



GENERAL TERMS AND CONDITIONS

These Terms and Conditions are applicable when services are ordered via the Access Service Request (ASR) process in the absence of a Master Services Agreement between Cincinnati Bell Telephone Company LLC, and the customer ordering services.

1. DEFINITIONS.

The following definitions shall apply to these Terms and Conditions. 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 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.

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

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

1.3 Party - means (i) Cincinnati Bell or (ii) Customer; and "Parties" means (i) and (ii).

1.4 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"), 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.

The specific terms and conditions applicable to the services to be provided by Cincinnati Bell including the description of the services to be provided and the obligations of each Party in connection therewith, applicable service rates, one-time charges, termination rights, performance obligations and service parameters are or shall be set forth in the corresponding Service Guides. All prices and rates set forth in the Service Guides are exclusive of 911 charges, taxes, and surcharges unless otherwise noted. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Services set forth in the Service Guides.

3. EQUIPMENT WARRANTY, USE AND MAINTENANCE.

Cincinnati Bell will maintain the equipment used to provide service under the applicable Service Guides, in good working order throughout the term specified in the submitted ASR, so that no service interruptions are experienced by Customer, subject to the exclusions set forth under Section four (4) entitled Warranty Exclusions. Customer and Customer's End-Users will permit Cincinnati Bell access to equipment on the

premises used to provide service hereunder and Cincinnati Bell will comply with the Customer's or Customer's End-User's security and safety regulations at the site. Cincinnati Bell will, for maintenance purposes, test its services only to the extent necessary to detect and/or clear troubles. In the event of any service interruption, Cincinnati Bell will use commercially reasonable efforts to restore service as soon as possible. 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 SCHEDULES, 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 OR FITNESS FOR A PARTICULAR PURPOSE.

5. TITLE OR RISK OF LOSS OF EQUIPMENT.

Title to equipment used in the provision of services under any of the Schedules shall remain solely with Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the parties. Customer acknowledges and agrees that all internal and external wiring, cabling, conduit, molding (including, specifically, both the home run wiring from the point of entrance onto Customer's or Customer's End User's property up to the network interface device (NID), optical network terminal (ONT), or similar equipment, and all other equipment and facilities that are reasonably necessary to provide the services to the Customer's or Customer's End User's property are and shall remain the property of Cincinnati Bell and that Cincinnati Bell shall have the exclusive right to own, access, control, and operate the facilities. 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.

These Terms and Conditions 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 their construction, interpretation and performance, without reference to conflicts of law provisions. Any action in connection with a service provided by Cincinnati Bell must be commenced within two (2) years after the underlying claim arises.

7. CONFIDENTIAL INFORMATION.

During the term of any services purchased under these Terms and Conditions and for two years thereafter, neither party shall disclose 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". The foregoing notwithstanding, either party may disclose pricing information to its officers, attorneys, accountants, members and affiliates (its "Representatives"), provided such Representatives are informed of the confidential nature of such information and such party shall be responsible and liable to the other party for the breach hereof by any of its Representatives.

8. RESOLUTION OF DISPUTES.

9.1 The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to

services 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 pursue legal remedies as set forth below.

9.2 Any claim arising out of or relating to services, or a breach of these Terms and Conditions must be brought in a state or federal court sitting in Cincinnati, Ohio and shall be resolved under the laws of the State of Ohio without regard to choice of law provisions. The Parties consent to the personal jurisdiction of such court.

9.3 Each Party is responsible for its own attorney's fees and other out-of-pocket costs incurred in connection with such litigation.

9. TERMS OF PAYMENT.

10.1 Invoices for Services are due and payable in U.S. dollars within thirty-one (31) calendar days of invoice date ("Invoice Due Date"). Payments not received by the Invoice Due Date are considered past due. 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 in law or in equity. Early-termination charges will also apply when services have been disconnected prior to expiration of the term specified in the ASR. Customer shall be in default if Customer fails to make payment as required and such failure remains uncured for ten (10) 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) calendar 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) calendar 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 fourteen (14) calendar days of resolution of the dispute. In the event that a billing dispute concerning any charges billed to the customer by Cincinnati Bell is resolved in favor of Cincinnati Bell, any payments withheld pending settlement of the dispute shall be subject to the late payment charge equal to 2% (or the maximum legal rate, if less) of the unpaid balance per month.

10.2 Customer shall pay taxes, utility or communications assessments (including Federal Universal Service Fund), franchise fees, or privilege, license, occupational, excise, or other similar fees, 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.

9.3 Customer shall pay all shipping, rigging and other destination charges invoiced that are not expressly included in the rates for the Services. Equipment sold as new will qualify as new under federal tax laws.

9.4 Where special construction of facilities is necessary special construction charges may apply for the installation of service to the Customer. Cincinnati Bell will provide an estimate of the Special Construction costs, if any, and the Customer must approve the charges prior to the beginning of construction.

9.5 If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification prior to completion thereof, Customer will reimburse Cincinnati Bell for the actual expenses incurred by CBT 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.

9.6 The customer may request a design change to the service ordered. A design change is any change to an Access Order that requires engineering review. An engineering review is a review by Cincinnati Bell personnel, of the service ordered and the requested changes to determine what changes in the design, if any, are necessary to meet the changes requested by the customer. Cincinnati Bell will review the requested change, notify the customer whether the change is a design change, if it can be accommodated and if a new service date is required. If the customer authorizes Cincinnati Bell to proceed with the design change, a Design Change Charge will apply. The Design Change Charge will apply on a per order per occurrence basis, for each order requiring a design change.

9.7 If customer requests a service date that is prior to the standard interval service date, or requests an earlier service date on a pending standard or negotiated service interval, if Cincinnati Bell accommodates such request, an Expedited Order Charge will apply.

9.8 If Customer requests that facilities be moved within its network or from one Customer network to another, a project coordination fee, the Design Management Charge, will apply.

9.9 If Customer requests changing customer circuit identification, the Circuit Identification Charge will apply.

9.10 Professional installation non-recurring charges do not cover premise technician work outside of normal business hours of Monday-Friday, 8 a.m. to 5 p.m.

9.11 Billing for the service will commence when Cincinnati Bell completes installation.

10. INDEMNIFICATION.

Each Party shall indemnify, defend and hold harmless the other Party 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 performance of obligations under these Terms and Conditions. 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. Either Party may undertake the defense of any such claim or action and permit the other Party to participate therein at its own expense. The settlement of any such claim or action by either Party without the other Party's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, shall release the other Party from its obligations hereunder with respect to such claim or action so settled.

11. LIMITATIONS OF LIABILITY.

Cincinnati Bell's liability arising out of: (i) the provision of Services; (ii) delays in the restoration of Services; or (iii) 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.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR THE OTHER'S CUSTOMERS, OR ANY OTHER THIRD PARTY WITH RESPECT TO ANY SERVICE UNDER ANY CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY FOR ANY TYPE OF INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, ACTUAL, SPECIAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS, LOST REVENUES, OR LOST SAVINGS OF ANY KIND, ARISING OUT OF OR RELATING TO ANY SERVICE 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 TELEPHONE COMPANY LLC AND ITS PARENT, SUBSIDIARIES AND AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM.

Cincinnati Bell's liability, if any, shall not exceed an amount equal to the proportionate charge for the service for the period during which the service was affected.

Customer agrees that the termination liabilities and the limitations on liability contained in these Terms and Conditions are fair and reasonable adjustments to the uncertain and difficult to ascertain damages which might arise in connection with the provision services and are intended to be reasonable allocations by the Parties of the inherent business risks.

12. RESPONSIBILITIES OF EACH PARTY.

Each Party has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations 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 for the limitations on liability as otherwise provided in herein, each Party will be responsible for its own acts and those of its employees, agents, and contractors during the performance of that Party's obligations hereunder.

13. SECURITY AND ACCESS.

Employees and agents of Cincinnati Bell and its subsidiaries, while on the premises of Customer or Customer's End-Users, will comply with all reasonable rules, regulations and security requirements of Customer.

14. WORK ON CUSTOMER'S PREMISES.

The customer shall furnish or arrange to have furnished to Cincinnati Bell, at no charge, equipment space with suitable environmental characteristics and electrical power required by the Cincinnati Bell to provide services at the points of termination of such services.

15. CUSTOMER OBLIGATIONS.

17.1 The Customer shall submit an Access Order to Cincinnati Bell to initiate service. The customer shall provide all information necessary for Cincinnati Bell to provide and bill for the requested service. The order date, which is known as the Application Date, is the date on which Cincinnati Bell receives a firm commitment and sufficient information from the customer to allow processing of the Access Order. The customer is advised of the Application Date at the time Cincinnati Bell gives the customer a firm order confirmation.

Charges for Customer initiated changes to the service dates, order cancellation circuit and design changes are shown in the applicable Schedule.

Customers requesting service installation intervals that are shorter than Cincinnati Bell standard installation intervals will be subject to Expedite changes, which are shown in the applicable Schedule.

17.2 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 or Customer's End-User's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's or Customer's End User's equipment or facilities. The customer or others may not rearrange, move, disconnect, remove or attempt to repair any facilities provided by Cincinnati Bell, other than by connection or disconnection to any interface means used, except with the written consent of Cincinnati Bell.

Customer will cooperate and cause its End-Users to cooperate with any joint testing of the Service reasonably requested by Cincinnati Bell,

17.3 By ordering services, customer certifies, that the Service carries interstate traffic and the interstate traffic is more than ten per cent (10%) of the total traffic carried on the Special Access Transport Service (i.e. Ethernet Services).

18. SYSTEM MAINTENANCE.

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. No credit will be allowed for any interruptions involved during such system maintenance.

19. SUBCONTRACTING.

Cincinnati Bell may subcontract work, but shall retain responsibility for the work and will ensure that any subcontractor agrees to keep Customers information confidential.

20. CHANGES IN LAWS.

These Terms and Conditions are predicated upon current state and federal laws and regulations. If new laws or regulations or new applications of current law and regulations affect these Terms and Conditions, Cincinnati Bell may amend them on thirty (30) days' written notice consistent with the changed circumstances.

21 **FORCE MAJEURE.**

No party shall be held liable for any delay or failure in performance of any service caused by a force majeure condition, including fires, 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. During the occurrence of the force majeure conditions, the obligations of the Non-Delayed Party hereunder shall be suspended and in no event shall such Non-Delayed Party be obligated to pay for any services not received or provide services unless and until any payment delayed by such force majeure event is received, whichever the case shall be.

22 **GOOD FAITH PERFORMANCE.**

Each Party shall act in good faith in its performance 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.

23 **NO LICENSE.**

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 these Terms and Conditions) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated.:

24 **NO RIGHTS TO THIRD PARTIES.**

These Terms and Conditions shall not be deemed to provide third parties with any remedy, claim, right of action or other right.

25 **SEVERABILITY.**

If any term, condition, or provision of these Terms and Conditions shall be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate or render unenforceable the remainder of these Terms and Conditions; and, unless such construction would be unreasonable, these Terms and Conditions 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.

26 **CONFIDENTIALITY OF INFORMATION**

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 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.