

EVOLVE EVANTAGE - 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. Internet - A Network of Global Computers as defined in 1996 running on Transmission Control Protocol (TCP), on top of Internet Protocol Version Four (IPv4).

2.2. Evolve Everage FUSE Internet Access - the engineering, configuration, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect Customer's network to the Evolve Everage FUSE Internet Access network for passage to the Internet for data transmission as part of the IP Trunking service described in this Agreement.

2.3. Demarcation Point - The point of physical separation of Cincinnati Bell's network, and associated responsibilities, from Customer's network and associated responsibilities. The location of the Demarcation Point shall be the physical interface for Evolve Everage Service presented by Cincinnati Bell to Customer including the Integrated Access Device (IAD).

2.4. Local Area Network - A network connecting computers and other peripheral equipment for data communications over a limited geographical area, usually within a single building or among a few buildings.

3. EVOLVE EVANTAGE SERVICE DETAIL.

3.1. See Services Agreement for specific product offerings and rates. Service pricing does not include wiring beyond the Demarcation Point. Any requested extension beyond the Demarcation Point and/or inside wiring will be based on Cincinnati Bell's standard time & material statement of work, which Customer will be required to execute.

4. BILLING.

4.1. Cincinnati Bell shall send notice to Customer that service is ready for commercial use ("Service Activation Date") and billing will commence within five (5) business days thereafter. Pricing on Services Agreement does not include charges for taxes, fees, and surcharges, which shall be included in the invoices. Cincinnati Bell reserves the right to examine Customer's credit record and to require a deposit or other security, including payment by credit card, before it provides or continues Service to Customer. Cincinnati Bell will determine, at its discretion, how Customer's deposit or other security will be allocated to satisfy outstanding amounts owed by Customer to Cincinnati Bell. By subscribing to the Service, Customer authorizes Cincinnati Bell to investigate Customer's creditworthiness and agrees, from time to time, to provide appropriate authorizations and financial information as Cincinnati Bell may reasonably request for this purpose.

5. INTERSTATE/INTRASTATE LONG DISTANCE USAGE RATE.

5.1. In consideration for Customer's Service, Cincinnati Bell will provide a block of domestic outbound minutes commensurate with the Service at no charge as set forth in the Services Agreement. The interstate/intrastate voice usage rate stated on the Services Agreement applies to Customer's interstate/intrastate long distance service terminating in the continental United States that is in excess to those minutes included in the monthly recurring rate for the tier selected.

6. INTERNATIONAL VOICE USAGE RATES.

6.1. Cincinnati Bell's international voice service usage rates, which vary by country, are subject to change upon three (3) days written notice. To view the international voice service usage rates, please visit CincinnatiBell.com or the specified web address as follows: http://www.cincinnatiBell.com/business/long_distance/international_rates/.

7. CALL INCREMENTS AND ROUNDING.

7.1. Non-calling card interstate and intrastate outbound and inbound calls are billed in thirty (30) second increments with six (6) second additional increments thereafter. International outbound with the exception of Mexico will be billed in thirty (30) second increments with six (6) second additional increments thereafter. Calls to Mexico will be billed in sixty (60) second increments with sixty (60) second additional increments thereafter. All calls are rounded up to the nearest cent.

8. SCOPE.

8.1. Cincinnati Bell (i) shall use reasonable commercial efforts to commence provisioning of services to Customer on or before the Service Activation Date, which is scheduled to be the first date of order activation; and (ii) is authorized to act as Customer's agent in placing orders with other carriers in order to provide telecommunications services, if requested. Usage charges shall be based on (i) the rates for services set forth herein, as applicable; and (ii) actual usage of Cincinnati Bell's network from establishment of a connection between the calling telephone and the called telephone to termination, as determined in Cincinnati Bell's sole discretion.

9. SHORT DURATION CALL PENALTY.

9.1. Notwithstanding anything to the contrary herein, if the percentage of the Customer's completed calls are equal to or less than six (6) seconds in length for any billing cycle meets or exceeds ten percent (10%), Cincinnati Bell may charge an additional \$0.02 for each Short Duration Call during such billing cycle (excluding those Short Duration Calls under the Short Duration Percentage Threshold).

10. NO RESALE.

10.1. Services provided hereunder are for Customer's own use and shall not be resold or provided to third parties.

11. AUTOMATIC DIALER DEVICES.

11.1. Customer acknowledges and agrees that use of auto dialers, predictive dialers or other devices that generate automated outbound calls in conjunction with products and services provided under this Agreement is strictly prohibited. Cincinnati Bell may, in its sole discretion, suspend service for issues pertaining to network congestion due to Customer's use of these devices, revise the pricing herein, or terminate service under this Agreement immediately.

12. MAINTENANCE CHARGES AND ANCILLARY FEES.

12.1. Cincinnati Bell shall maintain its network; however, if Customer requests Cincinnati Bell to send maintenance personnel to perform troubleshooting, who determines that the maintenance required was caused by Customer or Customer's equipment, additional charges will apply.

13. DISCLAIMER OF EMERGENCY 9-1-1 SERVICES.

13.1. Customer is hereby advised that the service; including Emergency 9-1-1 Service, will not function if the customer handset or equipment is moved from the physical address/registered location where service was installed by Cincinnati Bell. Customer is hereby advised that Emergency 9-1-1 Service will not function or be available to customer with the loss of electrical power or if the FUSE Internet Access connection is not operational. Depending on the Customer's location, the type of handsets and other equipment Customer uses, the type of equipment used by the public safety access point or other applicable emergency services provider, and the circumstances and conditions of a particular call, Customer may not be connected or Customer's phone number and/or location may not be identifiable to emergency service providers. Customer signature to this contract will serve as acknowledgement that Cincinnati Bell has advised customer of these limitations and that Customer accepts the services with these limitations. In addition to the limitations of liability contained in Federal Law and relevant State Statutes, Cincinnati Bell shall not be liable for any damages or other relief arising out of delays, mistakes, omissions, interruptions, misrouting of 9-1-1 calls, errors or defects in performance (including, but not limited to, problems with or outages of equipment) hereunder.

14. PROVISION OF EVOLVE EVANTAGE FUSE INTERNET ACCESS.

14.1. The provisioning of Evolve Evantage FUSE Internet Access will include the maintenance and repair required to maintain the Evolve Evantage FUSE Internet Access service in proper working order on Cincinnati Bell's side of the Demarcation Point.

14.2. Evolve Evantage FUSE Internet Access will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Evolve Evantage FUSE Internet Access. Cincinnati Bell reserves the right to perform these tasks, as needed, during the off-peak hours, normally on Sundays from 12:00 a.m. to 6:00 a.m. Downtime due to scheduled maintenance is not subject to the Repair and Response policies in the Scope Section. If maintenance affects Customer, Cincinnati Bell will use reasonable efforts to notify Customer in advance.

14.3. Cincinnati Bell will assign to Customer one (1) usable Internet Protocol (IP) address for Dedicated FUSE Internet Access service. Customer may request additional IP addresses by completing and submitting Cincinnati Bell's IP Justification Form. Cincinnati Bell does not guarantee additional IP Addresses will be provided and reserves the right to deny any request for additional IP addresses.

14.4. Unless otherwise agreed in writing, Cincinnati Bell will provide Evolve Evantage FUSE Internet Access service for TCP/IP based communication protocols for transmission across the Internet only.

14.5. The electrical signals of Evolve Evantage FUSE Internet Access will operate in compliance with the following American National Standard Institute ("ANSI") or IEEE standards for Ethernet LANs operating at a Native Mode of 10/100 Mbps, IEEE Standard 802.3 (Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications).

15. CUSTOMER OBLIGATIONS.

15.1. Customer acknowledges billing for Service will commence when Cincinnati Bell's transport facility is provisioned and facility channels are turned up for local service per terms outlined in the Billing Section of this Supplement.

15.2. Customer will furnish, at its expense, such space, electrical power and environmental conditioning at Customer's premises as Cincinnati Bell may reasonably require in connection with performing its obligations hereunder. Customer will permit Cincinnati Bell reasonable access to Customer's premises, in accordance with Customer's normal security procedures, in connection with providing Service hereunder.

15.3. The Customer is responsible for communicating with its Phone and IT Vendors about any Service change and ensuring the Phone and IT Vendors are present at the proposed time and date of the Service cutover. Cincinnati Bell will give the Customer five (5) days prior notice of the actual cutover date to ensure enough time is given to the Customer to coordinate with their Phone and IT Vendors. Cincinnati Bell is not responsible for any configuration to the Customer's phone system or any data network re-configuration. The cost of phone and network re-configuration will be the sole responsibility of the Customer. If the Customer does not have an IT or Phone Vendor, Cincinnati Bell will provide a quote to perform services or will assist with referring the Customer to a Cincinnati Bell approved Vendor. A late fee of \$150.00 will be billed to the Customer for cutover date changes made by the Customer that are not communicated in writing (email) and received by Cincinnati Bell forty-eight (48) hours in advance of scheduled cutover date.

15.4. Customer will provide, install and maintain, at its expense, all equipment and facilities necessary for LAN interconnection on the Customer's side of the Demarcation Point. Customer shall be responsible for insuring that the operating characteristics of such equipment and facilities are compatible with Cincinnati Bell's Evolve Evantage Service.

15.5. Customer will cause its electrical signals at the Demarcation Point to conform to the applicable ANSI or IEEE standards set forth in Section 14.6, above. Customer shall furnish any additional equipment or facilities necessary to comply with such standards at their expense.

15.6. Without the prior written consent of Cincinnati Bell, Customer will not access, or attempt to access, any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement. Customer agrees to use Internet access only for lawful purposes. Any content that Cincinnati Bell in its sole discretion considers being obscene, lewd, lascivious, filthy, excessively violent, harassing, harmful, offensive or otherwise objectionable Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Similarly, conduct by Customer that in Cincinnati Bell's sole discretion restricts or inhibits any other Internet Service Provider, subscriber, person or entity from using or enjoying the Service or any other service provided will not be permitted and Cincinnati Bell shall notify Customer of such and Customer shall start corrective action immediately or Cincinnati Bell may terminate Service. Examples of such conduct include, but are not limited to, sending of Unsolicited Commercial Email (UCE), Unsolicited Bulk Email (UBE) or "SPAM", Commercial advertisements in USENET News groups not intended for that purpose, attempts to access remote computing systems without permission, port scanning and any attempts to subvert any network security measures of the Service or any other network. Customer will indemnify and hold harmless Cincinnati Bell, its officers, directors, employees and agents, from and against any loss or expense, of whatever nature, arising out of any unauthorized access to any equipment or facilities furnished by Cincinnati Bell in connection with this Agreement.

15.7. Prior to requesting repair service from Cincinnati Bell, Customer will use its best efforts, including but not limited to performing reasonable diagnostic tests, to verify whether any trouble with the Service is a result of the Customer's equipment or facilities. Customer shall be responsible for any such trouble resulting from the Customer's equipment or facilities. Customer will cooperate with any joint testing of Service reasonably requested by Cincinnati Bell.

15.8. Client agrees to comply with Cincinnati Bell's policies respecting the Service as provided from time to time, or to which Customer is directed when using the Service. While using the Service, Client shall not transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or Cincinnati Bell's policies. In addition, without incurring liability, Cincinnati Bell may immediately and without notice: (i) discontinue or suspend the Services; (ii) cancel a request for Services; or (iii) temporarily block Service to a particular authorization code, if it deems such action is necessary, either to prevent Improper Use or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

16. PROCEDURES REGARDING THIRD PARTY COMPLAINTS.

16.1. If Cincinnati Bell receives a complaint that any content provided by Customer through the use of the Service, or provided by any party using Customer's account as permitted by this Agreement, infringes any copyright, trademark, service mark, or other intellectual property right of any third party; or constitutes fraud, false advertising, or misrepresentation; or constitutes libel, slander, or invasion of the right of privacy or publicity of any third party; or otherwise violates the terms of this contract; Cincinnati Bell reserves the right to take appropriate action including, without limitation, (i) taking down the offending material in compliance with the Digital Millennium Copyright Act, 17 U.S.C. § 512, (ii) removing or disabling Customer's access to the Service, and/or (iii) terminating Customer's Subscription, with or without prior notice to Customer.

17. TITLE TO EQUIPMENT AND FACILITIES.

17.1. All equipment and facilities used by Cincinnati Bell in providing Service hereunder will remain the sole property of Cincinnati Bell, whether or not attached to or embedded in realty, unless otherwise agreed to in writing by the Parties with respect to specific equipment.

18. ACCEPTABLE USE.

18.1. If Cincinnati Bell becomes aware, through subscriber complaints or otherwise, of any Content that it, in its sole discretion, considers to be obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, or otherwise objectionable, Cincinnati Bell shall have the right, but not the responsibility, to immediately remove such Content and/or to terminate Service without notice. This policy applies to any Content made available by Customer, Customer's clients, or generally made available through Customer account. Customer is solely responsible for all information, communications, software, photos, video, graphics, music, sounds, and other material and services (collectively referred to as "Content") that is transmitted through the Customer Account and/or make available on or through the Customer Web site or any of the Customer's clients web sites.

19. SUSPENSION OR RESTRICTION OF SERVICE.

19.1. Cincinnati Bell may suspend or restrict the use of Service (i) upon prior notification if the operations or efficiency of the Service is impaired by the use of the Account; or (ii) at any time any amount is past due from Customer to Cincinnati Bell; or (iii) at any time there has been or is any breach of these Terms and Conditions. Cincinnati Bell shall have no responsibility to notify any third party of such termination or suspension.

20. SERVICE LEVEL AGREEMENT.

20.1. The standards described herein do not include periods of non-attainment resulting in whole or in part from one or more of the following causes: (i) Any act or omission by Customer, its contractors, agents, or any other entity over which Customer exercises control or has the right to exercise control; (ii) Scheduled maintenance; (iii) Labor strikes; (iv) Force Majeure events; (v) Any act or omission on the part of a third party; (vi) First month of Service for this particular service element.

20.2. Cincinnati Bell guarantees the availability of Customer's voice and data network, where applicable, through the Evolve Evantage network, the Public Switched Telephone Network, and to the Internet 99.9% of the time. This availability will be determined by verification that Customer's network is "reachable" 99.9% of the times checked from the furthest point in the Evolve Evantage network. For each 0.1% below the 99.9% stated availability, Cincinnati Bell will credit Customer 10% of monthly recurring charges up to 30% in total.

20.3. Cincinnati Bell will use its best efforts to repair any inoperable Voice or FUSE Internet Access port within four (4) hours after Customer has notified Cincinnati Bell that such port is inoperable by opening a trouble ticket with Evolve Evantage repair. If such port remains inoperable for more than eight (8) hours after Customer has notified Cincinnati Bell that such port is inoperable, Cincinnati Bell will credit Customer's account for an amount equal to one-thirtieth (1/30) of the applicable monthly charge for such port. The same credit will apply for each additional eight (8) hour period that the port remains inoperable.

20.4. The total amount of all credits for any one inoperable port will not exceed the monthly port charge for such inoperable port. The credit referred to herein shall be Cincinnati Bell's entire liability and Customer's exclusive remedy for any damages resulting from such inoperable port.

20.5. Cincinnati Bell is providing a clear channel T1 or Metro Ethernet Services, on which the Customer can run multiple applications - voice and data. Voice is given priority across the network. If the Customer is installed using G.711 (uncompressed voice), the Customer will use approximately 80 Kbps per active call. If G.729 (compressed voice) is used, the Customer will use approximately 32 Kbps per active call. When no voice calls are present, all of the bandwidth will be available for Data applications. Cincinnati Bell refers to this as Dynamic Bandwidth Allocation.

21. MOVE/CHANGE OF SERVICE LOCATION.

21.1. If a Customer moves their business to another location within Cincinnati Bell's operating territory (Cincinnati/Northern KY/Dayton markets only) prior to the expiration of the then current Term, the Agreement will move with them, however, the Customer will pay for all standard installation and Service charges associated with moving the Service ("Move Charges"). The Agreement will continue with the original expiration date and rate structure. Termination charges will apply if Customer terminates any of the existing Service. In the event the Customer is in the Agreement for more than twelve (12) months prior to requested move, Customer may resign a new thirty-six (36) month term and Cincinnati Bell will waive the associated Move Charges.

21.2. If Customer cancels, in whole or in part, any requested addition, rearrangement, relocation or other modification to Evolve Evantage 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.

22. TERMINATION CHARGES.

22.1. If Customer terminates Evantage service for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the end of the then-current Term, Customer shall (i) reimburse Cincinnati Bell for all waived costs of the implementation of such Service(s) and (ii) 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.