

**STANDARD TERMS AND CONDITIONS
FOR COMMUNICATIONS SERVICES
("STANDARD TERMS AND CONDITIONS")**

1. GENERAL.

- 1.1 Applicability.** These Standard Terms and Conditions contain general provisions that apply to all retail business Products and Services that a CenturyLink-affiliated entity provides. "Agreement" means the terms and conditions under which Customer purchases Products and Services, including all attachments, these Standard Terms and Conditions, documents incorporated by reference, and all related Order(s). Other capitalized terms are defined in this document or in the applicable Schedules or Product and Service-specific Annexes.
- 1.2 Additional Terms and Conditions.** Customer's purchase and use of Products and Services is also governed by product and service-specific terms and conditions found in the applicable Schedules and Product and Service-specific Annexes, posted to http://about.centurylink.com/legal/rates_conditions.html (the "Rates and Conditions Website").
- 1.3 Local Governments and Government Programs.**
- A. Local Government Customers.** Unless specified otherwise, purchases of Products or Services by local governmental entities also are subject to the Local Government Customer Annex posted to the Rates and Conditions Website.
 - B. Universal Service Administrative Company Programs.** Customers seeking funds through Universal Service Administrative Company programs such as the Schools and Libraries Program of the Universal Service Fund ("E-Rate Program"), the Rural Health Care Program of the Universal Service Fund ("RHC Program"), or state or local corollaries to the E-Rate Program or the RHC Program are subject to applicable program annexes posted to the Rates and Conditions Website.
 - C. American Recovery and Reinvestment Act (ARRA).** Customer will not pay for Products or Services with funds obtained through the ARRA or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those functions and obligations is explicitly identified and agreed to by the parties in the Agreement or in an amendment to the Agreement.
- 1.4 Conflicts Provision.** If a conflict exists among provisions within the Agreement, specific terms will control over general provisions, and negotiated or added terms, conditions or pricing will control over standardized, posted or non-negotiated terms, conditions and pricing.

2. TERM.

- 2.1 Agreement Term.** The period set in the Agreement during which CenturyLink provides Products and Services to Customer is defined as the "Agreement Term." These Standard Terms and Conditions, relevant Schedules, and Product and Service-specific Annexes apply from the Effective Date until the Agreement Term expires or terminates. CenturyLink will not accept Orders for Products and Services after expiration of the Agreement Term, but these Standard Terms and Conditions, relevant Schedules, or Product and Service-specific Annexes will continue to apply to Orders properly placed during the Agreement Term. If Customer continues to use maintenance, managed, or professional Services following the termination or expiration of the Agreement Term or an Order issued during the Agreement Term for such Services, CenturyLink may, at its sole discretion, provide those Services on a time and material basis at CenturyLink's then-current rates without applying any discounts or credits under the Agreement, but these Standard Terms and Conditions and the Time and Materials Product Annex (posted to the Rates and Conditions Website) will govern CenturyLink's provision of such Services.
- 2.2 Order Term.** Customer purchases each Service for a specific term for the particular Service ordered (each, an "Order Term"). Each Order Term is listed in the Agreement and begins on the first day of the first billing month after CenturyLink installs and makes that Service available to Customer. If Customer continues to receive a Service after expiration of the Service's applicable Order Term, CenturyLink will provide that Service at its then-current list pricing and then-current

Standard Terms and Conditions, relevant Schedules, and Product and Service-specific Annexes, unless the parties otherwise agree in writing.

3. CHARGES.

3.1 CenturyLink Charges. Customer will pay CenturyLink the rates and charges for Products and Services set forth in the Agreement and any Order under the Agreement, including all charges associated with establishing Customer's Products and Services or related to CenturyLink's installation or provisioning costs. Charges associated with establishing or provisioning Services may include nonrecurring charges described in applicable Schedules and Product and Service-specific Annexes. Examples of these nonrecurring charges are customer-initiated change requests, expedite charges, service charges, any construction-related charges, and liabilities imposed on CenturyLink by third parties, such as other local exchange carriers, as a result of ordering or providing facilities to operate Services.

3.2 Fixed Rates and Percentage Discounts. Except as expressly stated otherwise in the Agreement, rates and charges for a Product or Service that are stated as a flat or fixed recurring or non-recurring charge will not change during the applicable Order Term (for a Service) or Agreement Term (for a Product) if CenturyLink increases or decreases the list rate in a Schedule or price list. Rates and charges for a Product or Service not fixed in the Agreement will be based on current Schedules or price lists and may change during the Agreement Term. If pricing in the Agreement for a Service is stated as a percentage discount off of a Schedule rate or list price, that percentage discount is fixed for the applicable Order Term, but CenturyLink may modify the underlying rate or list price to which the percentage discount is applied on no less than one day's notice. **Changes to Schedules are posted to the Rates and Conditions Website.**

3.3 Rate Adjustments. CenturyLink may impose additional fees, charges or surcharges on Customer to recover amounts that CenturyLink is required or permitted by governmental or quasi-governmental authorities to collect, or pay to others in support of, or to comply with, statutory or regulatory programs, plus a commercially reasonable amount to recover the administrative costs associated with such charges or programs. The amount of these fees, charges, or surcharges may vary. These charges may include state and federal Carrier Universal Service Charges, compensation to payphone providers, International Mobile Termination Charges, E911, Telephone Relay Service, or charges assessed to CenturyLink for terminating or originating a call to wireless providers.

3.4 Taxes.

A. Taxes Not Included. CenturyLink's rates and charges for Products and Services do not include taxes. Customer will pay all taxes, including, but not limited to, sales, use, gross receipts, excise, VAT, property, transaction, or other local, state, or national taxes or charges imposed on or based upon the provision, sale or use of Products and Services.

B. Withholding Taxes. Notwithstanding any other provision of the Agreement, if Customer is required by law to make a deduction or withholding from any amount due to CenturyLink, Customer must notify CenturyLink in writing. CenturyLink will then increase the gross amount of Customer's invoice so that, after Customer's deduction or withholding for taxes, the net amount paid to CenturyLink will not be less than the amount CenturyLink would have received without the required deduction or withholding.

C. Exclusions. Customer will not be responsible for payment of:

- (1) CenturyLink's direct income taxes and employment taxes; and
- (2) any other tax to the extent that Customer demonstrates a legitimate exemption under applicable law.

4. BILLING AND PAYMENT.

4.1 Invoicing.

A. Commencement of Invoicing. CenturyLink may begin invoicing Customer in full for rates and charges on the later of:

- (1) the date the Products or Services are installed and made available; or
- (2) the first day of the first bill cycle after the Effective Date.

- B. Delays.** If CenturyLink cannot install or make available the Products or Services by the delivery date specified in the Order due to a Customer-caused delay, CenturyLink may bill Customer as of the delivery date specified in the Order, or if no date is specified, any time 30 days after the Effective Date.
- C. Recurring Services.** For recurring Services and nonrecurring charges, CenturyLink bills fixed service charges in advance, and usage-based charges in arrears.
- D. Additional Invoice Information.** Customer may make a written request to CenturyLink for additional invoice-related information, including duplicate invoices, to the extent such information is reasonably available in CenturyLink's sole discretion. CenturyLink may charge Customer for such information. Customer may only request information from CenturyLink for the 12-month period preceding the date of Customer's written request.

4.2 Payment and Late Charges. Unless otherwise defined in the Agreement, Customer must pay all undisputed amounts by the due date listed on Customer's invoice, which may be up to 30 days from the date of the invoice. Customer's payments to CenturyLink must be in the form of electronic funds transfer (via wire transfer or ACH), cash payments (via previously-approved CenturyLink processes only), or paper check. Other than items subject to a bona fide dispute, CenturyLink may charge a late fee (up to the maximum rate allowed by law) or take other action to compel payment of past due amounts after written notice to Customer, including suspension or termination of Services, unless prohibited by applicable law or regulation. Service that is suspended or terminated for nonpayment may be subject to a reconnection charge. Customer may not offset disputed amounts from one invoice against payments due on the same or another account. CenturyLink's acceptance of late or partial payments (even those marked, "Paid in Full") and late payment charges is not a waiver of its right to collect the full amount due. Customer's payment obligations include late charges and third party collection costs CenturyLink incurs, including reasonable attorneys' fees, if Customer fails to cure its breach of these payment terms.

4.3 Disputed Invoice Charges. If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges within the payment period described in Section 4.2, and provides CenturyLink with a written explanation of the reasons for Customer's dispute of the charge. Customer must cooperate with CenturyLink to promptly resolve any disputed charge. If CenturyLink determines, in good faith, that the disputed charge is valid, CenturyLink will notify Customer and, within five business days of receiving notice, Customer must pay the charge.

5. CREDIT APPROVAL. CenturyLink's provision of Products and Services is subject to CenturyLink's credit approval of Customer. As part of the credit approval process, CenturyLink may require Customer to provide a deposit or other security. Additionally during the Agreement Term, if Customer's financial circumstance or payment history becomes reasonably unacceptable to CenturyLink, CenturyLink may require adequate assurance of future payment as a condition of continuing CenturyLink's provision of Products and Services. Customer's failure to provide adequate assurances required by CenturyLink is a material breach of the Agreement. CenturyLink may provide Customer's payment history or other billing/charge information to any credit reporting agency or industry clearinghouse.

6. ORDERS.

6.1 Application. The terms and conditions in any Orders will have no force or effect other than to denote quantity and description of Products or Services, delivery destinations, delivery dates, Customer billing addresses, installation addresses, the Agreement under which the Order is issued, and any other information required by CenturyLink. Orders are binding only upon acceptance in writing by CenturyLink. CenturyLink will notify Customer of rejected Orders. Customer may cancel an Order at any time before CenturyLink initiates delivery of Products and Services listed in the Order or otherwise begins performance, but Customer must pay CenturyLink's costs resulting from Customer's cancellation, including costs specifically described in the applicable Schedule or Product and Service-specific Annexes.

6.2 Cancellation. CenturyLink will notify Customer of rejected Orders. Customer may cancel an Order at any time before CenturyLink delivers the Products and Services listed in the Order or begins its performance, but Customer must pay any actual costs CenturyLink incurs due to Customer's cancellation in addition to any amounts described in the applicable Product and Service-specific Annexes.

7. **WARRANTIES.** THE SERVICES AND PRODUCTS PROVIDED BY CENTURYLINK UNDER THE AGREEMENT ARE PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT, OR ANY RESULTS TO BE ACHIEVED THEREFROM. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE OR PRODUCT WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.
8. **EQUIPMENT AND SOFTWARE; CENTURYLINK-PROVIDED NETWORK MANAGEMENT.**
- 8.1 **Equipment or Software Not Provided by CenturyLink.** Customer is responsible for any items not provided by CenturyLink, including installation, operation, and maintenance of such equipment or software and any equipment or software that impairs Product or Service quality or availability. Upon notice from CenturyLink of such impairment, Customer will promptly cure the problem. Customer will continue to pay CenturyLink for Products and Services during such impairment or related suspension. If the impairment interferes with the use of the CenturyLink-provided network by CenturyLink or third parties, CenturyLink, in its reasonable discretion, may suspend or disconnect the affected Products and Services without advance notice to Customer, although CenturyLink will provide advance notice where practical. Customer will not rearrange, disconnect, remove, or attempt to repair any CenturyLink-provided items. At Customer's request, CenturyLink will troubleshoot the impairment at CenturyLink's then-current time and materials rates. CenturyLink is not liable if a commercially reasonable change in Products or Services causes equipment or software not provided by CenturyLink to become obsolete, require alteration, or perform at lower levels.
- 8.2 **Calls via Customer's Equipment or Software.** Customer is responsible for all charges, including any third-party charges, incurred for all types of calls, authorized or unauthorized, placed by or through Customer's equipment or software via any remote access feature, transferring capability, or call forwarding, even when such calls are placed fraudulently. Customer's responsibility for these charges applies in all instances, including if Customer purchased or leased such equipment or software by or through CenturyLink or purchased CenturyLink-provided maintenance for its equipment or software. To reduce Customer's exposure, Customer may install its own blocking techniques to stop such capabilities and calls. CenturyLink will neither install nor assist in the installation of such blocking techniques, and has no obligation to block these capabilities or liability if such calls are placed, including no liability for charges that Customer may incur.
- 8.3 **Software License.**
- A. **Licensing Requirements.** Where software is provided with a Product or Service, Customer is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable Customer to use the Products and Services in accordance with the applicable licensing requirements. Software licensing terms and conditions, including end-user licensing agreements and terms and conditions from CenturyLink's vendors, may be provided to Customer through click or shrink-wrap agreements. CenturyLink may suspend, block or terminate Customer's use of any software if Customer fails to comply with any applicable licensing requirement.
- B. **Prohibitions.** Customer is not granted any rights to use any software on behalf of third parties or related to time share or service bureau activities. No rights are granted to source code, and Customer will not reverse engineer, decompile, modify, enhance, copy, prepare derivative works, or reproduce any software.
- 8.4 **Title to Software or Equipment.** CenturyLink (or CenturyLink vendors, if applicable) retain title and property rights to CenturyLink-provided software and equipment (excluding Products sold to Customer under the Agreement), including copies, and any related patents, copyrights, trademarks, or IP addresses assigned to Customer. Upon termination or expiration of the Agreement or an applicable Order, Customer will surrender and immediately return the CenturyLink-provided equipment and software, including all copies, to CenturyLink or will provide CenturyLink access to reclaim such equipment and software.
- 8.5 **Network Management.** CenturyLink reserves the right to perform preventative maintenance and software upgrades to the CenturyLink-provided network at its sole discretion on a scheduled or as-needed basis. CenturyLink may charge Customer where additional technical limitations or

CenturyLink must construct network facilities to provide Services to Customer. If software or equipment not provided by CenturyLink is connected to CenturyLink-provided network facilities, CenturyLink's obligations relate only to the Services under the Agreement.

9. **USE OF NAME, SERVICE MARKS, TRADEMARKS.** Neither party will use the name, service marks, trademarks, or carrier identification code of the other party or any of its Affiliates for any purpose without the other party's prior written consent.

10. **CUSTOMER RESPONSIBILITIES.**

10.1 **Installation.** Customer will reasonably cooperate with CenturyLink or its agents to install the Products and Services. Customer is responsible for damage to CenturyLink-owned Products and Services located on Customer premises, excluding reasonable wear and tear or damage caused by CenturyLink. CenturyLink may refuse to install Products and Services or may discontinue and disconnect Products and Services without notice, if any condition on Customer's premises is unsafe or likely to cause injury to any person using Products and Services. Additional Customer responsibilities relating to a particular Product or Service may be defined in the applicable Schedules or Product and Service-specific Annexes.

10.2 **Use of Products and Services.**

- A. **Acceptable Use Policy ("AUP").** If Customer purchases Products or Services that connect to the Internet, Customer must conform to the CenturyLink acceptable use policy posted to: <http://www.centurylink.com/Pages/AboutUs/Legal>, as reasonably amended from time to time.
- B. **Abuse and Fraud.** Customer will not use Products or Services: (1) for fraudulent, abusive, unlawful or destructive purposes, including unauthorized or attempted unauthorized access to, or alteration, abuse or destruction of, information; or (2) in any manner that causes interference with CenturyLink's or another's use of the CenturyLink-provided network. Customer will cooperate promptly with CenturyLink to prevent third parties from gaining unauthorized access to the Products and Services via Customer's facilities.
- C. **Reseller.** Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws.
- D. **Security.** CenturyLink has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by CenturyLink from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The CenturyLink information security program is subject to reasonable changes by CenturyLink from time to time. CenturyLink's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

11. **CONFIDENTIALITY AND PRIVACY.**

11.1 **Nondisclosure Requirements.** If the parties have not executed a mutual nondisclosure agreement, this provision will govern their exchange of information. Each party will not disclose any Confidential Information (defined below) received from the other party, or otherwise discovered by the receiving party, to any third party, except as expressly permitted in the Agreement. This obligation will continue until two years after the Agreement expires or terminates. Confidential Information includes, but is not limited to, pricing and terms of the Agreement, and information relating to the disclosing party's technology, business affairs, trade secrets, development and research information, and marketing or sales plans (collectively the "Confidential Information"). The receiving party may disclose Confidential Information to its subsidiaries, Affiliates, agents and consultants with a need to know, if they are not competitors of the disclosing party and are subject to a confidentiality agreement at least as protective of the disclosing party's rights as this provision.

The parties will use Confidential Information only for the purpose of performing under the Agreement or for the provision of other CenturyLink services. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (A) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of the receiving party; (C) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (D) is developed independently by the receiving party without reference to the Confidential Information, or (E) is required to be disclosed by law, regulation, or court or governmental order. The parties acknowledge that the receiving party's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of the Agreement, the disclosing party may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not limit any other remedies available to either party. The party who breached or threatened to breach its nondisclosure obligation under the Agreement will not raise the defense of an adequate remedy at law. CenturyLink will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of CenturyLink's Services.

- 11.2 HIPAA.** By providing Services, CenturyLink does not require or intend to access Customer data, including any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F. R. §164.501 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"). To the extent that any exposure to PHI is incidental to CenturyLink's provision of Services and not meant for the purpose of managing the PHI or creating or manipulating the PHI, such exposure is allowable under 45 CFR 164.502(a)(1)(iii).
- 11.3 Privacy.** CenturyLink's privacy policy, as amended from time to time, is available at <http://www.centurylink.com/Pages/AboutUs/Legal>. The privacy policy includes information about CenturyLink's customer information practices and applies to the provisioning of Products and Services.

12. LIMITATIONS OF LIABILITY.

- 12.1 Direct Damages.** Each party's maximum liability for damages caused by its failure(s) to perform its obligations under the Agreement is limited to: (A) proven direct damages for claims arising out of personal injury or death, or damage to real or personal property, caused by the party's negligent or willful misconduct; and (B) proven direct damages for all other claims arising out of the Agreement, not to exceed in the aggregate, in any 12-month period, an amount equal to Customer's total net payments for the affected Products and Services purchased in the month preceding the month in which the injury occurred. Customer's payment obligations, Customer's liability for early termination charges, and the parties' indemnification obligations under the Agreement are excluded from this provision.
- 12.2 Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.
- 12.3 Unauthorized Access and Hacking.** Except for physical damage to Customer's transmission facilities or Customer premise equipment directly caused by CenturyLink's negligence or willful misconduct, CenturyLink is not responsible for unauthorized access to, or alteration, theft, or destruction of, Customer's data, programs or other information through accident, wrongful means or any other cause while such information is stored on or transmitted across CenturyLink-provided network facilities or Customer premise equipment.
- 12.4 Liability for Content.** CenturyLink is not responsible for the content of any information transmitted, accessed, or received by Customer through CenturyLink's provision of the Products and Services.

13. INDEMNIFICATION.

- 13.1 Mutual Indemnification for Personal Injury, Death or Damage to Personal Property.** Each party will indemnify and defend the other party, its directors, officers, employees, agents and their

successors from and against all third party claims for damages, losses, liabilities, or expenses, including reasonable attorneys' fees, arising directly from performance of the Agreement and relating to personal injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of the indemnifying party or its subcontractors, directors, officers, employees or authorized agents.

13.2 Customer Indemnification. Customer will indemnify and defend CenturyLink, CenturyLink's officers, directors, agents, and employees and their successors, against all third party claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, arising out of:

- A. Customer's failure to obtain required permits, licenses, or consents necessary to enable CenturyLink to provide the Products and Services (e.g., landlord permissions or local construction licenses). This provision does not include permits, licenses, or consents related to CenturyLink's general qualification to conduct business;
- B. Customer's transmissions, or transmissions by parties authorized by Customer, of, information, data, or messages over the CenturyLink-provided network leading directly or indirectly to third party claims: (1) for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data; (2) for infringement of patents arising from the use of equipment, hardware or software not provided by CenturyLink; and (3) based on transmission and uploading of information that contains viruses, worms, or other destructive media or other unlawful content;
- C. CenturyLink's failure to pay any tax to the extent that CenturyLink relied on Customer's claimed legitimate exemption under applicable law;
- D. Customer's breach of software licensing requirements; and
- E. Customer's failure to comply with the usage requirements in the Customer Responsibilities Section of these Standard Terms and Conditions.

13.3 CenturyLink Indemnification. CenturyLink will indemnify and defend Customer, Customer's officers, directors, agents, and employees and their successors against third party claims enforceable in the United States alleging that Services as provided infringe any third party United States patent or copyright or contain misappropriated third party trade secrets. But CenturyLink's obligations under this Section will not apply if the infringement or violation is caused by Customer's modification to CenturyLink-provided software, equipment or Services; combination of CenturyLink-provided services or products with other services or products; functional or other specifications that were provided by or requested by Customer; or Customer's continued use of infringing Services after CenturyLink provides reasonable notice to Customer of the infringement. For any third party claim that CenturyLink receives, or to minimize the potential for a claim, CenturyLink may, at its sole option, either:

- A. procure the right for Customer to continue using the Services;
- B. replace or modify the Services with comparable Services; or
- C. terminate the Services.

13.4 Rights of Indemnified Party. To be indemnified, the party seeking indemnification must promptly notify the other party in writing of the claim (unless the other party already has notice of the claim); give the indemnifying party full and complete authority, information and assistance for the claim's defense and settlement; and not, by any act, admission, or acknowledgement, materially prejudice the indemnifying party's ability to satisfactorily defend or settle the claim. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense.

13.5 Remedies. The foregoing provisions of this Section state the entire liability and obligations of the indemnifying party and any of its Affiliates or licensors, and the exclusive remedy of the indemnified party, with respect to the claims described in this Section.

14. TERMINATION.

14.1 CenturyLink Right to Terminate.

- A. CenturyLink may immediately suspend or terminate Products or Services or the Agreement if:
- (1) Customer fails to cure its default of the payment terms in the Agreement;
 - (2) If Customer has vacated the premises to which Services are furnished;
 - (3) Customer fails to cure any other material breach of the Agreement within 30 days after receiving CenturyLink's written notice;
 - (4) Customer provides false or deceptive information establishing, using or paying for Services or Customer engages in false, deceptive, fraudulent, or harassing activities when establishing, using or paying for Services;
 - (5) Customer fails to comply with applicable law or regulation and Customer's noncompliance prevents CenturyLink's performance under the Agreement; or
 - (6) Customer resells Products or Services as prohibited by these Standard Terms and Conditions.
- B. If CenturyLink terminates the Agreement under this Section, Customer will be liable for any Products and Services provided up to the date of termination, whether or not invoiced by the termination date, as well as any applicable early termination liabilities.

14.2 Customer Right to Terminate.

- A. **Material Failure.** If CenturyLink materially fails to provide a Product or Service and CenturyLink fails to cure after Customer provides CenturyLink with written notice of the failure and a reasonable opportunity to cure within 30 days from receipt of notice, Customer may terminate the affected Products or Services without early termination liability 30 days after CenturyLink's receipt of Customer's written notice to terminate. CenturyLink's material failure does not include a failure caused by circumstances outside CenturyLink's sole control, a failure caused by a third party access provider, a Force Majeure Event, or Customer or Customer-provided software or equipment.
- B. **Termination for Convenience.** Customer may terminate a Service during the applicable Order Term, or the Agreement during the Agreement Term, by providing 60 days' written notice to CenturyLink. In the case of such termination for convenience, Customer will be liable for early termination fees set forth in the Agreement.

14.3 Early Termination Liability.

- A. **Calculation of Early Termination Liability.** If Customer terminates a Product or Service in whole or in part, before expiration of the applicable Order Term (unless due to CenturyLink's material failure), or CenturyLink terminates a Product or Service or applicable Order as permitted under the Agreement, Customer will pay the following early termination charges, which represent CenturyLink's reasonable liquidated damages and not a penalty:
- (1) **General Liability.** A lump sum equal to (a) 50% of the applicable monthly charges, multiplied by the number of months remaining in the applicable Order Term, plus (b) a pro rata amount of any waived installation charges, any credits issued (excluding any service level credits issued for any Service outages), and initialization fees waived based upon the number of months remaining in the applicable Order Term at the time of termination; and
 - (2) **Third Party Liability.** Any liabilities imposed on CenturyLink by third parties, such as other local exchange carriers and all nonrecoverable costs incurred by CenturyLink as a result of ordering facilities required to operate the Product or Service, as a result of Customer's early termination.
- B. **Waiver of Early Termination Liability.** With CenturyLink's written approval, Customer will not be liable for the early termination liability described in this Section for a Service if Customer purchases from the same CenturyLink entity providing the terminating Service another service at the same time with the same or greater monthly recurring charge for an Order Term at least equal to the greater of: the remaining months in the original Order Term or one year.

14.4 Disconnect Notice. CenturyLink will have up to 30 days to complete disconnection of a Service. To complete disconnection, Customer must provide information required by CenturyLink. Customer's failure to provide such information may delay or prevent the disconnection. Customer will be responsible for all charges through the later of the 30th day after CenturyLink received the disconnect notice, or the date Customer stops using the Services.

15. FORCE MAJEURE. Neither party will be responsible for any delay, interruption or other failure to perform under the Agreement due to acts, events, and causes beyond the control of the responsible party (a "Force Majeure Event"). Force Majeure Events include: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; inability to obtain parts or equipment from third party suppliers; cable cuts by third parties, a local exchange carrier's activities, and other acts of third parties; explosions and fires; embargoes, strikes, and labor disputes; and governmental decrees and any other cause beyond the reasonable control of a party.

16. DEFINITIONS.

16.1 "Affiliate" is a legal entity that directly or indirectly controls, is controlled by, or is under common control with the party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other such similar voting rights.

16.2 "Effective Date" is the date the last party signs the Agreement.

16.3 "Local Terms of Service" means the CenturyLink state-specific Guidebooks, Price Lists, Local Terms of Service or other deregulated terms and conditions under which CenturyLink provides detariffed incumbent local exchange carrier Services in certain states.

16.4 "Order" means a written, electronic or verbal order, or purchase order governed by the terms and conditions of the Agreement, submitted or confirmed by Customer and accepted by CenturyLink, which identifies specific Products and Services; quantity ordered; CenturyLink's Agreement number, title, and execution date; billing address; ship to address; and service/installation address, as applicable. Verbal Orders are deemed confirmed upon Customer's written acknowledgement, or Customer's use, of Products or Services.

16.5 "Product(s)" includes equipment, devices, hardware, software, cabling or other materials sold or leased to Customer by or through CenturyLink as a separate item from, or bundled with, a Service.

16.6 "Product and Service-specific Annexes" refers to separate descriptions, terms and conditions for certain non-tariffed Products and Services, including those offered under applicable CenturyLink local terms of service in states that have withdrawn Tariffs for such Products and Services. Product and Service-specific Annexes are incorporated into the Agreement.

16.7 "Schedules" and "Rates and Services Schedules" ("RSS") can be used interchangeably and are the terms and conditions governing CenturyLink's provision of certain interexchange Services that were detariffed by order of the Federal Communication Commission ("FCC"). CenturyLink Schedules are subject to change during the Agreement Term under the rules and authority of the FCC. Schedules are posted to the Rates and Conditions Website.

16.8 "Service(s)" means wireline and wireless business communications services that are not governed by Tariffs, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided to Customer by or through CenturyLink under the Agreement, excluding Products.

16.9 "Tariffs" means the CenturyLink incumbent local exchange carrier, competitive local exchange carrier, or intrastate interexchange carrier tariffs on record with the FCC or state regulatory authorities having jurisdiction over those Services. Tariffs are subject to change during the Agreement Term under the rules and authority of the relevant regulatory bodies.

17. MISCELLANEOUS.

17.1 Independent Contractor. CenturyLink provides the Products and Services as an independent contractor. The Agreement will not create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

- 17.2 No Waiver of Rights.** The failure to exercise any right under the Agreement does not constitute a waiver of the party's right to exercise that right or any other right in the future.
- 17.3 No Third Party Beneficiaries.** The Agreement's benefits do not extend to any third party.
- 17.4 Governing Law; Dispute Resolution.**
- A. Negotiation.** The parties will use good faith efforts to resolve any dispute promptly by negotiation at a higher level of management than the persons with direct responsibility for administration of the Agreement. All negotiations and any documents exchanged related to the negotiations under this Section are confidential, and will be treated as compromise and settlement negotiations under applicable rules of evidence.
 - B. Governing Law; Forum.** Delaware state law, without regard to choice-of-law principles, governs all matters relating to the Agreement. Any legal proceeding relating to the Agreement, will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in the location of the party to the Agreement not initiating the action, as indicated in the Notices section. But CenturyLink may, at its discretion, initiate proceedings in Denver, Colorado to collect undisputed amounts billed.
 - C. Waiver of Jury Trial and Class Action.** Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a jury trial and any right to pursue any claim or action relating to the Agreement on a class or consolidated basis or in a representative capacity.
 - D. Arbitration if Jury-Trial Waiver Unenforceable.** If for any reason the jury waiver is held to be unenforceable, the parties agree to binding arbitration for any dispute relating to the Agreement under the Federal Arbitration Act, 9 U.S.C. § 1, et. seq. The arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules, but need not be administered by JAMS unless the parties cannot otherwise agree upon the selection of an arbitrator within thirty (30) days of the receipt of a written demand for arbitration. If the parties cannot reach agreement on the selection of an arbitrator, either party may commence the arbitration process by filing a written demand for arbitration with JAMS, with a copy to the other party. The written demand for arbitration called for by this paragraph shall contain sufficient detail regarding the party's claims to permit the other party to understand the claims and identify witnesses and relevant documents. The arbitrator will not be empowered to award, nor will any party be entitled to receive, any damages or awards that are barred by the "Limitation of Liability" Section of the Agreement. The arbitrator's decision must follow the plain meaning of this Agreement and will be final, binding, and enforceable in a court of competent jurisdiction.
- 17.5 Compliance with Laws.** Each party agrees that it will comply with all applicable laws in performing its obligations under the Agreement.
- 17.6 Assignment.** Customer may not assign any rights or obligations under the Agreement or an Order without CenturyLink's prior written consent, except that Customer may assign the Agreement, after 30 days prior written notice, to an Affiliate or an entity that has purchased all or substantially all of Customer's assets. Following written notice to Customer, CenturyLink may assign the Agreement or an Order, in whole or in part, without Customer's prior written consent.
- 17.7 Amendments and Alterations.** The Agreement may only be amended in a writing signed by both parties' authorized representatives. Alterations to the Agreement are not valid unless accepted in writing by authorized representatives of both parties.
- 17.8 Notices.**
- (a) Notices.** All notices must be in writing. Notices are deemed given if sent to the addressee specified for a party either (a) by registered or certified U.S. mail, return receipt requested, postage prepaid, three days after such mailing; or (b) by national overnight courier service, next business day; or (c) by facsimile when delivered if duplicate notice is also sent by regular U.S. Mail.

- (b) **Service Notices.** All Customer notices for Service disconnect and termination must be sent via e-mail to: CenturyLink, Attn.: BusinessDisconnects@centurylink.com. Such disconnect and termination is effective 30 days after CenturyLink's receipt of the notice, unless a longer period is otherwise required by a Service Annex. Customer's notice of non-renewal for Services must be sent via e-mail to: CenturyLink, Attn.: CenturyLink NoRenew, e-mail: Norenew@centurylink.com. All Customer notices for other routine operational notices will be provided to its CenturyLink sales representative. Failure to provide disconnect, termination and non-renewal notices in accordance with the terms of this Agreement may result in continued charges, and CenturyLink will not credit charges for such noncompliance.
- (c) **Legal Notice.** All legal notices required to be given under the Agreement will be in writing and provided to CenturyLink at: 931 14th St., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Legal Dept., and to Customer as provided in the Agreement or in its absence, to Customer's address reflected in CenturyLink's records Attn. General Counsel.
- 17.9 Severability.** If any provision of the Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.
- 17.10 URLs and Successor URLs.** References to Uniform Resource Locators (URLs) in the Agreement include any successor URLs designated by CenturyLink.
- 17.11 Survivability.** The terms and conditions of the Agreement regarding confidentiality, indemnification, warranties, payment, dispute resolution and all others that by their sense and context are intended to survive the expiration of the Agreement will survive.
- 17.12 Entire Agreement.** This Agreement, including all referenced documents, annexes, Schedules, or exhibits, the related Orders and the parties' mutual nondisclosure agreement constitutes the entire agreement and understanding between the parties and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter.
- 17.13 Changes to Tariff, Local Terms of Service, or AUP.** CenturyLink may amend, change, or withdraw the Tariff, Local Terms of Service, or AUP, with such updated Tariff, Local Terms of Service, or AUP effective upon posting or upon fulfillment of any necessary regulatory requirements. If a modification to a Tariff, Local Terms of Service, or AUP (A) materially and adversely affects Customer's legitimate use of a Service; and (B) is not required by government or judicial action, then Customer may terminate the affected Service upon 30 days' written notice without liability for early termination charges for the affected Service, provided, however, that Customer provides written notice of its intent to terminate the Service under this Section within 30 days after the modification occurs and provides CenturyLink the opportunity to cure the modification within the 30 days after Customer's notice.