



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
www.co.monterey.ca.us

Board Order

Agreement No.: A-12812

A motion was made by Supervisor Mary Adams, seconded by Supervisor Chris Lopez to:

- a. Approve and authorize the Director of the Information Technology Department to execute Amendment No. 4 to the non-standard Agreement with CenturyLink Communications, LLC for renewal of current hosting and disaster recovery services, increase in backup storage, and addition of consulting services supporting the County's Enterprise Resource Planning System, extending the agreement for an additional year to June 30, 2020 and adding \$600,000 for a total agreement amount of \$4,241,241;
- b. Authorize the Director of the Information Technology Department to execute service order forms and such documents as are necessary to implement extension of the agreement; and
- c. Authorize the Director of Information Technology to sign up to three (3) renewals, of one (1) year each, of the agreement, provided additional costs do not exceed ten percent (10%) of the cost of Amendment No. 4 (\$60,000 maximum additional cost), subject to County Counsel review and provided the terms of the agreement remain substantially the same.

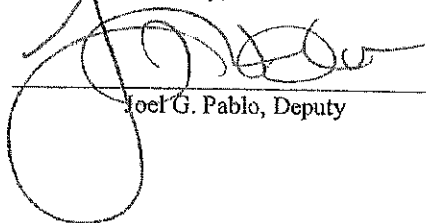
PASSED AND ADOPTED on this 25th day of June 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams
NOES: None
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 25, 2019.

Dated: June 26, 2019
File ID: A 19-252
Agenda Item No. 82

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Joel G. Pablo, Deputy

**AMENDMENT TO
CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT**

THIS AMENDMENT NO. Four (this "Amendment") by and between **CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC** ("CenturyLink") and **County of Monterey** ("Customer"), hereby amends the CenturyLink Loyal Advantage Agreement or Qwest Loyal Advantage Agreement, as applicable, Content ID: 960424, 974641, 1074546 and 1171673, as may have been previously amended (the "Agreement"). For an interim period of time until all work is completed to update the Service Exhibits, Tariffs and other terms and conditions incorporated by attachment or reference into this Amendment, all references to Qwest Communications Company, LLC mean CenturyLink Communications, LLC. Except as set forth in this Amendment, capitalized terms will have the definitions assigned to them in the Agreement. All references to "Qwest Loyal Advantage" or "QLA" are hereby replaced with "CenturyLink Loyal Advantage."

CenturyLink and Customer wish to amend the Agreement as follows:

1. Term. By checking one of the boxes below, Customer indicates that it is increasing the length of its existing Term. Customer understands and agrees that it may not decrease the length of its existing Term.

No Changes. Customer's existing Initial Term will remain in effect.

New Initial Term. The parties agree to start a new Initial Term that begins on the Amendment Effective Date. Customer's new Term is one year (600051 code).

Extension of the Initial Term. The parties agree to extend the existing Initial Term, which will retain the Agreement's existing Effective Date. Customer's new Term is Select Term in Drop-down.

2. Addition of Services. Customer is adding a new Service to the Agreement. If this Section 2 is not checked, Customer's existing Services as set forth in the Agreement will remain in effect. Customer's new Services are added as follows: ITS Services Exhibit

The attached contract documents(s) associated with the addition of Services(s) may include, but is not limited to the following: Service Exhibit(s), Pricing Attachment(s), and Service Attachments, which are added to, and constitute a part of, the Agreement and the existing Services. The definition of Services in the Agreement will include the Services in the contract documents attached to this Amendment.

3. Modifications. To the extent that the following provisions are not already in the Agreement or in a previous amendment, they are added through this Amendment. The Agreement is amended as follows:

3.1 Section 2 Term is deleted and replaced with the following:

Term. The Term of the Agreement will continue through June 30, 2020 ("Renewal Term"). The parties may agree in writing to renew the Agreement upon mutual agreement for an additional Renewal Term of 1 year, or period agreed upon by the parties, at least 30 days prior to the expiration of any Renewal Term. If the parties fail to renew the Agreement and Customer continues to use Services, the Agreement will automatically renew on a month to month basis until either party provides 60 days written notice to the other party to terminate the Agreement.

3.2 General.

(a) Customer will not pay 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 each of those functions and obligations is explicitly identified and agreed to by the parties in this Agreement or in an amendment to this Agreement.

(b) Customer may access its invoices and choose paperless invoices online through CenturyLink Control Center located at controlcenter.centurylink.com. If Customer does not choose paperless invoices through Control Center, CenturyLink may in its discretion assess a \$15 MRC for each full paper invoice provided to Customer or a \$2 MRC for each summary/remittance only (where available) paper invoice provided to Customer. Those charges will not apply to an invoice that is not available through Control Center. 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. CenturyLink reserves the right to charge administrative fees when Customer's payment preferences deviate from CenturyLink's standard practices.

(c) CenturyLink's Information Services Schedule ("ISS"), Rates and Services Schedules ("RSS") and Tariff (which includes CenturyLink state tariffs, price lists, price schedules, administrative guidelines, catalogs, and rate and term schedules) are posted at the following links and are incorporated by this reference:

- The ISS is located at http://www.centurylink.com/tariffs/clc_info_services.pdf
- The RSS is located at http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_10.pdf
- The Tariff is located at <http://www.centurylink.com/tariffs>

3.3 HIPAA. If the Agreement has a HIPAA section, then that section is deleted and replaced with the following HIPAA section, otherwise the following section is added to the Agreement.

CenturyLink does not require or intend to access Customer data in its performance hereunder, including but not limited to 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. §160.103 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 Service and not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI, such exposure is allowable under 45 CFR 164.502(a)(1)(iii).

3.4 Private Line Services. If Customer is amending an Agreement already containing Optical Wavelength Service (f/k/a QCC QWave®), Metro Private Line, EPL (f/k/a Ethernet Private Line), Metro EPL (f/k/a Metro Ethernet Private Line), Domestic Private Line, or R028864

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E-Line Service Exhibits, the following section is added to those Service Exhibits and replaces any conflicting language in those Service Exhibits:

RSS. Customer understands that Service is an interstate telecommunications service, as defined by Federal Communications Commission regulations and represents that during the Service Term, more than 10% of its traffic will be interstate traffic.

3.5 Domestic Voice Services. If Customer is amending an Agreement already containing Domestic Voice Service, the following section is added to the Domestic Voice Service Exhibit:

Access Arbitrage. If CenturyLink determines the number of calls routed to CenturyLink using Access Arbitrage exceeds 11.4% of Customer's total call volume, CenturyLink will apply a per minute Access Arbitrage Fee to 95% of their high cost minutes. In addition, CenturyLink may immediately restrict, suspend, or discontinue Service used in connection with Access Arbitrage upon notice of such violation to Customer. Inbound and outbound per minute "Access Arbitrage Fees" are \$0.10 per minute for switched Services and \$0.05 per minute for dedicated Services. For more detailed information about Access Arbitrage, please refer to the RSS.

"Access Arbitrage" is the use of a scheme, device or any other means to exploit or benefit from the difference between the rates for Voice Services provided by CenturyLink and the originating or terminating charges imposed by the Local Exchange Carrier ("Access Arbitrage"). Examples of Access Arbitrage include: (i) using switching equipment or a call processing system (such as a prepaid card, calling card, or teleconferencing platform) to segregate calls and systematically route to CenturyLink calls that are characterized by a greater discrepancy between the access costs and the price charged by CenturyLink; (ii) routing calls through a call processing system such that the percentage of high cost minutes routed to CenturyLink using the Service is more than 11.4%; (iii) segregating calls within another carrier's network or a call processing system to systematically route calls to CenturyLink where the access costs exceed the price of long distance service provided by CenturyLink; (iv) transporting intrastate traffic into a different state in order to cause the traffic to be rated by CenturyLink at a lower Interstate rate than would otherwise apply; or (v) any other means to exploit or benefit from the difference between the rates for Services and the originating or terminating access charges imposed by the local exchange carrier.

3.6 No Resale; Compliance. The "No Resale; Compliance" section is replaced as follows:

No Resale; Security. 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. 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. 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. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

3.7 Transport Services. The parties acknowledge that the Federal Communications Commission's reliability rules mandates the identification and tagging of any circuits or equivalent data paths ("Transport Services") to public safety answering points that are used to transport 9-1-1 calls and information ("9-1-1 Data"). Customer agrees to cooperate with CenturyLink regarding compliance with these rules and will notify CenturyLink of all Transport Services Customer purchases under this Agreement that are utilized to transport 9-1-1 calls and 9-1-1 Data.

4. Pricing. Changes to pricing of Customer's existing Services will be effective on the second full billing cycle following the Amendment Effective Date. CenturyLink reserves the right to modify rates after the conclusion of each Service's minimum service period upon not less than 30 days' prior written notice to Customer; provided that CenturyLink may reduce the foregoing notice period or modify rates or discounts prior to the conclusion of the minimum service period, as necessary, if such modification is based upon Regulatory Activity. CenturyLink also reserves the right to modify rates when the Agreement renews to the rates that are in effect at that time. If Regulatory Activity causes an increase in the rates for Customer's ordered Services that materially and adversely affects Customer, then Customer may terminate the affected Service upon 30 days prior written notice to CenturyLink without liability for Cancellation Charges for the affected Service, provided, however that Customer: (a) provides such notice within 30 days after the increase occurs; and (b) provides CenturyLink 30 days to cure such increase. If Customer does not provide CenturyLink such notice during the time permitted in this Section, Customer will have waived its right to terminate the affected Service under this Section.

5. 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.

(a) Service Notices. All Customer notices for Service disconnect and termination must be sent via e-mail to: CenturyLink, Attn.: BusinessDisconnects@centurylink.com, except that notices for Services purchased under the Select Advantage Service Exhibit Customer must be provided to the customer care number specified on Customer's invoice, and must contain the account name, account number, identification of the Service(s), and Service address(es). 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 Exhibit. 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-

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renewal notices in accordance with the terms of this Agreement may result in continued charges, and CenturyLink will not credit charges for such noncompliance.

(b) **Legal Notice.** All legal notices required to be given under the Agreement will be in writing and provided to CenturyLink at: 931 14th Str., #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.

6. Miscellaneous.

6.1 On April 1, 2014, CenturyLink completed an internal reorganization resulting in the merger of multiple CenturyLink owned companies into Qwest Communications Company, LLC. Simultaneously with the merger, Qwest Communications Company, LLC d/b/a CenturyLink QCC changed its name to CenturyLink Communications, LLC. The term "CenturyLink QCC" refers to the former "d/b/a CenturyLink QCC" company and not to any other CenturyLink owned companies now a part of CenturyLink Communications, LLC. References in the Agreement to "Qwest Communications Corporation," "Qwest Communications Company, LLC," or "QCC" are replaced with "CenturyLink Communications, LLC".

6.2 This Amendment will be effective as of the date it is executed by CenturyLink after the Customer's signature (the "Amendment Effective Date") and will become part of the Agreement. All other terms and conditions in the Agreement shall remain in full force and effect and be binding upon the parties. This Amendment and the Agreement set forth the entire understanding between the parties as to the subject matter herein, and in the event there are any inconsistencies between the two documents, the terms of this Amendment will control. Using CenturyLink's electronic signature process for the Agreement is acceptable.

The undersigned parties have read and agree to the terms and conditions set forth in this Amendment.

CENTURYLINK COMMUNICATIONS, LLC

Steve Arneson
Steve Arneson (Jun 13, 2019)

Authorized Signature

Steve Arneson

Name Typed or Printed

Steve Arneson

Title

Jun 13, 2019

Date

County of Monterey

Eric A. Chatham

Authorized Signature

Eric A. Chatham

Name Typed or Printed

Director of ITD

Title

6/27/2019

Date

APPROVED AS TO FORM
Rebecca M. Ceniceros
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Rebecca M. Ceniceros

June 21, 2019

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

6-21-19

**CENTURYLINK® MASTER SERVICE AGREEMENT
IT SERVICES EXHIBIT**

1. **IT Services.** CenturyLink will provide the professional, consulting, analytical, design and/or technical services ("IT Services") identified in the applicable statement of work ("SOW") pursuant to this IT Services Exhibit, any attached or incorporated documents, the applicable SOW, any Change Orders, and the applicable Master Service Agreement between CenturyLink and Customer (collectively, the "Agreement"). CenturyLink may provide the IT Services by one or more affiliates. If applicable, the SOW will specifically describe and designate any Software Deliverables and Other Deliverables (collectively, "Deliverables"). "Software Deliverables" means any software developed by CenturyLink solely and uniquely for Customer. Software Deliverables may include open source software, any software that requires as a condition of use, modification or distribution that the software or any other software incorporated into, derived from or distributed with such software be: (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, or (c) licensed or redistributed at no charge. "Other Deliverables" means any items other than Software Deliverables developed by CenturyLink solely and uniquely for Customer.

1.1 **Change Orders.** Customer must submit written requests for material changes to a SOW, including changes to project plans, scope, schedule, designs, or other requirements. The parties must agree in writing to the requested change and any corresponding change to the fees due under the applicable Statement of Work (a "Change Order").

1.2 **Customer Responsibilities.** Customer will comply with the responsibilities identified in the SOW. If Customer fails to comply, CenturyLink is excused from performance to the extent the IT Services are contingent on Customer's performance, until Customer's obligations are performed; CenturyLink will be entitled to an extension of time to complete the IT Services and an adjustment of the charges, including charges for any additional time required to complete the IT Services arising from Customer's noncompliance.

1.3 **Acceptance.** Except as otherwise provided in a SOW, IT Services will be deemed accepted unless Customer provides written notice of any deficiency to CenturyLink within three business days after commencement of work or delivery of the Software Deliverables and/or Other Deliverables or final tasks (the "Acceptance Period"). Such notice must detail and demonstrate the deficiency to CenturyLink's reasonable satisfaction. CenturyLink will remedy the deficiency and will notify Customer accordingly, at which time a new Acceptance Period will begin. CenturyLink will delay billing until IT Services are accepted.

1.4 **Compliance and Security.** CenturyLink will comply with all laws and regulations applicable to CenturyLink's provision of the Service, and Customer will comply with all laws and regulations applicable to Customer's use of the Service. CenturyLink has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer Data 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. Customer will ensure that all Customer Data stored, transmitted or processed via the Service complies with applicable law and reasonable information security practices, including those involving encryption. "Customer Data" means any Customer provided information, data or materials that Customer transmits, receives, stores or processes through its use of the IT Services.

2. **Term.** The term of the Service Exhibit will commence on its effective date and continues until the expiration of the last applicable SOW unless earlier terminated as provided in the Termination section (the "Term").

3. **Charges; Payment.** Subject to the Acceptance section above, the billing commencement date ("BCD") for IT Services is the date CenturyLink begins performing IT Services or as specified in a SOW. Customer will pay all charges (including reasonable travel and living expenses and third-party charges) and any progress payments as set forth in a SOW and all applicable Taxes and Fees.

4. **Termination.** Either party may terminate the Service Exhibit or a SOW upon 30 days prior written notice for Cause. Unless otherwise set forth in a SOW, if Customer terminates all or part of a SOW prior to its BCD, Customer will pay a cancellation fee of 25% of the affected fees set forth in the SOW plus all out-of-pocket costs incurred by CenturyLink. If a SOW or a part thereof is terminated either by CenturyLink for Cause or by Customer for any reason other than Cause after the BCD but prior to completion of the IT Services under such SOW, then unless otherwise set forth in the SOW Customer will be liable for: (a) an early termination charge equal to 50% of the NRC and MRC for any tasks, Deliverables or work not yet completed by CenturyLink as specified in the SOW; (b) any charges accrued but unpaid as of the termination date; and (c) any out-of-pocket costs incurred by or imposed upon CenturyLink. Customer will remain liable for charges accrued but unpaid as of the termination date.

5. **Performance Warranty; Disclaimer of Warranties.** THE IT SERVICES, INCLUDING ANY DELIVERABLE AND ANY OPEN SOURCE SOFTWARE, 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. ANY OPEN SOURCE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT (A) ANY IT SERVICE OR ANY DELIVERABLE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF (I) HACKING OR SIMILAR MALICIOUS ACTIVITY, OR (II) ANY ACT OR OMISSION OF THE CUSTOMER, (B) ALL ERRORS CAN BE CORRECTED, OR (C) THAT OPERATION OF THE DELIVERABLES AND IT SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE.

6. **Limitations of Liability.** Except for Customer's obligations under the Charges; Payment section, each party's total aggregate liability arising from or related to the IT Services will be limited to the total charges paid or payable under the SOW that gave rise to the claim ("Damage Cap").

7. **Intellectual Property.**

7.1 **Ownership of Technology.** All right, title and interest in and to CenturyLink Technology will remain solely with CenturyLink, its affiliates and their licensors. Customer acknowledges that CenturyLink grants no other rights of license (including implied licenses or the right to sub-license) other than the express rights granted herein. To the extent required by CenturyLink in a SOW, Customer grants to

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CenturyLink a non-exclusive, non-transferable, royalty-free license to use Customer Technology and to sublicense Customer Technology to CenturyLink subsidiaries and affiliates and any third parties providing all or part of the IT Services on behalf of CenturyLink. All right, title and interest in and to any Customer Technology furnished by Customer for use by CenturyLink in order to provide the Services will remain solely with Customer, its affiliates and their licensors. Each party agrees that it will not, directly or indirectly, reverse engineer, decompile, reproduce or otherwise attempt to derive source code, trade secrets, or other intellectual property from any information, material, or technology of the other party or its licensors. "CenturyLink Technology" means the proprietary technology of CenturyLink and its licensors, including services, software (in source and object forms), software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, report formats and the copyright in such reports (which such copyright excludes Customer Data), objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world and also including any derivatives, improvements, enhancements or extensions of CenturyLink Technology conceived, reduced to practice, or developed during the Term. "Customer Technology" means the proprietary technology of Customer and its licensors, including Customer's Internet operations design, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed by Customer during the Term.

7.2 Ownership of Customer Data. Customer will retain sole and exclusive ownership of all Customer Data. Upon Customer's request during the Term, CenturyLink will (a) promptly return to Customer, in the format and on media mutually agreed by the parties, all or part of the Customer Data and (b) erase or destroy all or any part of Customer Data in CenturyLink's possession. CenturyLink may use any archival tapes containing Customer Data only for back-up purposes. CenturyLink will not withhold any Customer Data as a means of resolving any dispute. CenturyLink will not disclose any personally identifiable information related to Customer's clients or administrators (employees, agents, etc.) to any third party. Customer represents and warrants that any and all Customer Data provided to CenturyLink as part of the Services will not (a) infringe or misappropriate any third party's recognized intellectual property rights; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes; or (d) otherwise violate the rights of any third party. In addition, Customer represents and warrants that it will keep, back up and maintain its own copy of all materials and information, including Customer Data that is provided or made available to CenturyLink, and further, that Customer will encrypt any Customer Data that is provided or made available to CenturyLink. If information is both Confidential Information and Customer Data, it will be treated as Customer Data for purposes of this Service Exhibit and CenturyLink's obligations with respect to such Customer Data shall be exclusively governed by the Compliance and Security section above and are further subject to the Limitation of Liability provisions identified in this Service Exhibit and the Agreement.

7.3 Third-Party Contractors. Customer may authorize its third-party contractors, which includes entities who are CenturyLink's competitors for the IT Services (a "Competitor"), to use Deliverables that contain CenturyLink Technology solely for Customer's internal business purposes as licensed per the Ownership of Technology section above. Customer will ensure that its third-party contractors are informed of the Agreement and will comply with the terms and conditions, including the terms governing the confidential information, to the same extent as if the third-party contractor were an employee of Customer. Customer will not make Deliverables that contain CenturyLink Technology available to any Competitor. If Customer makes Deliverables that include any CenturyLink Technology available to a Competitor, whether in connection with a change of control of Customer or otherwise, CenturyLink may terminate the license granted to Customer in the Ownership of Technology section above immediately upon notice to Customer.

7.4 Ownership of Deliverables.

(a) Software Deliverables. Upon receipt of full payment CenturyLink: (a) assigns to Customer all right, title and interest, including all intellectual property rights, in such Software Deliverable (excluding any CenturyLink Technology) and (b) grants to Customer a non-exclusive, non-transferable, royalty-free, perpetual license to use any CenturyLink Technology to facilitate use of the Software Deliverable as intended under the applicable SOW.

(b) Other Deliverables. CenturyLink retains ownership of all intellectual property rights in Other Deliverables. Upon receipt of full payment CenturyLink grants to Customer a non-exclusive, non-transferable, royalty-free, perpetual license to use Other Deliverables (including any CenturyLink Technology) solely for operating its internal business and not for purposes of commercialization.

7.5 Freedom of Action. Nothing in the Agreement will preclude CenturyLink from developing, marketing, and distributing any software or integration code or performing any services similar to the IT Services for itself or for any third party, provided that CenturyLink is in compliance with confidentiality obligations under the Agreement.

8. IP Indemnification.

8.1 Software Deliverables. CenturyLink will defend at its expense any suit brought against Customer and will pay any settlement CenturyLink makes or approves or any damages finally awarded in such suit insofar as such suit is based on a claim by any third party alleging that the Software Deliverables infringe or misappropriate any third party's US copyright, trademark or trade secret, as recognized under the Uniform Trade Secrets Act. CenturyLink's obligation as set forth in the foregoing sentence is expressly conditioned upon each of the foregoing: (i) Customer will promptly notify CenturyLink in writing of any threatened or actual claim or suit; (ii) CenturyLink will have sole control of the defense or settlement of any claim or suit; and (iii) Customer will cooperate with CenturyLink to facilitate the settlement or defense of any claim or suit. If any portion of the Software Deliverables becomes, or in CenturyLink's opinion is likely to become, the subject of a claim of infringement, CenturyLink may, at CenturyLink's option: (a) procure for Customer the right to continue using the Software Deliverables; (b) replace the applicable portion of the Software Deliverables with non-infringing materials which do not materially impair the functionality of the Software Deliverables; (c) modify the Software Deliverables so that they become non-infringing, or (d) if options (a), (b) and (c) are not commercially practicable, refund the amount paid for the Software Deliverables. Upon notice that neither (a), (b) nor (c) is practicable, Customer will immediately cease all use of the Software Deliverables. Notwithstanding the foregoing,

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CenturyLink will have no obligation under this subsection or otherwise with respect to any infringement claim based upon any application program interface ("API") not developed by CenturyLink. This subsection states the sole and exclusive remedy of Customer and the entire liability of CenturyLink and each of its officers, directors, employees, shareholders, contractors or representatives in connection with any third party claim, suit or other demand of infringement or misappropriation of third party proprietary rights in connection with any IT Services or Deliverables provided under this Service Exhibit.

8.2 CenturyLink Technology. CenturyLink will defend at its expense any suit brought against Customer and will pay any settlement CenturyLink makes or approves or any damages finally awarded in such suit insofar as such suit is based on a claim by any third party alleging that any CenturyLink Technology incorporated into a Deliverable infringes or misappropriates any third party's US patent, copyright, trademark or trade secret, as recognized under the Uniform Trade Secrets Act. CenturyLink's obligation as set forth in the foregoing sentence is expressly conditioned upon each of the foregoing: (i) Customer will promptly notify CenturyLink in writing of any threatened or actual claim or suit; (ii) CenturyLink will have sole control of the defense or settlement of any claim or suit; and (iii) Customer will cooperate with CenturyLink to facilitate the settlement or defense of any claim or suit. If any portion of the CenturyLink Technology incorporated into a Deliverable becomes, or in CenturyLink's opinion is likely to become, the subject of a claim of infringement, CenturyLink may, at CenturyLink's option: (a) procure for Customer the right to continue using the CenturyLink Technology; (b) replace the applicable portion of the Deliverable with non-infringing materials which do not materially impair the functionality of the Deliverable; (c) modify the Deliverable so that it becomes non-infringing, or (d) if options (a), (b) and (c) are not commercially practicable, refund the amount paid for the Deliverable. Upon notice that neither (a), (b) nor (c) is practicable, Customer will immediately cease all use of the affected Deliverable. Notwithstanding the foregoing, CenturyLink will have no obligation under this subsection or otherwise with respect to any infringement claim based upon (w) any use of the Deliverables not in accordance with this Service Exhibit or as specified in the applicable documentation; (x) the combination, use or operation of the Deliverables in combination with any third party products, equipment, software or data; (y) any modification of the Deliverables by any person other than CenturyLink, or (z) any API not developed by CenturyLink.

8.3 This IP Indemnification section states the sole and exclusive remedy of Customer and the entire liability of CenturyLink and each of its officers, directors, employees, shareholders, contractors or representatives in connection with any third party claim, suit or other demand of infringement or misappropriation of third party proprietary rights in connection with any IT Services or Deliverables provided under this Service Exhibit.

9. Confidentiality. In addition to the confidentiality terms contained in the Agreement, confidential information also includes CenturyLink Technology and Customer Technology. CenturyLink Technology and all enhancements and improvements, are the exclusive property and confidential information of CenturyLink. Customer Technology and all enhancements and improvements are the exclusive property and confidential information of Customer. Confidential information will not include information that is in the public domain through no breach of the Agreement by the receiving party, information that is already known or is independently developed by the receiving party, or Customer Data, the obligations for which are governed by the Compliance and Security section.

10. Non-solicitation. Until twelve months after the Term, each party will not directly or indirectly Solicit an Assigned Resource either to accept employment or a consulting or contractor relationship directly with it or to terminate his or her employment, agency or other relationship with the other party, unless it first obtains the other party's prior written consent. "Solicit" means any intentional contacts with Assigned Resource, regardless of who (*i.e.*, the party to this Agreement or the Assigned Resource) initiates the contact, that relates to the acceptance or termination of employment. "Assigned Resource" means an employee, consultant or contractor of the other party assigned by CenturyLink to perform the IT Services or by Customer to directly manage the IT Services.

11. Other Terms.

11.1. Acceptance; Billing.

(a) Acceptance. Section 1.3 Acceptance in this Service Exhibit contains acceptance criteria for IT Services and the acceptance and Customer Commit Date in Section 3 Customer Orders in the Agreement shall not apply to IT Services.

(b) Billing. Section 3 Charges in this Service Exhibit shall replace Section 4.1 Commencement of Billing in the Agreement. For this Service Exhibit, "MRC" means monthly recurring charge, and "NRC" means non-recurring charge. If CenturyLink cannot complete installation due to Customer delay or inaction, CenturyLink may begin charging Customer for the Service, and Customer will pay such charges.

11.2. Cancellation and Termination Charges. Section 4 Termination set forth in this Service Exhibit replaces Section 4.6 Cancellation and Termination Charges set forth in the Agreement. "Cause" means the failure of a party to perform a material obligation under the Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default; or (b) for any other material breach, within 30 days after written notice (unless a shorter notice period is identified in a Service Attachment).

11.3 Service Notices. Notices for disconnection of Service must be submitted to CenturyLink via Email at: BusinessDisconnects@Centurylink.com. Notices of non-renewal for Services must be sent via e-mail to: CenturyLink, Attn.: CenturyLink NoRenew, e-mail: Norenew@centurylink.com. Notices for billing inquiries/disputes or requests for Service Level credits must be submitted to CenturyLink via Customer's portal at <https://www.centurylink.com/business/login/> or via Email at: Care.Inquiry@Centurylink.com. All other routine operational notices will be provided by Customer to its CenturyLink sales representative.

11.4 Conflicts. If a conflict exists among the provisions of the Service Attachments, the order of priority will be as follows: the Service Exhibit, the general terms of the Agreement, SLA, and SOW, as applicable, and then any other documents attached or expressly

**CENTURYLINK® MASTER SERVICE AGREEMENT
IT SERVICES EXHIBIT**

incorporated into the Agreement.

11.5 HIPAA. To the extent the Services involve the ongoing storage of or routine access to PHI (as defined under the Health Insurance Portability and Accountability Act of 1996, as amended, "HIPAA"), or CenturyLink is otherwise acting as a Business Associate (pursuant to HIPAA), CenturyLink will agree to the terms in its then-current Business Associate Agreement upon Customer's request.

11.6. Acknowledgement: CenturyLink and its affiliates or subcontractors may use and transfer to the United States, or other countries, data or information (including business contact information such as names, phone numbers, addresses and/or email addresses) for the sole purpose of: (i) providing and managing the IT Services; (ii) fulfilling obligations related to the IT Services under this Service Exhibit and the Agreement; and (iii) complying with applicable law governing the IT Services.