$0.00
1.1.2	CB Ethernet Services- 10M Bronze QoS	1	\$0	\$0	\$0.00	\$0.00
1.1.3	CB Ethernet Services eVolve, voice PVC/VLAN	1	\$0	\$0	\$0.00	\$0.00
1.2	Product: Business Connections Order Type: Renewal Contract Term:36 months					
1.2.1	Business Connections	3	\$30	\$0	\$90.00	\$0.00
1.3	Product: Emerge Order Type: Renewal Contract Term:36 months					
1.3.1	Emerge Premium User - w/Voicemail	3	\$12.25	\$0	\$36.75	\$0.00
1.3.2	Emerge Standard User - w/Voicemail	7	\$9	\$0	\$63.00	\$0.00
1.3.3	Emerge Basic User - no Voicemail	2	\$6	\$0	\$12.00	\$0.00
1.3.4	Polycom VVX 311 IP Phone Rental	12	\$9	\$0	\$108.00	\$0.00
1.3.5	Emerge Starter Kit - (up to 18 users) QoS Router - 24 Port switch	1	\$136	\$0	\$136.00	\$0.00
1.3.6	Emerge Starter Kit without T1 - (up to 18 users)- includes group features and functionality	1	\$100	\$0	\$100.00	\$0.00
1.4	Product: Fioptics Order Type: Acquisition - New Contract Term:36 months					
1.4.1	Fioptics HSI - 100Mb/50Mb	1	\$99.99	\$0	\$99.99	\$0.00
1.5	Product: Business Line Order Type: Renewal Contract Term:36 months					
1.5.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00
2	Service Address: 701 Washington St., NEW RICHMOND, OH 45157USA					
2.1	Product: Business Line Order Type: Renewal Contract Term:36 months					
2.1.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00
3	Village Of New Richmond,900 Old Us Highway 52,NEW RICHMOND,OH 45157USA					
3.1	Product: Business Line Order Type: Renewal Contract Term:36 months					
3.1.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00

Total Monthly Recurring Charge

\$985.74

Total One-Time Charge

\$0.00

Customer Initials

Date

FLAT BUSINESS LINE - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Flat Business Line - Flat rate analog business line. A phone line for which Customer pays a single monthly charge for and on which the Customer may make as many local phone calls as the Customer wishes during a month.

3. SERVICES AND RATES.

3.1. Flat Business Line service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Flat Business Line service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Flat Business Line service.

4. TERMINATION CHARGES.

4.1. In the event that Flat Business Line service under this Agreement is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

4.2. If nonrecurring charges associated with the installation of Flat Business Line service are waived and the Flat Business Line service is then terminated prior to the expiration of the Initial Term, the Customer will become liable for payment of the waived charges.

BUSINESS CONNECTIONS - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Business Connections - one flat rate analog business line with the following optional features: call waiting, call forward variable, 69 – call return, 60 – call block, 66 – repeat dialing, voice mail box, call forwarding (i) busy line; (ii) don't answer; (iii) busy line second path; or (iv) don't answer second path, per line privacy, anonymous call rejection, message waiting indication, hunting, three way calling, caller ID number, caller ID name, speed dialing - 8, speed calling - 30, distinctive ring 1 and distinctive ring 2.

3. SERVICES AND RATES.

3.1 Business Connections service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Business Connections service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Business Connections service.

4. TERMINATION CHARGES.

4.1 In the event that the Business Connections service is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

4.2. If nonrecurring charges associated with the installation of Business Connections service are waived and the Business Connections service is then terminated prior to the expiration of the Initial Term, the Customer will become liable for payment of the waived charges.

EVOLVE EMERGE - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. This Agreement shall govern the services set forth within this Services Supplement from the Service Activation Date (as noted in the Billing Section below) for the period of time specified on the Services Agreement ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) days period, Customer shall be deemed to accept the rate adjustment. In the event there are multiple Service Activation Dates, the Term for each respective service shall commence as of the respective Service Activation Date and continue for the period of time specified on the Services Agreement.

1.2. Service orders submitted under this Agreement will have a Minimum Term per the Services Agreement.

2. DEFINITIONS.

2.1. Internet - A Network of Global Computers as defined in 1996 running on Transmission Control Protocol (TCP), on top of Internet Protocol Version Four (IPv4).

2.2. Evolve Emerge FUSE Internet Access - the engineering, configuration, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect Customer's network to the Evolve Emerge FUSE Internet Access network for passage to the Internet for data transmission as part of the Service described in this Agreement.

2.3. Local Area Network - A network connecting computers and other peripheral equipment for data communications over a limited geographical area, usually within a single building or among a few buildings.

3. BILLING.

3.1. Cincinnati Bell shall send notice to Customer that service is ready for commercial use ("Service Activation Date") and billing will commence within five (5) business days thereafter. Pricing on Services Agreement does not include charges for taxes, fees, and surcharges, which shall be included in the invoices. Cincinnati Bell reserves the right to examine Customer's credit record and to require a deposit or other security, including payment by credit card, before it provides or continues Service to Customer. Cincinnati Bell will determine, at its discretion, how Customer's deposit or other security will be allocated to satisfy outstanding amounts owed by Customer to Cincinnati Bell. By subscribing to the Service, Customer authorizes Cincinnati Bell to investigate Customer's creditworthiness and agrees, from time to time, to provide appropriate authorizations and financial information as Cincinnati Bell may reasonably request for this purpose.

4. INTERSTATE/INTRASTATE LONG DISTANCE USAGE RATE.

4.1. In consideration for Customer's Service, Cincinnati Bell will provide a block of domestic outbound minutes commensurate with the Service at no charge as set forth in the Services Agreement. The interstate/intrastate voice usage rate stated on the Services Agreement applies to Customer's interstate/intrastate long distance service terminating in the continental United States that is in excess to those minutes included in the monthly recurring rate for the tier selected.

5. INTERNATIONAL VOICE USAGE RATES.

5.1. Cincinnati Bell's international voice service usage rates, which vary by country, are subject to change upon three (3) days written notice. To view the international voice service usage rates, please visit CincinnatiBell.com or the specified web address as follows: http://www.cincinnatiBell.com/business/long_distance/international_rates/.

6. CALL INCREMENTS AND ROUNDING.

6.1. Non-calling card interstate and intrastate outbound and inbound calls are billed in thirty (30) second increments with six (6) second additional increments thereafter. International outbound with the exception of Mexico will be billed in thirty (30) second increments with six (6) second additional increments thereafter. Calls to Mexico will be billed in sixty (60) second increments with sixty (60) second additional increments thereafter. All calls are rounded up to the nearest cent.

7. SCOPE.

7.1. Cincinnati Bell (i) shall use reasonable commercial efforts to commence provisioning of services to Customer on or before the Service Activation Date, which is scheduled to be the first date of order activation; and (ii) is authorized to act as Customer's agent in placing orders with other carriers in order to provide telecommunications services, if requested. Usage charges shall be based on (i) the rates for services set forth herein, as applicable; and (ii) actual usage of Cincinnati Bell's network from establishment of a connection between the calling telephone and the called telephone to termination, as determined in Cincinnati Bell's sole discretion.

8. SHORT DURATION CALL PENALTY.

8.1. Notwithstanding anything to the contrary herein, if the percentage of the Customer's completed calls are equal to or less than six (6) seconds in length for any billing cycle meets or exceeds ten percent (10%), Cincinnati Bell may charge an additional \$0.02 for each Short Duration Call during such billing cycle (excluding those Short Duration Calls under the Short Duration Percentage Threshold).

9. NO RESALE.

9.1. Services provided hereunder are for Customer's own use and shall not be resold or provided to third parties.

10. AUTOMATIC DIALER DEVICES.

10.1. Customer acknowledges and agrees that use of auto dialers, predictive dialers or other devices that generate automated outbound calls in conjunction with products and services provided under this Agreement is strictly prohibited. Cincinnati Bell may, in its sole discretion, suspend service for issues pertaining to network congestion due to Customer's use of these devices, revise the pricing herein, or terminate service under this Agreement immediately.

11. MAINTENANCE CHARGES AND ANCILLARY FEES.

11.1. Cincinnati Bell shall maintain its network; however, if Customer requests Cincinnati Bell to send maintenance personnel to perform troubleshooting, who determines that the maintenance required was caused by Customer or Customer's equipment, additional charges will apply.

12. DISCLAIMER OF EMERGENCY 9-1-1 SERVICES.

12.1. Customer is hereby advised that the service, including Emergency 9-1-1 Service, will not function if the customer handset or equipment is moved from the physical address/registered location where service was installed by Cincinnati Bell. Customer is hereby advised that Emergency 9-1-1 Service will not function or be available to customer with the loss of electrical power or if the FUSE Internet Access connection is not operational. Depending on the Customer's location, the type of handsets and other equipment Customer uses, the type of equipment used by the public safety access point or other applicable emergency services provider, and the circumstances and conditions of a particular call, Customer may not be connected or Customer's phone number and/or location may not be identifiable to emergency service providers. Customer signature to this contract will serve as acknowledgement that Cincinnati Bell has advised customer of these limitations and that Customer accepts the services with these limitations. In addition to the limitations of liability contained in Federal Law and relevant State Statutes, Cincinnati Bell shall not be liable for any damages or other relief arising out of delays, mistakes, omissions, interruptions, misrouting of 9-1-1 calls, errors or defects in performance (including, but not limited to, problems with or outages of equipment) hereunder.

13. PROVISION OF EVOLVE EMERGE FUSE INTERNET ACCESS.

13.1. The provisioning of Evolve Emerge FUSE Internet Access will include the maintenance and repair required to maintain the Evolve Emerge FUSE Internet Access service in proper working order on Cincinnati Bell's side of the Demarcation Point.

13.2. Evolve Emerge FUSE Internet Access will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Evolve Emerge FUSE Internet Access. Cincinnati Bell reserves the right to perform these tasks, as needed, during the off-peak hours, normally on Sundays from 12:00 a.m. to 6:00 a.m. Downtime due to scheduled maintenance is not subject to the Repair and Response policies in the Scope Section. If maintenance affects Customer, Cincinnati Bell will use reasonable efforts to notify Customer in advance.

13.3. Cincinnati Bell may assign to Customer one (1) usable Internet Protocol (IP) address for Any Distance Dedicated Internet Access Service. In addition, Customer may request additional IP addresses (\$4/additional IP) by completing and submitting Cincinnati Bell's IP Justification Form. Cincinnati Bell does not guarantee additional IP Addresses will be provided and reserves the right to deny any request for additional IP addresses. If it is deemed the Customer is not using IP addresses in compliance with the American Registry for Internet Numbers (ARIN) standards, Cincinnati Bell shall have the right to immediately reclaim such IP addresses.

13.4. Unless otherwise agreed in writing, Cincinnati Bell will provide Evolve Emerge FUSE Internet Access service for TCP/IP based communication protocols for transmission across the Internet only.

13.5. The electrical signals of Evolve Emerge FUSE Internet Access will operate in compliance with the following American National Standard Institute ("ANSI") or IEEE standards for Ethernet LANs operating at a Native Mode of 10/100 Mbps, IEEE Standard 802.3 (Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications).

14. CUSTOMER OBLIGATIONS.

14.1. Customer acknowledges billing for Service will commence when Cincinnati Bell's transport facility is provisioned and facility channels are turned up for local service per terms outlined in the Billing Section of this Supplement.

14.2. Customer will furnish, at its expense, such space, electrical power and environmental conditioning at Customer's premises as Cincinnati Bell may reasonably require in connection with performing its obligations hereunder. Customer will permit Cincinnati Bell reasonable access to Customer's premises, in accordance with Customer's normal security procedures, in connection with providing Service hereunder.

14.3. The Customer is responsible for communicating with its Phone and IT Vendors about any Service change and ensuring the Phone and IT Vendors are present at the proposed time and date of the Service cutover. Cincinnati Bell will give the Customer five (5) days prior notice of the actual cutover date to ensure enough time is given to the Customer to coordinate with their Phone and IT Vendors. Cincinnati Bell is not responsible for any configuration to the Customer's phone system or any data network re-configuration. The cost of phone and network re-configuration will be the sole responsibility of the Customer. If the Customer does not have an IT or Phone Vendor, Cincinnati Bell will provide a quote to perform services or will assist with referring the Customer to a Cincinnati Bell approved Vendor. A late fee of \$150.00 will be billed to the Customer for cutover date changes made by the Customer that are not communicated in writing (email) and received by Cincinnati Bell forty-eight (48) hours in advance of scheduled cutover date.

14.4. Customer will provide, install and maintain, at its expense, all equipment and facilities necessary for LAN interconnection on the Customer's side of the Demarcation Point. Customer shall be responsible for insuring that the operating characteristics of such equipment and facilities are compatible with Cincinnati Bell's Evolve Emerge Service.

14.5. Customer will cause its electrical signals at the Demarcation Point to conform to the applicable ANSI or IEEE standards set forth in Section 13.6, above. Customer shall furnish any additional equipment or facilities necessary to comply with such standards at their expense.

14.6. Without the prior written consent of Cincinnati Bell, Customer will not access, or attempt to access, any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement. Customer agrees to use Internet access only for lawful purposes. Any content that Cincinnati Bell in its sole discretion considers being obscene, lewd, lascivious, filthy, excessively violent, harassing, harmful, offensive or otherwise objectionable Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Similarly, conduct by Customer that in Cincinnati Bell's sole discretion restricts or inhibits any other Internet Service Provider, subscriber, person or entity from using or enjoying the Service or any other service provided will not be permitted and Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Examples of such conduct include, but are not limited to, sending of Unsolicited Commercial Email (UCE), Unsolicited Bulk Email (UBE) or "SPAM", Commercial advertisements in USENET News groups not intended for that purpose, attempts to access remote computing systems without permission, port scanning and any attempts to subvert any network security measures of the Service or any other network. Customer will indemnify and hold harmless Cincinnati Bell, its officers, directors, employees and agents, from and against any loss or expense, of whatever nature, arising out of any unauthorized access to any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement.

14.7. Prior to requesting repair service from Cincinnati Bell, Customer will use its best efforts, including but not limited to performing reasonable diagnostic tests, to verify whether any trouble with the Service is a result of the Customer's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's equipment or facilities. Customer will cooperate with any joint testing of Service reasonably requested by Cincinnati Bell.

14.8. Client agrees to comply with Cincinnati Bell's policies respecting the Service as provided from time to time, or to which Customer is directed when using the Service. While using the Service, Client shall not transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or Cincinnati Bell's policies. In addition, without incurring liability, Cincinnati Bell may immediately and without notice: (i) discontinue or suspend the Services; (ii) cancel a request for Services; or (iii) temporarily block Service to a particular authorization code, if it deems such action is necessary, either to prevent Improper Use or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

15. PROCEDURES REGARDING THIRD PARTY COMPLAINTS.

15.1. If Cincinnati Bell receives a complaint that any content provided by Customer through the use of the Service, or provided by any party using Customer's account as permitted by this Agreement, infringes any copyright, trademark, service mark, or other intellectual property right of any third party; or constitutes fraud, false advertising, or misrepresentation; or constitutes libel, slander, or invasion of the right of privacy or publicity of any third party; or otherwise violates the terms of this contract; Cincinnati Bell reserves the right to take appropriate action including, without limitation, (i) taking down the offending material in compliance with the Digital Millennium Copyright Act, 17 U.S.C. § 512, (ii) removing or disabling Customer's access to the Service, and/or (iii) terminating Customer's Subscription, with or without prior notice to Customer.

16. TITLE TO EQUIPMENT AND FACILITIES.

16.1. All equipment and facilities used by Cincinnati Bell in providing Service hereunder will remain the sole property of Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the Parties with respect to specific equipment.

17. ACCEPTABLE USE.

17.1. If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any Content that it, in its sole discretion, considers to be obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable, Cincinnati Bell shall have the right, but not the responsibility, to immediately remove such Content and/or to terminate Service without notice. This policy applies to any Content made available by Customer, Customer's clients, or generally made available through Customer account. Customer is solely responsible for all information, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "Content") that is transmitted through the Customer Account and/or make available on or through the Customer Web site or any of the Customer's clients web sites.

18. SUSPENSION OR RESTRICTION OF SERVICE.

18.1. Cincinnati Bell may suspend or restrict the use of Service (i) upon prior notification if the operations or efficiency of the Service is impaired by the use of the Account; or (ii) at any time any amount is past due from Customer to Cincinnati Bell; or (iii) at any time there has been or is any breach of these Terms and Conditions. Cincinnati Bell shall have no responsibility to notify any third party of such termination or suspension.

19. SERVICE LEVEL AGREEMENT.

19.1. The standards described herein do not include periods of non-attainment resulting in whole or in part from one or more of the following causes: (i) Any act or omission by Customer, its contractors, agents, or any other entity over which Customer exercises control or has the right to exercise control; (ii) Scheduled maintenance; (iii) Labor strikes; (iv) Force Majeure events; (v) Any act or omission on the part of a third party; (vi) First month of Service for this particular service element.

19.2. Cincinnati Bell guarantees the availability of Customer's voice and data network, where applicable, through the Evolve Emerge network, the Public Switched Telephone Network, and to the Internet 99.9% of the time. This availability will be determined by verification that Customer's network is "reachable" 99.9% of the times checked from the furthest point in the Evolve Emerge network. For each 0.1% below the 99.9% stated availability, Cincinnati Bell will credit Customer 10% of monthly recurring charges up to 30% in total.

19.3. Cincinnati Bell will use its best efforts to repair any inoperable Voice or FUSE Internet Access port within four (4) hours after Customer has notified Cincinnati Bell that such port is inoperable by opening a trouble ticket with Evolve Emerge repair. If such port remains inoperable for more than eight (8) hours after Customer has notified Cincinnati Bell that such port is inoperable, Cincinnati Bell will credit Customer's account for an amount equal to one-thirtieth (1/30) of the applicable monthly charge for such port. The same credit will apply for each additional eight (8) hour period that the port remains inoperable.

19.4. The total amount of all credits for any one inoperable port will not exceed the monthly port charge for such inoperable port. The credit referred to herein shall be Cincinnati Bell's entire liability and Customer's exclusive remedy for any damages resulting from such inoperable port.

19.5. Cincinnati Bell is providing a clear channel T1 or Metro Ethernet Services, on which the Customer can run multiple applications - voice and data. Voice is given priority across the network. If the Customer is installed using G.711 (uncompressed voice), the Customer will use approximately 80 Kbps per active call. If G.729 (compressed voice) is used, the Customer will use approximately 32 Kbps per active call. When no voice calls are present, all of the bandwidth will be available for Data applications. Cincinnati Bell refers to this as Dynamic Bandwidth Allocation.

20. MOVE/CHANGE OF SERVICE LOCATION.

20.1. If a Customer moves their business to another location within Cincinnati Bell's operating territory (Cincinnati/Northern KY/Dayton markets only) prior to the expiration of the then current Term, the Agreement will move with them, however, the Customer will pay for all standard installation and Service charges associated with moving the Service ("Move Charges"). The Agreement will continue with the original expiration date and rate structure. Termination charges will apply if Customer terminates any of the existing Service. In the event the Customer is in the Agreement for more than twelve (12) months prior to requested move, Customer may resign a new thirty-six (36) month term and Cincinnati Bell will waive the associated Move Charges.

20.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Evolve Emerge Service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the Service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

21. TERMINATION CHARGES.

21.1. Either Party may terminate this Agreement or disconnect, in whole or in part, any services hereunder at any time and without cause upon thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if Customer terminates any Service for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the end of the then-current Term, Customer shall (i) reimburse Cincinnati Bell for all waived costs of the implementation of such Service(s) and (ii) pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

FIOPTICS HIGH SPEED INTERNET - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Fioptics High Speed Internet Service - the Cincinnati Bell brand name for High Speed Internet Service using fiber. It includes FUSE as the ISP and one Dynamic IP address. Fioptics High Speed Internet Service is available in various speeds. (1) Static IP address or (5) Static IP addresses can be purchased for an additional monthly fee.

3. SERVICES AND RATES.

3.1. Fioptics High Speed Internet service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested installation, addition, rearrangement, relocation or other modification to Internet service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Internet service.

4. BILLING.

4.1. Customer agrees to timely pay all monthly bills. Any amount outstanding after the due date on the Customer bill shall be deemed a "past due balance". In the event of a disagreement about a Customer bill, Customer may contact Cincinnati Bell Customer Care at 513-566-5050. Customer satisfaction is of the utmost importance to Cincinnati Bell, and it is our policy to fully investigate and resolve, to our satisfaction, all customer billing disagreements lodged within 60 days of the original due date.

4.2. Late payment fees will: (i) be assessed on any past due balance; (ii) be calculated as 2% of the past due balance if the past due balance includes regulated products or the greater of \$8.95 or 2% of the past due balance if the past due balance does not include regulated products; and (iii), will be added to the past due balance and included in future billing cycles.

5. COMPUTER / EQUIPMENT REQUIREMENTS.

5.1. In order to receive Fioptics High Speed Internet Service, Customer must have minimum computer requirements. Current information can be found on the cincinnatiBell.com website or through a Cincinnati Bell sales representative.

5.2. The following equipment must be used in order to receive Fioptics: (1) Fioptics Modem (provided by Cincinnati Bell); and if needed: (2) telephone line microfilters (provided by Cincinnati Bell). Customer agrees that all of the Equipment listed belongs to Cincinnati Bell. Cincinnati Bell grants the Customer a non-exclusive, non-transferable limited license to use the Equipment to access Cincinnati Bell's network only for use in connecting from authorized locations in accordance with this Agreement. Loss, theft or physical damage to the Equipment is the Customer's responsibility.

6. ACCESS TO FIOPTICS EQUIPMENT, SOFTWARE AND/OR FACILITIES.

6.1. Customer agrees that they will not access, or attempt to access any equipment, software (including reverse engineering, decompiling or disassembling the software or attempting in any manner to recreate the source code or object codes) or facilities (including remote computing systems) furnished in connection with this Agreement. Any attempt by Customer to access and/or subvert any such equipment, software or facilities without permission, and/or any attempts by Customer to subvert any network security measures of Cincinnati Bell or any other network shall entitle Cincinnati Bell to immediately terminate services without notice.

7. NETWORKING.

7.1. Due to the ever-growing complexity of networked computers, the Cincinnati Bell Helpdesk cannot advise or assist with general networking setup. Customer inquiries will be directed to 3rd party computer technicians and network equipment manufacturers. During troubleshooting sessions where networked computers are present, the Cincinnati Bell Helpdesk technician will ask the Customer to disconnect their networked equipment from the Cincinnati Bell equipment, and directly connect the Cincinnati Bell hardware to one Windows based or Macintosh PC. Doing so will help the technician diagnose issues with the Cincinnati Bell equipment at the customer's premise(s). Failure to comply with the Cincinnati Bell technician's request in this matter will release Cincinnati Bell's responsibility for further diagnosis.

8. Service Speed

8.1 ZoomTown and Fioptics Services come in a variety of speeds. The availability of some service speeds may depend on the location of facilities in your neighborhood and on your street. Not all service speeds are available in all areas.

8.2 Cincinnati Bell does not guarantee that the Service, Equipment, or other equipment authorized by Cincinnati Bell for use in connection with the Service will perform at a particular speed, bandwidth, or data throughput rate, or will be uninterrupted, error-free, secure, or free of viruses, worms, disabling code or conditions, or the like. The speed measurement advertised by Cincinnati Bell refers to the Internet access speed provisioned to a subscriber on a per-line and not a per-device basis.

8.3. The actual speed realized by the subscriber may vary based on a variety of factors including, but not limited to: the capabilities or limitations of the customer's computer, network, or other device; the number of computers or other devices in use in the customer's home network; concurrent use of Internet access and a TV video on demand service, which consumes Internet access bandwidth; the means of connecting to the Cincinnati Bell network (e.g., the condition of the home's inside wiring or the type and condition of WiFi router); the distance of the home from the Cincinnati Bell broadband network aggregation point or the type of Cincinnati Bell network facilities present in a given location; network congestion; and the performance of the content and application providers the consumer is accessing, as well as the performance of their respective host network(s).

9. WARRANTIES.

9.1. The manufacturers warrant the Fioptics modem and Telephone Line Microfilters for one-(1) year from initiation of service ("Manufacturer's Warranty"). Except for the Manufacturer's Warranty, the Equipment is provided on an "as is" basis without warranties of any kind, either express or implied, including the implied warranty that the Equipment is reasonably fit for the purpose for which it is to be used and the implied warranties of merchantability and fitness for a particular purpose, unless such warranties are legally incapable of exclusion.

10. ACCEPTABLE USE.

10.1. If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any content that it, in its sole discretion, considers to be obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable, Cincinnati Bell shall have the right, but not the responsibility, to immediately remove such content and/or to terminate Customer service without notice. This policy applies to any content made available by the Customer, the Customer's own customers, or generally made available through the Customer account. Customer is solely responsible for all information, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "content") that is transmitted through the Customer Account and/or made available on or through the Customer's website or any of Customer's own customer's websites.

11. COMPLIANCE WITH DIGITAL MILLENNIUM COPYRIGHT ACT.

11.1. Customer agrees to fully comply with all provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") and to fully cooperate with Cincinnati Bell in its efforts to comply with the DMCA. Cincinnati Bell may investigate any reported violation of its policies or complaints of infringement relating to Customer's use of the service and take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of Customer's Account and access to the Service. In the event that Customer believes that any third party has infringed on any copyrighted material of theirs, Customer shall provide Cincinnati Bell with notice in compliance with the provisions of the DMCA. Furthermore, Customer agrees that Cincinnati Bell shall have no liability until such time as such notice has been actually received. If Cincinnati Bell receives a valid notice that Customer's use constitutes alleged infringement, Cincinnati Bell will take action consistent with the requirements of the DCMA, including but not limited to terminating Customer's Account and access to the Service. See http://www.cincinnati-bell.com/customer_support/policies/dmca/ for more details.

12. TERMINATION CHARGES.

12.1. In the event that Fioptics High Speed Internet Service under this Agreement is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

12.2. All terminations in Fioptics High Speed Internet Service will result in IP addresses assigned to Customer(s) reverting back to Cincinnati Bell.

ETHERNET- TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the initial term as stated on the Services Agreement sheet, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods unless either party terminates this Agreement by providing thirty (30) days advance written and/or verbal notice of termination to the other party prior to the expiration of the then-current term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the initial term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written and/or verbal notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS.

2.1. Ethernet. The engineering, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect multiple LANs to form a MAN for data transmission.

2.2. Customer's location. A location specified by the Customer for the purposes of terminating network such as the Customer's premises or the building where the off-premises extension terminates.

2.3. Demarcation Point. The point of physical separation of Cincinnati Bell's network, and associated responsibilities, from Customer's network and associated responsibilities. The location of the Demarcation Point shall be the physical interface for Ethernet service presented by Cincinnati Bell to Customer.

2.4. Local Area Network (LAN). A network connecting computers and other peripheral equipment for data communications over a limited geographical area, usually within a single building or among a few buildings.

2.5. Metropolitan Area Network (MAN). A network connecting computers and other peripheral equipment for data communications over a larger geographical area than a LAN, usually within a city or region.

2.6. Permanent Virtual Circuits (PVC). A static logical connection used in packet and cell switched networks between two end points. Permanent Virtual Circuits support long-term ongoing connections between data termination equipment. Permanent logical paths are assigned exclusively to each permanent circuit in the network.

2.7. Quality of Service (QoS). Defined as a way to prioritize service for applications that are sensitive to latencies or delays. It is the primary form of intelligent bandwidth management that allows service levels to be specified for different traffic types.

2.8. Unprotected Ethernet. The standard Ethernet service.

2.9. Virtual LAN (VLAN). A static logical connection used in packet networks for point-to-point, point-to-multipoint, and multipoint-to-multipoint. Virtual LANs support long-term ongoing connections between data termination equipment. Permanent logical paths are assigned exclusively to each VLAN in the network, and are enforced by using VLAN Tagging.

2.10. VLAN Tagging (802.1q). A way to label different traffic types so they may be differentiated from each other. It is another form of intelligent bandwidth management that can allow service levels for different traffic types.

3. SERVICES AND RATES.

3.1. Ethernet service will be provided as specified on the attached Pricing Agreement.

3.2. Customer may move the location of its Ethernet service to a location where sufficient central office capacity and outside plant facilities are available and retain the current contract term and monthly rates, but initial nonrecurring charges will be reapplied. The termination charges outlined in this Supplement are applicable if Customer terminates this Agreement because of a move to a location where sufficient central office capacity or outside plant facilities are not available.

3.3. Customer will be responsible for all taxes, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Customer may add additional ports to its Ethernet service at the rates in effect at the time of such addition, provided Cincinnati Bell has sufficient existing equipment capacity and outside plant facilities to support such addition. If sufficient equipment capacity or outside plant facilities are not available, Customer will be responsible for any special construction or other charges required adding such additional port(s) to its Ethernet service.

3.5. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Ethernet service.

4. PROVISIONING.

4.1. Cincinnati Bell will provide Ethernet service for one or more of the following types of LANs, as specified by Customer on the attached Services Agreement: Ethernet LANs operating at a variety of speeds. Permanent Virtual Circuits (PVC) and/or VLANs, facilities redundancy, and other "optional" features relating to Ethernet are also available to Customer at rates, terms and conditions to be agreed upon.

4.2. Cincinnati Bell will provision Ethernet service in proper working order on Cincinnati Bell's side of the Demarcation Point by the agreed upon installation date. Customer will provide appropriate environmental conditions for Cincinnati Bell's customer premise equipment, which shall include, but not be limited to the following: 110/125 volt AC; 15 or 20 amp non switched circuit on UPS, if possible; Standard 110 3 – prong grounded outlet. Temperature between 40 and 100 degrees F. Humidity between 5% and 90% non-condensing. Security Access to this space that houses the Ethernet Service equipment must be restricted to authorized personnel only

4.3. Ethernet will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Ethernet. Cincinnati Bell reserves the right to perform these tasks, as needed, during the off-peak hours, normally on Sundays from 12:00 a.m. to 6:00 a.m. Cincinnati Bell will attempt to notify the Customer in advance according to the attached Ethernet Service Agreement.

4.4. If a major outage to Cincinnati Bell's network occurs, including Ethernet, Cincinnati Bell will use reasonable efforts to restore Ethernet service as soon as reasonably possible, subject to any federal or state laws or regulations that may specify priority for restoration of telephone service, including without limitation, the National Security Emergency Preparedness Telecommunications Service Priority System.

4.5. Cincinnati Bell will furnish Customer with a telephone number, which Customer will use to report any trouble with Ethernet.

4.6. Unless otherwise agreed in writing, Cincinnati Bell will provide Ethernet service for data transmission only.

4.7. The electrical signals of Ethernet operate in compliance with the following American National Standard Institute ("ANSI") or IEEE standards for Ethernet LANs operating at a Native Mode of 384 Kbps, 768 Kbps, 1.544 Mbps, 3 Mbps, 4.5 Mbps, 6 Mbps, 10 Mbps, IEEE Standard 802.3 or 100 Mbps and 1000 Mbps (a.k.a., GigE or 1 Gigabit), IEEE Standard 802.3u (Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications).

4.8. Ethernet supports the following interfaces: (i) RJ45 10 base T and 100 base T connections, for Ethernet LANs operating at a variety of speeds, and (ii) SX or LX Gigabit Interface Connectors for Ethernet LANs operating at a Native Mode of 1000 Mbps (a.k.a., GigE or 1 Gigabit). The standard equipment setting for a 1.5Mbps to 10Mbps circuit is 10Mbps full duplex setting. Circuit speed greater than 10Mbps, but, less than 100Mbps will be hard-coded 100Mbps full duplex setting. Gig-E speed is set at auto-negotiate.

4.9. An initial port is required in order to provide Ethernet to a Customer's location. Additional ports are only available to a Customer's location with at least one initial port.

4.10. Additional port discounts do not apply to different Customers at the same location.

4.11. The Customer must subscribe to the initial port in order to subscribe to an additional port. If the initial port is terminated at a Customer's location, then all Ethernet service will be terminated at that location unless Customer wants to re-specify one of the additional ports as the initial port with the appropriate rates applied. An additional port can be terminated without terminating the initial port to a Customer's location.

4.12. If the Customer subsequently orders an additional port and the contract period for the initial port has not expired, then the following applies: a) the contract period selected for an additional port must be equal or shorter than the remaining contract for the initial port or b) the contract period for the initial port will be extended to be coterminous with the contract period selected for the additional ports.

4.13. Customer shall provide an estimate of the percent of Ethernet traffic traversing the contracted Cincinnati Bell network to a carrier's long haul network and terminates to interstate locations. This traffic excludes internet access and traffic that is exclusively local or intra-state. Customer shall provide this information upon request by completing an online form provided by Cincinnati Bell. If Customer does not provide this information, Cincinnati Bell will consider all of Customer's traffic to be interstate.

5. REPAIR – RESPONSE TIME.

5.1. Cincinnati Bell will use its best efforts to repair any inoperable Ethernet port within four (4) hours after a reactive or proactive trouble ticket is opened with Cincinnati Bell that such port is inoperable. If such port remains inoperable for more than eight (8) hours after a trouble ticket has been opened, Cincinnati Bell will credit Customer's account for an amount equal to one-thirtieth (1/30) of the applicable monthly charge for such port. The same credit will apply for each additional eight (8) hour period that the port remains inoperable. The total amount of all credits for any one (1) inoperable port will not exceed the monthly port charge for such inoperable port. The credit referred to herein shall be Cincinnati Bell's entire liability and Customer's exclusive remedy for any damages resulting from such inoperable port.

5.2. Performance Standards of the Ethernet Network are as follows: Mean time to respond at the port level: 30 minutes and Mean time to repair at the port level: 2 hours. Response Time shall mean that Cincinnati Bell is aware of the problem, and a ticket is opened either reactively or proactively and Cincinnati Bell is beginning to take action to resolve the issue.

6. MAINTENANCE.

6.1. When a Customer reports a trouble to Cincinnati Bell and the problem is not found in the Cincinnati Bell's facilities, the Customer is responsible for a payment of Maintenance of Service charge for the period of time from when the technician is dispatched to when the work is completed. The Maintenance of Service charges is as follows: (a) \$ 31.50 for the first fifteen (15) minutes or fraction thereof and (b) \$ 9.00 for each additional fifteen (15) minutes or fraction thereof.

6.2. If Cincinnati Bell personnel initially fail to find trouble in Cincinnati Bell facilities, but later discover that the trouble was indeed facilities related, then Maintenance of Service charges will not apply.

6.3. Cincinnati Bell can continue to test/diagnose the problem on the Customer's premise at the rate of \$175.00 per hour, billable in half-hour increments, with a two-hour minimum.

6.4. Cincinnati Bell can also be contracted to engineer and optimize the Customer's network by working on the Customer's premise. The rate for this enhanced service is \$250.00 per hour, billable in half-hour increments, with a two (2) hour minimum. This service would typically be independent of a troubleshooting dispatch, or in conjunction with a major problem/initiative, and would be initiated by the Customer.

7. CANCELLATION, DELAY OR MODIFICATION OF SERVICE ORDERS

7.1. Cancellation of Service Order. If Customer cancels a Service Order before Cincinnati Bell has completed installation of the Ethernet service, Customer must reimburse Cincinnati Bell for its costs. If Customer cancels a Service Order after the Ethernet service has been installed, the termination liability set forth in Section 10 below will apply. All requests by Customer to cancel a pending Service Order are effective only if provided in writing.

7.2. Requests to Delay Installation. Customer may request to delay installation for up to thirty (30) days following the original Firm Order Commitment ("FOC") due date for no charge if such request is provided in writing to Cincinnati Bell within two (2) business days of receiving the FOC due date. If Customer submits its request to delay installation after the two (2) business days after receipt of the FOC, then Cincinnati Bell will bill \$100.00 for any request to change the FOC due date. However, if the customer requests a change of due date within five (5) business days prior to the communicated FOC due date, Cincinnati Bell will charge \$300.00 for the FOC due date change.

7.3. Failure to Notify of Installation Delay. If the Customer fails to notify Cincinnati Bell of an installation delay pursuant to Section 7.2 above, Cincinnati Bell will bill for the Monthly Recurring Charge for such Ethernet service from the original FOC due date to the actual date of installation. Customer will be required to notify Cincinnati Bell in writing to reschedule an installation date.

7.4. Modification of Service Orders. If Customer requests modifications to pending Service Orders, Customer must reimburse Cincinnati Bell for its actual costs incurred in reengineering and modifying the Ethernet service, including any third-party charges assessed against Cincinnati Bell as a result of such modification.

8. TESTING.

8.1. Cincinnati Bell will notify Customer when the Ethernet service has been successfully installed, on a circuit-by-circuit basis, and is available for Customer's use ("Service Date"). Unless Customer notifies Cincinnati Bell by the close of the second business day following the Service Date that the Service is not operational, the Service Term will commence on the Service Date. Customer also has thirty (30) days following the Service Date to conduct additional testing of the Ethernet services. If such testing indicates that the Ethernet service is not operating properly, and Customer notifies Cincinnati Bell and reasonably identifies the problem, Cincinnati Bell will work with Customer to remedy the problem. If Cincinnati Bell reasonably determines that the problem is due to Cincinnati Bell's Network or Cincinnati Bell Equipment or third-party telecommunications facilities arranged by Cincinnati Bell on Cincinnati Bell's side of the demarcation point, then Customer will be credited for the MRCs associated with the Ethernet service from the Service Date through the date that the Ethernet service is made operational. If Cincinnati Bell reasonably determines that the problem is not being caused by Cincinnati Bell's Network, Cincinnati Bell Equipment, or third-party telecommunications facilities arranged by Cincinnati Bell on Cincinnati Bell's side of the demarcation point, the Service Date will remain unchanged. Cincinnati Bell is not responsible for testing failures resulting from problems with Customer's equipment.

9. BILLING AND PAYMENT.

9.1. Unless Customer notifies Cincinnati Bell otherwise, charges for Ethernet services will commence on the Service Date as defined in Section 8 above. The Service Date will not be delayed due to Customer's failure to be ready for delivery of the Ethernet service on the agreed upon installation date.

10. TERMINATION CHARGES.

10.1. Either party may terminate this Agreement if the other party is in material breach of this Agreement and such breach remains uncured for a period of thirty (30) days after notice of such breach has been given to the breaching party by the other party.

10.2. If Customer terminates this Agreement, without cause, prior to the expiration of the term hereof, Customer will pay to Cincinnati Bell a termination charge equal to all remaining amounts due or to become due under this Agreement, including but not limited to all monthly charges for which Customer had not terminated this Agreement.

10.3. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Ethernet prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

10.4. If Customer removes one or more ports from service prior to the expiration of term hereof, Customer will pay Cincinnati Bell a termination charge equal to all monthly charges for such port(s) for which Customer would have been responsible had Customer not removed such port(s).

10.5. If nonrecurring charges associated with the installation of Ethernet are waived and the Ethernet is then terminated prior to the expiration of the Term, the Customer will become liable for payment of the waived charges.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

1.1. The following definitions shall apply to this Agreement and, unless otherwise provided therein, shall also apply to the Supplements. The definitions shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree or right or obligation for either Party. The use of the term "Agreement" shall be deemed to refer to the entire agreement between the Parties consisting of this Agreement and includes each Supplement.

1.2. Applicable Laws - means all applicable federal, state, and local statutes, laws, rules, regulations, codes, final and nonappealable orders, decisions, injunctions, judgments, awards and decrees that relate to a Party's obligations under this Agreement.

1.3. Information - means any writing, drawing, sketch, model, sample, data, computer program, software, verbal communication, e-mail, recording or documentation of any kind.

1.4. Party - means (i) Cincinnati Bell parent company, its affiliates and subsidiaries (collectively "Cincinnati Bell") or (ii) Customer; and "Parties" means (i) and (ii).

1.5. Proprietary Information - means any Information communicated, whether before, on or after the Effective Date, by a Party ("Disclosing Party") to the other Party ("Receiving Party"), pursuant to this Agreement and if written, is marked "Confidential" or "Proprietary" or by similar notice or if oral or visual, is identified as "Confidential" or "Proprietary" at the time of disclosure; or if by electronic transmission (including, but not limited to, facsimile or electronic mail) in either human readable or machine readable form, and is clearly identified at the time of disclosure as being "Proprietary" or "Confidential" by an appropriate and conspicuous electronic marking within the electronic transmission, which marking is displayed in human readable form along with any display of the "Proprietary" or "Confidential" information; or if by delivery of an electronic storage medium or memory device which is clearly identified at the time of disclosure as containing "Proprietary" or "Confidential" information by an appropriate and conspicuous marking on the storage medium or memory device itself and by an appropriate and conspicuous electronic marking of the stored "Proprietary" or "Confidential" information, which marking is displayed in human readable form along with any display of the "Proprietary" or "Confidential" information.

2. SERVICES.

2.1. The applicable rates, fees, commissions and charges for a particular service to be provided by Cincinnati Bell pursuant to the Supplement(s) will be on the Services Agreement sheet. Any other regulated services not listed on the Supplements which are provided by Cincinnati Bell to Customer shall be governed by the rates, terms, and conditions of the appropriate tariff. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Supplement Service. The specific terms and conditions applicable to the particular services to be provided pursuant to this Agreement, including the description of the services to be provided and the obligations of each Party in connection therewith, termination rights, performance obligations and service parameters are or shall be set forth in the Supplement(s). Any future Supplements entered into between the parties shall reference and be governed by the terms of this Agreement. In the event of a conflict between the terms of this Agreement and a Supplement, the terms of the Supplement shall prevail.

3. EQUIPMENT WARRANTY, USE AND MAINTENANCE.

3.1. If applicable, Cincinnati Bell will maintain the equipment used to provide service under the applicable Supplements, in good working order during the term specified on the Services Agreement sheet, except CPE provided as part of any Ethernet service, subject to the exclusions set forth under Section four (4) entitled Warranty Exclusions. Customer will permit Cincinnati Bell access to equipment on Customer's premises used to provide service hereunder and Cincinnati Bell will comply with the Customer's security and safety regulations at Customer's site. Repair parts or replacement parts may be new, remanufactured or refurbished at the discretion of Cincinnati Bell. Customer will not make any modifications to the equipment used to provide service hereunder without the written permission of Cincinnati Bell and will pay the cost of any repairs necessitated by unauthorized work.

4. WARRANTY EXCLUSIONS.

4.1. The warranties provided under Section three (3) do not cover services required to repair damages, malfunctions or failures caused by: (a) Customer's failure to follow Cincinnati Bell's written operation or maintenance instructions provided to Customer; (b) Customer's unauthorized repair, modifications or relocation of equipment used to provide services hereunder, or attachment to such equipment of non-Cincinnati Bell equipment; and (c) abuse, misuse or negligent acts. Cincinnati Bell may perform services in such instances on a time and materials or contract basis.

4.2. Cincinnati Bell will not be liable to Customer or third parties for any claims, loss or expense of any kind or nature caused directly or indirectly by: (i) interruption or loss of use or loss of business; or (ii) any consequential, indirect, special or incidental damages suffered by Customer or third parties whatsoever.

4.3. Except as specified herein and any supplements, Cincinnati Bell, its subcontractors and suppliers (except as expressed in writing by them) make no warranties, express or implied, and specifically disclaim any warranty or merchantability of fitness for a particular purpose.

5. TITLE OR RISK OF LOSS OF EQUIPMENT.

5.1. For equipment sold to Customer and installed by Cincinnati Bell, title shall pass to Customer on the In-Service Date. Risk of loss shall pass at the time of delivery.

5.2. For all other equipment used in the provision of services under any of the Supplements, title shall remain solely with Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the parties. Cincinnati Bell will bear the risk of loss or damage to the equipment used in the provision of service, except that Customer will be liable to Cincinnati Bell for the cost of repair or replacement of equipment lost or damaged as a result of Customer's negligence, intentional acts, unauthorized installation or maintenance or other causes within the control of Customer, its employees, agents or subcontractors.

6. GOVERNING LAW.

6.1. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio, and the internal laws of such state shall govern the construction, interpretation and performance of this Agreement, without reference to conflicts of law provisions. Any legal action arising under this Agreement must be filed (and thereafter maintained) in a state or federal court located in Hamilton County, Ohio within two (2) years after the cause of action arises.

7. CONFIDENTIAL INFORMATION.

7.1. During the term of this Agreement and for two years thereafter, neither Party shall disclose any terms or pricing contained in this Agreement or any confidential information disclosed by the other Party. Confidential information shall remain the property of the disclosing Party and shall be labeled as either "Confidential" or "Proprietary".

8. RESOLUTION OF DISPUTES.

8.1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly through discussions between themselves at the operational level. In the event a resolution cannot be reached at the operational level, the disputing Party shall give the other Party written notice of the dispute and such controversy or claim shall be negotiated between appointed counsel or senior executives of the Parties who have authority to settle the controversy. If the Parties fail to resolve such controversy or claim within thirty (30) days of the disputing Party's notice, either Party may seek arbitration as set forth below.

8.2. Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Cincinnati, Ohio and shall be resolved under the laws of the State of Ohio without regard to choice of law provisions. The arbitration shall be conducted before a single arbitrator in accordance with the commercial rules and practices of the American Arbitration Association then in effect.

8.3. The arbitrator shall have the power to order specific performance if requested. Any award, order, or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The Parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. All such arbitration proceedings shall be conducted on a confidential basis. The arbitrator may, as part of the arbitration award, permit the substantially prevailing Party to recover all or part of its attorney's fees and other out-of-pocket costs incurred in connection with such arbitration.

9. TERMS OF PAYMENT.

9.1. Invoices for Services are due and payable in U.S. dollars within thirty (30) days of invoice date ("Invoice Due Date"). Customer shall allow for up to three (3) days for payment processing within such thirty (30) day period. Payments not received by Invoice Due Date are considered past due. In addition to Cincinnati Bell undertaking any of the actions set forth in this Agreement, if any invoice is not paid when due, Cincinnati Bell may: (i) apply a late charge equal to 2% (or the maximum legal rate, if less) of the unpaid balance per month and/or (ii) take any action in connection with any other right or remedy Cincinnati Bell may have under this Agreement in law or in equity. Customer shall be in default if Customer fails to make payment as required and such failure remains uncured for five (5) calendar days after the Invoice Due Date. If Customer in good faith disputes any portion of any Cincinnati Bell invoice, Customer shall submit to Cincinnati Bell by the Invoice Due Date, full payment of the undisputed portion of any Cincinnati Bell invoice and written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within sixty (60) days following the date on the applicable invoice, Customer shall have waived its right to dispute that invoice. Cincinnati Bell and Customer agree to use their respective best efforts to resolve any dispute within thirty (30) days after Cincinnati Bell receives written notice of the dispute from Customer. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to Cincinnati Bell shall be due within (10) days of resolution of the dispute.

9.2. Customer shall pay taxes levied upon any sale, transfer of ownership, installation, license or use of products or services, unless Customer provides a tax exemption certificate. Excluded are taxes on Cincinnati Bell's net income.

10. TERMINATION.

10.1. Notwithstanding the provisions regarding the Term and Termination Charges of each Supplement, and in addition to the Parties' rights of termination specifically provided elsewhere in this Agreement, the following shall apply:

10.2. In the event Customer provides timely notice to Cincinnati Bell that it does not intend to renew an automatically renewing contract, Cincinnati Bell will continue to provide service to Customer after the expiration of the then current contract term on a month-to-month basis. The provision of such month-to-month service shall be subject to the terms and conditions and the month-to-month tariff / service agreement rates in effect at the time. Either Party may terminate the month-to-month service, without termination penalty, upon thirty (30) days advance written notice to the other Party.

10.3. In the event that one Party breaches any material obligation provided hereunder, excluding payment obligations, or in such Supplement (other than Customer's payment obligations), the other Party shall give the breaching Party written notice of the breach and request that the breach be cured ("Cure Notice"). If the breaching Party fails to cure the specified breach within thirty (30) days of receipt of the Cure Notice (or such other mutually agreed upon time), the other Party shall have the right to terminate the Supplement, effective upon five (5) days prior written notice to the breaching Party ("Termination Notice"). The right of Cincinnati Bell and the Customer to terminate in any such case shall be in addition to any other rights and remedies they may have hereunder or at law or in equity.

10.4. A Party may, at its option, terminate a Supplement effective immediately upon written notice upon the occurrence of an "Insolvency Event of Default" (as defined below) with respect to the other Party. The occurrence of any one or more of the following events shall constitute an "Insolvency Event of Default": the other Party admits in writing its inability to pay its debts generally or makes a general assignment for the benefit of creditors; any affirmative act of insolvency by the other Party or the filing by or against the other Party (which is not dismissed within ninety (90) days of any petition or action) under any bankruptcy, reorganization, insolvency arrangement, liquidation, dissolution or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or the subjection of a material part of the other Party's property to any levy, seizure, assignment or sale for or by any creditor, third party or governmental agency.

10.5. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Services prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

10.6. Customer shall have the right to terminate any Supplement for convenience at any time upon thirty (30) days prior written notice to Cincinnati Bell. The termination charge will be considered to be liquidated damages and will be Cincinnati Bell's sole remedy against Customer for early termination, except for outstanding charges. The termination liability language contained within the applicable Supplement is not intended to indicate that the Commissions have approved or sanctioned the specific termination charges contained herein. Signatories to the Agreement shall be free to pursue whatever legal remedies they may have should a dispute arise.

10.7. One or more Supplements may be terminated by the Parties without causing a termination of this Agreement or other Supplements.

11. INDEMNIFICATION.

11.1. Customer shall indemnify, defend and hold harmless Cincinnati Bell and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of claims for damage to property and/or personal injuries (including death) arising directly out of the Customer's performance of obligations under this Agreement. A Party shall notify the other Party and describe the claim or action within fourteen (14) days of becoming aware of the claim or action itself. Customer may undertake the defense of any such claim or action and permit Cincinnati Bell to participate therein. The settlement of any such claim or action by Customer without Cincinnati Bell's prior written consent, shall release the Cincinnati Bell from its obligations hereunder with respect to such claim or action so settled.

12. RESPONSIBILITIES OF EACH PARTY.

12.1. Each Party has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of their respective employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Except as otherwise provided in this Agreement, each Party will be responsible for its own acts and those of its employees, agents, and contractors during the performance of such Party's obligations hereunder.

13. LIMITATIONS OF LIABILITY.

13.1. Cincinnati Bell's liability arising out of the provision of: (i) Services; (ii) delays in the restoration of Services; or (iii) arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the limitations set forth below and in the applicable Tariff. In no event shall Cincinnati Bell be liable to customer, customer's own customers, or any other third party with respect to the subject matter of this agreement under any contract, warranty, negligence, strict liability, or other theory for any type of indirect, consequential, incidental, reliance, special, or punitive damages, or for any lost profits, lost revenues, or lost savings of any kind, arising out of or relating to this agreement whether or not Cincinnati Bell or Customer was advised of the possibility of such damages and whether or not such damages were foreseeable. For purposes of this section, "Cincinnati Bell" is deemed to include Cincinnati Bell's parent company, and its respective affiliates and subsidiaries, and the directors, officers, employees, agents, representatives, subcontractors and suppliers of each of them.

13.2. The Parties hereto agree that the termination liabilities and the limitations on liability contained in this Agreement are fair and reasonable adjustments to the uncertain and difficult to ascertain damages which might arise under this Agreement and are intended to be reasonable allocations by the Parties of the business risks inherent in this Agreement.

14. SECURITY AND ACCESS.

14.1. Employees and agents of Cincinnati Bell and its subsidiaries, while on the premises of Customer, will comply with all reasonable rules, regulations and security requirements of Customer.

15. WORK ON CUSTOMER'S PREMISES.

15.1. In performance of its obligations hereunder, Cincinnati Bell shall comply with all applicable laws and will indemnify and hold Customer harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of Cincinnati Bell's noncompliance with any such laws. If Cincinnati Bell's work this Agreement involves operations by Cincinnati Bell on the premises of Customer, Cincinnati Bell shall take reasonable precautions necessary to prevent the occurrence of any injury to person or property during the progress of such work. Except to the extent an injury to person or property is the result of Customer's negligence or willful misconduct, Cincinnati Bell shall defend, indemnify and hold harmless Customer against any claims, demands, suits, losses, damages, costs and expenses which are directly and proximately caused by negligent or willful conduct of Cincinnati Bell's employees, agents or subcontractors.

16. CUSTOMER OBLIGATIONS.

16.1. Prior to requesting repair service from Cincinnati Bell, Customer will use its best efforts, including but not limited to performing reasonable diagnostic tests, to verify whether any trouble with the Service is a result of the Customer's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's equipment or facilities. Customer will cooperate with any joint testing of the Service reasonably requested by Cincinnati Bell.

17. SYSTEM MAINTENANCE.

17.1. In the event Cincinnati Bell determines that it is necessary to interrupt Services or that there is a potential for Services to be interrupted for the performance of system maintenance, Cincinnati Bell will use good faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6:00 am. local time). In no event shall interruption for system maintenance constitute a failure of performance by Cincinnati Bell.

18. SUBCONTRACTING.

18.1. Cincinnati Bell may subcontract work to be performed under this Agreement, but shall retain responsibility for the work.

19. CHANGES IN LAWS.

19.1. This Agreement is predicated upon current state and federal laws and regulations. If new laws or regulations or new applications of current law and regulations affect this Agreement, either Party may request on thirty (30) days' written notice that one or more provisions be renegotiated consistent with the changed circumstances.

20. FORCE MAJEURE.

20.1. No Party shall be held liable for any delay or failure in performance of any part of this Agreement, including any Supplement, caused by a force majeure condition, including fires, pandemics, embargoes, explosions, power blackouts, earthquakes, volcanic action, floods, wars, water, the elements, labor disputes (such as a work stoppage), civil disturbances, government requirements, civil or military authorities, acts of God or a public enemy, inability to secure raw materials, inability to secure product of manufacturers or outside vendors, inability to obtain transportation facilities, acts or omissions of transportation common carriers, or other causes beyond its reasonable control whether or not similar to the foregoing conditions. If any force majeure condition occurs, the Party whose performance fails or is delayed because of such force majeure condition ("Delayed Party") shall promptly give written notice thereof to the other Party. The Delayed Party shall use all best efforts to avoid or mitigate performance delays despite a force majeure condition, and shall restore performance as soon as the force majeure condition is removed.

21. GOOD FAITH PERFORMANCE.

21.1. Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement, as the case may be.

22. NO LICENSE.

22.1. Except as expressly provided in this Agreement or a Supplement, no license under patents, copyrights, trademarks, service marks, trade names or other indicia of origins, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

23. AMENDMENTS; WAIVERS.

23.1. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same shall be in writing and signed by an authorized official of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of any Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

24. NOTICES.

24.1. All notices, demands, requests, elections, or other communications provided under this Agreement or which may be given by one Party to the other Party under this Agreement and to the extent a notice relates to an alleged breach, termination, or other claim under a Supplement, such notice shall be made in writing (unless specifically provided otherwise herein) and unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact, shall be (a) delivered personally, (b) delivered by express delivery service, (c) mailed, first class, certified mail postage prepaid, return receipt requested or (d) delivered by telecopy and shall be deemed effective upon receipt; provided that a confirmation copy is sent by the method described in (a), (b) or (c) of this Section. Notices shall be addressed to the parties at the addresses set forth on the Services Agreement sheet.

24.2. Changes in notice designation shall be made in writing and shall be deemed effective upon receipt. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) four (4) business days after mailing in the case of first class, certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy.

25. NO RIGHTS TO THIRD PARTIES.

25.1. This Agreement shall not be deemed to provide third parties with any remedy, claim, right of action or other right.

26. SEVERABILITY.

26.1. If any term, condition, or provision of this Agreement shall be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate or render unenforceable the remainder of this Agreement; and, unless such construction would be unreasonable, this Agreement shall be construed as if not containing the invalid or unenforceable provision or provisions and the rights and obligations of each Party shall be construed and enforced accordingly. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

27. ASSIGNMENT.

27.1. Customer will not resell or permit any third party to use any of the services provided by Cincinnati Bell hereunder. Neither Customer nor Cincinnati Bell may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. Cincinnati Bell shall not be required to obtain consent in the case of a sale of all or substantially all the assets of Cincinnati Bell or an assignment to an entity directly or indirectly owning or controlling, owned or controlled by, or under common control with the assigning Party. Notwithstanding the foregoing, Cincinnati Bell shall retain the right to terminate this Agreement without further obligation or liability to Customer, its successors or assigns, if, in its sole and exclusive judgment any assignment or purported assignment by Customer is to be made to a competitor of Cincinnati Bell.

28. ENTIRE AGREEMENT; CONTINUING OBLIGATIONS.

28.1. The Agreement, which includes the Services Agreement, Terms & Conditions and Supplements, constitutes the entire Agreement between the Parties concerning the subject matter hereof. All prior agreements, representations, statements, negotiations, understandings, proposals, and undertakings, oral or written, with respect to the subject matter thereof are superseded and replaced by the provisions of this Agreement.

28.2. Irrespective of any provision contained in this Agreement or in any Supplement to the contrary, Articles 6 through 9 and Articles 11 through 30 of this Agreement shall take precedence over, supersede and control any conflicting provision (or the absence of a provision) heretofore or hereinafter executed by the Parties unless such Article, including any subsection thereof, is expressly identified as the subject of an amendment that is in writing and agreed upon by a representative of each Party having authority to agree to such amendment.

28.3. Any liability or obligation of any Party to the other Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of any Party to make payments, any obligation of any Party under the provisions of Article 7 hereof regarding Confidential Information, Article 8 hereof regarding resolution of disputes, Articles 11 and 15 hereof regarding indemnification, and Article 13 regarding limitations on liability, and any provisions that, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall, in each case, survive cancellation or termination of this Agreement.

28.4. The rights and obligations under this Agreement shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assigns of each Party.

28.5. Under federal law, Customer has a right, and Cincinnati Bell has a duty, to protect the confidentiality of information regarding the telecommunications services Customer buys from Cincinnati Bell, including the amount, type, and destination of Customer's service usage; the way Cincinnati Bell provides services to Customer; and Customer's calling and billing records. Together, this confidential information is described as Customer Proprietary Network Information ("CPNI"). Customer hereby consents to Cincinnati Bell sharing its CPNI with Cincinnati Bell affiliates, subsidiaries and any other current or future direct or indirect subsidiaries of the Cincinnati Bell parent company as well as Cincinnati Bell agents and authorized sales representatives, to develop or bring to new products or services to Customer's attention. This consent survives the termination of Customer's service and is valid until Customer affirmatively revokes or limits such consent.

29. REGULATORY APPROVAL; TARIFFS.

29.1. This Agreement is subject to applicable regulatory requirements. In the event of any conflict between the terms of this Agreement and applicable regulatory requirements, such regulatory requirements will take precedence and be controlling. The obligations of Cincinnati Bell and Customer under this Agreement may be contingent upon approval of this Agreement by applicable regulatory agencies, including the Public Utilities Commission of Ohio and Public Services Commission of Kentucky. The regulations and rates specified herein are in addition to applicable regulations and rates set forth in Cincinnati Bell's tariffs on file with regulatory agencies.

30. EXECUTED IN COUNTERPARTS.

30.1. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

31. HEADINGS.

31.1. The titles and headings of Articles and Sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall in no way define, modify, or restrict the meaning or interpretation of the terms or provisions of this Agreement.

SERVICES AGREEMENT

Agreement Number: 01570638

Customer Village Of New Richmond			Service Provider Cincinnati Bell Telephone Company LLC ("Cincinnati Bell")		
Address 102 Willow Street			Address 221 East Fourth Street P.O. Box 2301		
City New Richmond	State OH	Zip Code 45157	City Cincinnati	State OH	Zip Code 45201
THIS CINCINNATI BELL SERVICES AGREEMENT IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND APPLICABLE SERVICES SUPPLEMENTS ATTACHED HERETO (COLLECTIVELY "TERMS AND CONDITIONS"). CINCINNATI BELL'S STANDARD TERMS AND CONDITIONS AND SUPPLEMENTS ARE AVAILABLE AT WWW.CINCINNATIBELL.COM/BUSINESS/LEGAL . BY EXECUTING THIS CINCINNATI BELL SERVICES AGREEMENT WHERE INDICATED BELOW, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ, UNDERSTANDS, ACCEPTS AND AGREES TO BE BOUND BY ALL SUCH TERMS AND CONDITIONS. CUSTOMER'S SIGNATURE ACKNOWLEDGES AUTHORIZATION FOR CINCINNATI BELL TO REQUEST CREDIT INFORMATION FROM ANY CREDIT REPORTING AGENCY OR SOURCE.					
NOTES: <ul style="list-style-type: none">- The term "Cincinnati Bell" shall be deemed to mean the Service Provider on behalf of itself and its' affiliates.- The Agreement shall become effective on the latter of the provisioning or activation date ("Effective Date").- In addition to the Services Agreement charges, Customers will incur all regulated charges mandated by the Regulatory Commissions with jurisdiction over Cincinnati Bell. ADSL, Dedicated FUSE Internet Access, Evantage and Emerge services are not subject to Regulatory Commission jurisdiction.- All prices and rates are exclusive of any surcharges and taxes.- Installation/One-time charge does not cover premise technician work outside of the hours of 8 a.m. to 5 p.m.- The service products, prices and terms identified on this Services Agreement constitutes Cincinnati Bell's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate above, Cincinnati Bell reserves the right to rescind this offer at any time, at its' sole discretion.- Facsimile signatures to this Services Agreement and any additional documents incorporated herein shall be deemed to be binding upon the parties.					

VILLAGE OF NEW RICHMOND

CINCINNATI BELL

Signature of Authorized Representative:

Signature of Authorized Representative:



Printed Name: Greg A. Roberts

Printed Name:

Title: Village Administrator

Title:

Date: 10/22/2018

Date:

SERVICE PRICING

ID	Service	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
1	Service Address: 102 Willow St., NEW RICHMOND, OH 45157USA					
1.1	Product: Metro Ethernet Order Type: Migration Contract Term:36 months					
1.1.1	CB Ethernet Services 10 Mbps Initial	1	\$250	\$0	\$250.00	\$0.00
1.1.2	CB Ethernet Services- 10M Bronze QoS	1	\$0	\$0	\$0.00	\$0.00
1.1.3	CB Ethernet Services eVolve, voice PVC/VLAN	1	\$0	\$0	\$0.00	\$0.00
1.2	Product: Business Connections Order Type: Renewal Contract Term:36 months					
1.2.1	Business Connections	3	\$30	\$0	\$90.00	\$0.00
1.3	Product: Emerge Order Type: Renewal Contract Term:36 months					
1.3.1	Emerge Premium User - w/Voicemail	3	\$12.25	\$0	\$36.75	\$0.00
1.3.2	Emerge Standard User - w/Voicemail	7	\$9	\$0	\$63.00	\$0.00
1.3.3	Emerge Basic User - no Voicemail	2	\$6	\$0	\$12.00	\$0.00
1.3.4	Polycom VVX 311 IP Phone Rental	12	\$9	\$0	\$108.00	\$0.00
1.3.5	Emerge Starter Kit - (up to 18 users) QoS Router - 24 Port switch	1	\$136	\$0	\$136.00	\$0.00
1.3.6	Emerge Starter Kit without T1 - (up to 18 users)- includes group features and functionality	1	\$100	\$0	\$100.00	\$0.00
1.4	Product: Fioptics Order Type: Acquisition - New Contract Term:36 months					
1.4.1	Fioptics HSI - 100Mb/50Mb	1	\$99.99	\$0	\$99.99	\$0.00
1.5	Product: Business Line Order Type: Renewal Contract Term:36 months					
1.5.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00
2	Service Address: 701 Washington St., NEW RICHMOND, OH 45157USA					
2.1	Product: Business Line Order Type: Renewal Contract Term:36 months					
2.1.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00
3	Village Of New Richmond,900 Old Us Highway 52,NEW RICHMOND,OH 45157USA					
3.1	Product: Business Line Order Type: Renewal Contract Term:36 months					
3.1.1	1FB – Renewal	1	\$30	\$0	\$30.00	\$0.00

Total Monthly Recurring Charge	\$985.74
Total One-Time Charge	\$0.00

Customer Initials

Date

FLAT BUSINESS LINE - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Flat Business Line - Flat rate analog business line. A phone line for which Customer pays a single monthly charge for and on which the Customer may make as many local phone calls as the Customer wishes during a month.

3. SERVICES AND RATES.

3.1. Flat Business Line service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Flat Business Line service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Flat Business Line service.

4. TERMINATION CHARGES.

4.1. In the event that Flat Business Line service under this Agreement is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

4.2. If nonrecurring charges associated with the installation of Flat Business Line service are waived and the Flat Business Line service is then terminated prior to the expiration of the Initial Term, the Customer will become liable for payment of the waived charges.

BUSINESS CONNECTIONS - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Business Connections - one flat rate analog business line with the following optional features: call waiting, call forward variable, 69 – call return, 60 – call block, 66 – repeat dialing, voice mail box, call forwarding (i) busy line; (ii) don't answer; (iii) busy line second path; or (iv) don't answer second path, per line privacy, anonymous call rejection, message waiting indication, hunting, three way calling, caller ID number, caller ID name, speed dialing - 8, speed calling - 30, distinctive ring 1 and distinctive ring 2.

3. SERVICES AND RATES.

3.1 Business Connections service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Business Connections service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Business Connections service.

4. TERMINATION CHARGES.

4.1 In the event that the Business Connections service is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

4.2. If nonrecurring charges associated with the installation of Business Connections service are waived and the Business Connections service is then terminated prior to the expiration of the Initial Term, the Customer will become liable for payment of the waived charges.

EVOLVE EMERGE - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. This Agreement shall govern the services set forth within this Services Supplement from the Service Activation Date (as noted in the Billing Section below) for the period of time specified on the Services Agreement ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) days period, Customer shall be deemed to accept the rate adjustment. In the event there are multiple Service Activation Dates, the Term for each respective service shall commence as of the respective Service Activation Date and continue for the period of time specified on the Services Agreement.

1.2. Service orders submitted under this Agreement will have a Minimum Term per the Services Agreement.

2. DEFINITIONS.

2.1. Internet - A Network of Global Computers as defined in 1996 running on Transmission Control Protocol (TCP), on top of Internet Protocol Version Four (IPv4).

2.2. Evolve Emerge FUSE Internet Access - the engineering, configuration, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect Customer's network to the Evolve Emerge FUSE Internet Access network for passage to the Internet for data transmission as part of the Service described in this Agreement.

2.3. Local Area Network - A network connecting computers and other peripheral equipment for data communications over a limited geographical area, usually within a single building or among a few buildings.

3. BILLING.

3.1. Cincinnati Bell shall send notice to Customer that service is ready for commercial use ("Service Activation Date") and billing will commence within five (5) business days thereafter. Pricing on Services Agreement does not include charges for taxes, fees, and surcharges, which shall be included in the invoices. Cincinnati Bell reserves the right to examine Customer's credit record and to require a deposit or other security, including payment by credit card, before it provides or continues Service to Customer. Cincinnati Bell will determine, at its discretion, how Customer's deposit or other security will be allocated to satisfy outstanding amounts owed by Customer to Cincinnati Bell. By subscribing to the Service, Customer authorizes Cincinnati Bell to investigate Customer's creditworthiness and agrees, from time to time, to provide appropriate authorizations and financial information as Cincinnati Bell may reasonably request for this purpose.

4. INTERSTATE/INTRASTATE LONG DISTANCE USAGE RATE.

4.1. In consideration for Customer's Service, Cincinnati Bell will provide a block of domestic outbound minutes commensurate with the Service at no charge as set forth in the Services Agreement. The interstate/intrastate voice usage rate stated on the Services Agreement applies to Customer's interstate/intrastate long distance service terminating in the continental United States that is in excess to those minutes included in the monthly recurring rate for the tier selected.

5. INTERNATIONAL VOICE USAGE RATES.

5.1. Cincinnati Bell's international voice service usage rates, which vary by country, are subject to change upon three (3) days written notice. To view the international voice service usage rates, please visit CincinnatiBell.com or the specified web address as follows: http://www.cincinnatiBell.com/business/long_distance/international_rates/.

6. CALL INCREMENTS AND ROUNDING.

6.1. Non-calling card interstate and intrastate outbound and inbound calls are billed in thirty (30) second increments with six (6) second additional increments thereafter. International outbound with the exception of Mexico will be billed in thirty (30) second increments with six (6) second additional increments thereafter. Calls to Mexico will be billed in sixty (60) second increments with sixty (60) second additional increments thereafter. All calls are rounded up to the nearest cent.

7. SCOPE.

7.1. Cincinnati Bell (i) shall use reasonable commercial efforts to commence provisioning of services to Customer on or before the Service Activation Date, which is scheduled to be the first date of order activation; and (ii) is authorized to act as Customer's agent in placing orders with other carriers in order to provide telecommunications services, if requested. Usage charges shall be based on (i) the rates for services set forth herein, as applicable; and (ii) actual usage of Cincinnati Bell's network from establishment of a connection between the calling telephone and the called telephone to termination, as determined in Cincinnati Bell's sole discretion.

8. SHORT DURATION CALL PENALTY.

8.1. Notwithstanding anything to the contrary herein, if the percentage of the Customer's completed calls are equal to or less than six (6) seconds in length for any billing cycle meets or exceeds ten percent (10%), Cincinnati Bell may charge an additional \$0.02 for each Short Duration Call during such billing cycle (excluding those Short Duration Calls under the Short Duration Percentage Threshold).

9. NO RESALE.

9.1. Services provided hereunder are for Customer's own use and shall not be resold or provided to third parties.

10. AUTOMATIC DIALER DEVICES.

10.1. Customer acknowledges and agrees that use of auto dialers, predictive dialers or other devices that generate automated outbound calls in conjunction with products and services provided under this Agreement is strictly prohibited. Cincinnati Bell may, in its sole discretion, suspend service for issues pertaining to network congestion due to Customer's use of these devices, revise the pricing herein, or terminate service under this Agreement immediately.

11. MAINTENANCE CHARGES AND ANCILLARY FEES.

11.1. Cincinnati Bell shall maintain its network; however, if Customer requests Cincinnati Bell to send maintenance personnel to perform troubleshooting, who determines that the maintenance required was caused by Customer or Customer's equipment, additional charges will apply.

12. DISCLAIMER OF EMERGENCY 9-1-1 SERVICES.

12.1. Customer is hereby advised that the service, including Emergency 9-1-1 Service, will not function if the customer handset or equipment is moved from the physical address/registered location where service was installed by Cincinnati Bell. Customer is hereby advised that Emergency 9-1-1 Service will not function or be available to customer with the loss of electrical power or if the FUSE Internet Access connection is not operational. Depending on the Customer's location, the type of handsets and other equipment Customer uses, the type of equipment used by the public safety access point or other applicable emergency services provider, and the circumstances and conditions of a particular call, Customer may not be connected or Customer's phone number and/or location may not be identifiable to emergency service providers. Customer signature to this contract will serve as acknowledgement that Cincinnati Bell has advised customer of these limitations and that Customer accepts the services with these limitations. In addition to the limitations of liability contained in Federal Law and relevant State Statutes, Cincinnati Bell shall not be liable for any damages or other relief arising out of delays, mistakes, omissions, interruptions, misrouting of 9-1-1 calls, errors or defects in performance (including, but not limited to, problems with or outages of equipment) hereunder.

13. PROVISION OF EVOLVE EMERGE FUSE INTERNET ACCESS.

13.1. The provisioning of Evolve Emerge FUSE Internet Access will include the maintenance and repair required to maintain the Evolve Emerge FUSE Internet Access service in proper working order on Cincinnati Bell's side of the Demarcation Point.

13.2. Evolve Emerge FUSE Internet Access will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Evolve Emerge FUSE Internet Access. Cincinnati Bell reserves the right to perform these tasks, as needed, during the off-peak hours, normally on Sundays from 12:00 a.m. to 6:00 a.m. Downtime due to scheduled maintenance is not subject to the Repair and Response policies in the Scope Section. If maintenance affects Customer, Cincinnati Bell will use reasonable efforts to notify Customer in advance.

13.3. Cincinnati Bell may assign to Customer one (1) usable Internet Protocol (IP) address for Any Distance Dedicated Internet Access Service. In addition, Customer may request additional IP addresses (\$4/additional IP) by completing and submitting Cincinnati Bell's IP Justification Form. Cincinnati Bell does not guarantee additional IP Addresses will be provided and reserves the right to deny any request for additional IP addresses. If it is deemed the Customer is not using IP addresses in compliance with the American Registry for Internet Numbers (ARIN) standards, Cincinnati Bell shall have the right to immediately reclaim such IP addresses.

13.4. Unless otherwise agreed in writing, Cincinnati Bell will provide Evolve Emerge FUSE Internet Access service for TCP/IP based communication protocols for transmission across the Internet only.

13.5. The electrical signals of Evolve Emerge FUSE Internet Access will operate in compliance with the following American National Standard Institute ("ANSI") or IEEE standards for Ethernet LANs operating at a Native Mode of 10/100 Mbps, IEEE Standard 802.3 (Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications).

14. CUSTOMER OBLIGATIONS.

14.1. Customer acknowledges billing for Service will commence when Cincinnati Bell's transport facility is provisioned and facility channels are turned up for local service per terms outlined in the Billing Section of this Supplement.

14.2. Customer will furnish, at its expense, such space, electrical power and environmental conditioning at Customer's premises as Cincinnati Bell may reasonably require in connection with performing its obligations hereunder. Customer will permit Cincinnati Bell reasonable access to Customer's premises, in accordance with Customer's normal security procedures, in connection with providing Service hereunder.

14.3. The Customer is responsible for communicating with its Phone and IT Vendors about any Service change and ensuring the Phone and IT Vendors are present at the proposed time and date of the Service cutover. Cincinnati Bell will give the Customer five (5) days prior notice of the actual cutover date to ensure enough time is given to the Customer to coordinate with their Phone and IT Vendors. Cincinnati Bell is not responsible for any configuration to the Customer's phone system or any data network re-configuration. The cost of phone and network re-configuration will be the sole responsibility of the Customer. If the Customer does not have an IT or Phone Vendor, Cincinnati Bell will provide a quote to perform services or will assist with referring the Customer to a Cincinnati Bell approved Vendor. A late fee of \$150.00 will be billed to the Customer for cutover date changes made by the Customer that are not communicated in writing (email) and received by Cincinnati Bell forty-eight (48) hours in advance of scheduled cutover date.

14.4. Customer will provide, install and maintain, at its expense, all equipment and facilities necessary for LAN interconnection on the Customer's side of the Demarcation Point. Customer shall be responsible for insuring that the operating characteristics of such equipment and facilities are compatible with Cincinnati Bell's Evolve Emerge Service.

14.5. Customer will cause its electrical signals at the Demarcation Point to conform to the applicable ANSI or IEEE standards set forth in Section 13.6, above. Customer shall furnish any additional equipment or facilities necessary to comply with such standards at their expense.

14.6. Without the prior written consent of Cincinnati Bell, Customer will not access, or attempt to access, any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement. Customer agrees to use Internet access only for lawful purposes. Any content that Cincinnati Bell in its sole discretion considers being obscene, lewd, lascivious, filthy, excessively violent, harassing, harmful, offensive or otherwise objectionable Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Similarly, conduct by Customer that in Cincinnati Bell's sole discretion restricts or inhibits any other Internet Service Provider, subscriber, person or entity from using or enjoying the Service or any other service provided will not be permitted and Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Examples of such conduct include, but are not limited to, sending of Unsolicited Commercial Email (UCE), Unsolicited Bulk Email (UBE) or "SPAM", Commercial advertisements in USENET News groups not intended for that purpose, attempts to access remote computing systems without permission, port scanning and any attempts to subvert any network security measures of the Service or any other network. Customer will indemnify and hold harmless Cincinnati Bell, its officers, directors, employees and agents, from and against any loss or expense, of whatever nature, arising out of any unauthorized access to any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement.

14.7. Prior to requesting repair service from Cincinnati Bell, Customer will use its best efforts, including but not limited to performing reasonable diagnostic tests, to verify whether any trouble with the Service is a result of the Customer's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's equipment or facilities. Customer will cooperate with any joint testing of Service reasonably requested by Cincinnati Bell.

14.8. Client agrees to comply with Cincinnati Bell's policies respecting the Service as provided from time to time, or to which Customer is directed when using the Service. While using the Service, Client shall not transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or Cincinnati Bell's policies. In addition, without incurring liability, Cincinnati Bell may immediately and without notice: (i) discontinue or suspend the Services; (ii) cancel a request for Services; or (iii) temporarily block Service to a particular authorization code, if it deems such action is necessary, either to prevent Improper Use or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

15. PROCEDURES REGARDING THIRD PARTY COMPLAINTS.

15.1. If Cincinnati Bell receives a complaint that any content provided by Customer through the use of the Service, or provided by any party using Customer's account as permitted by this Agreement, infringes any copyright, trademark, service mark, or other intellectual property right of any third party; or constitutes fraud, false advertising, or misrepresentation; or constitutes libel, slander, or invasion of the right of privacy or publicity of any third party; or otherwise violates the terms of this contract; Cincinnati Bell reserves the right to take appropriate action including, without limitation, (i) taking down the offending material in compliance with the Digital Millennium Copyright Act, 17 U.S.C. § 512, (ii) removing or disabling Customer's access to the Service, and/or (iii) terminating Customer's Subscription, with or without prior notice to Customer.

16. TITLE TO EQUIPMENT AND FACILITIES.

16.1. All equipment and facilities used by Cincinnati Bell in providing Service hereunder will remain the sole property of Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the Parties with respect to specific equipment.

17. ACCEPTABLE USE.

17.1. If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any Content that it, in its sole discretion, considers to be obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable, Cincinnati Bell shall have the right, but not the responsibility, to immediately remove such Content and/or to terminate Service without notice. This policy applies to any Content made available by Customer, Customer's clients, or generally made available through Customer account. Customer is solely responsible for all information, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "Content") that is transmitted through the Customer Account and/or make available on or through the Customer Web site or any of the Customer's clients web sites.

18. SUSPENSION OR RESTRICTION OF SERVICE.

18.1. Cincinnati Bell may suspend or restrict the use of Service (i) upon prior notification if the operations or efficiency of the Service is impaired by the use of the Account; or (ii) at any time any amount is past due from Customer to Cincinnati Bell; or (iii) at any time there has been or is any breach of these Terms and Conditions. Cincinnati Bell shall have no responsibility to notify any third party of such termination or suspension.

19. SERVICE LEVEL AGREEMENT.

19.1. The standards described herein do not include periods of non-attainment resulting in whole or in part from one or more of the following causes: (i) Any act or omission by Customer, its contractors, agents, or any other entity over which Customer exercises control or has the right to exercise control; (ii) Scheduled maintenance; (iii) Labor strikes; (iv) Force Majeure events; (v) Any act or omission on the part of a third party; (vi) First month of Service for this particular service element.

19.2. Cincinnati Bell guarantees the availability of Customer's voice and data network, where applicable, through the Evolve Emerge network, the Public Switched Telephone Network, and to the Internet 99.9% of the time. This availability will be determined by verification that Customer's network is "reachable" 99.9% of the times checked from the furthest point in the Evolve Emerge network. For each 0.1% below the 99.9% stated availability, Cincinnati Bell will credit Customer 10% of monthly recurring charges up to 30% in total.

19.3. Cincinnati Bell will use its best efforts to repair any inoperable Voice or FUSE Internet Access port within four (4) hours after Customer has notified Cincinnati Bell that such port is inoperable by opening a trouble ticket with Evolve Emerge repair. If such port remains inoperable for more than eight (8) hours after Customer has notified Cincinnati Bell that such port is inoperable, Cincinnati Bell will credit Customer's account for an amount equal to one-thirtieth (1/30) of the applicable monthly charge for such port. The same credit will apply for each additional eight (8) hour period that the port remains inoperable.

19.4. The total amount of all credits for any one inoperable port will not exceed the monthly port charge for such inoperable port. The credit referred to herein shall be Cincinnati Bell's entire liability and Customer's exclusive remedy for any damages resulting from such inoperable port.

19.5. Cincinnati Bell is providing a clear channel T1 or Metro Ethernet Services, on which the Customer can run multiple applications - voice and data. Voice is given priority across the network. If the Customer is installed using G.711 (uncompressed voice), the Customer will use approximately 80 Kbps per active call. If G.729 (compressed voice) is used, the Customer will use approximately 32 Kbps per active call. When no voice calls are present, all of the bandwidth will be available for Data applications. Cincinnati Bell refers to this as Dynamic Bandwidth Allocation.

20. MOVE/CHANGE OF SERVICE LOCATION.

20.1. If a Customer moves their business to another location within Cincinnati Bell's operating territory (Cincinnati/Northern KY/Dayton markets only) prior to the expiration of the then current Term, the Agreement will move with them, however, the Customer will pay for all standard installation and Service charges associated with moving the Service ("Move Charges"). The Agreement will continue with the original expiration date and rate structure. Termination charges will apply if Customer terminates any of the existing Service. In the event the Customer is in the Agreement for more than twelve (12) months prior to requested move, Customer may resign a new thirty-six (36) month term and Cincinnati Bell will waive the associated Move Charges.

20.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Evolve Emerge Service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the Service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

21. TERMINATION CHARGES.

21.1. Either Party may terminate this Agreement or disconnect, in whole or in part, any services hereunder at any time and without cause upon thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if Customer terminates any Service for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the end of the then-current Term, Customer shall (i) reimburse Cincinnati Bell for all waived costs of the implementation of such Service(s) and (ii) pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

FIOPTICS HIGH SPEED INTERNET - TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the Initial Term as stated on the Services Agreement, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods ("Renewal Term") unless either Party terminates this Agreement by providing thirty (30) days advance written notice of termination to the other Party prior to the expiration of the then-current Term. Hereinafter "Term" shall mean collectively Initial and/or Renewal Term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the Initial Term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS

2.1. Fioptics High Speed Internet Service - the Cincinnati Bell brand name for High Speed Internet Service using fiber. It includes FUSE as the ISP and one Dynamic IP address. Fioptics High Speed Internet Service is available in various speeds. (1) Static IP address or (5) Static IP addresses can be purchased for an additional monthly fee.

3. SERVICES AND RATES.

3.1. Fioptics High Speed Internet service will be provided as specified on the attached Services Agreement.

3.2. If Customer cancels, in whole or in part, any requested installation, addition, rearrangement, relocation or other modification to Internet service prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

3.3. Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Internet service.

4. BILLING.

4.1. Customer agrees to timely pay all monthly bills. Any amount outstanding after the due date on the Customer bill shall be deemed a "past due balance". In the event of a disagreement about a Customer bill, Customer may contact Cincinnati Bell Customer Care at 513-566-5050. Customer satisfaction is of the utmost importance to Cincinnati Bell, and it is our policy to fully investigate and resolve, to our satisfaction, all customer billing disagreements lodged within 60 days of the original due date.

4.2. Late payment fees will: (i) be assessed on any past due balance; (ii) be calculated as 2% of the past due balance if the past due balance includes regulated products or the greater of \$8.95 or 2% of the past due balance if the past due balance does not include regulated products; and (iii), will be added to the past due balance and included in future billing cycles.

5. COMPUTER / EQUIPMENT REQUIREMENTS.

5.1. In order to receive Fioptics High Speed Internet Service, Customer must have minimum computer requirements. Current information can be found on the cincinnatiBell.com website or through a Cincinnati Bell sales representative.

5.2. The following equipment must be used in order to receive Fioptics: (1) Fioptics Modem (provided by Cincinnati Bell); and if needed: (2) telephone line microfilters (provided by Cincinnati Bell). Customer agrees that all of the Equipment listed belongs to Cincinnati Bell. Cincinnati Bell grants the Customer a non-exclusive, non-transferable limited license to use the Equipment to access Cincinnati Bell's network only for use in connecting from authorized locations in accordance with this Agreement. Loss, theft or physical damage to the Equipment is the Customer's responsibility.

6. ACCESS TO FIOPTICS EQUIPMENT, SOFTWARE AND/OR FACILITIES.

6.1. Customer agrees that they will not access, or attempt to access any equipment, software (including reverse engineering, decompiling or disassembling the software or attempting in any manner to recreate the source code or object codes) or facilities (including remote computing systems) furnished in connection with this Agreement. Any attempt by Customer to access and/or subvert any such equipment, software or facilities without permission, and/or any attempts by Customer to subvert any network security measures of Cincinnati Bell or any other network shall entitle Cincinnati Bell to immediately terminate services without notice.

7. NETWORKING.

7.1. Due to the ever-growing complexity of networked computers, the Cincinnati Bell Helpdesk cannot advise or assist with general networking setup. Customer inquiries will be directed to 3rd party computer technicians and network equipment manufacturers. During troubleshooting sessions where networked computers are present, the Cincinnati Bell Helpdesk technician will ask the Customer to disconnect their networked equipment from the Cincinnati Bell equipment, and directly connect the Cincinnati Bell hardware to one Windows based or Macintosh PC. Doing so will help the technician diagnose issues with the Cincinnati Bell equipment at the customer's premise(s). Failure to comply with the Cincinnati Bell technician's request in this matter will release Cincinnati Bell's responsibility for further diagnosis.

8. Service Speed

8.1 ZoomTown and Fioptics Services come in a variety of speeds. The availability of some service speeds may depend on the location of facilities in your neighborhood and on your street. Not all service speeds are available in all areas.

8.2 Cincinnati Bell does not guarantee that the Service, Equipment, or other equipment authorized by Cincinnati Bell for use in connection with the Service will perform at a particular speed, bandwidth, or data throughput rate, or will be uninterrupted, error-free, secure, or free of viruses, worms, disabling code or conditions, or the like. The speed measurement advertised by Cincinnati Bell refers to the Internet access speed provisioned to a subscriber on a per-line and not a per-device basis.

8.3. The actual speed realized by the subscriber may vary based on a variety of factors including, but not limited to: the capabilities or limitations of the customer's computer, network, or other device; the number of computers or other devices in use in the customer's home network; concurrent use of Internet access and a TV video on demand service, which consumes Internet access bandwidth; the means of connecting to the Cincinnati Bell network (e.g., the condition of the home's inside wiring or the type and condition of WiFi router); the distance of the home from the Cincinnati Bell broadband network aggregation point or the type of Cincinnati Bell network facilities present in a given location; network congestion; and the performance of the content and application providers the consumer is accessing, as well as the performance of their respective host network(s).

9. WARRANTIES.

9.1. The manufacturers warrant the Fioptics modem and Telephone Line Microfilters for one-(1) year from initiation of service ("Manufacturer's Warranty"). Except for the Manufacturer's Warranty, the Equipment is provided on an "as is" basis without warranties of any kind, either express or implied, including the implied warranty that the Equipment is reasonably fit for the purpose for which it is to be used and the implied warranties of merchantability and fitness for a particular purpose, unless such warranties are legally incapable of exclusion.

10. ACCEPTABLE USE.

10.1. If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any content that it, in its sole discretion, considers to be obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable, Cincinnati Bell shall have the right, but not the responsibility, to immediately remove such content and/or to terminate Customer service without notice. This policy applies to any content made available by the Customer, the Customer's own customers, or generally made available through the Customer account. Customer is solely responsible for all information, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "content") that is transmitted through the Customer Account and/or made available on or through the Customer's website or any of Customer's own customer's websites.

11. COMPLIANCE WITH DIGITAL MILLENNIUM COPYRIGHT ACT.

11.1. Customer agrees to fully comply with all provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") and to fully cooperate with Cincinnati Bell in its efforts to comply with the DMCA. Cincinnati Bell may investigate any reported violation of its policies or complaints of infringement relating to Customer's use of the service and take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of Customer's Account and access to the Service. In the event that Customer believes that any third party has infringed on any copyrighted material of theirs, Customer shall provide Cincinnati Bell with notice in compliance with the provisions of the DMCA. Furthermore, Customer agrees that Cincinnati Bell shall have no liability until such time as such notice has been actually received. If Cincinnati Bell receives a valid notice that Customer's use constitutes alleged infringement, Cincinnati Bell will take action consistent with the requirements of the DCMA, including but not limited to terminating Customer's Account and access to the Service. See http://www.cincinnati-bell.com/customer_support/policies/dmca/ for more details.

12. TERMINATION CHARGES.

12.1. In the event that Fioptics High Speed Internet Service under this Agreement is terminated by Customer for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term.

12.2. All terminations in Fioptics High Speed Internet Service will result in IP addresses assigned to Customer(s) reverting back to Cincinnati Bell.

ETHERNET- TERMS AND CONDITIONS SUPPLEMENT

1. TERM.

1.1. After expiration of the initial term as stated on the Services Agreement sheet, this Agreement shall automatically renew at the current contract rate for twelve (12) month periods unless either party terminates this Agreement by providing thirty (30) days advance written and/or verbal notice of termination to the other party prior to the expiration of the then-current term. Notwithstanding the foregoing, Cincinnati Bell reserves the right to adjust rates at any time after the expiration of the initial term upon sixty (60) days prior written notice to Customer, during which time Customer shall have the right to terminate the Agreement, without incurring termination charges, if Customer does not agree to stated rate adjustment. In the event Customer does not provide written and/or verbal notice of termination during the sixty (60) day period, Customer shall be deemed to accept the rate adjustment.

2. DEFINITIONS.

2.1. Ethernet. The engineering, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect multiple LANs to form a MAN for data transmission.

2.2. Customer's location. A location specified by the Customer for the purposes of terminating network such as the Customer's premises or the building where the off-premises extension terminates.

2.3. Demarcation Point. The point of physical separation of Cincinnati Bell's network, and associated responsibilities, from Customer's network and associated responsibilities. The location of the Demarcation Point shall be the physical interface for Ethernet service presented by Cincinnati Bell to Customer.

2.4. Local Area Network (LAN). A network connecting computers and other peripheral equipment for data communications over a limited geographical area, usually within a single building or among a few buildings.

2.5. Metropolitan Area Network (MAN). A network connecting computers and other peripheral equipment for data communications over a larger geographical area than a LAN, usually within a city or region.

2.6. Permanent Virtual Circuits (PVC). A static logical connection used in packet and cell switched networks between two end points. Permanent Virtual Circuits support long-term ongoing connections between data termination equipment. Permanent logical paths are assigned exclusively to each permanent circuit in the network.

2.7. Quality of Service (QoS). Defined as a way to prioritize service for applications that are sensitive to latencies or delays. It is the primary form of intelligent bandwidth management that allows service levels to be specified for different traffic types.

2.8. Unprotected Ethernet. The standard Ethernet service.

2.9. Virtual LAN (VLAN). A static logical connection used in packet networks for point-to-point, point-to-multipoint, and multipoint-to-multipoint. Virtual LANs support long-term ongoing connections between data termination equipment. Permanent logical paths are assigned exclusively to each VLAN in the network, and are enforced by using VLAN Tagging.

2.10. VLAN Tagging (802.1q). A way to label different traffic types so they may be differentiated from each other. It is another form of intelligent bandwidth management that can allow service levels for different traffic types.

3. SERVICES AND RATES.

3.1. Ethernet service will be provided as specified on the attached Pricing Agreement.

3.2. Customer may move the location of its Ethernet service to a location where sufficient central office capacity and outside plant facilities are available and retain the current contract term and monthly rates, but initial nonrecurring charges will be reapplied. The termination charges outlined in this Supplement are applicable if Customer terminates this Agreement because of a move to a location where sufficient central office capacity or outside plant facilities are not available.

3.3. Customer will be responsible for all taxes, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the products and services provided hereunder.

3.4. Customer may add additional ports to its Ethernet service at the rates in effect at the time of such addition, provided Cincinnati Bell has sufficient existing equipment capacity and outside plant facilities to support such addition. If sufficient equipment capacity or outside plant facilities are not available, Customer will be responsible for any special construction or other charges required adding such additional port(s) to its Ethernet service.

3.5. Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Ethernet service.

4. PROVISIONING.

4.1. Cincinnati Bell will provide Ethernet service for one or more of the following types of LANs, as specified by Customer on the attached Services Agreement: Ethernet LANs operating at a variety of speeds. Permanent Virtual Circuits (PVC) and/or VLANs, facilities redundancy, and other "optional" features relating to Ethernet are also available to Customer at rates, terms and conditions to be agreed upon.

4.2. Cincinnati Bell will provision Ethernet service in proper working order on Cincinnati Bell's side of the Demarcation Point by the agreed upon installation date. Customer will provide appropriate environmental conditions for Cincinnati Bell's customer premise equipment, which shall include, but not be limited to the following: 110/125 volt AC; 15 or 20 amp non switched circuit on UPS, if possible; Standard 110 3 – prong grounded outlet. Temperature between 40 and 100 degrees F. Humidity between 5% and 90% non-condensing. Security Access to this space that houses the Ethernet Service equipment must be restricted to authorized personnel only.

4.3. Ethernet will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Ethernet. Cincinnati Bell reserves the right to perform these tasks, as needed, during the off-peak hours, normally on Sundays from 12:00 a.m. to 6:00 a.m. Cincinnati Bell will attempt to notify the Customer in advance according to the attached Ethernet Service Agreement.

4.4. If a major outage to Cincinnati Bell's network occurs, including Ethernet, Cincinnati Bell will use reasonable efforts to restore Ethernet service as soon as reasonably possible, subject to any federal or state laws or regulations that may specify priority for restoration of telephone service, including without limitation, the National Security Emergency Preparedness Telecommunications Service Priority System.

4.5. Cincinnati Bell will furnish Customer with a telephone number, which Customer will use to report any trouble with Ethernet.

4.6. Unless otherwise agreed in writing, Cincinnati Bell will provide Ethernet service for data transmission only.

4.7. The electrical signals of Ethernet operate in compliance with the following American National Standard Institute ("ANSI") or IEEE standards for Ethernet LANs operating at a Native Mode of 384 Kbps, 768 Kbps, 1.544 Mbps, 3 Mbps, 4.5 Mbps, 6 Mbps, 10 Mbps, IEEE Standard 802.3 or 100 Mbps and 1000 Mbps (a.k.a., GigE or 1 Gigabit), IEEE Standard 802.3u (Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications).

4.8. Ethernet supports the following interfaces: (i) RJ45 10 base T and 100 base T connections, for Ethernet LANs operating at a variety of speeds, and (ii) SX or LX Gigabit Interface Connectors for Ethernet LANs operating at a Native Mode of 1000 Mbps (a.k.a., GigE or 1 Gigabit). The standard equipment setting for a 1.5Mbps to 10Mbps circuit is 10Mbps full duplex setting. Circuit speed greater than 10Mbps, but, less than 100Mbps will be hard-coded 100Mbps full duplex setting. Gig-E speed is set at auto-negotiate.

4.9. An initial port is required in order to provide Ethernet to a Customer's location. Additional ports are only available to a Customer's location with at least one initial port.

4.10. Additional port discounts do not apply to different Customers at the same location.

4.11. The Customer must subscribe to the initial port in order to subscribe to an additional port. If the initial port is terminated at a Customer's location, then all Ethernet service will be terminated at that location unless Customer wants to re-specify one of the additional ports as the initial port with the appropriate rates applied. An additional port can be terminated without terminating the initial port to a Customer's location.

4.12. If the Customer subsequently orders an additional port and the contract period for the initial port has not expired, then the following applies: a) the contract period selected for an additional port must be equal or shorter than the remaining contract for the initial port or b) the contract period for the initial port will be extended to be coterminous with the contract period selected for the additional ports.

4.13. Customer shall provide an estimate of the percent of Ethernet traffic traversing the contracted Cincinnati Bell network to a carrier's long haul network and terminates to interstate locations. This traffic excludes internet access and traffic that is exclusively local or intra-state. Customer shall provide this information upon request by completing an online form provided by Cincinnati Bell. If Customer does not provide this information, Cincinnati Bell will consider all of Customer's traffic to be interstate.

5. REPAIR – RESPONSE TIME.

5.1. Cincinnati Bell will use its best efforts to repair any inoperable Ethernet port within four (4) hours after a reactive or proactive trouble ticket is opened with Cincinnati Bell that such port is inoperable. If such port remains inoperable for more than eight (8) hours after a trouble ticket has been opened, Cincinnati Bell will credit Customer's account for an amount equal to one-thirtieth (1/30) of the applicable monthly charge for such port. The same credit will apply for each additional eight (8) hour period that the port remains inoperable. The total amount of all credits for any one (1) inoperable port will not exceed the monthly port charge for such inoperable port. The credit referred to herein shall be Cincinnati Bell's entire liability and Customer's exclusive remedy for any damages resulting from such inoperable port.

5.2. Performance Standards of the Ethernet Network are as follows: Mean time to respond at the port level: 30 minutes and Mean time to repair at the port level: 2 hours. Response Time shall mean that Cincinnati Bell is aware of the problem, and a ticket is opened either reactively or proactively and Cincinnati Bell is beginning to take action to resolve the issue.

6. MAINTENANCE.

6.1. When a Customer reports a trouble to Cincinnati Bell and the problem is not found in the Cincinnati Bell's facilities, the Customer is responsible for a payment of Maintenance of Service charge for the period of time from when the technician is dispatched to when the work is completed. The Maintenance of Service charges is as follows: (a) \$ 31.50 for the first fifteen (15) minutes or fraction thereof and (b) \$ 9.00 for each additional fifteen (15) minutes or fraction thereof.

6.2. If Cincinnati Bell personnel initially fail to find trouble in Cincinnati Bell facilities, but later discover that the trouble was indeed facilities related, then Maintenance of Service charges will not apply.

6.3. Cincinnati Bell can continue to test/diagnose the problem on the Customer's premise at the rate of \$175.00 per hour, billable in half-hour increments, with a two-hour minimum.

6.4. Cincinnati Bell can also be contracted to engineer and optimize the Customer's network by working on the Customer's premise. The rate for this enhanced service is \$250.00 per hour, billable in half-hour increments, with a two (2) hour minimum. This service would typically be independent of a troubleshooting dispatch, or in conjunction with a major problem/initiative, and would be initiated by the Customer.

7. CANCELLATION, DELAY OR MODIFICATION OF SERVICE ORDERS

7.1. Cancellation of Service Order. If Customer cancels a Service Order before Cincinnati Bell has completed installation of the Ethernet service, Customer must reimburse Cincinnati Bell for its costs. If Customer cancels a Service Order after the Ethernet service has been installed, the termination liability set forth in Section 10 below will apply. All requests by Customer to cancel a pending Service Order are effective only if provided in writing.

7.2. Requests to Delay Installation. Customer may request to delay installation for up to thirty (30) days following the original Firm Order Commitment ("FOC") due date for no charge if such request is provided in writing to Cincinnati Bell within two (2) business days of receiving the FOC due date. If Customer submits its request to delay installation after the two (2) business days after receipt of the FOC, then Cincinnati Bell will bill \$100.00 for any request to change the FOC due date. However, if the customer requests a change of due date within five (5) business days prior to the communicated FOC due date, Cincinnati Bell will charge \$300.00 for the FOC due date change.

7.3. Failure to Notify of Installation Delay. If the Customer fails to notify Cincinnati Bell of an installation delay pursuant to Section 7.2 above, Cincinnati Bell will bill for the Monthly Recurring Charge for such Ethernet service from the original FOC due date to the actual date of installation. Customer will be required to notify Cincinnati Bell in writing to reschedule an installation date.

7.4. Modification of Service Orders. If Customer requests modifications to pending Service Orders, Customer must reimburse Cincinnati Bell for its actual costs incurred in reengineering and modifying the Ethernet service, including any third-party charges assessed against Cincinnati Bell as a result of such modification.

8. TESTING.

8.1. Cincinnati Bell will notify Customer when the Ethernet service has been successfully installed, on a circuit-by-circuit basis, and is available for Customer's use ("Service Date"). Unless Customer notifies Cincinnati Bell by the close of the second business day following the Service Date that the Service is not operational, the Service Term will commence on the Service Date. Customer also has thirty (30) days following the Service Date to conduct additional testing of the Ethernet services. If such testing indicates that the Ethernet service is not operating properly, and Customer notifies Cincinnati Bell and reasonably identifies the problem, Cincinnati Bell will work with Customer to remedy the problem. If Cincinnati Bell reasonably determines that the problem is due to Cincinnati Bell's Network or Cincinnati Bell Equipment or third-party telecommunications facilities arranged by Cincinnati Bell on Cincinnati Bell's side of the demarcation point, then Customer will be credited for the MRCs associated with the Ethernet service from the Service Date through the date that the Ethernet service is made operational. If Cincinnati Bell reasonably determines that the problem is not being caused by Cincinnati Bell's Network, Cincinnati Bell Equipment, or third-party telecommunications facilities arranged by Cincinnati Bell on Cincinnati Bell's side of the demarcation point, the Service Date will remain unchanged. Cincinnati Bell is not responsible for testing failures resulting from problems with Customer's equipment.

9. BILLING AND PAYMENT.

9.1. Unless Customer notifies Cincinnati Bell otherwise, charges for Ethernet services will commence on the Service Date as defined in Section 8 above. The Service Date will not be delayed due to Customer's failure to be ready for delivery of the Ethernet service on the agreed upon installation date.

10. TERMINATION CHARGES.

10.1. Either party may terminate this Agreement if the other party is in material breach of this Agreement and such breach remains uncured for a period of thirty (30) days after notice of such breach has been given to the breaching party by the other party.

10.2. If Customer terminates this Agreement, without cause, prior to the expiration of the term hereof, Customer will pay to Cincinnati Bell a termination charge equal to all remaining amounts due or to become due under this Agreement, including but not limited to all monthly charges for which Customer had not terminated this Agreement.

10.3. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Ethernet prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

10.4. If Customer removes one or more ports from service prior to the expiration of term hereof, Customer will pay Cincinnati Bell a termination charge equal to all monthly charges for such port(s) for which Customer would have been responsible had Customer not removed such port(s).

10.5. If nonrecurring charges associated with the installation of Ethernet are waived and the Ethernet is then terminated prior to the expiration of the Term, the Customer will become liable for payment of the waived charges.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

1.1. The following definitions shall apply to this Agreement and, unless otherwise provided therein, shall also apply to the Supplements. The definitions shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree or right or obligation for either Party. The use of the term "Agreement" shall be deemed to refer to the entire agreement between the Parties consisting of this Agreement and includes each Supplement.

1.2. Applicable Laws - means all applicable federal, state, and local statutes, laws, rules, regulations, codes, final and nonappealable orders, decisions, injunctions, judgments, awards and decrees that relate to a Party's obligations under this Agreement.

1.3. Information - means any writing, drawing, sketch, model, sample, data, computer program, software, verbal communication, e-mail, recording or documentation of any kind.

1.4. Party - means (i) Cincinnati Bell parent company, its affiliates and subsidiaries (collectively "Cincinnati Bell") or (ii) Customer; and "Parties" means (i) and (ii).

1.5. Proprietary Information - means any Information communicated, whether before, on or after the Effective Date, by a Party ("Disclosing Party") to the other Party ("Receiving Party"), pursuant to this Agreement and if written, is marked "Confidential" or "Proprietary" or by similar notice or if oral or visual, is identified as "Confidential" or "Proprietary" at the time of disclosure; or if by electronic transmission (including, but not limited to, facsimile or electronic mail) in either human readable or machine readable form, and is clearly identified at the time of disclosure as being "Proprietary" or "Confidential" by an appropriate and conspicuous electronic marking within the electronic transmission, which marking is displayed in human readable form along with any display of the "Proprietary" or "Confidential" information; or if by delivery of an electronic storage medium or memory device which is clearly identified at the time of disclosure as containing "Proprietary" or "Confidential" information by an appropriate and conspicuous marking on the storage medium or memory device itself and by an appropriate and conspicuous electronic marking of the stored "Proprietary" or "Confidential" information, which marking is displayed in human readable form along with any display of the "Proprietary" or "Confidential" information.

2. SERVICES.

2.1. The applicable rates, fees, commissions and charges for a particular service to be provided by Cincinnati Bell pursuant to the Supplement(s) will be on the Services Agreement sheet. Any other regulated services not listed on the Supplements which are provided by Cincinnati Bell to Customer shall be governed by the rates, terms, and conditions of the appropriate tariff. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Supplement Service. The specific terms and conditions applicable to the particular services to be provided pursuant to this Agreement, including the description of the services to be provided and the obligations of each Party in connection therewith, termination rights, performance obligations and service parameters are or shall be set forth in the Supplement(s). Any future Supplements entered into between the parties shall reference and be governed by the terms of this Agreement. In the event of a conflict between the terms of this Agreement and a Supplement, the terms of the Supplement shall prevail.

3. EQUIPMENT WARRANTY, USE AND MAINTENANCE.

3.1. If applicable, Cincinnati Bell will maintain the equipment used to provide service under the applicable Supplements, in good working order during the term specified on the Services Agreement sheet, except CPE provided as part of any Ethernet service, subject to the exclusions set forth under Section four (4) entitled Warranty Exclusions. Customer will permit Cincinnati Bell access to equipment on Customer's premises used to provide service hereunder and Cincinnati Bell will comply with the Customer's security and safety regulations at Customer's site. Repair parts or replacement parts may be new, remanufactured or refurbished at the discretion of Cincinnati Bell. Customer will not make any modifications to the equipment used to provide service hereunder without the written permission of Cincinnati Bell and will pay the cost of any repairs necessitated by unauthorized work.

4. WARRANTY EXCLUSIONS.

4.1. The warranties provided under Section three (3) do not cover services required to repair damages, malfunctions or failures caused by: (a) Customer's failure to follow Cincinnati Bell's written operation or maintenance instructions provided to Customer; (b) Customer's unauthorized repair, modifications or relocation of equipment used to provide services hereunder, or attachment to such equipment of non-Cincinnati Bell equipment; and (c) abuse, misuse or negligent acts. Cincinnati Bell may perform services in such instances on a time and materials or contract basis.

4.2. Cincinnati Bell will not be liable to Customer or third parties for any claims, loss or expense of any kind or nature caused directly or indirectly by: (i) interruption or loss of use or loss of business; or (ii) any consequential, indirect, special or incidental damages suffered by Customer or third parties whatsoever.

4.3. Except as specified herein and any supplements, Cincinnati Bell, its subcontractors and suppliers (except as expressed in writing by them) make no warranties, express or implied, and specifically disclaim any warranty or merchantability of fitness for a particular purpose.

5. TITLE OR RISK OF LOSS OF EQUIPMENT.

5.1. For equipment sold to Customer and installed by Cincinnati Bell, title shall pass to Customer on the In-Service Date. Risk of loss shall pass at the time of delivery.

5.2. For all other equipment used in the provision of services under any of the Supplements, title shall remain solely with Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the parties. Cincinnati Bell will bear the risk of loss or damage to the equipment used in the provision of service, except that Customer will be liable to Cincinnati Bell for the cost of repair or replacement of equipment lost or damaged as a result of Customer's negligence, intentional acts, unauthorized installation or maintenance or other causes within the control of Customer, its employees, agents or subcontractors.

6. GOVERNING LAW.

6.1. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio, and the internal laws of such state shall govern the construction, interpretation and performance of this Agreement, without reference to conflicts of law provisions. Any legal action arising under this Agreement must be filed (and thereafter maintained) in a state or federal court located in Hamilton County, Ohio within two (2) years after the cause of action arises.

7. CONFIDENTIAL INFORMATION.

7.1. During the term of this Agreement and for two years thereafter, neither Party shall disclose any terms or pricing contained in this Agreement or any confidential information disclosed by the other Party. Confidential information shall remain the property of the disclosing Party and shall be labeled as either "Confidential" or "Proprietary".

8. RESOLUTION OF DISPUTES.

8.1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly through discussions between themselves at the operational level. In the event a resolution cannot be reached at the operational level, the disputing Party shall give the other Party written notice of the dispute and such controversy or claim shall be negotiated between appointed counsel or senior executives of the Parties who have authority to settle the controversy. If the Parties fail to resolve such controversy or claim within thirty (30) days of the disputing Party's notice, either Party may seek arbitration as set forth below.

8.2. Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Cincinnati, Ohio and shall be resolved under the laws of the State of Ohio without regard to choice of law provisions. The arbitration shall be conducted before a single arbitrator in accordance with the commercial rules and practices of the American Arbitration Association then in effect.

8.3. The arbitrator shall have the power to order specific performance if requested. Any award, order, or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The Parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. All such arbitration proceedings shall be conducted on a confidential basis. The arbitrator may, as part of the arbitration award, permit the substantially prevailing Party to recover all or part of its attorney's fees and other out-of-pocket costs incurred in connection with such arbitration.

9. TERMS OF PAYMENT.

9.1. Invoices for Services are due and payable in U.S. dollars within thirty (30) days of invoice date ("Invoice Due Date"). Customer shall allow for up to three (3) days for payment processing within such thirty (30) day period. Payments not received by Invoice Due Date are considered past due. In addition to Cincinnati Bell undertaking any of the actions set forth in this Agreement, if any invoice is not paid when due, Cincinnati Bell may: (i) apply a late charge equal to 2% (or the maximum legal rate, if less) of the unpaid balance per month and/or (ii) take any action in connection with any other right or remedy Cincinnati Bell may have under this Agreement in law or in equity. Customer shall be in default if Customer fails to make payment as required and such failure remains uncured for five (5) calendar days after the Invoice Due Date. If Customer in good faith disputes any portion of any Cincinnati Bell invoice, Customer shall submit to Cincinnati Bell by the Invoice Due Date, full payment of the undisputed portion of any Cincinnati Bell invoice and written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within sixty (60) days following the date on the applicable invoice, Customer shall have waived its right to dispute that invoice. Cincinnati Bell and Customer agree to use their respective best efforts to resolve any dispute within thirty (30) days after Cincinnati Bell receives written notice of the dispute from Customer. Any disputed amounts resolved in favor of Customer shall be credited to Customer's account on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to Cincinnati Bell shall be due within (10) days of resolution of the dispute.

9.2. Customer shall pay taxes levied upon any sale, transfer of ownership, installation, license or use of products or services, unless Customer provides a tax exemption certificate. Excluded are taxes on Cincinnati Bell's net income.

10. TERMINATION.

10.1. Notwithstanding the provisions regarding the Term and Termination Charges of each Supplement, and in addition to the Parties' rights of termination specifically provided elsewhere in this Agreement, the following shall apply:

10.2. In the event Customer provides timely notice to Cincinnati Bell that it does not intend to renew an automatically renewing contract, Cincinnati Bell will continue to provide service to Customer after the expiration of the then current contract term on a month-to-month basis. The provision of such month-to-month service shall be subject to the terms and conditions and the month-to-month tariff / service agreement rates in effect at the time. Either Party may terminate the month-to-month service, without termination penalty, upon thirty (30) days advance written notice to the other Party.

10.3. In the event that one Party breaches any material obligation provided hereunder, excluding payment obligations, or in such Supplement (other than Customer's payment obligations), the other Party shall give the breaching Party written notice of the breach and request that the breach be cured ("Cure Notice"). If the breaching Party fails to cure the specified breach within thirty (30) days of receipt of the Cure Notice (or such other mutually agreed upon time), the other Party shall have the right to terminate the Supplement, effective upon five (5) days prior written notice to the breaching Party ("Termination Notice"). The right of Cincinnati Bell and the Customer to terminate in any such case shall be in addition to any other rights and remedies they may have hereunder or at law or in equity.

10.4. A Party may, at its option, terminate a Supplement effective immediately upon written notice upon the occurrence of an "Insolvency Event of Default" (as defined below) with respect to the other Party. The occurrence of any one or more of the following events shall constitute an "Insolvency Event of Default": the other Party admits in writing its inability to pay its debts generally or makes a general assignment for the benefit of creditors; any affirmative act of insolvency by the other Party or the filing by or against the other Party (which is not dismissed within ninety (90) days of any petition or action) under any bankruptcy, reorganization, insolvency arrangement, liquidation, dissolution or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or the subjection of a material part of the other Party's property to any levy, seizure, assignment or sale for or by any creditor, third party or governmental agency.

10.5. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Services prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by Cincinnati Bell in connection with such modification prior to Cincinnati Bell's receipt of notice of cancellation; provided, however, the amount of such reimbursement will not exceed the service, construction, installation, termination and other charges for which Customer would have otherwise been responsible.

10.6. Customer shall have the right to terminate any Supplement for convenience at any time upon thirty (30) days prior written notice to Cincinnati Bell. The termination charge will be considered to be liquidated damages and will be Cincinnati Bell's sole remedy against Customer for early termination, except for outstanding charges. The termination liability language contained within the applicable Supplement is not intended to indicate that the Commissions have approved or sanctioned the specific termination charges contained herein. Signatories to the Agreement shall be free to pursue whatever legal remedies they may have should a dispute arise.

10.7. One or more Supplements may be terminated by the Parties without causing a termination of this Agreement or other Supplements.

11. INDEMNIFICATION.

11.1. Customer shall indemnify, defend and hold harmless Cincinnati Bell and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of claims for damage to property and/or personal injuries (including death) arising directly out of the Customer's performance of obligations under this Agreement. A Party shall notify the other Party and describe the claim or action within fourteen (14) days of becoming aware of the claim or action itself. Customer may undertake the defense of any such claim or action and permit Cincinnati Bell to participate therein. The settlement of any such claim or action by Customer without Cincinnati Bell's prior written consent, shall release the Cincinnati Bell from its obligations hereunder with respect to such claim or action so settled.

12. RESPONSIBILITIES OF EACH PARTY.

12.1. Each Party has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of their respective employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Except as otherwise provided in this Agreement, each Party will be responsible for its own acts and those of its employees, agents, and contractors during the performance of such Party's obligations hereunder.

13. LIMITATIONS OF LIABILITY.

13.1. Cincinnati Bell's liability arising out of the provision of: (i) Services; (ii) delays in the restoration of Services; or (iii) arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the limitations set forth below and in the applicable Tariff. In no event shall Cincinnati Bell be liable to customer, customer's own customers, or any other third party with respect to the subject matter of this agreement under any contract, warranty, negligence, strict liability, or other theory for any type of indirect, consequential, incidental, reliance, special, or punitive damages, or for any lost profits, lost revenues, or lost savings of any kind, arising out of or relating to this agreement whether or not Cincinnati Bell or Customer was advised of the possibility of such damages and whether or not such damages were foreseeable. For purposes of this section, "Cincinnati Bell" is deemed to include Cincinnati Bell's parent company, and its respective affiliates and subsidiaries, and the directors, officers, employees, agents, representatives, subcontractors and suppliers of each of them.

13.2. The Parties hereto agree that the termination liabilities and the limitations on liability contained in this Agreement are fair and reasonable adjustments to the uncertain and difficult to ascertain damages which might arise under this Agreement and are intended to be reasonable allocations by the Parties of the business risks inherent in this Agreement.

14. SECURITY AND ACCESS.

14.1. Employees and agents of Cincinnati Bell and its subsidiaries, while on the premises of Customer, will comply with all reasonable rules, regulations and security requirements of Customer.

15. WORK ON CUSTOMER'S PREMISES.

15.1. In performance of its obligations hereunder, Cincinnati Bell shall comply with all applicable laws and will indemnify and hold Customer harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of Cincinnati Bell's noncompliance with any such laws. If Cincinnati Bell's work this Agreement involves operations by Cincinnati Bell on the premises of Customer, Cincinnati Bell shall take reasonable precautions necessary to prevent the occurrence of any injury to person or property during the progress of such work. Except to the extent an injury to person or property is the result of Customer's negligence or willful misconduct, Cincinnati Bell shall defend, indemnify and hold harmless Customer against any claims, demands, suits, losses, damages, costs and expenses which are directly and proximately caused by negligent or willful conduct of Cincinnati Bell's employees, agents or subcontractors.

16. CUSTOMER OBLIGATIONS.

16.1. Prior to requesting repair service from Cincinnati Bell, Customer will use its best efforts, including but not limited to performing reasonable diagnostic tests, to verify whether any trouble with the Service is a result of the Customer's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's equipment or facilities. Customer will cooperate with any joint testing of the Service reasonably requested by Cincinnati Bell.

17. SYSTEM MAINTENANCE.

17.1. In the event Cincinnati Bell determines that it is necessary to interrupt Services or that there is a potential for Services to be interrupted for the performance of system maintenance, Cincinnati Bell will use good faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6:00 am. local time). In no event shall interruption for system maintenance constitute a failure of performance by Cincinnati Bell.

18. SUBCONTRACTING.

18.1. Cincinnati Bell may subcontract work to be performed under this Agreement, but shall retain responsibility for the work.

19. CHANGES IN LAWS.

19.1. This Agreement is predicated upon current state and federal laws and regulations. If new laws or regulations or new applications of current law and regulations affect this Agreement, either Party may request on thirty (30) days' written notice that one or more provisions be renegotiated consistent with the changed circumstances.

20. FORCE MAJEURE.

20.1. No Party shall be held liable for any delay or failure in performance of any part of this Agreement, including any Supplement, caused by a force majeure condition, including fires, pandemics, embargoes, explosions, power blackouts, earthquakes, volcanic action, floods, wars, water, the elements, labor disputes (such as a work stoppage), civil disturbances, government requirements, civil or military authorities, acts of God or a public enemy, inability to secure raw materials, inability to secure product of manufacturers or outside vendors, inability to obtain transportation facilities, acts or omissions of transportation common carriers, or other causes beyond its reasonable control whether or not similar to the foregoing conditions. If any force majeure condition occurs, the Party whose performance fails or is delayed because of such force majeure condition ("Delayed Party") shall promptly give written notice thereof to the other Party. The Delayed Party shall use all best efforts to avoid or mitigate performance delays despite a force majeure condition, and shall restore performance as soon as the force majeure condition is removed.

21. GOOD FAITH PERFORMANCE.

21.1. Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement, as the case may be.

22. NO LICENSE.

22.1. Except as expressly provided in this Agreement or a Supplement, no license under patents, copyrights, trademarks, service marks, trade names or other indicia of origins, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

23. AMENDMENTS; WAIVERS.

23.1. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same shall be in writing and signed by an authorized official of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of any Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

24. NOTICES.

24.1. All notices, demands, requests, elections, or other communications provided under this Agreement or which may be given by one Party to the other Party under this Agreement and to the extent a notice relates to an alleged breach, termination, or other claim under a Supplement, such notice shall be made in writing (unless specifically provided otherwise herein) and unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact, shall be (a) delivered personally, (b) delivered by express delivery service, (c) mailed, first class, certified mail postage prepaid, return receipt requested or (d) delivered by telecopy and shall be deemed effective upon receipt; provided that a confirmation copy is sent by the method described in (a), (b) or (c) of this Section. Notices shall be addressed to the parties at the addresses set forth on the Services Agreement sheet.

24.2. Changes in notice designation shall be made in writing and shall be deemed effective upon receipt. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) four (4) business days after mailing in the case of first class, certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy.

25. NO RIGHTS TO THIRD PARTIES.

25.1. This Agreement shall not be deemed to provide third parties with any remedy, claim, right of action or other right.

26. SEVERABILITY.

26.1. If any term, condition, or provision of this Agreement shall be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate or render unenforceable the remainder of this Agreement; and, unless such construction would be unreasonable, this Agreement shall be construed as if not containing the invalid or unenforceable provision or provisions and the rights and obligations of each Party shall be construed and enforced accordingly. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

27. ASSIGNMENT.

27.1. Customer will not resell or permit any third party to use any of the services provided by Cincinnati Bell hereunder. Neither Customer nor Cincinnati Bell may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. Cincinnati Bell shall not be required to obtain consent in the case of a sale of all or substantially all the assets of Cincinnati Bell or an assignment to an entity directly or indirectly owning or controlling, owned or controlled by, or under common control with the assigning Party. Notwithstanding the foregoing, Cincinnati Bell shall retain the right to terminate this Agreement without further obligation or liability to Customer, its successors or assigns, if, in its sole and exclusive judgment any assignment or purported assignment by Customer is to be made to a competitor of Cincinnati Bell.

28. ENTIRE AGREEMENT; CONTINUING OBLIGATIONS.

28.1. The Agreement, which includes the Services Agreement, Terms & Conditions and Supplements, constitutes the entire Agreement between the Parties concerning the subject matter hereof. All prior agreements, representations, statements, negotiations, understandings, proposals, and undertakings, oral or written, with respect to the subject matter thereof are superseded and replaced by the provisions of this Agreement.

28.2. Irrespective of any provision contained in this Agreement or in any Supplement to the contrary, Articles 6 through 9 and Articles 11 through 30 of this Agreement shall take precedence over, supersede and control any conflicting provision (or the absence of a provision) heretofore or hereinafter executed by the Parties unless such Article, including any subsection thereof, is expressly identified as the subject of an amendment that is in writing and agreed upon by a representative of each Party having authority to agree to such amendment.

28.3. Any liability or obligation of any Party to the other Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of any Party to make payments, any obligation of any Party under the provisions of Article 7 hereof regarding Confidential Information, Article 8 hereof regarding resolution of disputes, Articles 11 and 15 hereof regarding indemnification, and Article 13 regarding limitations on liability, and any provisions that, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall, in each case, survive cancellation or termination of this Agreement.

28.4. The rights and obligations under this Agreement shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assigns of each Party.

28.5. Under federal law, Customer has a right, and Cincinnati Bell has a duty, to protect the confidentiality of information regarding the telecommunications services Customer buys from Cincinnati Bell, including the amount, type, and destination of Customer's service usage; the way Cincinnati Bell provides services to Customer; and Customer's calling and billing records. Together, this confidential information is described as Customer Propriety Network Information ("CPNI"). Customer hereby consents to Cincinnati Bell sharing its CPNI with Cincinnati Bell affiliates, subsidiaries and any other current or future direct or indirect subsidiaries of the Cincinnati Bell parent company as well as Cincinnati Bell agents and authorized sales representatives, to develop or bring to new products or services to Customer's attention. This consent survives the termination of Customer's service and is valid until Customer affirmatively revokes or limits such consent.

29. REGULATORY APPROVAL; TARIFFS.

29.1. This Agreement is subject to applicable regulatory requirements. In the event of any conflict between the terms of this Agreement and applicable regulatory requirements, such regulatory requirements will take precedence and be controlling. The obligations of Cincinnati Bell and Customer under this Agreement may be contingent upon approval of this Agreement by applicable regulatory agencies, including the Public Utilities Commission of Ohio and Public Services Commission of Kentucky. The regulations and rates specified herein are in addition to applicable regulations and rates set forth in Cincinnati Bell's tariffs on file with regulatory agencies.

30. EXECUTED IN COUNTERPARTS.

30.1. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

31. HEADINGS.

31.1. The titles and headings of Articles and Sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall in no way define, modify, or restrict the meaning or interpretation of the terms or provisions of this Agreement.