

## Section 1: Dedicated Fuse Internet Access Terms and Conditions Supplement

### 1.1 Definitions

- 1.1.1 Dedicated FUSE Internet Access - Defined as the engineering, configuration, installation, maintenance and repair services provided by Cincinnati Bell to Customer necessary to interconnect Customer's network to the Dedicated FUSE Internet Access network for passage to the Internet for data transmission.
- 1.1.2 Internet - Defined as a Network of Global Computers as defined in 1996 running on Transmission Control Protocol (TCP), on top of Internet Protocol Version Four (IPv4).
- 1.1.3 Demarcation Point - Defined as 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 Dedicated FUSE Internet Access service presented by Cincinnati Bell to Customer.

### 1.2 Services and Rates.

- 1.2.1 Dedicated FUSE Internet Access service will be provided as specified on the attached Services Agreement.
- 1.2.2 Customer will be responsible for all taxes, surcharges, assessments or other charges (excluding taxes based on Cincinnati Bell's net income) imposed upon or relating to the provision or use of the Dedicated FUSE Internet service.
- 1.2.3 Any other regulated services not listed herein which are provided by Cincinnati Bell to Customer, shall be governed by the rates, terms, and conditions of the appropriate tariff / service agreement. Cincinnati Bell shall comply with all applicable laws, rules, regulations, ordinances, and codes (collectively, "Legal Requirements") in connection with the provision of the Dedicated FUSE Internet Access service.

### 1.3 Provision of Dedicated Fuse Internet Access.

- 1.3.1 Cincinnati Bell will provide Dedicated FUSE Internet Access service as specified on the Services Agreement sheet. Other "optional" features relating to Dedicated FUSE Internet Access service are also available to Customer if requested and agreed upon by both Parties.
- 1.3.2 Subject to Section 5, below, Cincinnati Bell's provision of Dedicated FUSE Internet Access service will include the maintenance and repair required to maintain the Dedicated FUSE Internet Access service in proper working order on Cincinnati Bell's side of the Demarcation Point.
- 1.3.3 Dedicated FUSE Internet Access service will be available twenty-four (24) hours per day, seven (7) days per week, except as required to update, enhance, maintain and/or repair Dedicated FUSE Internet Access service. 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 Section 5. If maintenance affects Customer, Cincinnati Bell will use reasonable efforts to notify Customer in advance.
- 1.3.4 If a major outage to Cincinnati Bell's network occurs, including Dedicated FUSE Internet Access service, Cincinnati Bell will use commercially reasonable efforts to restore Dedicated FUSE Internet Access service as soon as reasonably possible, subject to any federal or state laws or regulations that may specify priority for restoration of telephone service, including without limitation, the National Security Emergency Preparedness Telecommunications Service Priority System.
- 1.3.5 Cincinnati Bell will furnish Customer with a telephone number that Customer will use to report any trouble with Dedicated FUSE Internet Access service (1-800-FUSENET (387-3638), Option 4).
- 1.3.6 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.
- 1.3.7 Unless otherwise agreed in writing, Cincinnati Bell will provide Dedicated FUSE Internet Access service for TCP/IP based communication protocols for transmission across the Internet only.

- 1.3.8 The electrical signals of Dedicated 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).

#### **1.4 Repair – Response Time.**

- 1.4.1 Cincinnati Bell guarantees the availability of Customer's network through the Dedicated FUSE Internet Access service 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 Cincinnati Bell's Dedicated FUSE Internet Access service network. For each 1% below the 99.9% stated availability, Cincinnati Bell will credit customer \$100.00. This guarantee only applies to Dedicated FUSE Internet Access service. The physical transport is not included.
- 1.4.2 Cincinnati Bell will use commercially reasonable efforts to repair any inoperable Dedicated FUSE Internet Access service port within four (4) hours (residential-based dedicated Integrated Services Digital Network [ISDN] excluded) after Customer has notified Cincinnati Bell that such port is inoperable or it has come to the attention of Cincinnati Bell that Customer's port is inoperable. 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.
- 1.4.3 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. The above-mentioned Repair and Response policies do not apply to any Cincinnati Bell facility outages (ISDN, T1, Frame Relay Network, LAN Advantage, and Integrated Advantage).

#### **1.5 Customer's Obligations.**

- 1.5.1 Customer acknowledges billing for Dedicated FUSE Internet Access service will commence when Cincinnati Bell's transport facility is provisioned.
- 1.5.2 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.
- 1.5.3 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 Dedicated FUSE Internet Access service and conform to the Technical Reference Specifications furnished by Cincinnati Bell to Customer in connection with this Agreement.
- 1.5.4 Customer will cause its electrical signals at the Demarcation Point to conform to the applicable ANSI or IEEE standards set forth in Section 4 above. Customer shall furnish any additional equipment or facilities necessary to comply with such standards at their expense.
- 1.5.5 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 shall entitle Cincinnati Bell to immediately terminate service without notice. 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 FUSE or another service will not be permitted and shall entitle Cincinnati Bell to immediately terminate service without notice. 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 FUSENET 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 FUSE 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.

- 1.5.6 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 Dedicated FUSE Internet Access 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 Dedicated FUSE Internet Access reasonably requested by Cincinnati Bell.

## 1.6 Procedures Regarding Third Party Complaints.

- 1.6.1 If Cincinnati Bell receives a complaint that any content provided by Customer through the use of Dedicated FUSE Internet Access service, or provided by any party using Customer's account as permitted by this contract, 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 Dedicated FUSE Internet Access service, and/or (iii) terminating Customer's Subscription, with or without prior notice to Customer.

## 1.7 Title to Equipment and Facilities.

- 1.7.1 All equipment and facilities used by Cincinnati Bell in providing Dedicated FUSE Internet Access 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.
- 1.7.2 Upon disconnection of Dedicated FUSE Internet Access service, Customer agrees to allow Cincinnati Bell reasonable access to its facility in order to recover Cincinnati Bell-owned, customer edge equipment within thirty (30) days of the disconnection date. In the event Customer does not allow Cincinnati Bell reasonable access to its facility within thirty (30) days of the disconnection date, Customer agrees to pay an "unclaimed equipment fee" equal to the amount of Cincinnati Bell's actual cost incurred for the customer edge equipment. The actual cost for the service access switch model D fee is \$1,000. The actual cost for the service access switch model T fee is \$5,000.

## 1.8 Terminations Charges.

- 1.8.1 If Customer terminates Dedicated FUSE Internet Access service for convenience or for reasons other than Cincinnati Bell's breach of this Agreement prior to the expiration of the then-current Term, the Customer will pay a termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if the Customer had not terminated prior to the expiration of the then-current Term. All terminations in Dedicated FUSE Internet Access service will result in IP addresses assigned to customers by Dedicated FUSE Internet Access service reverting back to Dedicated FUSE Internet Access.
- 1.8.2 If nonrecurring charges associated with the installation of Dedicated FUSE Internet Access service are waived and the Dedicated FUSE Internet Access service is then terminated prior to the expiration of the Initial Term, the Customer will become liable for payment of the waived charges