

CENTURYLINK
1600 7th Avenue, Room 1506
Seattle, Washington 98191
(206) 733-5178

Maura E. Reynolds
Paralegal
Regulatory Law

March 20, 2015

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2015 MAR 23 PM 2:27

IDAHO PUBLIC
UTILITIES COMMISSION



CenturyLink®

Via Overnight delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No.: [New]
Application for Approval of Broadband for Resale
Service Agreement

QWE-T-15-02

Dear Ms. Jewell:

Enclosed is a revised Application for Approval of Broadband for Resale Agreement. This Application corrects the inconsistencies in the previously submitted application. CenturyLink respectfully requests that this matter be placed on the Commission Decision Meeting Agenda for expedited approval.

Please contact me if you have any questions concerning the enclosed. Thank you for your assistance in this matter.

Sincerely,

Maura E. Reynolds

MEP/jga
Enclosures

Lisa A Anderl (WSBA# 13236)
CenturyLink
1600 7th Ave, Room 1506
Seattle, Washington 98191
Telephone: (206) 345-1574
Lisa.anderl@centurylink.com

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**APPLICATION OF QWEST
CORPORATION dba CENTURYLINK QC
FOR APPROVAL OF THE BROADBAND
FOR RESALE SERVICE AGREEMENT
WITH IONEX CORPORATIONS NORTH,
INC. dba BIRCH COMMUNICATIONS
FOR THE STATE OF IDAHO PURSUANT
TO 47 U.S.C. §252(e)**

CASE NO.: QWE-T-15-02

**APPLICATION FOR APPROVAL OF
BROADBAND FOR RESALE
AGREEMENT**

Qwest Corporation dba CenturyLink QC (“CenturyLink”) hereby files this Application for Approval of CenturyLink™ Broadband for Resale (CBR) 2011 Service Agreement between Qwest Corporation dba CenturyLink QC and Ionex Communications North, Inc. dba Birch Communications for the State of Idaho (“Agreement”). The Agreement with Ionex Communications North, Inc. dba Birch Communications (“Birch”) is submitted herewith.

This Agreement was reached through voluntary negotiations without resort to mediation or arbitration and is submitted for approval pursuant to Section 252(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

Section 252(e)(2) of the Act directs that a state Commission may reject an agreement reached through voluntary negotiations only if the Commission finds that: the agreement (or portion(s) thereof) discriminates against a telecommunications carrier not a party to this

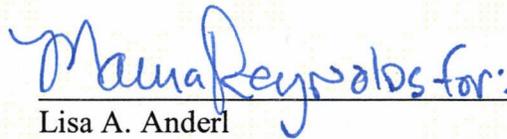
agreement; or the implementation of such an agreement (or portion) is not consistent with the public interest, convenience and necessity.

CenturyLink respectfully submits that this Agreement provides no basis for either of these findings, and, therefore requests that the Commission approve this Agreement expeditiously. This Agreement is consistent with the public interest as identified in the pro-competitive policies of the State of Idaho, the Commission, the United States Congress, and the Federal Communications Commission. Expeditious approval of this Agreement will enable Birch Communications to interconnect with CenturyLink facilities and to provide customers with increased choices among local telecommunications services.

CenturyLink further requests that the Commission approve this Agreement without a hearing. Because this Agreement was reached through voluntary negotiations, it does not raise issues requiring a hearing and does not concern other parties not a party to the negotiations. Expeditious approval would further the public interest.

Respectfully submitted this 18th day of March, 2015.

CENTURYLINK



Lisa A. Anderl
Attorney for CenturyLink

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2015, I served the foregoing **Application for Approval Broadband for Resale (CBR) Service Agreement** upon all parties of record in this matter as follows:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074
jjewell@puc.state.id.us

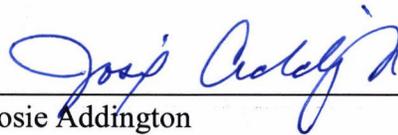
Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Chris Bunce
Sr. VP and General Counsel
Birch Communications
2323 Grand Boulevard, Suite 925
Kansas City, Missouri 64108

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Kristen Welty
Director – Vendor & Contract Management
Birch Communications
140 Gateway Drive, Suite A
Macon, Georgia 31210

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email



Josie Addington

CENTURYLINK™ BROADBAND FOR RESALE (CBR) 2011 SERVICE AGREEMENT

This CenturyLink™ Broadband for Resale (CBR) 2011 Master Services Agreement, together with the Attachments hereto, incorporated herein by reference ("Agreement") is between **Qwest Corporation dba CenturyLink QC ("CenturyLink"), a Colorado corporation, and Ionex Communications North, Inc. dba Birch Communications ("CLEC"), a South Dakota corporation**, (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"). The undersigned Parties have read and agree to the terms and conditions set forth in this Agreement.

<p>Qwest Corporation dba CenturyLink QC:</p> <p>DocuSigned by: <i>L. T. Christensen</i></p> <p>By: _____ <small>05E9FC088B57454...</small></p> <p>Name: <u>L. T. Christensen</u></p> <p>Title: <u>Director – Wholesale Contracts</u></p> <p>Date: <u>3/2/2015</u></p>	<p>Ionex Communications North, Inc. dba Birch Communications:</p> <p>DocuSigned by: <i>Chris Aversano</i></p> <p>By: _____ <small>234CC7E000682457...</small></p> <p>Name: <u>Chris Aversano</u></p> <p>Title: <u>Executive VE & COO</u></p> <p>Date: <u>3/2/2015</u></p>
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NOTICE INFORMATION: All written notices required under this Agreement shall be sent to the following:

CenturyLink:

Director - Interconnection Agreements
930 15th Street, 6th Floor
Denver, CO 80202
Phone: 303-672-2879
Fax: 303-672-2713
Email: intagree@centurylink.com

With copy to:

CenturyLink Legal Department
Wholesale Interconnection
1801 California Street, 9th Floor
Denver, CO 80202
Phone: 303-383-6553
Email: Legal.Interconnection@centurylink.com

CLEC:

Chris Bunce
Sr. VP & General Counsel
Birch Communications
2323 Grand Blvd, STE 925
Kansas City, MO 64108
Phone: 816-300-3322
Email: chris.bunce@birch.com

With copy to:

Kristen Welty
Director – Vendor & Contract Management
Birch Communications
140 Gateway Drive, STE A
Macon, GA 31210
Phone: 469-916-3506
Email: kristen.welty@birch.com

APPLICABLE STATES:

CenturyLink agrees to offer and CLEC intends to purchase Service in the states indicated below by CLEC's signatory initialing (or an "X") on the applicable blanks:

- Arizona**
- Colorado
- Idaho**
- Iowa
- Minnesota
- Montana
- Nebraska
- New Mexico
- North Dakota
- Oregon
- South Dakota
- Utah
- Washington
- Wyoming

CenturyLink and CLEC hereby mutually agree as follows:

1. **Definitions.** Capitalized terms used herein are defined in Attachment 1.

2. **Effective Date.** This Agreement is effective upon the date that it is fully executed by all of the Parties and the applicable preorder information of the Interconnection Agreement between the Parties is completed in the appropriate State indicated above ("Effective Date").

3. **Term.** The term of this Agreement begins on the Effective Date and will continue on a month-to-month basis until it is terminated by either Party, with at least ninety (90) Days prior written notice, or replaced by a successor agreement.

4. **Scope of Agreement; Service Provisioning; Controlling Documents; Change of Law; Eligibility for Services under this Agreement; Non-Applicability of Change Management Process.**

4.1 The Services ("Services") described in this Agreement will only be provided in CenturyLink's incumbent Local Exchange Carrier (LEC) service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

4.2 In the event of a conflict in any term of any documents that govern the provision of Services hereunder, the following order of precedence will apply in descending order of control: an Attachment, this Agreement, and any effective Order Form hereunder. The Parties agree that the Services offered and purchased under this Agreement are subject to compliance with Applicable Law; and obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of Applicable Law, including but not limited to Federal rules, regulations, and laws, as of the Effective Date ("Existing Rules"). Nothing in this Agreement shall be deemed an admission by CenturyLink or CLEC concerning the interpretation or effect of the Existing Rules or an admission by CenturyLink or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop CenturyLink or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

4.4 If any change in Applicable Law materially impairs a Party's ability to perform or obtain a benefit under this Agreement, both Parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

4.5 To receive services under this Agreement, CLEC must be a certified CLEC under Applicable Law. CLEC may not purchase or utilize Services covered under this Agreement for its own administrative use or for the use by an Affiliate.

4.6 The Parties agree that Services provided under this Agreement are not subject to the CenturyLink Wholesale Change Management Process (CMP), CenturyLink QC Performance Indicator Definitions (PID), CenturyLink QC Performance Assurance Plan (PAP), or any other wholesale service quality standards, or liquidated damages and remedies. CLEC hereby waives any rights it may have under the PID, PAP and all other wholesale service quality standards to liquidated damages, and remedies with respect to Services provided pursuant to this Agreement. Any CLEC-proposed changes to the attributes of any Service or process enhancements will be communicated through the standard account interfaces. Change

requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

5. **CLEC Information.** CLEC agrees to work with CenturyLink in good faith to promptly complete or update, as applicable, CenturyLink's "New Customer Questionnaire" to the extent that CLEC has not already done so, and CLEC shall hold CenturyLink harmless for any damages to or claims from CLEC caused by CLEC's failure to promptly complete or update the questionnaire.

6. **Financial Terms.**

6.1 **Rates and Terms.** Attachment 2 hereto specifies the description, terms, and conditions specific to the Service. Applicable rates are incorporated into this Agreement by reference. The Parties agree that the referenced rates are just and reasonable.

6.2 **Taxes, Fees, and other Governmental Impositions.** All charges for Services provided herein are exclusive of any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges ("Tax" or "Taxes"). Taxes resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such Taxes is placed upon the other Party. However, where the selling Party is specifically permitted by Applicable Law to collect such Taxes from the purchasing Party, such Taxes shall be borne by the Party purchasing the services. Taxes shall be billed as a separate item on the invoice in accordance with Applicable Law. The Party billing such Taxes shall, at the written request of the Party being billed, provide the billed Party with detailed information regarding billed Taxes, including the applicable Tax jurisdiction, rate, and base upon which the Tax is applied. If either Party (the Contesting Party) contests the application of any Tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays all reasonable costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party has paid the Tax contested. If the purchasing Party provides the selling Party with a resale or other exemption certificate, the selling Party shall exempt the purchasing Party if the selling Party accepts the certificate in good faith. If a Party becomes aware that any Tax is incorrectly or erroneously collected by that Party from the other Party or paid by the other Party to that Party, the Party that received such Tax shall refund the incorrectly or erroneously collected Tax or paid Tax to the other Party.

6.3 Each Party is solely responsible for any tax on its corporate existence, status or income and each Party shall be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and shall be responsible for any related tax filings, payment, protest, audit and litigation. Each Party shall be solely responsible for the billing, collection and proper remittance of all applicable Taxes relating to its own services provided to its own Customers.

7. **Intellectual Property.**

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive Service solely as provided in this Agreement or as specifically required by the then-applicable federal rules and regulations relating to Services provided under this Agreement, nothing contained in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trademark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable

by either Party. Neither Party may use any patent, copyright, trade name, trademark, service mark, trade secret, nor other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party without execution of a separate written agreement between the Parties.

7.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) shall indemnify and hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. The obligation for indemnification recited in this paragraph shall not extend to infringement which results from:

A. any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or is not reasonably necessary to CLEC's use of the Services offered by CenturyLink under this Agreement; or

B. any modification made to the facilities or services of the Indemnifying Party by, on behalf of, or at the request of the Indemnified Party and not required by the Indemnifying Party.

7.3 In the event of any claim, the Indemnifying Party may, at its sole option, obtain the right for the Indemnified Party to continue to use any infringing facility or service or replace or modify any infringing facility or service to make such facility or service non-infringing.

7.4 If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided above and either the facility or service is held to be infringing by a court of competent jurisdiction or the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party will notify the Indemnified Party and the Parties will negotiate in good faith regarding reasonable modifications to this Agreement necessary to mitigate damage or comply with an injunction which may result from such infringement or allow cessation of further infringement.

7.5 The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

7.6 To the extent required under Applicable Law, CenturyLink shall use commercially reasonable efforts to obtain, from its vendors who have licensed intellectual property rights to CenturyLink in connection with Services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such Services as contemplated hereunder and at least in the same manner used by CenturyLink for the Services provided hereunder. CenturyLink shall notify CLEC immediately in the event that CenturyLink believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection shall be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 7.2, preceding.

7.7. Neither Party shall without the express written permission of the other Party, state or imply that it is connected, or in any way affiliated with the other or its Affiliates; it is part of a joint business association or any similar arrangement with the other or its Affiliates; the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it

and its goods and services; or with respect to its marketing, advertising or promotional activities or materials, state or imply that the services are in any way associated with or originated from the other Party or any of its Affiliates. In addition, CLEC, including its employees, representatives and agents, will not state or otherwise indicate, directly or indirectly, to its end-users or prospective end-users: (a) that they will be CenturyLink customers or that they may obtain CenturyLink service from CLEC or (b) that CLEC has or the end-user will have any relationship with CenturyLink. Without limiting the foregoing, CLEC must not use a name, trademark, service mark, copyright or any other intellectual property owned by CenturyLink or its Affiliates, except that CLEC may communicate that CenturyLink is one of the underlying carriers from which CLEC purchases services if CLEC has obtained the prior written consent of the CenturyLink Law Department. This is a non-exclusive agreement. Nothing in this Agreement prevents CenturyLink from offering to sell or selling any services to other parties.

7.8 Nothing in this Section prevents either Party from truthfully describing the Services it uses to provide service to its End User Customers, provided it does not represent the Services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates. CenturyLink's name and the names of its Affiliates are proprietary and nothing in this Agreement constitutes a license authorizing their use, and in no event will CLEC, including its employees, representatives and agents, attempt to sell any Services to its end-users using the name, brand or identity of CenturyLink or CenturyLink's Affiliates in any way.

7.9 Because a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

8. Financial Responsibility, Payment and Security.

8.1 **Payment Obligation.** Amounts payable under this Agreement are due and payable within thirty (30) Days after the date of invoice ("Payment Due Date"). If the Payment Due Date falls on a Sunday or on a holiday which is observed on a Monday, the payment date will be the first non-holiday day following such Sunday or holiday. If such a payment date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-holiday day preceding such Saturday or holiday. For invoices distributed electronically, the date of the invoice is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If CLEC fails to make payment on or before the Payment Due Date, CenturyLink may invoke all available rights and remedies.

8.2 **Cessation of Order Processing.** CenturyLink may discontinue processing orders for Services for any breach by CLEC of this Agreement, including without limitation, the failure of CLEC to make full payment for Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date provided that CenturyLink has first notified CLEC in writing at least ten (10) business days prior to discontinuing the processing of orders for Services. If CenturyLink does not refuse to accept additional orders for Services on the date specified in the ten (10) business days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude CenturyLink's right to refuse to accept additional orders for Services from CLEC without further notice. For order processing to resume, CLEC will be required to cure any breach and make full payment of all past-due charges for Services not disputed in good faith under this Agreement, and CenturyLink may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, CenturyLink reserves the right to seek equitable relief including injunctive relief and specific performance.

8.3 **Disconnection.** CenturyLink may disconnect any Services provided under this Agreement for any breach by CLEC of this Agreement that is not cured by CLEC in accordance with Section 11 herein, including without limitation, failure by CLEC to make full payment for such Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date provided that CenturyLink has first notified CLEC in writing at least ten (10) business days prior to disconnecting Services. CLEC will pay the applicable charge set forth under this Agreement required to reconnect Services for each End User Customer disconnected pursuant to this Section 8.3. In case of such disconnection, all applicable undisputed charges, including termination charges, will become due and payable. If CenturyLink does not disconnect CLEC's Service on the date specified in the ten (10) business days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude CenturyLink's right to disconnect any or all Services. For reconnection of the Service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for Services and CenturyLink may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, CenturyLink reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, CenturyLink will not effect a disconnection pursuant to this Section 8.3 in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

8.4 **Billing Disputes.** Should CLEC dispute, in good faith, and withhold payment on any portion of the charges under this Agreement, CLEC will notify CenturyLink in writing within fifteen (15) Days following the Payment Due Date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC will pay all undisputed amounts due to CenturyLink. Both CLEC and CenturyLink agree to expedite the investigation of any disputed amounts, promptly provide reasonably requested documentation regarding the amount disputed, and work in good faith in an effort to resolve and settle the dispute through informal means prior to invoking any other rights or remedies.

A. If CLEC disputes charges and does not pay such charges by the Payment Due Date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of CenturyLink, CLEC will pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. CLEC may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of CLEC, CenturyLink will credit CLEC's bill for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute.

B. If CLEC pays the disputed charges and the dispute is resolved in favor of CenturyLink, no further action is required. If CLEC pays the charges disputed at the time of payment or at any time thereafter, and the dispute is resolved in favor of CLEC, CenturyLink will adjust the Billing, usually within two Billing cycles after the resolution of the dispute, as follows: CenturyLink will credit CLEC's bill for the disputed amount and any associated interest; or if the disputed amount is greater than the bill to be credited, pay the remaining amount to CLEC.

C. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, will any late payment charges be assessed on any previously assessed late payment charges.

D. If CLEC fails to dispute a rate or charge within sixty (60) Days following the invoice date on which the rate or charge appeared, adjustment will be made on a going-forward basis only, beginning with the date of the dispute.

8.5 **Security Deposits.** In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of this Agreement, CenturyLink may request a security deposit. A "material adverse change in financial condition" means CLEC is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with CenturyLink, or the Party is Repeatedly Delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by CenturyLink due to a previous failure to pay undisputed charges in a timely manner or due to the failure by CLEC to cure a breach of this Agreement in a timely manner. CenturyLink may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly Delinquent" means any payment of a material amount of total monthly Billing under this Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The deposit may not exceed the estimated total monthly charges for a two (2) month period based upon recent Billing. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to CenturyLink, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by CLEC's actual monthly average charges, payment history under this Agreement, or other relevant factors, but in no event will the security deposit exceed five million dollars (\$5,000,000.00). Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to the terms and provisions of Section 8.2 and Section 8.3 of this Agreement.

8.6 **Interest on Deposits.** Any interest earned on cash deposits will be credited to CLEC in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits are not subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of this Agreement or the establishment of satisfactory credit with CenturyLink, which will generally be one full year of consecutive timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request, and CenturyLink will consider, a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

8.7 **Late Payment Charge.** If any portion of the payment is received by CenturyLink after the Payment Due Date, or if any portion of the payment is received by CenturyLink in funds that are not immediately available, then a late payment charge will be due to CenturyLink. The late payment charge is the portion of the payment not received by the Payment Due Date multiplied by a late factor. The late factor is the lesser of (i) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of Days from the Payment Due Date to and including the date that CLEC actually makes the payment to CenturyLink; or (ii) 0.000407 per Day, compounded daily for the number of Days from the Payment Due Date to and including the date that CLEC actually makes the payment to CenturyLink.

8.8 CLEC must not remit payment for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions

unless those functions and obligations are specifically agreed to by the parties in this Agreement or in an amendment to this Agreement.

9. Conversions. If CLEC is obtaining services from CenturyLink under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to a Service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein will be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

10. Customer Contacts. CLEC, or CLEC's authorized agent, is the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC will inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting CenturyLink will be instructed to contact CLEC, and CenturyLink's End User Customers contacting CLEC will be instructed to contact CenturyLink. In responding to calls, neither Party will make disparaging remarks about the other Party. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider; however, nothing in this Agreement shall be deemed to prohibit CenturyLink or CLEC from discussing its products and services with CLEC's or CenturyLink's End User Customers who call the other Party.

10.1 In the event CenturyLink terminates Service to CLEC for any reason, CLEC will provide any and all necessary notice to its End User Customers of the termination. In no case will CenturyLink be responsible for providing such notice to CLEC's End User Customers.

11. Default and Breach. If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement and such default or violation continues for thirty (30) Days after written notice thereof, the other Party may terminate this Agreement and seek relief in accordance with any remedy available under this Agreement, including without limitation, the Dispute Resolution provisions of Section 25 herein and, in addition to the foregoing, CenturyLink may cease to accept orders from CLEC for Services in accordance with Section 8.2 above. The remedies available to each Party pursuant to this Agreement are not to be considered exclusive of one another and will be cumulative.

12. Limitation of Liability.

12.1 CLEC's exclusive remedies for claims under this Agreement are limited to CLEC's proven direct damages unless CLEC's damages are otherwise limited by this Agreement to outage credits or other service credits, in which case CenturyLink's total liability will not exceed the aggregate amount of any applicable credits due.

12.2 Except for indemnification obligations under this Agreement, neither Party shall be liable to the other for indirect, incidental, consequential, exemplary, punitive, or special damages, including, without limitation, damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including, without limitation, negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

12.3 Nothing contained in this Section will limit either Party's liability to the other for willful misconduct, provided that, a Party's liability to the other Party pursuant to the foregoing exclusion, other than direct damages, will be limited to a total cap equal to one hundred

per cent (100%) of the annualized run rate of total amounts charged by CenturyLink to CLEC under this Agreement.

12.4 CenturyLink will incur no liability to CLEC for any withdrawal of, interference with, or degradation to Service provided to CLEC's End User Customers caused by CenturyLink's deployment of Remote-Based DSL.

13. Indemnity.

13.1 The Parties agree that unless otherwise specifically set forth in this Agreement, the following constitute the sole indemnification obligations between and among the Parties:

A. Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each, an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

B. In the case of claims or losses alleged or incurred by an End User Customer of either Party arising out of or in connection with Services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (each, an Indemnified Party) against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying Service was provided or was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.

13.2 The indemnification provided herein is conditioned upon the following:

A. The Indemnified Party will promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

B. If the Indemnifying Party wishes to defend against such action, it will give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party has sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not

accept the defense of the action, the Indemnified Party has the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party will be available to the other Party with respect to any such defense.

C. In no event will the Indemnifying Party settle or consent to any judgment for relief other than monetary damages pertaining to any such action without the prior written consent of the Indemnified Party. In the event that the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense; provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

14. Limited Warranties.

14.1 Each Party will provide suitably qualified personnel to perform its obligations under this Agreement and provide all Services hereunder in a good and workmanlike manner and in material conformance with all Applicable Laws and regulations.

14.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CENTURYLINK SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER. CENTURYLINK SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

15. Relationship. Except to the limited extent expressly provided in this Agreement, neither Party has the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other or otherwise act on the other's behalf. The relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise. CenturyLink is acting as an independent contractor and will have exclusive control of the manner and means of performing its obligations. Notwithstanding anything herein to the contrary, CenturyLink reserves the right, in its sole discretion, to modify or change the name of the Services.

16. Assignment.

16.1 Either Party may assign this Agreement without the other Party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; (c) to an entity that it controls, is controlled by, or it commonly controls; or (d) to satisfy a regulatory requirement imposed upon a party by a governmental body with appropriate authority; provided such Party gives the other Party thirty (30) Days prior written notice of such assignment and that the assignee acknowledge in writing its assumption of the obligations of the assignor hereunder. Any assignee of CLEC must have a financial standing and creditworthiness equal to or better than CLEC's, as reasonably determined by CenturyLink, through a generally accepted, third party credit rating index (e.g., D&B, S&P, etc.). Any other assignment will require the prior written consent of the other Party, which will not be unreasonably withheld.

16.2 In the event that CenturyLink transfers to any unaffiliated party exchanges, including End User Customers that CLEC serves in whole or in part through Services provided by CenturyLink under this Agreement, CenturyLink will ensure that the transferee serves as a successor to and fully performs all of CenturyLink's responsibilities and obligations under this Agreement for a period of ninety (90) Days from

the effective date of such transfer or until such later time as the FCC may direct pursuant to the FCC's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, CenturyLink will use its best efforts to facilitate discussions between CLEC and the transferee with respect to the transferee's assumption of CenturyLink's obligations after the transition period set forth above in accordance with the terms and provisions of this Agreement.

17. Reporting Requirements. If reporting obligations or requirements are imposed upon either Party by any third party or regulatory agency in connection with this Agreement or the Services, including use of the Services by CLEC or its End Users, the other Party agrees to assist that Party in complying with such obligations and requirements, as reasonably required by that Party.

18. Survival. The expiration or termination of this Agreement does not relieve either Party of those obligations that by their nature are intended to survive.

19. Confidentiality/ Nondisclosure.

19.1 Neither Party will, without the prior written consent of the other Party (a) issue any public announcement regarding, or make any other disclosure of the terms of, this Agreement or use the name or marks of the other Party or its Affiliates; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other Party. Consent may only be given on behalf of a Party by its Legal Department. However, a Party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the disclosing Party gives the non-disclosing Party reasonable prior written notice and the receiving Party will cooperate with the disclosing Party to seek or take appropriate protective measures and will make such disclosure in a manner to best protect the Confidential Information from further disclosure. Notwithstanding the foregoing, if reporting or filing obligations or requirements are imposed upon CenturyLink by any third party or regulatory agency in connection with this Agreement, CLEC agrees to assist CenturyLink in complying with such obligations and requirements, as reasonably required by CenturyLink and to hold CenturyLink harmless for any failure by CLEC in this regard. CenturyLink's compliance with any regulatory filing obligation will not constitute a violation of this section. Each Party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the Party would use to protect its own.

19.2 All Confidential Information will remain the property of the disclosing Party. A Party who receives Confidential Information via an oral communication may request written confirmation that the material is Confidential Information. A Party who delivers Confidential Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Confidential Information. Each Party has the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party will from that time forward, treat such information as Confidential Information.

19.3 Upon request by the disclosing Party, the receiving Party will return all tangible copies of Confidential Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

19.4 Each Party will keep all of the other Party's Confidential Information confidential and will disclose it on a need to know basis only. Each Party will use the other Party's Confidential Information

only in connection with this Agreement and in accordance with Applicable Law. Neither Party will use the other Party's Confidential Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. If either Party loses, or makes an unauthorized disclosure of, the other Party's Confidential Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

19.5 **Effective Date of this Section.** Notwithstanding any other provision of this Agreement, the Confidential Information provisions of this Agreement apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

19.6 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party is entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies are not the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but are in addition to all other remedies available at law or in equity.

19.7 Nothing herein should be construed as limiting either Party's rights with respect to its own Confidential Information or its obligations with respect to the other Party's Confidential Information under Section 222 of the Act.

20. **Waiver.** Except as otherwise provided herein, neither Party's failure to enforce any right or remedy available to it under this Agreement will be construed as a waiver of such right or a waiver of any other provision hereunder.

21. **Regulatory Approval.** Each Party reserves its rights with respect to whether this Agreement is subject to Sections 251 and 252 of the Act. In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, whether by direct action or by virtue of generic proceedings, including without limitation, any pricing terms, either Party may immediately upon written notice to the other Party terminate this Agreement in whole or in part, including without limitation, with respect to Service in any state. In the event a Party exercises its right to terminate pursuant to this Section 21, the other Party agrees to consent to any regulatory approvals necessary to disconnect any circuits provided pursuant to this Agreement and further agrees to provide any required notice to affected customers within five (5) business days of such notice. If a Party is required by a lawful, binding order to file this Agreement or a provision thereof with the FCC or state regulatory authorities for approval or regulatory review, the filing Party shall provide written notice to the other Party of the existence of such lawful, binding order so that the other Party may seek an injunction or other relief from such order. In addition, the filing Party agrees to reasonably cooperate to amend and make modifications to this Agreement to allow the filing of this Agreement or the specific part of this Agreement affected by the order to the extent reasonably necessary.

22. **Notices.** Any notices required by or concerning this Agreement will be in writing and will be sufficiently given if delivered personally, delivered by prepaid overnight express service, sent by facsimile with electronic confirmation, or sent by certified mail, return receipt requested, or by email where specified in this Agreement to CenturyLink and CLEC at the addresses shown on the cover sheet of this Agreement. Notwithstanding anything herein to the contrary, CenturyLink may provide notice via email or by posting to CenturyLink's website without duplicate written notification for: (v) marketing notices; (w) notices provided under Section 8; (x) rate change notices; or (y) notices regarding changes in maintenance windows.

23. **Force Majeure.** Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (each, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide Service to each other at a level equivalent to the level they provide themselves.

24. **Governing Law.** Colorado state law, without regard to choice-of-law principles, governs all matters arising out of, or relating to, this Agreement.

25. **Dispute Resolution.**

25.1 The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will, within seven (7) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions will be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations will be treated as Confidential Information developed for purposes of settlement, and will be exempt from discovery and production, and are not admissible in any subsequent proceedings without the concurrence of both Parties.

25.2 If the designated representatives have not reached a resolution of the dispute within fifteen (15) Days after the written notice (or such longer period as agreed to in writing by the Parties), then either Party may commence a civil action. Any action will be brought in the United States District Court for the District of Colorado if it has subject matter jurisdiction over the action, and shall otherwise be brought in the Denver District Court for the State of Colorado. The Parties agree that such courts have personal jurisdiction over them.

25.3 **Waiver of Jury Trial and Class Action.** Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.

25.4 No cause of action regardless of the form of action, arising out of, or relating to this Agreement, may be brought by either Party more than two (2) years after the cause of action arises.

26. **Headings.** The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement.

27. **Authorization.** Each Party represents and warrants that:

- A. the full legal name of the legal entity intended to provide and receive the benefits and Services under this Agreement is accurately set forth herein;
- B. the person signing this Agreement has been duly authorized to execute this Agreement on that Party's behalf;
- C. the execution hereof is not in conflict with law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected; and
- D. each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

28. **Third Party Beneficiaries.** The terms, representations, warranties and agreements of the Parties set forth in this Agreement are not intended for, nor will they be for the benefit of or enforceable by, any third party (including, without limitation, CLEC's Affiliates and End Users).

29. **Insurance.** Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from its operations for which that Party has assumed legal responsibility in this Agreement. If a Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section, to the extent its affiliated Party fails to meet such obligations.

29.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

29.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

29.3 "All Risk" Property coverage on a full replacement cost basis insuring all of such Party's personal property situated on or within the Premises.

29.4 Each Party may be asked by the other to provide certificate(s) of insurance evidencing coverage, and thereafter shall provide such certificate(s) upon request. Such certificates shall:

- A. name the other Party as an additional insured under commercial general liability coverage;
- B. indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by such Party; and

C. acknowledge severability of interest/cross liability coverage.

30. **Communications Assistance Law Enforcement Act of 1994.** Each Party represents and warrants that any equipment or Services provided to the other Party under this Agreement comply with the CALEA. Each Party will indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and will at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or Services provided to the other Party under this Agreement to ensure that such equipment, facilities and Services fully comply with CALEA.

31. **Entire Agreement.** This Agreement (including all Attachments and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Agreement. Notwithstanding the foregoing, certain elements used in combination with the Service provided under this Agreement are provided by CenturyLink to CLEC under the terms and conditions of its interconnection agreement, and nothing contained herein is intended by the Parties to amend, alter, or otherwise modify those terms and conditions.

32. **Proof of Authorization.**

32.1 Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA), as required by applicable federal and state law, as amended from time to time.

32.2 Each Party will make POAs available to the other Party upon request. In the event of an allegation of an unauthorized change or unauthorized service in accordance with all Applicable Law, the Party charged with the alleged infraction shall be responsible for resolving such claim, and it shall indemnify and hold harmless the other Party for any losses, damages, penalties, or other claims in connection with the alleged unauthorized change or service.

33. **General Terms.**

33.1 CenturyLink will provide general repair and maintenance services on its facilities, including those facilities supporting Services purchased by CLEC under this Agreement, at a level that is consistent with other comparable services provided by CenturyLink.

33.2 In order to maintain and modernize the network properly, CenturyLink may make necessary modifications and changes to its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in transmission parameters that are within transmission limits of the Service ordered by CLEC.

33.3 **Network Security.**

A. **Protection of Service and Property.** Each Party will exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own employees, agents, End User Customers and property, but in no case less than a commercially reasonable degree of care.

B. Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of

Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide Service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

C. The Parties' networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for their employees with respect to such security requirements and penalties.

D. CenturyLink shall not be liable for any losses, damages or other claims, including, but not limited to, uncollectible or unbillable revenues, resulting from accidental, erroneous, malicious, fraudulent or otherwise unauthorized use of Services or facilities ("Unauthorized Use"), whether or not such Unauthorized Use could have been reasonably prevented by CenturyLink, except to the extent CenturyLink has been notified in advance by CLEC of the existence of such Unauthorized Use, and fails to take commercially reasonable steps to assist in stopping or preventing such activity.

33.4. Responsibility For Environmental Contamination.

A. Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected work location. Each Party shall defend and hold harmless the other Party and its respective officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from:

1. any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the work locations; or
2. the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

B. In the event any suspect materials within CenturyLink-owned, operated or leased facilities are identified to CLEC by CenturyLink to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with Applicable Law, including without limitation, local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. CenturyLink agrees to immediately notify CLEC if CenturyLink undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

CENTURYLINK COMMERCIAL BROADBAND SERVICE AGREEMENT ATTACHMENT 1- DEFINITIONS

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"Applicable Law" means all laws, statutes, common law including, but not limited to, the Act, the regulations, rules, and final orders of the FCC, a state regulatory authority, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or a state regulatory authority.

"Asymmetric Digital Subscriber Line" (ADSL) is one form of the Digital Subscriber Line technology, a data communications technology that enables faster data transmission over copper telephone lines than a conventional voice band modem can provide. It does this by utilizing frequencies that are not used by a voice telephone call.

"Asynchronous Transfer Mode" (ATM) is a cell-based switching technique that uses asynchronous time division multiplexing. It encodes data into small fixed-sized cells (cell relay) and provides data link layer services that run over OSI Layer physical links. This differs from other technologies based on packet-switched networks (such as the Internet Protocol or Ethernet), in which variable sized packets (known as frames when referencing Layer 2) are used. ATM uses a Connection-oriented model and establishes a virtual circuit between two endpoints before the actual data exchange begins.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers under Section 229 of the Act.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature and that: (a) the receiving Party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party; and/or (b) is of such a nature that the receiving Party should reasonably understand that the disclosing Party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Agreement by the receiving Party or is already known or is independently developed by the receiving Party.

"Customer" means the Person purchasing a Telecommunications Service or an information service or both from a Carrier.

"Day" means calendar days unless otherwise specified.

"Due Date" means the specific date on which the requested Service is to be available to CLEC or to CLEC's End User Customer, as applicable.

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service or information service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Ethernet" is a family of frame-based computer networking technologies for local area networks. The name came from the physical concept of the ether. It defines a number of wiring and signaling standards for the Physical Layer of the OSI networking model as well as a common addressing format and Media Access Control at the Data Link Layer.

"FCC" means the Federal Communications Commission.

Fiber to the x "(FTT)x" is a generic term for any broadband network architecture that uses optical fiber to replace all or part of the usual metal local loop used for last mile telecommunications. The generic term originated as a generalization of several configurations of fiber deployment, including without limitation, FTTH, FTTC, FTTB and FTTN, all starting by FTT but differentiated by the last letter, which is substituted by an x in the generalization.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of Telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of Commercial Mobile Radio Service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Miscellaneous Charges" mean charges that CenturyLink may assess in addition to recurring and nonrecurring rates under this Agreement, for activities CLEC requests CenturyLink to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in CenturyLink's recurring or nonrecurring rates under this Agreement. Miscellaneous Charges shall be contained in or referenced under this Agreement.

"Operational Support Systems" or "OSS" mean pre-ordering, Provisioning, maintenance, repair and billing systems.

"Order Form" means service order request forms issued by CenturyLink, as amended from time to time.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Premises" refers to CenturyLink's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by CenturyLink that house its network facilities; all structures that house CenturyLink facilities on public rights-of-way, including but not limited to vaults containing Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by CenturyLink that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider and may take the form of a third party verification format.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services from the other with attendant acknowledgments and status reports.

"Remote-Based DSL" refers to a network architecture where the DSLAM serving End User Customers is not located in the Serving Wire Center.

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The DSLAM is generally located in a cabinet outside of the Serving Wire Center.

"Tariff" as used throughout this Agreement refers to CenturyLink interstate Tariffs and state Tariffs, price lists, and price schedules.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Very-high-bit rate Digital Subscriber Line" (VDSL) is a DSL technology providing faster data transmission (up to 52 Mbit/s downstream and 16 Mbit/s upstream) over a single flat untwisted or twisted pair of copper wires. These fast speeds mean that VDSL is capable of supporting high bandwidth applications such as HDTV, as well as telephone services (voice over IP) and general Internet access, over a single connection. VDSL is deployed over existing wiring used for POTS and lower-speed DSL connections.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act or elsewhere in this Agreement, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

ATTACHMENT 2- CENTURYLINK™ BROADBAND FOR RESALE (CBR) 2011 SERVICE

- 1.0** CenturyLink will provide wholesale CenturyLink™ Broadband for Resale (CBR) 2011 Service ("Service"), previously known as Digital Subscriber Line (DSL), High Speed Internet, and Commercial Broadband Service, in conjunction with compatible and available Local Exchange Resale and CenturyLink™ Local Services Platform (CLSP) services, according to the terms and conditions set forth in the CBR Agreement between the Parties (the "Agreement") and in this Attachment 2 to the Agreement, which is incorporated into and made a part of the Agreement (this "Attachment"). Except as otherwise set forth in this Attachment, capitalized terms used but not otherwise defined herein have the definitions assigned to them in the Agreement.
- 1.0.1 Many specific Service terms and conditions, including but not limited to availability, available products and speeds, additional terms and conditions, rates, implementation, and process information is contained in the CenturyLink Wholesale Product Catalogue (PCAT) which is incorporated herein by reference.
- 1.1 Service Description**
- 1.1.1 The Service utilizes a number of data transport solutions, including without limitation, Rate Adaptive Digital Subscriber Line (RADSL) and Asynchronous Transfer Mode (ATM) technologies, Asymmetric Digital Subscriber Line (ADSL2+) and Very-high-bit rate Digital Subscriber Line (VDSL2) Ethernet technologies to allow transmission of voice and data over a single local loop and provides End User Customers continuous, dedicated access to an Internet Service Provider (ISP). For any Service utilizing Ethernet technologies, CenturyLink must be the ISP.
- 1.1.2 The Service is available with compatible and available Resale and CLSP products which are purchased separately under applicable service agreements and/or Interconnection Agreements.
- 1.1.3 Stand Alone Service is strictly a data service and does not include analog voice transmission capabilities or 911 services. Stand Alone Service is available only under the Resale process.
- 1.2 Scope of Agreement**
- As of the Effective date, the terms and conditions, if any, under which CLEC may have previously purchased a functionally similar CenturyLink wholesale high speed internet service with Resale or CLSP services, are terminated and CenturyLink will provide Service only pursuant to the terms and conditions of the Agreement and this Attachment.
- 2.0 Terms and Conditions**
- 2.1** CenturyLink provides this Service at rates and terms and conditions that Customer agrees are just and reasonable.
- 2.2** Service is dependent upon CLSP and Resale product compatibility and end office availability as defined in the online CenturyLink Wholesale PCAT.
- 2.3** CLEC may order new Service where qualified. CLEC may also convert existing CenturyLink retail End User Customers with CenturyLink retail high speed internet service as provided herein and in the CenturyLink Wholesale PCAT.
- 2.4** CenturyLink retail high speed internet service marketing, sales, and/or pricing promotions are not available under the Agreement.
- 2.5** Intentionally Left Blank.
- 2.6** CLEC is responsible for all work activities at the End User Customer premises. All negotiations with the premises End User Customer and or premises owner are solely the responsibility of CLEC.
- 2.7 Customer Provided Equipment (CPE) and Minimum Service Requirements** The end-user customer must be equipped with certain CPE including computers, software, and modems that meet minimum system requirements.
- 2.7.1 CLEC will be solely responsible for Tier 1 Technical Support and for providing its end-users with CPE (including, without limitation, computers, software, modems, filters and installation instructions). CLEC may, however, purchase certain modems, filters and installation instructions from CenturyLink pursuant to the terms of the Agreement and this Attachment.
- 2.7.2 CLEC will be responsible for providing accurate address information for modem fulfillment.
- 2.7.3 Installing or using the Service with CPE that does not meet minimum system requirements limits functionality, availability, and support and may damage CPE, software, peripherals or data.
- 2.7.4 Following conversion of existing retail CenturyLink high speed internet service to CenturyLink Commercial high speed internet service, existing and installed CPE will not be maintained or changed by CenturyLink.
- 2.7.5 Further information on Service-compatible CPE, including qualified modems and minimum system requirements is provided in the CenturyLink PCAT.
- 2.8 Service Conditions** CLEC and CLEC's end user(s) are subject to the CenturyLink high speed internet Subscriber Agreement, Acceptable Use Policy (AUP), and Excessive Use Policy (EUP) provided in the CenturyLink PCAT. The Subscriber Agreement, AUP, and EUP are subject to change without notice.
- 2.9 Broadband Service Technology** In certain areas, CenturyLink is changing its network to support newer high speed internet functionality. These changes may include, among other things, deployment of Remote-Based DSL, which may interfere with or degrade existing Service or may limit availability of new ATM-based Service.
- 2.10 Service Interference** Network changes, including without limitation, deployment of Remote-Based DSL may interfere with or degrade CLEC's End User Customer's existing ATM-based Service. Upon receipt of a trouble report involving interference with or degradation of Service to any of CLEC's End User Customers, CenturyLink will attempt to correct the reported trouble by moving the Service to a new binder group, if available. If moving the Service to a new binder group does not correct the reported trouble, CenturyLink may determine that the existing ATM-based Service is no longer compatible with Remote-Based DSL and CenturyLink may immediately, and at its sole and absolute discretion, withdraw the Service on an individual circuit basis. CenturyLink will incur no liability to CLEC for degradation or withdrawal of Service caused by network changes, including

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without limitation, as a result of deployment of Remote-Based DSL.

2.11 CenturyLink reserves the right at any time to modify or change the name(s) of the Service.

2.12 Nothing in the Agreement or in this Attachment precludes CenturyLink from withdrawing or discontinuing the availability of any high speed internet service and/or any related technology from its retail end user customers. In the event of any such withdrawal and/or discontinuation of high speed internet service and/or any related technology, it is expressly agreed and understood that CenturyLink may also, in its sole and absolute discretion, withdraw the availability of any equivalent Service and/or any equivalent supporting technology under the Agreement.

3.0 Changes to Service Availability and Rates

3.0.1 At any time, effective upon posting to the CenturyLink Wholesale PCAT or notification, CenturyLink may introduce new Services, modify existing Services, and/or any of the terms and conditions contained in the CenturyLink Wholesale PCAT and/or reduce monthly recurring charges (MRCs) and/or non-recurring charges (NRCs).

3.0.2 Upon thirty (30) Days notice, CenturyLink may increase MRCs and/or NRCs for Existing Services. CenturyLink may reduce the foregoing notice period if such increase is based upon Regulatory Activity.

3.0.3 Upon ninety (90) Days notice, the availability of Service(s) may be withdrawn if CenturyLink has also withdrawn the availability of similar high speed internet service from its retail end user customers. CenturyLink may reduce the foregoing notice period if such withdrawal is based upon Regulatory Activity.

4.0 Rates and Charges

4.1 Rates for the Service, except as identified below, are set forth in Rates Cards published at www.centurylink.com/legal. Rates are subject to change.

4.2 Under the Agreement, CLECs will receive the discounts published by CenturyLink at <http://www.centurylink.com/wholesale/clecs/commercialagreements.html> (or as may be published by other means upon notice given in accordance with the terms set forth in the Agreement); provided that in no event will such discounts be less than a 20% discount off of the Business and Residential Rate MRCs, a 50% discount off of the standard Activation Charge, and a 25% discount off of the modem charge, in each case based on rates provided in the Rate Cards. These discounts will not apply to any other rates provided in the Rate Cards or to Services published in the CenturyLink Wholesale PCAT that are offered to CLECs at wholesale rates. CenturyLink and CLEC agree that (i) CenturyLink may immediately increase the discounts published pursuant to this Section 4.2, at its sole and absolute discretion, upon notice given in accordance with the terms set forth in the Agreement, and (ii) CenturyLink may subsequently decrease such published discounts at any time, at its sole and absolute discretion, upon thirty (30) Days notice given in accordance with the terms set forth in the Agreement; provided, however, that the discounts may not, unless otherwise agreed to in writing by CenturyLink and CLEC, be decreased to a percentage lower than the percentages set forth above in this Section 4.2.

4.3 CLEC is responsible for Billing its End User Customers all Service Miscellaneous Charges and surcharges required of CLEC by statute, regulation or otherwise required.

4.4 Service has a one month minimum service period at the line level. This one month minimum service period and all attendant charges apply even if CLEC does not retain Service for the entire month. Services are billed month to month and shall, after the one month minimum service period is satisfied, be pro-rated for partial months based on the number of days service was provided.

5.0 Systems and Interfaces

5.1 CenturyLink and CLEC shall continue to support the use of existing Operational Support Systems (OSS) interfaces and current OSS business rules for the Service as the same may evolve over time.

5.2 The Service is ordered via a Local Service Request (LSR) as described in the CenturyLink Wholesale PCAT.

5.3 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and shall have in its possession a Proof of Authorization.

5.4 When CenturyLink or another provider of choice, at the End User Customer's request, orders the disconnection of the End User Customer's existing Service with CLEC, CenturyLink will render its closing bill to CLEC effective with the disconnection. CenturyLink will notify CLEC by FAX, OSS interface, or other agreed upon processes when an End User Customer moves to CenturyLink or another service provider. CenturyLink shall not provide CLEC or CenturyLink retail personnel with the name of the other service provider selected by the End User Customer.

6.0 Maintenance and Repair

6.1 CenturyLink will maintain its facilities and equipment that comprise the Service provided to CLEC. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair CenturyLink facilities or equipment, other than by connection or disconnection to any interface between CenturyLink and the End User Customer, without the written consent of CenturyLink.

6.2 CenturyLink shall provide general repair and maintenance services on its facilities. Without limiting the generality of the foregoing, CenturyLink shall repair and restore any equipment or any other maintainable component that may adversely impact CLEC's use of the Service, except that CenturyLink may not be able to restore Service in the event of interference or degradation caused by deployment of Remote-Based DSL or due to the withdrawal and/or discontinuation of retail high speed internet service and/or any related technology. CenturyLink and CLEC shall cooperate with each other to implement procedures and processes for handling service-affecting events. There shall be no charge for the services provided under this section except as set forth in the CenturyLink Wholesale PCAT.