

Frame Relay Service Agreement

This Qwest Corporation DBA CenturyLink QC Frame Relay Service Agreement (“Agreement”) is between the customer ordering service (“Customer”) and Qwest Corporation DBA CenturyLink QC (“CenturyLink”) and is effective at the time Customer places the order (“Effective Date”). CenturyLink will provide, and Customer will purchase, the CenturyLink Frame Relay month-to-month service provided under this Agreement (“FRS” or “Service”). Service is subject in all respects to the Oregon product catalog of which this Agreement is a part (“Catalog”). CenturyLink reserves the right to amend, change, withdraw, or file additional Catalogs in its sole discretion, with such updated Catalogs effective upon posting or upon fulfillment of any necessary regulatory requirements. In the event of a conflict in any term or condition of any documents that govern the provision of the Service hereunder, the following order of precedence will apply in descending order of control: the Catalog, this Agreement, and CenturyLink records.

1. Scope.

1.1 FRS provides interconnection of Local Area Networks (LANs) and/or computers in a frame relay format (frames) suitable for transmission over the CenturyLink Frame Relay network, with maximum transmission speeds of 44.736 Mbps. FRS enables users to allocate circuit bandwidth to applications as needed up to the maximum bandwidth purchased, rather than assigning fixed channels for specific applications. FRS requires certain Customer Provided Equipment (“CPE”) not provided as part of FRS to accumulate and properly format Customer data transmission.

1.2 Customer understands and agrees that CenturyLink supplies Service as an intrastate, intraLATA telecommunications service, as defined by State and/or Federal Communications Commission (“F.C.C.”) regulations, which are incorporated herein by this reference. It is Customer’s responsibility to ensure that Customer uses Service as an intrastate, intraLATA telecommunications service consistent with such regulations. F.C.C. regulations permit interstate usage of Service if such usage does not exceed 10% of the total usage. If Customer should use this Service for any other purpose, or if interstate usage exceeds 10%, it is Customer’s responsibility to immediately notify CenturyLink of such use and to place an order for appropriate service. CenturyLink will bill, and Customer will promptly pay, appropriate monthly recurring charges, for such use of and changes to Customer’s telecommunications service including, but not limited to all applicable CenturyLink Access Tariff F.C.C. No. 1 interstate access charges or intrastate Catalog access charges.

2. Term. This Agreement will remain in effect month-to-month until Customer cancels Service.

3. Installation/Location(s).

3.1 CenturyLink will provide the Service at the locations requested by Customer. CenturyLink’s records will document the actual date of installation at each location.

3.2 CenturyLink will notify Customer of the date Service is available for use. In the event Customer informs CenturyLink that it is unable or unwilling to accept Service at such time, the subject Service will be held available for Customer for a period not to exceed 30 business days from such date (“Grace Period”). If after the Grace Period, Customer still has not accepted Service, CenturyLink may either: (a) commence with regular monthly billing for the subject Service; or (b) terminate the subject Service.

4. Charges and Billing. The charges for Service will be the month-to-month rates in effect in the Catalog at the time each Service element is ordered and subject to Catalog changes as referenced elsewhere in this Agreement. Customer must pay CenturyLink all charges by the date on the invoice. Any amount not paid when due will be subject to a late charge as specified by the Catalog, or if there is no such late charge specified in the Catalog, the amount due will be subject to late interest at the lesser of the rate of 1.5% per month or the highest rate permitted by applicable law. Customer must also pay CenturyLink any applicable Taxes assessed in connection with Customer’s Service. “Taxes” means federal, state and local taxes, surcharges, and other similar charges. CenturyLink may reasonably modify the payment terms or require other assurance of payment based on Customer’s payment history or a material and adverse change in Customer’s financial condition. The prices for Services under this Agreement, including any and all discounts to which Customer may be entitled, will be offered and charged to Customer independently from and regardless of the Customer’s purchase of any customer premises equipment or enhanced services from CenturyLink.

5. Interruptions To Service. The Catalog specifies the credit allowance due Customer, if any, for interruptions to Service that are not caused by Customer’s negligence. If no credit allowance is specified in the Catalog, CenturyLink will apply the provisions of FCC1 Access Service Tariff with respect to any credit allowance due Customer for interruptions to Service.

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6. Termination. Either party may terminate Service and/or this Agreement in accordance with the applicable Catalog or for Cause. “Cause” means the failure of a party to perform a material obligation under this Agreement, which failure is not remedied: (a) in the event of a payment default by Customer, within five days of separate written notice from CenturyLink notifying Customer of such default (unless a different notice period is specified in the Catalog); or (b) in the event of any other material breach, within 30 days of written notice (unless a different notice period is specified in the Catalog or this Agreement). Customer will remain liable for Service charges accrued but unpaid as of the termination date. Customer will also be liable for reasonable costs incurred by CenturyLink before the start of Service, should an order for Service be canceled prior to the start of Service.

7. Disclaimer of Warranties. THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE.

8. Limitation of Liability. NEITHER PARTY, ITS AFFILIATES, AGENTS, OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER RELATING TO THE SERVICE OR THE AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED. WITH REGARD TO ANY SERVICE RELATED CLAIM BY CUSTOMER FOR DAMAGES THAT IS NOT LIMITED BY THE PRECEDING SENTENCE, CUSTOMER’S EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE APPLICABLE OUT-OF-SERVICE CREDITS, IF ANY. Notwithstanding the foregoing, the limitation of liability in this Section will not apply to: (a) a party’s indemnification obligations; and (b) Customer’s payment obligation for all charges under the Agreement, including without limitation, Service charges, Taxes, and interest.

9. Personal Injury, Death, and Property Damage. Each party will be responsible for the actual, physical damages it directly causes to the other party in the course of its performance under the Agreement, limited to damages resulting from personal injury or death to a party’s employees and loss or damage to a party’s personal tangible property arising from the negligent acts or omissions of the liable party; PROVIDED, HOWEVER, THAT NEITHER PARTY, ITS AFFILIATES, AGENTS, OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER.

10. Indemnification. Customer will defend and indemnify CenturyLink, its Affiliates, agents, and contractors against all third party claims, liabilities, costs, and expenses, including reasonable attorneys’ fees, arising from or related to the use, modification, or resale of the Service by Customer or End Users. “End Users” means Customer’s members, end users,

customers, or any other third parties who utilize or access the Service or the CenturyLink network via the Service provided hereunder. “Affiliate” means any entity controlled by, controlling, or under common control with a party.

11. Confidentiality; Publicity. 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, the 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, the Agreement) the Confidential Information of the other party. Such consent may only be given on behalf of CenturyLink by its Legal Department. 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 the Agreement, provided that the disclosing party gives the non-disclosing party reasonable prior written notice. “Confidential Information” means any information that is not generally available to the public, whether of a technical, business or other nature and that: (c) the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party; and/or (d) 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.

12. Dispute Resolution; Governing Law.

12.1 Governing Law; Forum. This Agreement will be governed by the laws of the state of Colorado, except with regard to matters that are within the exclusive jurisdiction of the state or federal regulatory agency. Those matters alone will be governed by the laws of the appropriate jurisdiction. Any legal proceeding arising out of, or relating to this Agreement, will be brought in a United States District Court, or absent federal court jurisdiction, in a state court of competent jurisdiction, in the location of the party to this Agreement not initiating the action, as indicated in the Notices section. Notwithstanding the foregoing, CenturyLink may initiate proceedings in Denver, Colorado to collect undisputed amounts billed. This provision is not intended to deprive a small claims court or state agency of lawful jurisdiction that would otherwise exist over a claim or controversy between the parties.

12.2 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.

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Frame Relay Service Agreement (continued)

13. Notices. Except as otherwise provided herein, all required notices must be in writing and sent to CenturyLink at 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: (888) 778-0054; Attn.: Legal Department, and to Customer at its then current address as reflected in CenturyLink's records; Attn.: General Counsel or other person designated for notices. Except as otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by facsimile so long as duplicate notification is also sent via regular U.S. mail.

14. General. Customer may not assign the Agreement or any of its rights or obligations under the Agreement without the prior written consent of CenturyLink, which consent will not be unreasonably withheld. Customer may not assign to a reseller or telecommunications carrier under any circumstances and represents that it will not resell the Service. The Agreement is intended solely for CenturyLink and Customer and it will not benefit or be enforceable by any other person or entity, including without limitation, End Users. If any term of the Agreement is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of the Agreement will be construed as a waiver of any of its rights hereunder. All terms of the Agreement that should by their nature survive the termination of the Agreement will so survive. Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. "Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, flood, labor strike, sabotage, fiber cuts, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services. The Agreement constitutes the entire agreement between Customer and CenturyLink with respect to the subject matter hereof, and supersedes all prior oral or written agreements or understandings relating to the subject matter hereof. Except for Catalog or Service modifications initiated by CenturyLink, all amendments to the Agreement must be in writing and signed by the parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice.

The parties have read, understand and agree to all of the above terms and conditions of this Agreement and hereby authorize this Agreement.

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