

**REDACTED**

Agreement Number:

**QWEST METRO OPTICAL ETHERNET SERVICE  
FIXED PERIOD PRICING PLAN  
INTRASTATE ICB**

This Qwest Metro Optical Ethernet Service Agreement ("Agreement") between [REDACTED] and Qwest Corporation ("Qwest") is effective on the date of execution by Qwest ("Effective Date").

**1. Scope.**

1.1 Qwest Metro Optical Ethernet Service is a flexible transport service that uses established Ethernet transport technology. The Service provides connections between multiple Customer locations within a metropolitan area using native Ethernet protocol. The transmission speed depends on the Ethernet port ("Port") selected and the amount of bandwidth ordered over the Port ("Bandwidth Profile"). Service extends to the Demarcation Point. The "Demarcation Point" is the Qwest Fiber Distribution Panel or Digital Cross-Connect in the building's telecommunications facility or meet-me point. The Service is subject to the SLA in the Tariff that is effective as of the first day of the second month after initial installation of Service. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for MOE Service.

1.2 Qwest will provide Service in accordance with the applicable state Tariff, Price List, Price Schedule, Administrative Guideline, and/or Catalog. The applicable document(s) is referred to as "Tariff" and is incorporated herein by this reference. In the event of a conflict between the terms and conditions of this Agreement and the Tariff, the Tariff will prevail.

1.3 Service may be subject to network infrastructure availability which includes, but is not limited to, facilities such as switching equipment, and may require the expenditure of Qwest capital funds ("Funding") to provide Service to Customer. Notwithstanding the above, Qwest will not be compelled under this Agreement to provide Service in locations where adequate network infrastructure does not exist without Funding approval as evidenced on the signature page of this Agreement. Such approval will be granted at the sole discretion of Qwest. If this Agreement is executed and the required Funding is not approved, Qwest may terminate this Agreement immediately without cost, termination liability or penalty.

1.4 Customer understands and agrees that Qwest 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 Qwest of such use and to place an order for appropriate service. Qwest 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 Qwest Access Tariff F.C.C. No. 1 interstate access charges or intrastate Tariff access charges.

2. **Term.** The term of this Agreement will begin upon the Effective Date and will expire thirty-six (36) months from the date Service is available to Customer, as evidenced by Qwest records ("Term"). The minimum service period ("Minimum Service Period") for each Service is twelve months. If Qwest continues to provide Service after the Term, the provisions for month-to-month service in the Tariff will apply.

**3. Installation/Provisioning of Service.**

3.1 Upon acceptance of an Order Form, Qwest will notify Customer of its target date for the delivery of each Service (the "Estimated Availability Date"). Qwest will use commercially reasonable efforts to install each Service on or before the Delivery Date, but the inability of Qwest to install a Service by such date will not be a default under the Agreement. If Qwest fails to make Service available (excluding ICB Service) within ninety calendar days after the acceptance of the Order Form ("Delivery Date"), then Customer's sole remedy will be to cancel the Order Form which pertains to such Service by giving Qwest five calendar days written notice prior to Qwest's delivery of the Service to Customer provided however, that Customer will reimburse Qwest for any third party charges incurred by Qwest as a result of its efforts to install the Service. "ICB Service" is Service for which Qwest must perform special construction.

3.2 Start of service for each Service ("Start of Service Date") will begin on the date on which Customer accepts delivery of such Service. Qwest will provide notice that a Service is ready for acceptance. At Customer's request, mutual testing may be performed in accordance to the service parameters outlined in the Tariff.

**4. Payment/Locations.**

4.1 Service's monthly recurring charge ("MRC") and nonrecurring charge ("NRC") will be those in effect in the Tariff on the first date of installation of Service. Qwest will fix the MRCs during the Term so that Qwest will not pass through any Qwest initiated price increases to Customer during the Term. Any rate increases directed or mandated by a regulatory body will be applied as required. Charges for Service will be due upon Customer's receipt of invoice and paid on or before thirty (30) days from the invoice date ("Due Date"). Any amount not paid by the Due Date will be considered past due and subject to a late charge as specified by Tariff, and if there is no such rate specified by Tariff, the late charge will be equal to the lesser of: (i) the rate of one and one-half percent (1½%) per month or (ii) the highest rate permitted by applicable law. In addition to such rates and charges, Customer will be responsible for foreign, federal, state and local taxes, surcharges and other similar charges assessed in connection with the

Service ("Taxes"). Qwest may modify the payment terms or require other reasonable assurance of payment if Qwest reasonably deems itself insecure with respect to Customer's ability to pay.

4.2 Qwest will provide Service as identified below:

Location (Address, City, State)	Term	Port Speed	Bandwidth Profile	MRC	NRC
[REDACTED]	36 months	1000 Mbps	1000 Mbps (1Gbps)	\$3,468.00	\$0.00
[REDACTED]	36 months	1000 Mbps	1000 Mbps (1 Gbps)	\$3,468.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00
[REDACTED]	36 months	100 Mbps	100 Mbps	\$1,275.00	\$0.00

5. Changes to Service.

5.1 Subsequent orders to add new Service port(s) will be for the remainder of the Term, provided the Minimum Service Period can be met. All Service ports ordered under this Agreement will expire on the same date regardless of when they are ordered (e.g., if the original Service is in month 10 of a 60-month Term when Customer orders a new Service port for a 60-month fixed period rate plan, the new Service port will be billed at the 60-month rate for the next 50-months). In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.2 A subsequent order to change or add a Service port during the Term will be assessed an NRC.

5.3 A subsequent order to change Service Bandwidth during the Term will not be assessed the NRC, however, the MRC will be changed to the new Service bandwidth profile charge. Customer may be assessed an early Termination liability charge for any decrease in bandwidth during the Term of the Agreement.

5.4 Customer request for a physical move of Service to a new location will be treated as a termination of service at the original location. NRC's will apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.5 Customer request for a physical move of Service to a location within the same building as the existing Service will be charged a fee equal to one half the applicable NRC charge. There will be no changes to the Minimum Service Period.

6. Termination.

6.1 Qwest may (a) immediately suspend all or any part of the Service, and/or (b) terminate this Agreement: (i) for Cause; or (ii) upon written notice if Customer becomes or is declared insolvent or bankrupt or is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it.

6.2 If Service provisioned hereunder is terminated prior to the expiration of its applicable Term for reasons other than a default of Qwest, then Customer will pay Qwest: (i) all accrued and unpaid charges for the canceled Service provided through the effective date of such termination; plus (ii) a cancellation charge of one hundred percent (100%) of the balance of the MRCs for the unexpired portion of the Minimum Service Period for the canceled Service; plus (iii) forty percent (40%) of the balance of the MRCs due for the unexpired portion of the Term in excess of the Minimum Service Period for the canceled Service; plus (iv) any and all third party costs and expenses incurred by Qwest in so canceling such Service and all applicable non-recurring charges that may have been waived.

7. Limitation of Liability. NEITHER PARTY, ITS AFFILIATES 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 THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED. CUSTOMER'S EXCLUSIVE REMEDIES FOR CLAIMS RELATED TO THE SERVICE WILL BE LIMITED TO THE APPLICABLE CREDIT ALLOWANCE FOR SERVICE INTERRUPTIONS, IF ANY. QWEST'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL MRCS PAID OR PAYABLE BY CUSTOMER TO QWEST PURSUANT TO THIS AGREEMENT IN THE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF LIABILITY IN THIS SECTION WILL NOT APPLY TO CUSTOMER'S PAYMENT AND

**INDEMNIFICATION OBLIGATIONS.**

8. **Indemnification.** Customer agrees to defend, indemnify, and hold harmless Qwest, its affiliates, agents and contractors from any and all third-party claims, liabilities, costs and expenses, including reasonable attorneys fees, arising from or related to any use, modification or resale of the Service by Customer or Customer's members, end-users, customers or any other third parties who utilize or access the Service provided hereunder.

9. **Force Majeure.** Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by an unforeseeable event (other than a failure to comply with payment obligations) beyond the reasonable control of a party, including without limitation: act of God; fire; flood; labor strike; sabotage; fiber cut; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; or failures of suppliers of goods and services.

10. **Dispute Resolution.** Any dispute arising out of, or relating to, this Agreement will be settled by arbitration to be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, will govern the arbitrability of the dispute. The costs of the arbitration, including the arbitrator's fees, will be shared equally by the parties; provided, however, that each party will bear the cost of preparing and presenting its own claims and/or defenses (including its own attorneys fees). The arbitration will be held in Denver, Colorado. The arbitrator has no authority to award any indirect, incidental, special, reliance, punitive, or consequential damages, including damages for lost profits. The arbitrator's decision will be final, binding, and enforceable in a court of competent jurisdiction. If either party fails to comply with the dispute resolution process set forth herein (including, without limitation, nonpayment of an arbitration award) and a party is required to enforce such compliance in court or elsewhere, then the non-complying party will reimburse all of the costs and expenses incurred by the party seeking such enforcement (including reasonable attorneys fees). 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.

10.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington. Venue for any legal action involving this Agreement shall be in King County, Washington. Each party hereby submits to the jurisdiction of Washington's state and federal courts for purposes of any legal action involving this Agreement

11. **Lawfulness.** This Agreement and the parties' actions under this Agreement will comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any agreement to that extent without further notice.

12. **Publicity.** Neither party will, without the prior written consent of the other, issue any press release or public announcement regarding this Agreement or any relation between Customer and Qwest or use the name, trademarks, or other proprietary identifying symbol of the other party or its affiliates. Such consent by Qwest may be given in writing by the Executive Vice President of Corporate Communications or his or her designee.

13. **Notices.** Except as otherwise provided herein, all required notices will be in writing, transmitted to Qwest at 1801 California Street, Suite 900, Denver, Colorado 80202; Facsimile #: (303) 295-6973; Attention: Legal Department, and to Customer at Qwest's then current address of record for Customer; Attention: General Counsel or other person designated for notices. Notices will be considered given either: (a) when delivered in person to the recipient designated for notices; (b) when deposited in either registered or certified U.S. Mail, return receipt requested, postage prepaid; or (c) when delivered to an overnight courier service. Customer's current address, facsimile number and person designated for notices are: [REDACTED] with a copy to Senior Vice President and General counsel [REDACTED]

14. **General Provisions.**

14.1 This Agreement will be governed by the laws of the state where Service is provided, without regard to its choice of law principles; provided however, that Service may also be subject to the Communications Act of 1934, as amended.

14.2 Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder.

14.3 If any term of this Agreement is held to be unenforceable, the unenforceable term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect.

14.4 All terms of this Agreement, which should by their nature survive the termination of this Agreement, will so survive.

14.5 Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Qwest, which consent will not be unreasonably withheld. Customer may not assign to a reseller or a telecommunications carrier under any circumstances.

14.6 This Agreement is intended solely for Qwest and its affiliates and Customer and it will not benefit or be enforceable by any other person or entity.

14.7 This Agreement and any exhibits hereunder constitute the entire agreement between Customer and Qwest with respect to the subject matter hereof, and supersede all prior agreements or understandings, whether oral or written, relating to the subject matter hereof. Except for Service and Tariff modifications initiated by Qwest, all amendments to this Agreement will be in writing and signed by the parties' authorized representatives. Qwest may act in reliance upon any instruction, instrument, or signature reasonably believed by Qwest to be genuine. Customer agrees that any employee of Customer who gives any written notice or other instruction in connection with this Agreement has the authority to do so.

14.8 The following clause is included because of the possible application of Section 1861 (v)(1)(1) of the Social Security Act to this agreement; but if that section should be found inapplicable to this Agreement, then this clause shall be deemed not to be part of this Agreement and shall be null and void:

Until the expiration of four years after the furnishing of services under this Agreement, Qwest shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents and records of Qwest as are necessary to certify the nature and extent of the costs hereunder. If Qwest carries out any of its duties under this Agreement through a subcontractor, for the value or cost of \$10,000.00 or more over a twelve-month period, with a related organization, such contracts shall contain a clause placing the same duty on the subcontractor as this Agreement places on Qwest. This clause shall survive the termination of this Agreement according to its terms.

In the event the law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount set forth herein shall be deemed amended accordingly. Notwithstanding the presence of this clause in this agreement, this clause shall only be applicable if the actual dollar amount paid during any twelve-month period equals or exceeds the government threshold amount.

14.9 The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.5(a), the affirmative action clause for disabled workers, set forth in 41 CFR 60-741.5(a), and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this Agreement. By accepting this Agreement, Qwest certifies that it complies with the authorities cited above.

14.10 Qwest expressly acknowledges that it shall comply fully with all applicable federal, state and local laws, rules and regulations and applicable standards of the JCAHO.

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

<p>[Redacted Signature]</p> <p>Authorized Signature</p> <p>[Redacted Name]</p> <p>Name Typed or Printed</p> <p>[Redacted Title]</p> <p>Title</p> <p>[Redacted Date]</p> <p>Date</p>	<p>Qwest Corporation</p> <p><i>July Lampo on behalf of</i></p> <p>Authorized Signature</p> <p><i>Tom DeMure</i></p> <p>Name Typed or Printed</p> <p>Director Pricing &amp; Offer Management</p> <p>Title</p> <p>12-7-04</p> <p>Date</p>
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*(For Qwest internal use only)*

FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION

Funding Approved By: \_\_\_\_\_

Funding Approver's Name

AQCB Quote No. \_\_\_\_\_

Date Concurred: \_\_\_\_\_

ATTENTION: