

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:

EXHIBIT "A"
Resolution 2018-14

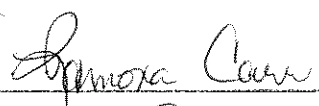
SERVICES AGREEMENT

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:**
- 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: Pamela Carr	Printed Name:
Title: Mayor	Title:
Date: 10-09-18	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.

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.

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.

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 cincinnati.bell.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.

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.

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.

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:

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.

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.