

## Cincinnati Bell Business Marketplace Terms of Service

As a customer of Cincinnati Bell Telephone Co. LLC d/b/a Cincinnati Bell Business (“Cincinnati Bell”, “CBB”, “we”, “our”, or “us”), you (“Customer”, “User”, “You”, or “Your”) are eligible to purchase certain third-party services through our Cincinnati Bell Business Marketplace. Our Marketplace is a software-as-a-service, management, and single sign-on platform consisting of the websites provided by AppDirect Inc. and AppDirect Canada Inc. d/b/a RadialPoint, and located at [www.AppDirect.com](http://www.AppDirect.com) (included branded and white-labeled subdomains of appdirect.com) as well as other related websites, services, applications, widgets, and networks owned or controlled by Cincinnati Bell (collectively the “Cincinnati Bell Business Marketplace” or “Marketplace”).

Our Marketplace enables independent software vendors (each, an "ISV") to make the products and services they provide as software-as-a-service (each, an "ISV Application") available to You. Each ISV Application is provided by a third party ISV, subject to separate terms of use and privacy policy concluded directly with the provider. The definition of the Cincinnati Bell Business Marketplace excludes these ISV Applications.

PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND CINCINNATI BELL TELEPHONE COMPANY LLC. BY REGISTERING FOR, ACCESSING, BROWSING, DOWNLOADING OR USING THE MARKETPLACE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE PRIVACY POLICY, AND ANY ADDITIONAL POLICIES AND FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS"). IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE MARKETPLACE.

1. Eligibility. The Marketplace is not available to persons under the age of 18 or to any users previously suspended or removed from the Marketplace by CBB. YOU HEREBY REPRESENT THAT YOU ARE AT LEAST 18 YEARS OF AGE AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE MARKETPLACE. If you are using or opening an account with CBB on behalf of a company, entity, or organization (collectively, a "Subscribing Organization") then you represent and warrant that you are an authorized representative of that Subscribing Organization with the authority to bind such Subscribing Organization to these terms, and that you agree to these terms on behalf of such Subscribing Organization. In such a case “You” in these terms refers to (i) your Subscribing Organization, (ii) you, an individual user, and (iii) any other Subscribing Organization personnel accessing and using the Marketplace on the Subscribing Organization's behalf.

2. Additional Terms and Policies. The following terms and policies are incorporated by reference into, and made part of, the Terms. By registering for, accessing, browsing, downloading, or using the Marketplace, You acknowledge that You have read, understood and agree to be bound by these linked policies, as well as the terms available on this page.

A. Privacy Policy. The AppDirect Privacy Policy (available at: <http://www.appdirect.com/privacy>), which provides Cincinnati Bell’s privacy policy related to

the Marketplace and our collection, use, and disclosure of Your personal information in connection with the Marketplace, is hereby incorporated into these Terms by reference.

B. Additional Policies. When using the Marketplace, You will be subject to any additional posted policies, guidelines or rules applicable to specific services and features which may be posted from time to time (the "Policies"). All such Policies are hereby incorporated by reference into these Terms.

### 3. Permission to Access the Marketplace; Accounts.

Access to the Marketplace. Subject to Your ongoing compliance with these Terms, CBB hereby grants to You permission to use the Marketplace solely for your internal business purposes to (i) search and browse ISV Applications available through the Marketplace (ii) to manage subscriptions to and sign on to use ISV Applications purchased through the Marketplace; and (iii) in the case of a Subscribing Organization, to create individual user accounts allowing personnel of the Subscribing Organization to access and use the Marketplace.

#### Account.

When You set up an account on the Marketplace, You will be issued a password. You may also establish individual user accounts and passwords under your master account (for example, your MyAccount). You are solely responsible for maintaining the confidentiality of Your accounts and passwords, and for restricting access to them, and You agree to accept responsibility for all activities that occur under Your accounts or passwords. Information You provide to Cincinnati Bell upon registration and at all other times must be true, accurate, current, and complete. You also agree to keep this information accurate and up-to-date at all times. If You have reason to believe that Your account has been compromised, then You agree to promptly notify Cincinnati Bell at [securityoffice@cinbell.com](mailto:securityoffice@cinbell.com) or 1-800-391-4648.

### 4. Terms of Purchase.

ISV Applications. The ISV Applications offered on the Marketplace are made available by third party providers that are not affiliated with CBB and, as such, you agree that CBB is not responsible for such ISV Applications. Your purchases of access to ISV Applications are concluded directly between you and the applicable ISV, and subject to that ISV's terms of use and privacy policy (the "ISV Application Terms"), which you will have the opportunity to review and accept before processing your transaction. You agree to abide by the applicable ISV Application Terms.

Customer Service. For assistance with questions regarding these Terms (including any of the related Policies) or other inquiries, please first refer to the help section of the Marketplace. If You cannot find answers to your questions there, please call the provider of the ISVs on the Marketplace, AppDirect's

subsidiary company Radialpoint, at:1-866-731-3431 or 513-233-7846. We will assist you in finding the right resource to answer your questions.

PLEASE NOTE THAT SUPPORT QUESTIONS RELATED TO THIRD PARTY APPLICATIONS MADE AVAILABLE ON THE MARKETPLACE SHOULD BE REFERRED DIRECTLY TO RADIALPOINT, WHICH MAY LIKEWISE DIRECT YOU TO THE PROVIDER OF THE APPLICABLE APPLICATION.

**Transaction Processing.** Transactions in respect of your purchases, are processed directly (and applicable fees are collected) by CBB, using a third party payment processor, irrespective of whether the transaction itself is concluded between You and CBB or You and a Third Party, such as an ISV. For recurring payments for periodic subscriptions, your credit card will be charged on an automatic and recurring basis, in advance, on the first day of each subscription period.

**Payments.** You agree to pay for all products and services that You purchase through the Marketplace, and we may charge Your payment instrument for any such payments. You are required to keep Your payment instrument information on file with CBB current, complete and accurate, and notify CBB if Your account is changed or canceled (e.g., if it is compromised or deactivated). You are responsible for all charges incurred under Your account made by You or anyone who uses Your account (including Your employees, contractors, agents, or other personnel). If Your payment instrument fails or Your account is past due, we may collect fees owed using other collection mechanisms. Your account may be deactivated without notice to You if payment is past due, regardless of the dollar amount.

**Taxes.** You are responsible for paying any governmental taxes imposed on Your use of the Marketplace, including, but not limited to, sales, use or value-added taxes. To the extent CBB is obligated to collect such taxes, the applicable tax will be added to Your billing account.

**Refund Policy; Risk of Loss.** As between You and Cincinnati Bell, all fees relating to services and downloaded products are final and nonrefundable. Each ISV may have its own policies regarding refunds, as set forth in the applicable ISV Application Terms.

**Cancellation Policy.** When you cancel your subscription to an application you will no longer have access to that application. We do not provide refunds on paid subscriptions.

**Availability of Content; Purchases.** CBB may make changes to or discontinue any of the products or services available within the Marketplace at any time, and without notice. In the event that an ISV Application you have purchased access to through the Marketplace is no longer accessible through the Marketplace, you must contact the applicable ISV directly to ensure continuity of service during the remaining term of the applicable subscription.

**5. Ownership; Proprietary Rights.** The Marketplace is owned and operated by Cincinnati Bell and its vendors and suppliers. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the Marketplace provided by CBB (the "Materials") are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and

proprietary rights, and applicable laws. All Materials contained on the Marketplace are the property of Cincinnati Bell or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Cincinnati Bell or its affiliates and/or third-party licensors. You may not sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials. Cincinnati Bell and its vendors and suppliers reserve all rights not expressly granted in these Terms.

#### 6. Prohibited Conduct. BY USING THE MARKETPLACE YOU AGREE NOT TO:

- use the Marketplace for any purposes other than: (i) to browse ISV Applications, purchase and manage subscriptions to ISV Applications, and sign on to ISV Applications you have purchased through, or imported into the Marketplace; or (ii) to access other features of the Marketplace as such services are offered by CBB;
- rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials, or use the Marketplace on behalf of any third party;
- post, upload, or distribute any User Submission (as defined in Section 8 below) or other content that is defamatory, libelous, inaccurate, unlawful (including in violation of any intellectual property or similar laws), or that a reasonable person could deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;
- impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Marketplace accounts of others without permission, forge another person's digital signature, misrepresent the source, identity, or content of information transmitted via the Marketplace, or perform any other similar fraudulent activity;
- use the Marketplace if You are under the age of eighteen (18) years old;
- remove, circumvent, disable, damage or otherwise interfere with security-related features of the Marketplace or User Submissions, features that prevent or restrict use or copying of any content or ISV Applications accessible through the Marketplace, or features that enforce limitations on the use of the Marketplace or ISV Applications;
- reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Marketplace or any ISV Application, or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- modify, adapt, translate or create derivative works based upon the Marketplace or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- interfere or attempt to interfere with the proper workings of the Marketplace or any activities conducted on the Marketplace; or
- access the Marketplace with any bot, spider, crawler, or other automated system or process, or bypass robots.txt exclusion files or any other similar or dissimilar measures CBB may use to prevent or regulate access to the Marketplace.

#### 7. Third-Party Sites, Products and Services; Links.

The Marketplace includes links or references to other web sites or services, including without limitation advertisers' and ISV's web sites and ISV Applications, and the websites of CBB's vendors for the Marketplace, solely as a convenience to Users ("Reference Materials"). CBB does not endorse any such Reference Materials or the information, materials, products, or services contained on or accessible through Reference Materials.

Your correspondence or business dealings with, or participation in promotions of, third party ISVs or advertisers found on or through the Marketplace are solely between You and such third party. Access and use of Reference Materials and ISV Applications, including the information, materials, products, and services on or available through Reference Sites, is solely at Your own risk.

CBB provides a single signon service as part of the Marketplace. When you purchase an ISV Application, CBB will provide the ISV with certain information, such as your name, company name, email address, address and CBB account status to the ISV so that the ISV can provide the ISV Application. You hereby consent to CBB's provision of such information to the ISV. The ISV's use of such information (and other information it may collect from you in connection with the ISV Application) is governed by the ISV's privacy policy, which you can locate from the ISV Application or via the ISV's website.

#### 8. User Submissions License Grant; Representations and Warranties.

License Grant to CBB. The Marketplace may allow you to submit content, including text, images, and other media files ("User Submissions"), such as when you create a profile or submit a comment on an ISV Application. You retain all right, title and ownership to all intellectual property rights in original aspects of your User Submissions. By submitting User Submissions to the Marketplace, You hereby grant to CBB a worldwide, non-exclusive, perpetual, irrevocable, transferable, sublicensable, assignable, fully paid-up, and royalty-free license to host, transfer, display, perform, reproduce, distribute, modify and otherwise utilize Your User Submissions in connection with developing, enhancing, providing, syndicating, promoting, and advertising the Marketplace. You also agree to waive (and cause to be waived) any claims and assertions of so called "moral rights" with respect to your User Submissions.

User Submissions Representations and Warranties. You are solely responsible for Your User Submissions and the consequences of posting or publishing them. By uploading and publishing Your User Submissions, You affirm, represent, and warrant that: (1) You are the creator and owner of or have all the necessary licenses, rights, consents, and permissions to authorize CBB to use and distribute Your User Submissions in the manner consistent with the features of the Marketplace and these Terms; (2) Your User Submissions do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right, or (b) slander, defame, libel, or invade the right of privacy or other property rights of any other person; and, (3) Your User Submissions do not contain any viruses, adware, spyware, worms, or other malicious code or any content or file that may have the effect of compromising any security or access control feature of the Marketplace or of any ISV Application. Violators of third-party rights may be subject to criminal and civil liability. CBB reserves all rights and remedies against any Users who violate these Terms.

User Submissions Disclaimer. You understand that when using the Marketplace You will be exposed to User Submissions or other content from a variety of sources, and that CBB is not responsible for the quality, accuracy, usefulness, or intellectual property rights of or relating to such User Submissions and other content. You further understand and acknowledge that You may be exposed to User Submissions (including without limitation communications with other users through public postings, private messaging, chat, or other similar features) and other content that is inaccurate, offensive, indecent or objectionable, and You agree to waive, and hereby do waive, any legal or equitable rights or remedies You have or may have against CBB with respect thereto. CBB does not endorse any User Submissions, and CBB expressly disclaims any and all liability in connection with User Submissions and other content. CBB reserves the right to determine in its sole discretion whether to remove any User Submission or other content. For clarity, CBB does not permit copyright infringing activities on the Marketplace.

9. Digital Millennium Copyright Act. Cincinnati Bell recognizes the importance of protecting copyright holders and prohibits the use of its systems or network for infringing activities. If you are a copyright owner or an agent thereof, and you believe that any content hosted on the Marketplace infringes your copyrights, then you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing notice to us at:

Patrick Crotty, Corporate Counsel  
Cincinnati Bell DMCA Support  
Attn: Security Department  
221 East Fourth Street, Suite 121-300  
Cincinnati, Ohio 45201  
[dmcnotification@cinbell.com](mailto:dmcnotification@cinbell.com)

Please be aware that for the notice to be effective under the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 512(i), it must be in writing, submitted to the person at the address listed above, and must include substantially the following information:

- The electronic or physical signature of the owner of the copyright or the person authorized to act on the owner's behalf.
- A description of the copyrighted work that you claim has been infringed and a description of the infringing activity.
- Identification of the location where the original or an authorized copy of the copyrighted work exists, for example the URL of the website where it is posted or the name of the book in which it has been published.
- Identification of the URL or other specific location on this site where the material that you claim is infringing is located; you must include enough information to allow us to locate the material.
- Your name, address, telephone number, and email address.

- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
- A statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

Please do not send any other notices or communications to the Designated Agent, who is appointed solely for the purposes of receiving notices of claimed copyright infringement under the DMCA.

#### 10. Modification of these Terms; Modification of Fees.

**Terms.** CBB reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms at any time by posting the amended Terms to the Marketplace. Please check these Terms and any Policies periodically for changes. In the event that such modifications materially alter your rights or obligations, CBB will use commercially reasonable efforts to notify you directly of the change, such as through the use of an in-Marketplace notification (for example, a pop-up or banner ad), or by sending an email to the address you provide upon registration. Your continued use of the Marketplace after the changes become effective constitutes Your binding acceptance of such changes. Except as stated elsewhere, such amended Terms or fees will automatically be effective upon the earlier of (a) Your use of the Marketplace with actual notice of the new terms, or (b) thirty (30) days after they are initially posted on the Marketplace; provided however, that any dispute that arises under this Agreement shall be resolved according to the version of the terms that were in place at the time the dispute arose.

**Fees.** Certain functions on the Marketplace have fees associated with them. When You use a service that has a fee You have an opportunity to review and accept the fees that You will be charged based on our stated fees, which we may change from time to time. CBB may choose to temporarily change the fees for CBB's services for promotional events or new services, and such changes are immediately effective when CBB posts the temporary promotional event or new service on the Marketplace. Any changes to fees for CBB's services that are not temporary or promotional will be effective thirty (30) days after we provide You with notice by posting such changes on the Marketplace. Unless otherwise stated, all fees are quoted in U.S. Dollars.

#### 11. Termination; Terms of Service Violations.

**CBB.** You agree that CBB, in its sole discretion, for any or no reason, and without penalty, may terminate any account (or any part thereof) You may have with CBB or Your use of the Marketplace and remove and discard all or any part of Your account, user profile, and any User Submission, at any time. You agree that any termination of Your access to the Marketplace or any account You may have or portion thereof may be effected without prior notice, and You agree that CBB will not be liable to You or any third party for any such termination. Any suspected fraudulent, abusive, or illegal activity may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies CBB may have at law or in equity.

You. Your only remedy with respect to any dissatisfaction with (i) the Marketplace, (ii) any of these Terms, (iii) any policy or practice of CBB in operating the Marketplace, or (iv) any content or information transmitted through the Marketplace, is to terminate these Terms and Your account. You may terminate these Terms by discontinuing use of any and all parts of the Marketplace and notifying CBB's customer service at [business@cinbell.com](mailto:business@cinbell.com).

12. Indemnification. You agree to indemnify, defend, and hold CBB, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of Your use or misuse of the Marketplace or any ISV Application, Your violation of these Terms, or any breach of Your representations, warranties, and covenants. CBB reserves the right, at Your expense, to assume the exclusive defense and control of any matter for which You are required to indemnify CBB, and You agree to cooperate with CBB's defense of these claims. CBB will use reasonable efforts to notify You of any such claim, action, or proceeding upon becoming aware of it.

13. Warranty Disclaimer. YOU EXPRESSLY AGREE THAT THE USE OF THE MARKETPLACE IS AT YOUR SOLE RISK. THE MARKETPLACE AND ANY DATA, INFORMATION, THIRD-PARTY SOFTWARE, USER SUBMISSIONS, ISV APPLICATIONS, REFERENCE SITES, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE MARKETPLACE ARE PROVIDED BY CBB ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED. YOU MAY, HOWEVER, HAVE ADDITIONAL WARRANTY RIGHTS DIRECTLY FROM THE APPLICABLE ISV. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, CBB, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. CBB, AND ITS AFFILIATES, PARTNERS, AND SUPPLIERS DO NOT WARRANT THAT THE DATA, USER SUBMISSIONS, FEATURES, FUNCTIONS, OR ANY OTHER INFORMATION OFFERED ON OR THROUGH THE MARKETPLACE OR ANY REFERENCE MATERIALS WILL BE UNINTERRUPTED, ACCURATE, USEFUL, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING, IF ENCOUNTERED, WILL BE CORRECTED. CBB, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS ABOUT ISVs OR ISV APPLICATIONS. ANY WARRANTY MADE REGARDING ANY ISV APPLICATION IS MADE DIRECTLY BY SUCH ISV. CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE EXCLUSIONS OF WARRANTIES CONTAINED IN THESE TERMS APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION WHERE YOU ARE LOCATED.

14. Limitation of Liability and Damages.

Limitation of Liability. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL CBB OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL,



PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES, LOST BUSINESS, LOST REVENUES OR LOSS OF ANTICIPATED PROFITS ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE MATERIALS, THE MARKETPLACE OR ANY ISV APPLICATION, EVEN IF CBB OR A CBB AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, CBB'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Limitation of Damages. IN NO EVENT WILL CBB OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE MARKETPLACE (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE), EXCEED THE AMOUNT PAID BY YOU, IF ANY, TO CBB (OTHER THAN AMOUNTS PAID SPECIFICALLY FOR THE RIGHT TO ACCESS AND USE ISV APPLICATIONS) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR TWO HUNDRED FIFTY US DOLLARS (\$250 USD), WHICHEVER IS GREATER.

15. Basis of the Bargain. YOU ACKNOWLEDGE AND AGREE THAT CBB HAS OFFERED ITS PRODUCTS AND SERVICES, SET ITS PRICES, AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND CBB, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND CBB. CBB WOULD NOT BE ABLE TO PROVIDE THE MARKETPLACE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

16. Miscellaneous.

Notice. Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Notices to You shall be sent to the your Subscribing Organization's billing address; notices to CBB shall be sent to: Cincinnati Bell Telephone Co. LLC, 221 East Fourth Street, Cincinnati, Ohio 45202 Attn: Cincinnati Bell Business Marketplace, with a copy to: Cincinnati Bell Telephone Co. LLC, 221 East Fourth Street, Cincinnati, Ohio 45202 Attn: General Counsel. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

Waiver. The failure of CBB to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by CBB.

**Severability.** If any provision of these Terms or any Policies is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

**Assignment.** These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by You under any circumstances, but may be assigned by CBB without restriction, including by operation of law, or in connection with merger, sale of stock or assets, or change of control. Any assignment attempted to be made by You in violation of these Terms shall be void. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**Survival.** Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 2, 4, 5, 7, 8, and 11 through 16.

**Headings.** The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

**Third Party Beneficiaries.** The software and website platform for Marketplace is powered by CBB's vendor, AppDirect, Inc. AppDirect, Inc. is a third party beneficiary of the terms in this Agreement and is entitled to enforce them as if it were a party to this Agreement.

**Entire Agreement.** This is the entire agreement between You and CBB relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to these Terms or Policies made by CBB as set forth in section 10 above.

**Independent Contractors, No Agency.** The relationship between You and CBB is one of independent contractors. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended, nor shall anything herein be interpreted or construed to or create, either expressly or by implication, any such relationship.