

**HIGH-SPEED DATA SERVICES AGREEMENT
(BULK-BILLED)**

EFFECTIVE DATE: _____, 200_

PARTIES:

Operator:

[TIME WARNER ENTITY'S LEGAL NAME]

Contact Person: _____
Telephone: _____
Facsimile: _____

Owner:

[PROPERTY OWNER'S LEGAL NAME]

Contact Person: _____
Telephone: _____
Facsimile: _____

PROPERTY:

[NAME OF PROPERTY]

Number of Rooms/Ports: _____
On-Site Contact Person: _____
Telephone: _____
Facsimile: _____

RECITALS

- Owner owns the hotel referred to above (including all buildings, improvements, and the underlying land, the "**Property**").
- Owner and Operator desire to make the Service available to occupants at the Property ("**Occupants**") in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

Owner and Operator agree as follows:

1. OPERATOR'S SERVICE OBLIGATIONS.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Services available to the Occupants during the Term. "**Services**"

means Operator's high-speed data and Internet access services delivered over Operator's System. Operator shall use its commercially reasonable efforts to make the Services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the Services, including, but not limited to, the content and applications accessible through or provided via the Services. Operator will notify Owner at least 30 days prior to any material adverse change to the Service by posting notice of such change over the Service, notification by e-mail, or as otherwise provided by this Agreement. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to terminate this Agreement due to a material adverse change to the Service, Owner shall be deemed to have accepted such change.

1.2 Installation of System. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and the applicable Construction Plans and Schedule agreed upon by Owner and Operator. "**System**" means Operator's hybrid fiber/coaxial system that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding, and other facilities that Operator owns or installs or that Operator otherwise uses to deliver the Services to the Property.

1.3 Maintenance of System; Restoration of Property. At Operator's sole expense, Operator will (A) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (B) repair and restore all portions of the Property damaged by Operator (regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number and e-mail address for Services use inquiries, Services disruption reports, and remote problem support for Services disruptions, which support line shall be provided during regular business hours (excluding holidays and weekends).

1.4 Service Outage Credits. If the Services are disrupted, fail, or otherwise are unavailable for normal use by Occupants due to a technical or other malfunction in Operator's System or delivery network for 24 consecutive hours or more, then Owner will be entitled to a pro-rated credit upon request, such credit being equal to 1/30th of the monthly recurring charges for each consecutive 24-hour period of each such failure of Services (a "**Credit**"). To receive a Credit, Owner must request a Credit from Operator within 30 days after the date of such failure. In no event shall Credits awarded for any month of Service exceed the monthly recurring charges received by Operator for such month of Service. Operator shall have no liability, including as set forth in this Section, for disruption of the Services due to a Force Majeure Event (as defined in Section 13.2). Operator's provision of Credits shall constitute Operator's sole obligation and liability and Customer's exclusive remedy for Service disruptions, failures or unavailability.

2. SERVICES FEE.

Owner shall pay to Operator the fee as set forth on Exhibit B (the "**Fee**"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the Services under the terms of this Agreement, and that Owner is not a reseller or provider of the Services. Although Owner is entitled in its sole discretion to determine charges to Occupants for use of the Services, Owner shall not reference the amount payable by Owner or Occupants for the Services in any materials provided to Occupants or prospective Occupants (e.g., charges for Services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the Services are included as part of an Occupant's room/rental charges.

3. OWNERSHIP AND USE OF SYSTEM DURING TERM.

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants to Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that Owner only grants to Operator the non-exclusive right to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to, access, move, use or interfere with any part of the System. The System is not, and shall not be deemed to be,

affixed to or a fixture of the Property. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the Property.

4. OWNER'S OBLIGATIONS.

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, install, operate, maintain, upgrade, repair, replace, and remove the System for the delivery of the Services.

4.2 Cooperation with Governmental Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with Operator and any appropriate governmental legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous Occupants.

5. TERM.

The initial term of this Agreement commences on the Effective Date and shall continue in effect for [_____] years after the date on which Operator begins providing the Services to the Property. The initial term automatically will be extended for successive one-year periods unless either party notifies the other at least 120 days before the expiration of the initial term or any renewal term, as the case may be, that it does not wish to extend the Agreement. The initial term and any extensions thereof are collectively referred to as the "**Term**".

6. REPRESENTATIONS AND WARRANTIES.

6.1 Owner's Representations and Warranties. Owner represents and warrants to Operator that (A) Owner is the sole legal and equitable owner in fee simple of the Property; (B) no purchase contracts exist with respect to the Property; (C) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (D) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement; (E) the party signing this Agreement is duly authorized to execute and deliver such documents on behalf of Owner; (F) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding,

conduit or components), if any; and (G) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.

6.2 Operator's Representations and Warranties. Operator represents and warrants to Owner that (A) Operator has the full power and authority to negotiate, execute, deliver and perform this Agreement; (B) the party signing this Agreement is duly authorized to execute and deliver the Agreement on behalf of Operator; (C) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the Services; and (D) there are no agreements, understandings or intentions with or between Operator and any other party that conflict with this Agreement.

7. DEFAULT AND REMEDIES.

If (a) a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this Agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative.

8. LIMITATION OF WARRANTIES AND LIABILITY; DISCLAIMERS; SERVICE OUTAGE CREDITS.

8.1 LIMITATION OF WARRANTIES AND LIABILITY. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED-- REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY OPERATOR AND WAIVED BY OWNER TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS. OWNER ACKNOWLEDGES THAT THE PERFORMANCE OF THE SERVICES

WILL VARY FROM TIME TO TIME BASED ON NETWORK USAGE AND OTHER FACTORS, AND THAT NO MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. OPERATOR MAKES NO REPRESENTATION, WARRANTY OR GUARANTY REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION, SERVICE OR MERCHANDISE ADVERTISED, PURCHASED OR PROVIDED THROUGH THE SERVICE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL OPERATOR'S AGGREGATE LIABILITY TO OWNER OR ANY THIRD PARTY UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS FOR SUCH LIABILITY, EXCEED THE AMOUNTS PAID BY OWNER TO OPERATOR DURING THE PREVIOUS 12 MONTH PERIOD UNDER THIS AGREEMENT.

8.2 USE OF THE INTERNET AND SERVICES BY OCCUPANTS. OWNER ACKNOWLEDGES THAT USE OF THE SERVICE AND ACCESS TO THE INTERNET IS AT THE OCCUPANTS' AND OWNER'S SOLE RISK AND THAT OPERATOR SHALL BE NOT BE LIABLE IN ANY WAY IN CONNECTION WITH ANY USE OF THE SERVICE BY OCCUPANTS, OWNER OR ANY THIRD PARTY, INCLUDING CIRCUMSTANCES WHERE THE USE OF THE SERVICE RESULTS IN FILE OR DATA LOSS OR HARDWARE OR SOFTWARE LOSS OR DESTRUCTION (E.G., WHERE SUCH LOSS OR DESTRUCTION IS CAUSED BY VIRUSES CONTRACTED OVER THE INTERNET). OWNER SHALL BE RESPONSIBLE FOR PROTECTING THE CONFIDENTIALITY OF ITS PASSWORDS, ACCESS CODES AND OTHER SECURITY MECHANISMS FOR ACCESSING THE SERVICE. OWNER ACKNOWLEDGES THAT THE SERVICES MAY PROVIDE OCCUPANTS WITH A CONNECTION TO THE INTERNET THAT MAY BE UNFILTERED AND THAT OCCUPANTS MAY ACCESS VIA THE SERVICES CERTAIN CONTENT, MERCHANDISE AND SERVICES THAT ARE NOT CONTROLLED OR PROVIDED BY OPERATOR AND FOR WHICH THERE ARE CHARGES PAYABLE TO THIRD

PARTIES (WHICH MAY INCLUDE OPERATOR). OWNER AGREES THAT OPERATOR SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR SUCH CONTENT, SERVICES OR CHARGES.

9. INDEMNIFICATION.

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owner's shareholders, members, partners, directors, managers, officers, employees, contractors, agents, representatives and affiliates (collectively, "**Related Parties**") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "**Losses**"), incurred by Owner or its Related Parties that result from (A) Operator's design, construction, installation, operation, or maintenance of the System or (B) Operator's breach of its representation and warranties in Section 6.2.

9.2 From Owner. Owner will defend, indemnify and hold harmless Operator and, as applicable, Operator's Related Parties from and against all Losses incurred by Operator or its Related Parties that result from (A) damage to any part of the System caused by Owner or its Related Parties, (B) access to or use of the Services (or any content or other services available through the Services) by any end-user at the Property, including Owner's employees, Occupants, and their guest or invitees, or (C) Owner's breach of its representations and warranties in Section 6.1.

10. OWNERSHIP AND REMOVAL OF SYSTEM AFTER TERM.

After this Agreement has expired or been properly terminated as permitted hereby, Operator shall retain ownership of, and for 90 days after such expiration or termination be entitled at Operator's option to remove, abandon, disable, or sell all of the respective components of, the System, unless Owner owns such System components, or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was terminated because of Owner's uncured default, in which case Owner will bear Operator's reasonable removal costs.

11. CONFIDENTIALITY.

Except as specifically provided in this Agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (A) keep this Agreement and its terms confidential, (B) keep confidential and not disclose to any other party any information that is provided by one party to the other and that is marked as confidential, (C) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the Property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the terms of this Agreement without further disclosure to any other party.

12. PROPRIETARY NAMES.

Neither party will use any proprietary or trade name of the other except as specifically permitted in writing by the owner of the name.

13. ASSIGNMENT.

13.1 Assignment by Operator. Operator may assign this Agreement to (A) any parent, affiliate (an entity in which Operator, AOL Time Warner Inc., or Time Warner Entertainment Company, L.P. has an ownership interest of 25% or more), successor (by operation of law or otherwise), or subsidiary that Operator may have or (B) any entity that purchases Operator's overall network system serving the Property. Upon the new operator's written assumption of all of Operator's obligations and duties under this Agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigns the Property, Owner promptly will provide Operator with the name, address, telephone, facsimile, and contact name of the new owner. Upon the new owner's written assumption of all of Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption.

14. MISCELLANEOUS PROVISIONS.

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this Agreement. Such notice shall be effective, (A) if sent by facsimile, when confirmation of transmission is received, or (B) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this Agreement, neither party will be liable or in breach of or default under this Agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "**Force Majeure Event**"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather, earthquakes, or floods; fires or explosions; governmental action or regulation; strikes, lockouts, or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the non-performance caused by the Force Majeure Event (giving consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This terms of this Agreement shall be subject to, and in the performance of their respective obligations under this Agreement the parties shall comply with, all applicable federal, state and local laws and regulations (including the rules and regulations of governmental and regulatory authorities with jurisdiction over the parties) (collectively, "**Laws and Regulations**"). Nothing in this Agreement shall prohibit Operator from fully complying with all Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the Federal Communications Commission or other

governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this Agreement. This Agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modifications. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supersedes all other agreements relating to, the subject matter contained herein. This Agreement can be modified or changed only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this Agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in connection with this Agreement, then the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs in connection with such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this Agreement. All exhibits are fully incorporated into this Agreement by their reference herein.

14.7 Survival. The terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or termination of this Agreement for any reason.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective as of the Effective Date.

[TIME WARNER ENTITY'S LEGAL NAME]

By: _____

Title: _____

[PROPERTY OWNER'S LEGAL NAME]

By: _____

Title: _____

EXHIBIT A
TO
HIGH-SPEED DATA SERVICES AGREEMENT

Services Fee

The Services Fee shall be [\$_____] per high-speed data port/outlet at the Property per month (plus applicable taxes and fees), regardless of whether such ports/outlets are being used. Operator shall be entitled to raise the Services Fee at any time upon 30 days prior written notice to Owner; provided that such increases shall not exceed [____%] during any calendar year.

During the Term, Operator will bill Owner for the Services on a monthly basis in advance and payment by Owner shall be due within 30 days after the date of such invoice; provided that Owner shall not be required to pay any invoice more than 30 days prior to the month to which such invoice applies. If Operator fails to present an invoice prior to the first day of the month for which Services are being provided, such failure shall not constitute a waiver of the Services Fee, and Owner promptly shall pay such invoice when delivered by Operator.

Any payments not received by Operator within 30 days after the date of invoice automatically shall incur a late payment fee of 1.5% per month (pro-rated on a daily basis), or the maximum monthly amount permitted by Laws and Regulations, whichever is less. The late payment fee shall apply from the due date of such payment until the date such amount is paid in full. In addition to the late payment fee, Operator may, without liability to Owner and without breaching this Agreement, temporarily discontinue the Services (in whole or in part) until such charges, together with the late payment fee, are paid in full. If the Services are discontinued in whole or in part and Operator agrees to resume providing the Services, then Operator may require Owner to pay a reconnect charge before resumption of Services. Owner will be responsible for all expenses (including reasonable attorneys' fees) incurred by Operator in collecting any amounts due and unpaid by Owner.

Operator shall have the right, upon reasonable prior notice and during Owner's normal business hours, and subject to any reasonable security requirements, to audit the use of the Services to ensure Owner's compliance with this Agreement. If Operator's audit reveals that the use of the Services exceeds Owner's rights hereunder, then Owner shall pay Operator an amount equal to 1.5 times the Services Fee that would have been due for such excessive use as liquidated damages and not as a penalty. In addition, Owner shall either discontinue any excess usage or thereafter continue to pay Operator's then-current fees for such additional usage.