

REQUESTED BY: CITY MANAGER, BILL KOCHER

DATE OF FIRST READING: 8-17-2021  
FINAL ACTION DATE: 8-19-2021

WAIVE RULES?        YES         NO  
VOTE:         YES        NO

SUSPENSION OF TWO READING RULE:

YES	NO
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DENISE LINGO  
JENNIFER MOODY  
ROBERT PARSONS  
JOE ROETTING  
KISHA DOSA  
CORDEL GEORGE  
CINDY SCHEETS  
TOTALS

ADOPTION OF RESOLUTION:

YES	NO
<input checked="" type="checkbox"/>	<u>      </u>
<u>ABSENT</u>	<u>      </u>
<input checked="" type="checkbox"/>	<u>      </u>
<u>ABSENT</u>	<u>      </u>
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**RESOLUTION NO. 21-1168**

**A RESOLUTION AUTHORIZING ACCEPTANCE OF AWARD OF HAMILTON COUNTY CDBG-CV GRANT FUNDS EXPANDING FREE PUBLIC WI-FI IN CITY AND AUTHORIZING CITY MANAGER TO EXECUTE ALL NECESSARY CONTRACTS AND DOCUMENTS AS REQUIRED AND DECLARING AN EMERGENCY**

**WHEREAS**, in May 2021, the City of Mt. Healthy submitted an application to the Hamilton County Planning and Development Department requesting grant monies in response to being notified of a new program allocating grant monies in CDBG-CV funding to communities for the purpose of providing and/or expanding free public Wi-Fi during the COVID-19 public health emergency; and

**WHEREAS**, the City of Mt. Healthy submitted the aforementioned grant application with the idea of teaming up with the efforts of the Mt. Healthy City Schools to provide and expand the free public Wi-Fi available within the City; and

**WHEREAS**, on June 3, 2021, the Hamilton County Planning and Development Department notified the City of Mt. Healthy it was selected to receive \$150,000 in Hamilton County CDBG grant funds to expand the free public Wi-Fi within its community; and

**WHEREAS**, the Counsel of the City of Mt. Healthy has determined that providing and/or expanding the free public Wi-Fi available within the City of Mt. Healthy is in the best interest of the health, safety, security, education, welfare, and overall well-being of its citizens; and

**WHEREAS**, it is the desire of the City of Mt. Healthy to enter into a contract with Cincinnati Bell utilizing the above-referenced Hamilton County CDBG grant funds to pay for such services which will expand the free public Wi-Fi within the City; and

**WHEREAS**, Cincinnati Bell is agreeable to the furnishing of said services upon the terms and conditions as set out in the Service Agreement attached hereto and marked as **Exhibit A**; and

**WHEREAS**, it is the opinion of Council that said contract is for the benefit, safety and improvement of the overall general welfare of the City of Mt. Healthy and its residents and property owners.

**NOW THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO:

**Section 1.** The City of Mt. Healthy hereby officially accepts the above-referenced award of \$150,000 in Hamilton County CDBG grant funds for the purpose of expanding free public Wi-Fi within the City of Mt. Healthy and authorizes the City Manager to immediately communicate the acceptance of such grant funds to the Hamilton County Planning and Development Department.

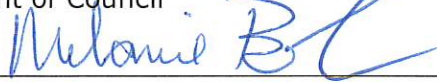
**Section 2.** The City Council authorizes the City Manager to enter into the Service Agreement attached hereto and marked as Exhibit A on behalf of the City of Mt. Healthy as well as executing any other documents with Cincinnati Bell as may be necessary and appropriate for obtaining this financial assistance.

**Section 3.** 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.

**Section 4.** This Resolution is declared an emergency measure for the immediate preservation of the public peace, health and safety. The reason for the emergency is to allow the City Manager to immediately communicate the acceptance of the CDBG-CV funds to the Hamilton County Planning and Development Department. This Resolution shall take effect and be in force immediately upon its passage by Council and approval by the Mayor.

Passed this 19 day of AUGUST, 2021.

  
\_\_\_\_\_  
President of Council

Attest:   
\_\_\_\_\_  
Clerk of Council

Approved this 19 day of AUGUST, 2021.

  
\_\_\_\_\_  
Mayor

Approved as to form:



\_\_\_\_\_  
Scott A. Sollmann (0081476)  
5300 Socialville Foster Rd., Suite 200  
Mason, OH 45040  
(513) 707-4249  
City of Mt. Healthy Law Director



**A Service Agreement for  
City of Mt. Healthy**

**Q-00012265**

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## Section 1: Signatures

City of Mt. Healthy ("Customer") and Cincinnati Bell ("CBT"), for itself and its Affiliates agree to engage for the Services described in this Service Agreement: Q-00012265 ("Service Agreement").

This Service Agreement is effective as of the date of last execution below (the "Effective Date") and entered into by and between CBT, a Delaware corporation, with its principal place of business at 221 East 4th Street, Cincinnati, OH 45202 and City of Mt. Healthy with a place of business at 7700 Perry Street, Mt. Healthy, OH 45231.

This Service Agreement provides details of the Services (detailed in Section 2 below), related Products if any, Customer rights and responsibilities and one-time fees.

IN WITNESS WHEREOF, the parties have caused this Service Agreement to be executed by their duly authorized representatives.

### Cincinnati Bell

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### City of Mt. Healthy

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### City of Mt. Healthy Point of Contact:

Name: \_\_\_\_\_  
Office: \_\_\_\_\_  
Mobile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

## Section 2: Pricing

### 1. Location: Mt. Healthy City Park

#### General Pricing

Line Item	Product	Description	QTY	MRC per	MRC Subtotal	NRC per	NRC Subtotal	
1	Fioptics Wi-Fi	Installation	3	0.00	0.00	750.00	2,250.00	
2	Fioptics WiFi	NEMA Enclosure and Electric Work at AP locations.	3	0.00	0.00	1,100.00	3,300.00	
3	Fioptics WiFi	Aruba IAP-375 Access Point	3	0.00	0.00	838.00	2,514.00	
4	Fioptics WiFi	AP-220-MNT-W3 Mounts	3	0.00	0.00	64.00	192.00	
5	Fioptics WiFi	WiFi Power over Ethernet 30W	3	0.00	0.00	75.00	225.00	
6	Fioptics WiFi	Activation Fee - Access Point	3	0.00	0.00	50.00	150.00	
					<b>Subtotal</b>	0.00	<b>Subtotal</b>	8,631.00

### 2. Location: Business District #1

#### General Pricing

Line Item	Product	Description	QTY	MRC per	MRC Subtotal	NRC per	NRC Subtotal	
7	Fioptics WiFi	Installation	7	0.00	0.00	750.00	5,250.00	
8	Fioptics WiFi	NEMA Enclosure and Electric Work at AP locations.	7	0.00	0.00	1,100.00	7,700.00	
9	Fioptics WiFi	Aruba IAP-375 Access Point	7	0.00	0.00	838.00	5,866.00	
10	Fioptics WiFi	AP-220-MNT-W3 Mounts	7	0.00	0.00	64.00	448.00	
11	Fioptics WiFi	WiFi Power over Ethernet 30W	7	0.00	0.00	75.00	525.00	
12	Fioptics WiFi	Activation Fee - Access Point	7	0.00	0.00	50.00	350.00	
					<b>Subtotal</b>	0.00	<b>Subtotal</b>	20,139.00

### 3. Location: Clovernook Apartments

#### General Pricing

Line Item	Product	Description	QTY	MRC per	MRC Subtotal	NRC per	NRC Subtotal	
1	Fioptics WiFi	NEMA Enclosure and Electric Work at AP locations.	10	0.00	0.00	1,070.10	10,701.00	
2	Fioptics WiFi	Aruba IAP-375 Access Point	60	0.00	0.00	838.00	50,280.00	
3	Fioptics WiFi	AP-220-MNT-W3 Mounts	60	0.00	0.00	64.00	3,840.00	
4	Fioptics WiFi	WiFi Power over Ethernet 30W	60	0.00	0.00	75.00	4,500.00	
5	Fioptics WiFi	Activation Fee - Access Point	60	0.00	0.00	50.00	3,000.00	
					<b>Subtotal</b>	0.00	<b>Subtotal</b>	72,321.00

4. **Location:** Compton Lake Apartments

**General Pricing**

Line Item	Product	Description	QTY	MRC per	MRC Subtotal	NRC per	NRC Subtotal	
13	Fioptics WiFi	Installation	17	0.00	0.00	750.00	12,750.00	
14	Fioptics WiFi	NEMA Enclosure and Electric Work at AP locations.	17	0.00	0.00	1,100.00	18,700.00	
15	Fioptics WiFi	Aruba IAP-375 Access Point	17	0.00	0.00	838.00	14,246.00	
16	Fioptics WiFi	AP-220-MNT-W3 Mounts	17	0.00	0.00	64.00	1,088.00	
17	Fioptics WiFi	WiFi Power over Ethernet 30W	17	0.00	0.00	75.00	1,275.00	
18	Fioptics WiFi	Activation Fee - Access Point	17	0.00	0.00	50.00	850.00	
					<b>Subtotal</b>	0.00	<b>Subtotal</b>	48,909.00
					<b>MRC Total</b>	USD 0.00	<b>NRC Total</b>	USD 150,000.00

## Section 3: General Terms and Conditions

### 3.1 Definitions.

- 3.1.1 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.
- 3.1.2 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 under this Agreement.
- 3.1.3 Information - means any writing, drawing, sketch, model, sample, data, computer program, software, verbal communication, e-mail, recording or documentation of any kind.
- 3.1.4 Party - means (i) Cincinnati Bell parent company, its affiliates and subsidiaries (collectively "Cincinnati Bell") or (ii) Customer; and "Parties" means (i) and (ii).
- 3.1.5 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.

### 3.2 Services.

- 3.2.1 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.

### 3.3 Governing Law.

- 3.3.1 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.

### **3.4 Confidential Information. – Removed at customer request**

### **3.5 Resolution of Disputes.**

- 3.5.1 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.
- 3.5.2 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.
- 3.5.3 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.

### **3.6 Indemnification. – Removed at customer request**

### **3.7 Terms of Payment.**

- 3.7.1 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, Cincinnati Bell may apply late payment fees or take any action in connection with any other right or remedy Cincinnati Bell may have under this Agreement in law or in equity. 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 \$11.95 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. 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.
- 3.7.2 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.

### **3.8 Termination.**

- 3.8.1 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:
- 3.8.2 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.
- 3.8.3 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.

### **3.9 Responsibilities of Each Party.**

- 3.9.1 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.

### **3.10 Limitations of Liability.**

- 3.10.1 Cincinnati Bell's liability arising out of the provision of: (i) Services; (ii) delays in the restoration of Services; or (iii) arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the limitations set forth below and in the applicable Tariff. In no event shall Cincinnati Bell be liable to customer, customer's own customers, or any other third party with respect to the subject matter of this agreement under any contract, warranty, negligence, strict liability, or other theory for any type of indirect, consequential, incidental, reliance, special, or punitive damages, or for any lost profits, lost revenues, or lost savings of any kind, arising out of or relating to this agreement whether or not Cincinnati Bell or Customer was advised of the possibility of such damages and whether or not such damages were foreseeable. For purposes of this section, "Cincinnati Bell" is deemed to include Cincinnati Bell's parent company, and its respective affiliates and subsidiaries, and the directors, officers, employees, agents, representatives, subcontractors and suppliers of each of them.
- 3.10.2 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.

### **3.11 Security and Access.**

- 3.11.1 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.

### **3.12 Work on Customer's Premises.**

- 3.12.1 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 related to 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.

### **3.13 Customer Obligations.**

3.13.1 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.

### **3.14 Subcontracting.**

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

### **3.15 Changes in Laws.**

3.15.1 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.

### **3.16 Force Majeure.**

3.16.1 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.

### **3.17 Good Faith Performance.**

3.17.1 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.

### **3.18 Amendments; Waivers.**

3.18.1 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.

### **3.19 Notices.**

3.19.1 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.

- 3.19.2 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.

### 3.20 No Rights to Third Parties.

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

### 3.21 Severability.

- 3.21.1 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.

### 3.22 Assignment.

- 3.22.1 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.

### 3.23 Entire Agreement; Continuing Obligations.

- 3.23.1 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.
- 3.23.2 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.
- 3.23.3 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

WPM 8-18-21

Agreement, shall, in each case, survive cancellation or termination of this Agreement.

3.23.4 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.

3.23.5 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.

### 3.24 Regulatory Approval; Tariffs.

3.24.1 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.

### 3.25 Executed in Counterparts.

3.25.1 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.

### 3.26 Headings.

3.26.1 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.