

## High Speed Internet Access -- Terms and Conditions of Service

~~November 2015~~ ~~November~~ ~~April~~ ~~September 2020~~

THESE TERMS AND CONDITIONS OF SERVICE APPLY TO HIGH SPEED INTERNET ACCESS SERVICES PROVIDED BY CINCINNATI BELL TELEPHONE COMPANY LLC ("CBT") and CINCINNATI BELL EXTENDED TERRITORIES LLC ("CBET") (COLLECTIVELY, "CINCINNATI BELL") UNDER THE TRADEMARKS ZOOMTOWN® AND FIOPTICS®.

ZoomTown and Fioptics are high-speed Internet access services (individually, the "**Service**") provided to you by Cincinnati Bell, subject to your compliance with the terms and conditions set forth in these "High Speed Internet Access -- Terms and Conditions of Service" (the "**Terms and Conditions**"). Any terms or conditions included on any Work Order, Services Agreement, point-of-sale purchase receipt, E-SIGN recording of a non-written contract, Promotional Offer, Acceptable Use Policy, or Privacy Policy are incorporated into and made a part of these Terms and Conditions, which collectively form the Agreement between you and Cincinnati Bell (the "**Agreement**"). By accessing and using the Service, you represent and agree that you have read, understand, and consent to be bound by the Terms and Conditions of the Agreement. If you do not consent to be bound by the Terms and Conditions of the Agreement you must not use the Service or register as a subscriber of the Service, and must promptly call the ZoomTown Help Desk at (513) 397-HELP (513-397-4357) or the Fioptics Help Desk at (513) 565-9890 to cancel the Service.

Cincinnati Bell may revise the Agreement at any time by posting a revised version on Cincinnati Bell's website at the following address: <http://www.cincinnati-bell.com/customer-support/policies/> in the "Customer Support/Policies" area, or by notifying you by email, conventional mail, telephone, or on your Cincinnati Bell monthly bill. You are responsible for periodic review of the Agreement and must be aware of any such revisions. The modified terms will become effective three (3) days after posting to the website or, if we notify you by email, conventional mail, telephone, or on your monthly bill, effective as stated in such message. By using the Service after any such modification, you agree to the latest version of the Terms and Conditions. However, any changes to the resolution of disputes provisions in Section 12 will not apply to any disputes for which the parties have actual notice on or prior to the date the change takes effect.

If any revision to the Agreement is unacceptable to you, you may terminate your subscription to the Service as provided in Section 14 herein. Further, if you violate any of the terms and conditions contained within the Agreement, Cincinnati Bell may terminate and/or suspend your access to the Service without notice.

### 1. Account

Upon acceptance of your application for service (which application may include a credit check), and receipt of any applicable deposit(s), you will become a subscriber to the Service. By registering as a subscriber to the Service, you will receive an account ("**Account**"). **Your Account is for residential use only.** You are solely and legally responsible for all activities conducted through your Account and any sub-accounts or user names under your Account, and agree that you will only use the Service for lawful purposes. You may permit another individual, including a minor, in your household to use your Account subject to your supervision, in which case you will retain all legal responsibility for the Account. Cincinnati has created an informational website with FAQs and tips about safeguarding your home network, viewable here: <https://www.cincinnati-bell.com/about-us/policies/copy-right-policy>

Finally, you agree to provide accurate and complete registration information and to update this information when it changes. Failure to provide such accurate, complete and updated information shall constitute a breach of this Agreement and unauthorized access to the Service, and may result in immediate termination of your Account and subject you to civil and/or criminal liabilities.

### 2. Selection of a User Name

You may not select or use the user name of another person or a name subject to the rights of any person other than you. You also may not use a user name that suggests to other subscribers the availability of Content (as defined in Section 5 below) that Cincinnati Bell, in its sole discretion, considers to be libelous, defamatory, invasive of privacy or publicity rights, threatening, abusive, illegal, obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable or would constitute or encourage a criminal offense, violate the right of any party, or otherwise give rise to liability, violate any law or in violation of the Agreement. Furthermore, you agree that you will not attempt to conceal or disguise your user name in any communications.

### 3. Acceptable Use

If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any Content (as defined in Section 5 below) that is available by you, your customers, or generally made available through your Account or in a Public Area (as defined in Section 5.1.1 below), and Cincinnati Bell, in its sole discretion, considers such Content to be libelous, defamatory, invasive of privacy or publicity rights, threatening, abusive, illegal, obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable or would constitute or encourage a criminal offense, violate the right of any party, or otherwise give rise to liability, violate any law, or violate the Agreement, Cincinnati Bell shall have the right, but not the obligation, to immediately remove such Content and/or to terminate your Account without notice. This policy applies to any Content made available by you, your customers, or generally made available through your Account.

As a subscriber, you agree not to use the Service to:

- (a) upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- (b) harm minors in any way;
- (c) impersonate any person or entity, including, but not limited to, a Cincinnati Bell official, forum leader, guide, or host, or falsely state or otherwise misrepresent your person or entity;
- (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- (e) upload, post, email, transmit, or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- (f) upload, post, email, transmit, or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- (g) upload, post, email, transmit, or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas that are designated for such purpose;
- (h) upload, post, email, transmit, or otherwise make available any material that contains software viruses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- (i) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- (j) interfere with, disrupt, or cause a disruption to the Service, servers, or networks connected to the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Service;
- (k) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- (l) "stalk" or otherwise harass another; NOR
- (m) collect or store personal data about other users.

Any violation of this provision will constitute a breach of the Agreement, and Cincinnati Bell reserves the right in its sole and absolute discretion to temporarily or permanently suspend or terminate your access to the Service without notice.

#### 4. High-Speed Internet Access – Privacy Policy

##### 4.1. General

We respect your privacy and are committed to protecting personally identifiable information you may provide us by visiting our Websites or that we may obtain or collect from you with respect to your use of the Service. This *High Speed Internet Access Privacy Policy* is specific to the Service but should be read in conjunction with the *Cincinnati Bell Privacy Policy*, available at: <http://www.cinbell.com/privacy>. The *Cincinnati Bell Privacy Policy* describes the types of information we will collect about our customers in connection with your use of the Cincinnati Bell, ZoomTown and Fioptics websites. This *High Speed Internet Access Privacy Policy* will instruct you on how to manage the collection and use of your personal information in connection with your use of high-speed internet access service. [Should you have any questions related to the privacy of your data please feel free to contact us at \[privacy@cinbell.com\]\(mailto:privacy@cinbell.com\).](#) In the event of a conflict between this Privacy Policy and the Cincinnati Bell Privacy Policy, the terms of this Privacy Policy will control. This Privacy Policy is effective on the date posted above and may be amended from time to time.

#### 4.2. Types of Information Collected

Cincinnati Bell collects and maintains the following types of information on high-speed Internet access subscribers

- a. **Personally Identifiable Billing Information-**  
This information includes your name, address, email address and telephone number, as well as financial account information (e.g. credit or debit card numbers, bank account numbers, etc.) which you have actively submitted, which may be required for billing purposes. If we obtained a credit report in connection with the opening of your account, it may also include information included in the credit report. As this information is of a very personal and sensitive nature, it is not used for any other purpose other than billing. This information is not shared or distributed beyond Cincinnati Bell.
- b. **Other Sources of Personally Identifiable Information.**  
On occasion, Cincinnati Bell and its partners may run promotions in which we request personally identifiable information. This information may include, but is not limited to:
  1. Name
  2. Address
  3. Telephone number
  4. Email address

Providing this information to Cincinnati Bell is strictly voluntary and necessary to participation in promotions or sweepstakes. If you do not want your personally identifiable information collected, please do not submit it to us.

- c. **Non-Personally Identifiable Information**  
This information is data about usage and Service operation that is not associated with a specific personal identity. Examples of this type of information include the type of Internet browser and the type of computer operating system you are using. We collect and analyze non-personally identifiable information to evaluate subscribers' use of the Service and to enhance subscribers' online experience. Most non-personally identifiable data is collected via cookies or other analysis technologies.

#### 4.3. How We Use Personally Identifiable Information

When you do provide us with personally identifiable information, we may use that information in the following ways

- a. to contact you;
- b. to install, configure, operate, provide, support, and maintain the Service;
- c. to manage the network supporting the Service;
- d. to confirm you are receiving the level(s) of service requested and are properly billed;
- e. to make you aware of new products or services that may be of interest to you;
- f. to understand the use of, and identify improvements to, the Service;
- g. to detect unauthorized reception, use, or abuse of the Service;
- h. to determine whether there are violations of any applicable policies and terms of service;
- i. to obtain a credit report or to contact a creditor; and
- j. to comply with law.

#### 4.4. Disclosure of Email Content

Cincinnati Bell will not randomly monitor or disclose the contents of private communication (e.g., email). However, Cincinnati Bell reserves the right, as permitted by law, to monitor or disclose the contents of private communication if it in good faith believes that such action is necessary under the following conditions:

- a. to comply with applicable law, regulation or valid legal process (e.g., warrant, court order);
- b. to protect and defend the rights or property of Cincinnati Bell; and/or
- c. in emergencies when personal safety is at issue.

#### 4.5. Email Contact from Cincinnati Bell

Cincinnati Bell is an ardent advocate of online privacy. As a result, we do not take SPAM or other Unsolicited Commercial Email (UCE) lightly. With this in mind, Cincinnati Bell may still occasionally contact its subscribers via email. For this reason, Cincinnati Bell reserves the right to use its subscriber email database as follows:

- a. **Email Programs.** On occasion, Cincinnati Bell may elect to contact subscribers by email about forthcoming Services offerings or changes to the Service, or solicit subscriber assistance with our ongoing customer care and performance improvement programs. All such contacts will consist of a single, brief email describing the Services offered or subject to change, or the customer care / services improvement initiative. Subscribers will be given options as to how to respond with respect to the content of the email. With each such email, you will be given the opportunity to opt out of future emails of a similar nature.
  1. **Subscriber Surveys.** Cincinnati Bell is committed to providing outstanding customer service. As part of our ongoing performance improvement efforts, we will occasionally ask subscribers to participate in online surveys and other studies designed to improve the performance and usability of our products and Services. Participation in such surveys is always optional.
  2. **Notice of New or Changing Services.** Cincinnati Bell regularly adds new services and new features to its existing Services. Cincinnati Bell may contact its subscribers via email with information regarding these new Services. Cincinnati Bell provides its subscribers with the option to subscribe to these new features or Services, which will require some affirmative action on the part of the subscriber if they will increase subscribers' costs or fees. If the new features or Services will not increase the subscribers' costs or fees, Cincinnati Bell may provide subscribers with an opportunity to decline installation of the new features or Services if feasible. In both cases, Cincinnati Bell will provide instructions in the email as to how to subscribe to or decline the Services, as well as how to opt out of receiving similar notices of new Services and features in the future where such new Services or features are optional.
- b. **Communications Related to Transaction Account, Website, and Maintenance Activities.** You may receive email communications from us related to your account, the Services, and website and Services maintenance activities. In the event of system upgrades, Cincinnati Bell may contact you via email with additional information and instructions relative to the changes. Upon receipt of these notices, you are responsible for any follow-up actions described therein. If the instructions are unclear, please contact the ZoomTown Help Desk at (513) 397-HELP (513-397-4357) or the FiOptics Help Desk at (513) 565-9890. Email System Notifications will only be distributed when absolutely necessary. Subscribers may not opt out of emails concerning System Notifications at this time.

#### 4.6. Parental Consent Required; Use of Service by Persons Younger than 18

Our Services are marketed to be purchased by adults, or with the consent of persons 18 or older. From time to time, parents and guardians may permit their children under 18 to use the Service. However, Cincinnati Bell does not knowingly allow anyone under 18 to provide any personally identifiable information, and Cincinnati Bell does not knowingly collect personally identifiable information from anyone under 18 via the Service. Furthermore, the law would require us to obtain verifiable parental consent before knowingly collecting any personally identifiable information from children under the age of 13. While Cincinnati Bell does not collect personally identifiable information from children under the age of 13, all children should obtain permission from a parent or guardian before sending personal information over the Internet. Any violation of this provision may constitute a breach of the Agreement and Cincinnati Bell, at its sole discretion, may suspend or terminate your access to the Service without notice.

## 5. Content

### 5.1. Subscriber Content

You are solely responsible for all information, technology, products, processes, data, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "Content") that you transmit through your Account and/or make available on or through your web site or any of your customer's web sites.

#### 5.1.1 Submission of Content to Public Areas

"Public Area" means chat areas, public message boards, newsgroups or email functions offered as part of the Service. By submitting or uploading Content to any Public Area, you automatically grant to and/or warrant that the owner of such Content has expressly granted to Cincinnati Bell a royalty-free, perpetual, irrevocable, non-exclusive, unrestricted right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such Content (in whole or part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed for the full term of any Rights that may exist in such Content.

### 5.1.2 Compliance with Digital Millennium Copyright Act

You agree to fully comply with copyright law and 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 your use of the Service and take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, and suspension or termination of your Account and access to the Service. In the event that you believe that any third party has infringed on any copyrighted material of yours, you shall provide Cincinnati Bell with notice in compliance with the provisions of the DMCA. See our informational webpage "File a Notice of Claimed Copyright Infringement" available at: [http://www.cincinnati-bell.com/customer\\_support/policies/dmca/](http://www.cincinnati-bell.com/customer_support/policies/dmca/). Furthermore, you agree 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 your use constitutes alleged infringement, Cincinnati Bell will take action consistent with the requirements of the DCMA, including but not limited to terminating your Account and access to the Service. Please refer to the *Cincinnati Bell Copyright Infringement Policy* for more information, available at: [http://www.cinbell.com/customer\\_support/policies/copyright\\_policy/](http://www.cinbell.com/customer_support/policies/copyright_policy/).

## 5.2. Service Content

### 5.2.1 Accessing Content

You acknowledge that:

1. The Service permits access to Content that is or may be protected by copyrights, trademarks, patents or other proprietary rights (including intellectual property) ("**Rights**") owned by Cincinnati Bell and other third parties;
2. These Rights are valid and protected in all media existing now or later developed; and
3. Except as is explicitly provided otherwise, applicable copyright and other intellectual property laws shall govern your use of Content; provided, however, that such use does not grant you a license under any of the Rights in the Content described herein.

All such Rights are retained by Cincinnati Bell and its affiliates and/or any third party owner of such Rights. Further, you agree that you may upload software files, message boards or otherwise transmit only Content that is not encrypted; Content that is not subject to any Rights; and/or Content for which any holder of Rights has given express authorization for its distribution.

### 5.2.2 Intellectual Property Rights in Content

You understand that rights in any Content, including any compilations on the Service, that is copyrighted by a third party, is claimed and reserved by Cincinnati Bell and may not be copied, used, uploaded, posted, transmitted, distributed or reproduced in any way without the express written consent of Cincinnati Bell. If you wish to obtain rights to copy any Content on the Web Site, please email your request to [customercare@cinbell.com](mailto:customercare@cinbell.com).

### 5.2.3 Use of Trademarks or Service Marks

The ZoomTown and FiOptics names and logos and all related product and service names, design marks and slogans (the "Marks") are the trademarks or service marks of Cincinnati Bell and its affiliate companies (collectively "Cincinnati Bell"). You are not authorized to use any of the Marks in any advertising, publicity, or in any other commercial manner without the prior written consent of Cincinnati Bell. If you wish to obtain such authorization, please email your request to [customercare@cinbell.com](mailto:customercare@cinbell.com).

## 6. Customer System Requirements; Required Hardware; Required Software

### 6.1. Customer System Requirements

In order to receive the Service, your computer must meet minimum system requirements and your network must include the software provided by Cincinnati Bell and a compatible modem/gateway. Information about computer, system, and network requirements can be found at:

- [https://www.cincinnati-bell.com/customer\\_support/product\\_support/fioptics/high\\_speed\\_internet/](https://www.cincinnati-bell.com/customer_support/product_support/fioptics/high_speed_internet/)
- [https://www.cincinnati-bell.com/customer\\_support/product\\_support/fioptics/1gig/\\_OR/](https://www.cincinnati-bell.com/customer_support/product_support/fioptics/1gig/_OR/)
- [https://www.cincinnati-bell.com/help-center/internet/equipment\\_OR](https://www.cincinnati-bell.com/help-center/internet/equipment_OR)
- through a Cincinnati Bell sales representative.

Cincinnati Bell recommends using Cincinnati Bell provided hardware (i.e., an ADSL gateway/modem, DOCSIS/cable gateway/modem, or fiber/GPON gateway/modem, as applicable), as our modems/gateways are

**Commented [CP 1]:**  
BYOM content

For clarity, note that Video customers must still use our Hardware

**Commented [HL2R1]:** This wasn't included in the modem language from 9/13/17. If needed can you clarify where to put?

**Commented [HL3]:** These do not link...changed to a link that does that speaks to equipment

specially configured to provide optimum service and enables Cincinnati Bell to remotely troubleshoot issues should you require technical support. If you choose to provide your own modem/gateway Cincinnati Bell cannot guarantee that your service will work and charges may apply for technical support. The charges for this technical support can be found as follows:

Description	Price
<b>Premium Technical Support – Standard Session</b> /Single PTS session lasting between 20 and 60 minutes	\$75.00/ one time
<b>Premium Technical Support – Advanced Session</b> /Single PTS session lasting more than 60 minutes	\$125.00 / one time
<b>Premium Technical Support – Diagnostic Fee</b> /Single PTS session where customer committed to a one-time session, but we were unable to repair a PC, equipment, or software on an NRC call.	\$40.00 / one time
<b>Premium Technical Support-</b> Unlimited Monthly support for users to avoid one-time fees. (Requires a 12 month contract )	\$14.99 per month

Cincinnati Bell reserves the right to determine which hardware and software is deemed optimal for delivering the Service, and to require that you use it, by performing certain software and hardware upgrades, including but not limited to: (i) distributing new equipment to be used in connection with the Service; and/or (ii) upgrading modem software and/or settings. Periodically, we will upgrade our network infrastructure. As this occurs, Cincinnati Bell reserves the right to establish new requirements by: (i) remotely upgrading or resetting modem equipment; and/or (ii) requiring Subscribers to install new equipment and software. If you are providing your own modem/gateway, you will be responsible for upgrading your equipment and will incur charges for Cincinnati Bell technical support to provide you with any necessary software upgrades to your service.

## 6.2. Hardware Agreement

### 6.2.1 Equipment

In order to receive the Service, you may need to install certain equipment in your computer system, network and/or home. You agree that all of the equipment listed below ("**Equipment**") has been provided to you, as applicable and/or required, and belongs to Cincinnati Bell. Cincinnati Bell reserves the right to charge subscribers for use of the Equipment.

1. ADSL modem, DOCSIS/cable modem, or fiber/GPON modem
2. Telephone Line Microfilters
3. Jack Splitter
4. WiFi Extenders and Wireless Access Points (WAP)
5. Power Cords for all above Equipment

Cincinnati Bell grants you 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 your responsibility.

#### **A. Bring Your Own Gateway**

Cincinnati Bell recommends using a Cincinnati Bell provided modem, as our modems are specially configured to provide optimum service allowing the best support possible. Cincinnati Bell will allow the use of a customer-owned gateway if the customer choose to not use the Cincinnati Bell provided modem. By choosing your own modem with your Cincinnati Bell Service, the following terms and conditions will apply:

Cincinnati Bell video service, static-IP option, and many Internet services with speeds 50 Mbps or lower may require a Cincinnati Bell modem to perform optimally. Customer-owned modems are likely to be incompatible

**Commented [HL4]:** Added in BYOM from the Bring Your Own Gateway Terms and Conditions (pe edits 2017Sep13) file

with these types of service.

When using a non-Cincinnati Bell modem, the level of support for the modem service will vary based on where the issue is found within the residence. Cincinnati Bell's technical support team will determine the level of support provided. If the support is outside of Cincinnati Bell's scope, the user will be referred to our Premium Technical Support Team, charges may apply.

If a CBT technician is required to dispatch to a residence to handle a technical issue with a non-Cincinnati Bell modem, charges will apply to such services.

### 6.2.2 Installation

You may either self-install the Equipment or have Cincinnati Bell perform the installation. If Cincinnati Bell performs the installation a premises visit charge will be assessed and billed to you on your Cincinnati Bell monthly bill. In any event, Cincinnati Bell assumes no responsibility or liability for damages to your computer system, network, or home as a result of your attempts to install the Equipment or any installation performed by Cincinnati Bell.

Commented [HL5]: Self install needs to be added

Commented [HL6R5]: Does anything more need to be added about self install?

### 6.2.3 Termination and Cancellation Policy

A. Cincinnati Bell does not anticipate that you will fail to pay for the Service(s) on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or nonpayment are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when we set such fees, charges, and assessments, because we cannot know in advance: (a) whether you will pay for the Service(s) on a timely basis, if ever; (b) if you do pay late, when you will actually pay; and (c) what costs we will incur because of your late payment or non-payment.

A-B. Equipment Termination Charge: When terminating service, including porting out to another provider, you must return the modem and power cord to Cincinnati Bell or you will be charged One Hundred and Twenty Dollars (USD\$120.00); One Hundred Dollars (\$100.00) for the modem and Twenty Dollars (\$20.00) for the power cord (the "**Equipment Termination Charge**"). The Equipment Termination Charge will appear on your monthly Cincinnati Bell bill unless you return these items, undamaged, on or before the 5<sup>th</sup> calendar day from the day on which you or we terminate your Service (the "**service termination date**"). If you return the undamaged items after more than 5 calendar days but within 30 calendar days from your service termination date, you will see the Equipment Termination Charge and an equivalent credit on your monthly bill. You will not receive any credit for returning these items unless they are received by Cincinnati Bell within 30 calendar days of your service termination date.

—Cancellation Billing Policy: The monthly charge for Internet service will not be prorated for the final partial month of service. The full monthly service fees will apply, even if your service is active for only a partial month.

C.  
D. Cincinnati Bell will not disconnect all or part of a subscriber's internet service for nonpayment until the bill is at least fourteen (14) days past due.

### 6.2.4 Prohibition on Customer Access to Equipment, Software and/or Facilities

You agree that you 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 you to access and/or subvert any network security measures of Cincinnati Bell or any other network shall entitle Cincinnati Bell to immediately terminate your access to the Service without notice.

### 6.2.5 Limitation of Liability and Disclaimer of Warranties for Equipment

The following is capitalized to emphasize its importance.

IN NO EVENT WHATSOEVER WILL CINCINNATI BELL BE LIABLE FOR ANY DAMAGES TO THE EQUIPMENT, INCLUDING SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, USE OR DATA, EVEN IF CINCINNATI

BELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR PURPOSES OF THIS SECTION, "CINCINNATI BELL" IS DEEMED TO INCLUDE CINCINNATI BELL TELEPHONE COMPANY LLC, ITS PARENT COMPANY AND THE RESPECTIVE SUBSIDIARIES AND AFFILIATES OF EACH, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM.

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.

By using the Service you are agreeing to these terms. This limitation of liability and these disclaimers of warranties allocate the risks of the Agreement between us and you. This allocation is reflected in the pricing of the Services and is an essential element of the basis of the bargain between us.

### 6.3. Software Agreements

#### 6.3.1 ZoomTown Installation Software

For installation and support purposes, Cincinnati Bell may elect to install software ("**ZoomTown Installation Software**") on your computer to facilitate troubleshooting and the distribution and maintenance of desktop support. During installation, the ZoomTown Installation Software may read the following information from your computer operating system (hereinafter "**Computer Information**"): (i) Operating system name and version; (ii) total amount of RAM; (iii) amount of free disk space; (iv) network information; (v) NIC card type; and (vi) processor name and type. After reading the Computer Information, the ZoomTown Installation Software will upload all of the Computer Information into a single log file which will be stored on your computer operating system and the ZoomTown server and network.

With regard to the use and performance of the ZoomTown Installation Software, please consider the following:

1. ZoomTown Installation Software is licensed as a single product. Its component parts may not be separated or reverse engineered, decompiled, and disassembled.
2. JAVA SUPPORT: The ZoomTown Installation Software may contain support for programs written in java. Java technology is not fault tolerant.
3. LIMITATION OF LIABILITY: Cincinnati Bell is not liable for any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use the ZoomTown Installation Software or the provision of or failure to provide support services, even if Cincinnati Bell has been advised of the possibility of such damages. Please see also paragraph 6.2.5 above.
4. Intellectual Property Rights: All copyrights, trademarks, patents, and/or other proprietary rights ("Intellectual Property Rights") in the ZoomTown Installation Software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the ZoomTown Installation Software), the accompanying printed materials, and any copies of the ZoomTown Installation Software are owned by Cincinnati Bell. All title and intellectual property rights in and to the content that may be accessed through use of the ZoomTown Installation Software is the property of Cincinnati Bell or other third parties and may be protected by applicable copyright or other intellectual property laws and treaties. You must respect the intellectual property rights of others while using the Services. Please see also paragraph 5.1.2 above.

#### 6.3.2 Third Party Software

As described above, components of the ZoomTown Installation Software and other maintenance applications may incorporate third party software, and your installation of the software and use of the Service indicates your acceptance of the license agreement(s) of each. Third party software agreements currently in effect are:

- Sun Microsystems, Inc. Binary Code License Agreement JAVA(tm) RUNTIME ENVIRONMENT VERSION 1.18-004 <http://java.sun.com/products/jdk/1.1/jre/LICENSE>

### 7. Networking

Commented [CP 7]:

Jim confirming

Commented [HL8]: Still needs to be confirmed...Jim is asking

Leaving as is 7/16



## 7.1 Networks or Equipment not supplied or installed by Cincinnati Bell

The ZoomTown/Fioptics Helpdesk does not advise or assist with networks or equipment related to networks not supplied or installed by Cincinnati Bell. Customer inquiries regarding networking should be directed to third party computer technicians and network equipment manufacturers.

## 7.2 Networks and Equipment supplied or installed by Cincinnati Bell

The ZoomTown/Fioptics Helpdesk offers technical support for networks and equipment supplied or installed by Cincinnati Bell. Subscribers can reach the ZoomTown Help Desk by calling 513-397-HELP (513-397-4357) or via the web at: <https://www.cincinnati-bell.com/help-center/internet> <http://www.cincinnati-bell.com/customer-support/product-support/internet/zoomtown/>. Subscribers can reach the Fioptics Help Desk by calling 513-565-9890 or via the web at: <https://www.cincinnati-bell.com/help-center/internet> <http://www.cincinnati-bell.com/customer-support/product-support/fioptics/high-speed-internet/>. Cincinnati Bell networks and equipment are subject to the specific terms and conditions of the relevant contract(s), terms of service and/or other customer agreement established and agreed to at the time of purchase and/or installation of each.

During troubleshooting sessions where networked computers are present, the ZoomTown/Fioptics Helpdesk technician will ask the customer to disconnect their networked equipment from the Equipment and directly connect the hardware to one Windows-based or Apple computer. Doing so will help the technician diagnose issues with the Equipment at the customer's premises. Failure to comply with the ZoomTown/Fioptics technician's request in this matter will release Cincinnati Bell from responsibility for further diagnosis, and customer hereby expressly assumes all liability and risk of loss in exchange for the assistance from the Helpdesk.

## 8. Service Speed

ZoomTown and Fioptics Services come in a variety of speeds. The availability of some service speeds may depend on the location of facilities in your neighborhood and on your street. Not all service speeds are available in all areas. Cincinnati Bell does not guarantee that the Service, Equipment, or other equipment authorized by Cincinnati Bell for use in connection with the Service will perform at a particular speed, bandwidth, or data throughput rate, or will be uninterrupted, error-free, secure, or free of viruses, worms, disabling code or conditions, or the like. The speed measurement advertised by Cincinnati Bell refers to the Internet access speed provisioned to a subscriber on a per-line and not a per-device basis. The actual speed realized by the subscriber may vary based on a variety of factors including, but not limited to: the capabilities or limitations of the customer's computer, network, or other device; the number of computers or other devices in use in the customer's home network; concurrent use of Internet access and a TV video on demand service, which consumes Internet access bandwidth; the means of connecting to the Cincinnati Bell network (e.g., the condition of the home's inside wiring or the type and condition of WiFi router); the distance of the home from the Cincinnati Bell broadband network aggregation point or the type of Cincinnati Bell network facilities present in a given location; network congestion; and the performance of the content and application providers the consumer is accessing, as well as the performance of their respective host network(s).

## 9. Subscriber Electronic Mail Account Policy

### 9.1. Amount and Duration of Customer Email Storage;

Cincinnati Bell reserves the right in its sole and absolute discretion the space allocated for storage of your electronic mail and the duration of time for which it will be preserved, and reserves the right to refuse to accept delivery of any email messages and permanently delete from our mail servers any customer data that causes a customer to exceed these limitations, as amended from time to time. As of the effective date of these terms, Cincinnati Bell does not limit the quantity or duration of the email storage space it provides its customers.

### 9.2. Account Inactivity

If you do not log in to your email account via WebMail or POP3 Access for more than 90 days your account may be categorized as inactive. With respect to inactive accounts, Cincinnati Bell reserves the right to delete subscriber electronic mail, to include opened and unopened mail, and to return incoming mail as "undeliverable". Inactive accounts may be reactivated. However, deleted mail is not recoverable.

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### 9.3. Unsolicited Commercial Email

As a subscriber to the Service, you agree that you will not send Unsolicited Bulk Email (UCE) or "SPAM", or Commercial advertisements in USENET Newsgroups not intended for that purpose without the prior written consent of Cincinnati Bell. You understand that Cincinnati Bell may, in its sole discretion, immediately terminate your Account and access to the Service without notice if you send UCE, SPAM, or commercial advertisements in the USENET Newsgroups.

This "Electronic Mail Policy" incorporates the entirety of this Agreement, but please see the "Acceptable Use Policy" at paragraph 3 above, for more detail.

### 10. Disclaimer of Warranties; Limitation of Liability

The following is capitalized to emphasize its importance.

YOU EXPRESSLY AGREE BY YOUR USE OF THE SERVICE THAT YOUR USE OF THE SERVICE, ITS CONTENT, AND RELATED SERVICES AVAILABLE ON OR LINKED TO THE CINCINNATI BELL, ZOOMTOWN, OR FIOPTICS WEB SITE ARE PROVIDED TO YOU "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

CINCINNATI BELL DOES NOT WARRANT THAT ANY OF THE SERVICE, EQUIPMENT, OR OTHER EQUIPMENT AUTHORIZED BY CINCINNATI BELL FOR USE IN CONNECTION WITH THE SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. CINCINNATI BELL SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT (INCLUDING ANY OTHER EQUIPMENT AUTHORIZED BY CINCINNATI BELL FOR USE IN CONNECTION WITH THE SERVICE), RENDER THE EQUIPMENT OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE.

Cincinnati Bell is not responsible and shall not be liable for the listings or the advertisements contained on the Web Site, and Cincinnati Bell does not:

- Guarantee the accuracy, completeness, usefulness or adequacy of any other web sites, services, goods or advertisements that may be linked to the Web site;
- Make any endorsement, express or implied, of any other web sites, services, goods or advertisements that may be linked to the Web Site;
- Check for licenses with respect to licensed professions or trades prior to publishing advertisements and does not assume the responsibility for monitoring the use of trademarks, certifications, or other rights of third parties; NOR
- Warrant that the Service will be uninterrupted or error-free or that defects in the Service will be corrected. The Service and any Equipment or software made available are provided on an "as is" basis.

IN NO EVENT SHALL CINCINNATI BELL NOR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES FOR: (I) BUSINESS INTERRUPTION, OR LOSS OF PROFITS, REVENUE, USE OR DATA, WHETHER BROUGHT IN CONTRACT OR TORT, ARISING OUT OF OR CONNECTED WITH THE SERVICE, WEB SITE, OR THE USE, RELIANCE UPON, OR PERFORMANCE OF ANY MATERIAL CONTAINED IN OR ACCESSED FROM THE WEB SITE, EVEN IF CINCINNATI BELL OR ITS AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND/OR (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICE AND/OR MATERIALS OR INFORMATION DOWNLOADED THROUGH OR HYPERLINKED FROM THE SERVICE.

For purposes of this section, "Cincinnati Bell" is deemed to include: Cincinnati Bell Telephone Company LLC; its parent company; the respective subsidiaries and affiliates of each; and the directors, officers, employees, agents, representatives, subcontractors, and suppliers of each of them.

By using the Service you are agreeing to these terms. This limitation of liability and these disclaimers of warranties allocate the risks of the Agreement between us and you. Cincinnati Bell relies on this allocation, which is reflected in the pricing of the Services, and is an essential element of the basis of the bargain between us.

### 11. Indemnification

You agree to defend, indemnify, and hold harmless Cincinnati Bell, its affiliated companies and their respective directors, officers, employees and agents from all liabilities, actions, suits, proceedings, claims, damages and expenses, including

without limitation, reasonable attorney's fees, arising from or relating to your use of the Service, the Web Site and your Account. Cincinnati Bell reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you hereunder, and in such event, you shall have no further obligation to provide indemnification for such matter.

## **12. Resolution of Disputes**

Please read this section carefully. It affects rights that you may otherwise have. It provides for resolution of most disputes through arbitration instead of court trials and class actions. Arbitration is final and binding and subject to only very limited review by a court. This arbitration clause shall survive termination of this agreement.

### **12.1. Binding Arbitration**

This provision is intended to be interpreted broadly to encompass all disputes or claims arising out of our relationship. Any dispute or claim, including those against any of our subsidiary, parent, or affiliate companies arising out of or relating to this Agreement, our Privacy Policy, our Acceptable Use Policy, or the Service or any equipment used in connection with the Service (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration except that (1) you may take claims to small claims court if they qualify for hearing by such a court, or (2) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us.

### **12.2. Arbitration Procedures**

You must first present any claim or dispute to us by contacting Customer Care to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or dispute cannot be resolved within 60 days. The arbitration of any dispute or claim shall be resolved by binding arbitration administered by the JAMS under its rules and procedures in effect when the claim is filed. The rules and procedures and other information, including information on fees, may be obtained from JAMS' website ([www.jamsadr.com](http://www.jamsadr.com)) or by calling JAMS at 949-224-1810. You and we agree that this Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. Unless you and we agree otherwise, any arbitration will take place in the county seat for the county in which your billing address is located. At either party's election, the arbitration shall be held telephonically. As set forth below, you and we both agree that any arbitration will be solely between you and Cincinnati Bell, not as part of a consolidated, class-wide, or representative claim (that is, not brought on behalf of or together with another individual's claim). An arbitrator may award any relief or damages (including injunctive or declaratory relief) that a court could award, except an arbitrator may not award relief in excess of or contrary to what this Agreement provides and may not order relief on a consolidated, class-wide, or representative basis. Except as set forth in Section 12.4, below, if any portion of this arbitration clause is determined to be inapplicable or invalid by a court, arbitrator, or state or federal agency with proper jurisdiction, then the remainder shall still be given full force and effect. Judgment on any arbitration award may be entered in any court having proper jurisdiction. Both you and we agree that all issues relating to the validity of this agreement to arbitrate will be decided by a court (including but not limited to the substantive scope of our agreement to arbitrate or whether consolidated, class-wide, or representative arbitration is allowed), and do not intend to confer any such powers on an arbitrator.

### **12.3. Costs of Arbitration**

For claims of less than \$1,000, you will be obligated to pay \$25 and we will pay all other administrative costs and fees. For claims over \$1,000 but under \$75,000, you will be obligated to pay your share of the arbitration fees, but no more than the equivalent court filing fee for a court action filed in the jurisdiction where your billing address is located. For arbitrations in excess of \$75,000, all administrative fees and expenses of arbitration will be divided equally between you and us. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

### **12.4. Waiver of Class Actions**

By this Agreement, both you and we are waiving certain rights to litigate disputes in court. You and we both agree that any arbitration will be conducted on an individual basis only and not on a consolidated, class-wide, or representative basis or the like. If for any reason any court, arbitrator, or state or federal agency with proper jurisdiction holds that this restriction is unconscionable or otherwise unenforceable, then we both agree: (i) that this agreement to arbitrate will be invalidated and terminated and the dispute must be brought in court; and (ii) you and we both waive, to the fullest extent allowed by law, any right to pursue any claims on a class or consolidated basis or in a representative capacity. In the event that this arbitration agreement is invalidated and terminated in accordance with this Section 12.4, both you and we agree to submit to the jurisdiction of the United States District

Court for the Southern District of Ohio with venue in Cincinnati, Ohio, or in the alternative, to the jurisdiction of the Hamilton County Court of Common Pleas located in Cincinnati, Ohio.

### 12.5. Limitations Period

Any arbitration or legal action with respect to any and all claims or causes of action related to or arising out of this Agreement must be brought within two years after the cause of action arises, or within the applicable statutory period of time, whichever is shorter. This limitations period does not apply to any given cause of action when the statutory limitations period for that cause of action cannot be waived, restricted or otherwise limited by you.

## 13. Billing

### 13.1. Monthly Billing; "Past Due Balance"

You agree to timely pay all monthly bills. Any amount outstanding after the due date on the Customer bill shall be deemed a "past due balance".

### 13.2. Process for Billing Disagreements

In the event of a disagreement about a Customer bill, please contact Cincinnati Bell Customer Care at 513-565-2210 or 888-CIN-BELL (246-2355).

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.

Unless an investigation has been initiated through a customer inquiry, Cincinnati Bell reserves the right not to issue refunds or credits after the expiration of this ~~sixty~~60-day period, except where required by law or regulation.

### 13.3. Late Payment Fees

Late payment fees will be assessed on any past due balance of \$10.00 or more. For past due balances of ~~greater than~~ \$10.00 ~~and but~~ less than \$~~5497647~~50, the fee will be calculated: (A) for customers with internet and video service, or only internet service or only video service, as \$~~12408~~12.95; and (B) for customers with home phone service, ~~video service~~ and internet service, or home phone service and video service, ~~or home phone service and internet service~~, as \$~~12408~~12.95 plus 2% of the past due internet/video balance. The fee for all past due balances of \$~~5947647~~50 and greater will be calculated as 2% of the past due balance.

The late payment fee will be added to the past due balance and included in future billing cycles.

### 13.4. Promotional Discount

Cincinnati Bell standard pricing (a "Promotion"). The specific terms of each Promotion may vary and will supersede these terms.

Generally, our Promotions consist of: a certain dollar amount discount for a certain number of months against Cincinnati Bell standard pricing, and require purchase of a certain service or bundle of services at or above a certain monthly price for a certain number of months.

Promotion(s) will end or decrease at the end of the promotional period depending on the Promotion offered. Removal or changing of Cincinnati products after receiving a Promotion could result in forfeiting the entire Promotion. Promotions are not available in all locations. Moving locations could result in change or forfeiting Promotions. Promotions may vary by location, by time of year, products available at location, whether adding a new product, sales channel offering Promotion, and products ordered.

To be eligible for Promotion(s), you must be enrolled in eBill. To sign-up for eBill sign into MyAccount or call or the Fioptics Help Desk at (513) 565-9890.

Cincinnati Bell standard pricing is subject to change. Cincinnati Bell will provide you with at least thirty (30) calendar days' prior written notice before such a change.

#### **16.14. Conversion-Use of fiber optic technology**

When Cincinnati Bell is able to provision Service utilizing fiber optic technologies, we may in our discretion terminate your copper-based service and cease offering copper-based service to your location. In such case, Cincinnati Bell will offer you fiber-based service at the then applicable rates and terms, which may differ from your previous copper-based service rates and terms. In the event that you are [under contract for a fixed-length term on a Term Plan](#) and Cincinnati Bell terminates or ceases to offer service to your location under this Section 14, you will not be liable to pay the Early Termination Fee.

#### **17.15. Right of Access**

By using the Service, you grant permission for Cincinnati Bell and its agents and employees to enter upon the property of the Subscriber for the purpose of installation, inspection, maintenance, testing, and repair of the Service to the Subscriber's premises and, upon service being cancelled for any reason, the Subscriber grants permission for Cincinnati Bell, during reasonable hours, to enter upon the premises and remove all equipment and material belonging to Cincinnati Bell and to discontinue service thereto.

#### **18.16. Termination**

Either you or Cincinnati Bell may terminate your Account at any time and for any reason whatsoever.

Other than disputing your bill in accordance with section 13.2, your only right with respect to any dissatisfaction with the Web Site or Service is to terminate your Account by delivering notice to Cincinnati Bell. Any such notice of termination will be effective upon its actual receipt by Cincinnati Bell.

If this limitation is ruled inapplicable or invalid by a court, arbitrator, or state or federal agency with proper jurisdiction, then the remainder of the Agreement shall still be given full force and effect.

#### **19.17. Waiver**

No waiver by either party of any breach by the other party of any of its covenants, obligations, or agreements under this Agreement and no waiver by either party of any term or condition of this Agreement shall be a waiver of any subsequent breach or failure or of any other covenant, obligation, agreement, term or condition, nor shall any forbearance to seek a remedy for any breach or failure be a waiver of any rights and remedies with respect to such or any subsequent breach or failure.

#### **20.18. Miscellaneous**

If any provision of these terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.

#### **21.19. Governing Law**

The Service is operated from a site in the State of Ohio, United States of America. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to any principles or conflicts of law.