

VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2016-39

A RESOLUTION APPROVING AND FURTHER AUTHORIZING MAYOR AND  
FISCAL OFFICER TO EXECUTE AN AGREEMENT FOR TELEPHONE AND  
INTERNET SERVICES WITH CINCINNATI BELL TELEPHONE, AND  
DECLARING AN EMERGENCY

WHEREAS, on July 15, 2013, per Resolution# 2013-24, after soliciting proposals for telephone and internet services, the Village Council approved an agreement with Cincinnati Bell for telephone and internet services to provide services to Village offices; and,

WHEREAS, Cincinnati Bell has submitted a renewal agreement which would maintain the current rates for the services provided by Cincinnati Bell through August 30, 2017; and,

WHEREAS, the Village desires to enter into an agreement for Telephone and Internet Services from Cincinnati Bell Telephone through August 30, 2017; and,

WHEREAS, immediate action is required to provide telephone and internet service to the Village offices at the current rate, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

**Section 1.** That the Council approves and authorizes the Mayor and Fiscal Officer to execute the agreement with Cincinnati Bell Telephone, a copy of which is attached hereto.

**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of

the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Section 5.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 3rd day of November, 2016.

Attest:    
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

Rules Suspended: 11 / 3 /2016 (if applicable)	Effective Date - / /2016
Vote - ___ Yeas ___ Nays	
First Reading - / /2016	Effective Date - / /2016
Second Reading - / /2016	
Third Reading - / /2016	
Vote - <u>6</u> Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 11/3/2016

### SERVICES AGREEMENT

Agreement Number: 03861253

<b>Customer</b> Village Of South Lebanon			<b>Service Provider</b> Cincinnati Bell Telephone Company LLC ("Cincinnati Bell")		
<b>Address</b> 90 N High St			<b>Address</b> 221 East Fourth Street P.O. Box 2301		
<b>City</b> South Lebanon	<b>State</b> OH	<b>Zip Code</b> 45065	<b>City</b> Cincinnati	<b>State</b> OH	<b>Zip Code</b> 45201
<p>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 <a href="http://WWW.CINCINNATIBELL.COM/BUSINESS/LEGAL">WWW.CINCINNATIBELL.COM/BUSINESS/LEGAL</a>. 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.</p> <p><b>NOTES:</b></p> <ul style="list-style-type: none"> <li>- The term "Cincinnati Bell" shall be deemed to mean the Service Provider on behalf of itself and its' affiliates.</li> <li>- The Agreement shall become effective on the latter of the provisioning or activation date ("Effective Date").</li> <li>- 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.</li> <li>- All prices and rates are exclusive of any surcharges and taxes.</li> <li>- Installation/One-time charge does not cover premise technician work outside of the hours of 8 a.m. to 5 p.m.</li> <li>- 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.</li> <li>- Facsimile signatures to this Services Agreement and any additional documents incorporated herein shall be deemed to be binding upon the parties.</li> </ul>					

Village Of South Lebanon

CINCINNATI BELL

Signature of Authorized Representative:	Signature of Authorized Representative:
Printed Name: <i>James D. Smith</i>	Printed Name:
Title: <i>Mayor</i>	Title:
Date: <i>11-3-16</i>	Date:

**SERVICE PRICING**

ID	Service	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
1	Village of South Lebanon,99 N High St,SOUTH LEBANON,OH 45065					
1.1	Product: Fioptic - Internet Order Type: Renewal Contract Term:12 months					
1.1.1	Fioptics HSI - 30Mb/10Mb with up to 5 Static IPs	1	\$309.95	\$0	\$309.95	\$0.00
1.2	Product: Business Connections Order Type: Renewal Contract Term:12 months					
1.2.1	Business Connections	5	\$29.99	\$0	\$149.95	\$0.00
2	Village of South Lebanon Sheriff's Department,103 W Forest Ave,SOUTH LEBANON,OH 45065					
2.1	Product: Fioptic - Internet Order Type: Renewal Contract Term:12 months					
2.1.1	Fioptics HSI - 30Mb/10Mb with up to 5 Static IPs	1	\$309.95	\$0	\$309.95	\$0.00
2.2	Product: Business Connections Order Type: Renewal Contract Term:12 months					
2.2.1	Business Connections	3	\$29.99	\$0	\$89.97	\$0.00

<b>Total Monthly Recurring Charge</b>	<b>\$859.82</b>
<b>Total One-Time Charge</b>	<b>\$0.00</b>

<b>Customer Initials</b>	<b>Date</b>

## 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 rates under this Agreement do not reflect the tariffed / service agreement rates and 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.

## 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 either Dynamic IP address, (1) Static IP address or (5) Static IP addresses. FiOptics High Speed Internet Service is available in various speeds.

### 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 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 513-666-5050. 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 of \$25.00 or more; (ii) be calculated as the greater of \$6.00 or 2% of the past due balance; 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 cincinnati-bell.com website or through a Cincinnati Bell sales representative.

5.2. The following hardware and software must be installed on your computer system (collectively referred to as "Equipment") in order to receive FiOptics: (1) FiOptics Modem (provided by Cincinnati Bell); if needed: (2) telephone line microfilters (provided by Cincinnati Bell); (3) Ethernet Card (provided by Cincinnati Bell); (4) Network Interface Card; and (5) FiOptics CD-ROM. 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 every 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 premises. Failure to comply with the Cincinnati Bell technician's request in this matter will release Cincinnati Bell's responsibility for further diagnosis.

### 8. WARRANTIES.

8.1. The manufacturers warrant the FiOptics modem, Telephone Line Microfilters, and Network Interface Card 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. The manufacturer will perform warranty service, and Customer should follow their guidelines in invoking Customer rights under their warranties.

## **9. ACCEPTABLE USE.**

9.1. 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 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's website or any of Customer's own customer's websites.

## **10. COMPLIANCE WITH DIGITAL MILLENNIUM COPYRIGHT ACT.**

10.1. 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 DMCA, including but not limited to terminating Customer's Account and access to the Service. See [http://www.cincinnati-bell.com/customer\\_support/policies/dmca/](http://www.cincinnati-bell.com/customer_support/policies/dmca/) for more details.

## **11. PREMIUM TECHNICAL SUPPORT / MONTHLY SERVICE PLAN.**

11.1. Cincinnati Bell will provide Premium Technical Support for Customer's network, PC performance, computer security up to diagnosis, new software, and peripherals for a Monthly Service Plan. Additional fees may apply for select security repair procedures. The Monthly Service Plan requires a minimum twelve (12) month commitment. By subscribing to the Monthly Service Plan, Customer acknowledges that an early termination fee of the number of remaining months left on Customer's Agreement multiplied by the recurring monthly charge applies. Premium Technical Support is a best effort service; Cincinnati Bell cannot guarantee resolution of Customer's issue. If any damage occurs to Customer's computer or software during the term commitment, Cincinnati Bell cannot be held liable for damages to Customer's hardware or software. Cincinnati Bell provides technical support services, which shall apply if Customer subscribes to a Monthly Service Plan.

## **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.



## 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 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.