

UT-111597-AF
OM-10/13/11
NO ACTION



CenturyLink™

Qwest Corporation DBA CenturyLink QC

1600 7th Avenue, Room 1506
Seattle, Washington 98191
(206) 345-1568
Facsimile (206) 343-4040

Mark S. Reynolds
Director State Regulatory Affairs
Public Policy

August 30, 2011

Mr. David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Attn: Betty Erdahl

RE: WAC 480-120-375 Affiliated Interest Agreement

Dear Mr. Danner:

In accordance with WAC 480-120-375, Qwest Corporation is filing notification of the enclosed agreement between Qwest Corporation (QC) DBA CenturyLink QC and Savvis. This customer was not an affiliate when the original Wholesale Data Service Agreement was created however QC should have filed this agreement at the time Savvis became an affiliate of QC which was on July 15, 2011. Amendment 1 to this agreement was file on August 22, 2011. Also enclosed is a verified statement.

Please call Fran Bendever on 303-922-4341 if you have any questions or require any additional information.

Very truly yours,

for Mark Reynolds

Enclosures

RECEIVED
REGULATORY MANAGEMENT
2011 SEP - 1 AM 11:24
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

VERIFIED STATEMENT OF AFFILIATED INTEREST TRANSACTION

Qwest Corporation

WAC 480-120-375 states:

Every public service company must file a verified copy, or a verified summary, if unwritten, of contracts or arrangements with affiliated interests before the effective date of the contract or arrangement. Verified copies of modifications or amendments to the contract or arrangements must be filed before the effective date of the modification or amendment. If the contract or arrangement is unwritten, then a public service company must file a verified summary of any amendment or modification. The Commission may institute an investigation and disapprove the contract or arrangement if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest.

Frances L. Bendever Analyst III of Qwest Corporation DBA CenturyLink QC certifies that the attached Wholesale Data Service agreement describes the arrangement between Qwest Corporation DBA CenturyLink QC and Savvis.

A handwritten signature in cursive script that reads "Frances L. Bendever". The signature is written in black ink and is positioned above the printed name.

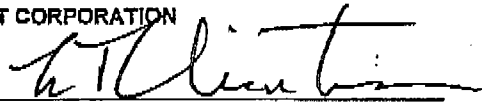
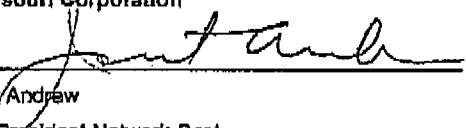
Frances L. Bendever

Dated at Denver this 30th day of August, 2011.

QWEST CORPORATION WHOLESALE DATA SERVICES AGREEMENT

GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is between Qwest Corporation, including its subsidiary El Paso County Telephone Company ("Qwest") and Customer (each identified in the signature blocks) and will become effective on the latest signature date (the "Agreement Effective Date"). Unless otherwise defined in the Agreement, capitalized terms are defined in Addendum 1. Each Qwest entity is responsible only for providing Service in its respective territory, and in no case will one Qwest entity be liable to Customer for actions or failures of another Qwest entity.

<p>QWEST:</p> <p>QWEST CORPORATION</p> <p>By: <u></u></p> <p>Warren Mickens Vice President, Customer Service Operations</p> <p>Date: <u>5/18/10</u></p> <p>Offer Management Director: _____</p> <p>Date: _____</p>	<p>CUSTOMER:</p> <p>SAVIS Communications Corporation, a Missouri Corporation</p> <p>By: <u></u></p> <p>Janet Andrew Vice President Network Cost</p> <p>Date: <u>5/14/10</u></p>
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Each party warrants that: (a) the full legal name of the legal entity intended to provide or receive the benefits or Services under this Agreement is accurate; (b) the person signing this Agreement has been duly authorized to execute this Agreement; and (c) the execution of the Agreement does not conflict with law, the terms of any charter, bylaw, articles of association, or any other agreements with third parties. Qwest may rely upon any instruction, instrument, or signature reasonably believed by Qwest to be genuine and authorized by the Customer. Each party acknowledges that it has received, or has had opportunity to receive, the advice of competent counsel.

This Agreement incorporates by reference additional material terms and conditions applicable to the Services as set forth in the RSS http://tariffs.qwest.com:8000/lcd/groups/public/documents/res/htmltoc_qc_rss1.htm. Customer has reviewed the RSS. Customer agrees that it is impractical for Qwest to list all the terms, conditions and charges applicable to the Services in these General Terms and Conditions and the Service Exhibits. Customer further agrees that Qwest has acted reasonably in providing it access to the RSS. Qwest will keep an archive of the web pages of the RSS listing Rates, terms and conditions, including dates of changes to Rates, terms and conditions. Customer agrees that Qwest's archive is conclusive evidence in the event of dispute.

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QWEST: QWEST CORPORATION By: _____ Warren Mickens Vice President, Customer Service Operations Date: _____ Offer Management Director <u>Brian Fisher</u> Date: <u>5/19/10</u>	CUSTOMER: SAVIS Communications Corporation, a Missouri Corporation By: _____ Janet Andrew Vice President Network Cost Date: <u>5/14/10</u>
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Each party warrants that: (a) the full legal name of the legal entity intended to provide or receive the benefits or Services under this Agreement is accurate; (b) the person signing this Agreement has been duly authorized to execute this Agreement; and (c) the execution of the Agreement does not conflict with law, the terms of any charter, bylaw, articles of association, or any other agreements with third parties. Qwest may rely upon any instruction, instrument, or signature reasonably believed by Qwest to be genuine and authorized by the Customer. Each party acknowledges that it has received, or has had opportunity to receive, the advice of competent counsel.

This Agreement incorporates by reference additional material terms and conditions applicable to the Services as set forth in the RSS http://tariffs.qwest.com:8000/lde/groups/public/documents/rss/htmltoc_qc_rss1.htm. Customer has reviewed the RSS. Customer agrees that it is impractical for Qwest to list all the terms, conditions and charges applicable to the Services in these General Terms and Conditions and the Service Exhibits. Customer further agrees that Qwest has acted reasonably in providing it access to the RSS. Qwest will keep an archive of the web pages of the RSS listing Rates, terms and conditions, including dates of changes to Rates, terms and conditions. Customer agrees that Qwest's archive is conclusive evidence in the event of dispute.

QWEST CORPORATION WHOLESALE DATA SERVICES AGREEMENT

1. Notices. Notice is given when: (a) delivered by facsimile or e-mail, so long as duplicate notification is sent via U.S. Mail; (b) delivered in person; (c) deposited in either registered, overnight or certified U.S. Mail, postage prepaid, if sent in the U.S.; or (d) delivered to an overnight courier service. Qwest may provide notice via email without duplicate notification via U.S. Mail for: (w) notices provided under Section 6, (x) rate change notices, (y) notices regarding changes in the RSS, or (z) notices regarding changes in maintenance windows. Customer's continued subscription to, usage of, or payment for Services after the effective date of such changes will be deemed to be Customer's acceptance of such changes. If Customer does not agree to such changes, Customer must contact Customer's Qwest sales representative and either terminate Customer's Services or make alternative arrangements with Qwest before the effective date of such changes. All required written notices must be sent to the addresses specified below or other addresses as may be specified in writing, or via the electronic subscription tool, by the recipient:

To Qwest:
Director Wholesale Contracts
1801 California Street, 24th Floor
Denver, Colorado 80202
Facsimile #: (303) 896-7358
E-Mail: wholesale.contracts@qwest.com

To Customer:
SAVVIS Communications Corporation
1 SAVVIS Parkway
Town & Country, MO 63017
Phone #: 314 628-7000
E-Mail: carriermanagement@savvis.net
Attention: Carrier Management

With copy to:
Qwest Corporation
1801 California Street, 9th Floor
Denver, Colorado 80202
Facsimile #: 1-888-778-0054
Attention: Wholesale Legal Department

Legal/Rate Change Notices To Customer:
SAVVIS Communications Corp
1 SAVVIS Parkway
Town & Country, MO 63017
Phone #: 314 628 7000
E-Mail: adam.vickery@savvis.net
Attention: Legal

2. Applicable Services. Services are available only in Qwest's local service areas in the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The Service Exhibits included under this Agreement as of the Agreement Effective Date are:

Qwest Metro Optical Ethernet (QMOE®)

Asynchronous Transfer Mode ("ATM") Service, Frame Relay ("FR"), GeoMax, HDTV-Net, Qwest Metro Optical Ethernet ("QMOE"), Self-Healing Network Service ("SHNS"), and Synchronous Service Transport ("SST") are subject to relief from federal tariff requirements as provided *In the Matter of Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, FCC No. 08-168. This Agreement will apply to the provision of any service that is on a month-to-month basis upon detariffing, converts to month-to-month after detariffing, or is ordered under the Agreement after detariffing. Customer agrees that all amounts and obligations owed to Qwest for services provisioned or ordered under the FCC1 Tariff prior to detariffing will be due and owing under this Agreement.

3. Term and Termination.

3.1 The term of the Agreement, which does not have any effect on an individual Service term, begins on the Agreement Effective Date and will continue for the initial term of 12 months ("Initial Term"). After the expiration of the Initial Term, this Agreement continues on a month-to-month basis unless this Agreement, or any Service, is terminated, in whole or part by either party on 30 calendar days prior written notice (the Initial Term and any month-to-month extensions will collectively be referred to as the "Agreement Term"). Any termination after the Initial Term other than for Cause will take effect on the 31st calendar day following the date of the terminating party's notice, regardless of the date upon which the initial month-to-month renewal occurred. If Qwest revises the RSS and the revised RSS conflicts with this Agreement or a Service Exhibit, then Customer must amend this Agreement or add a revised Service Exhibit as necessary to comport with the revised RSS before Customer may move, upgrade, make changes to, or order additional circuits.

3.2 Services ordered under this Agreement will have their own individual Service Term from the date an individual Service is available to Customer. During the Service Term of an individual Service, Qwest will apply the then current NRCs and: (a) for month-to-month MRCs, the then-current Rates, terms, and conditions; or (b) for MRCs covered by a Term Plan, the MRCs that are in effect at the time an individual Service is installed, regardless of any later changes to the RSS. The MRCs for an individual Service covered by the Term Plan will be frozen from Qwest-initiated rate changes during that Service's Service Term. Customer will not receive rate decreases if Qwest decreases the Rates during an individual Service's Service Term. Once a Term Plan expires for an individual

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Service, Qwest will apply the then-current month-to-month MRCs, terms and conditions to that Service unless customer renews the Service under a then-current Term Plan.

3.3 Customer may terminate an individual Service by issuing an Order Form at least two business days prior to Customer's desired termination date. After Customer has terminated all Services under the Agreement, Customer may terminate the Agreement for reasons other than Cause by providing written notice to Qwest. Cause to terminate the entire Agreement for Service-related claims will exist only if customer has Cause to terminate all or substantially all of the Services under the applicable SLA, Service Exhibit, or RSS.

3.4 Either party may terminate an individual Service ordered under a Service Exhibit after the date the individual Service is available to Customer under the terms of the applicable Service Exhibit. Qwest will waive the Termination Charge in excess of the Minimum Service Period if Customer terminates due to a move or upgrade of all or a portion of Service and all of the following conditions are met ("Waiver Policy"): (a) Customer must have satisfied the Minimum Service Period for the existing Service or be subject to the Termination Charge applicable to the unexpired portion of the Minimum Service Period; (b) Customer must agree to a new Service Term and Minimum Service Period for the new service; (c) The total value of the new Service must be equal to or greater than 115% of the remaining value of the Service being terminated. NRCs and Construction charges will not contribute toward the 115% calculation; (d) The request to disconnect the existing Service and the request for the new service are received by Qwest at the same time and both requests must reference this Waiver Policy; (e) For ATM, FR, and QMOE, the new Service installation due date must be within 30 days of the due date of the disconnection of the existing Service, unless the installation is delayed by Qwest; for SHNS, SST, GeoMax, QWave, and HDTV-NET, the new Service installation due date must be on or before the due date of the disconnection of the existing Service, unless the installation is delayed by Qwest; (f) Customer agrees to pay all outstanding MRCs and NRCs for existing Service; (g) The NRCs in effect at the time the Service is moved or upgraded will apply to the move or upgrade; and (h) This Waiver Policy only applies to moves or upgrades to other Qwest services that are subject to a Qwest Tariff or the Qwest RSS.

3.5 Customer is not entitled to any outage credits due to any Service outage or interruption resulting from a termination by Qwest for Cause. If either party terminates any part of this Agreement or any Service, Customer will pay any charges accrued but unpaid as of the termination date. If Customer terminates this Agreement for reasons other than Cause, or if Qwest terminates this Agreement for Cause, Customer will also pay any applicable Termination Charge due under this Agreement and the Service Exhibits.

4. Service Provisioning

4.1 Customer will complete an Order Form for all service requests (including, but not limited to, install, change, move, rearrangement, disconnect or cancellations). Qwest offers the Service subject to: (a) Customer's submission of a valid, accurate, and complete Order Form submitted by Customer; and (b) availability of adequate capacity. Adequate capacity depends on availability and limits of Qwest wire centers and facilities. Service will not be provided using unsuitable facilities or if provision of Service creates interference with other services.

4.2 Qwest may change features or functions of its Services. For material changes, Qwest will provide 30 days prior written notice, but may provide a shorter notice period if the change is based upon Regulatory Activity. Qwest may at its sole discretion, discontinue providing any part of a Service in, to, or from any: (a) location, (b) particular person or entity because provision of the Services is unlawful or economically unfeasible. Qwest will provide Customer notice, if reasonably practicable, prior to discontinuing a Service.

4.3 Qwest will provide Customer reasonable notification of Service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements, routine preventative maintenance and major switching machine change-out. Generally, such activities are not individual customer service specific; they affect many customer services. No specific advance notification period is applicable to all Service activities. Services will be available to Qwest at times mutually agreed upon in order to permit Qwest to make tests and adjustments appropriate for maintaining Services in satisfactory operating condition. No credit will be allowed for any interruptions involved during those tests and adjustments.

4.4 Service is subject to the credit for service interruptions specific to the Service contained in the SLA or RSS. The credits outlined in the SLAs are Customer's sole and exclusive remedy for interruptions of any kind to the Service. Service interruption means a total disruption of the Service subject to restrictions and exclusions outlined in an SLA or in the RSS. Services with a Service-specific SLA are subject to the credit for service interruptions contained in the applicable SLA and described in the RSS posted at www.qwest.com/legal. Services without a Service-specific SLA are subject to the credit for service interruptions contained in the RSS.

4.5 Qwest offers Service under this Agreement subject to network infrastructure availability and may require Funding to provide Service to Customer. Qwest will not be compelled under this Agreement to provide Service in locations where adequate network infrastructure does not exist without Funding approval. Such approval will be granted at the sole discretion of Qwest. If Funding is not approved, Qwest may charge Customer a one-time special Construction charge, which if included would cause the project to receive special Funding through Qwest internal processes. Qwest shall inform Customer of the special Construction charge, giving Customer the opportunity to cancel the Order Form, rather than incur the special Construction charge. In the event the required Funding is not

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approved, Qwest or Customer may terminate the Order Form for which Funding was not approved immediately, without liability. Qwest may assess separate Construction charges if facilities are not available to meet an order for Service and Qwest constructs facilities under one or more of the following circumstances: (a) if the amount of Customer's expected payments over the term of the Agreement does not exceed Qwest's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that Qwest would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; or (d) Customer requests that Construction be expedited, resulting in added cost to Qwest.

4.6 Any Customer requests for Qwest to Expedite the delivery of Service before the standard or negotiated service interval will be deemed an Expedited order and Expedite charges will apply if Qwest agrees to meet a date other than the Qwest standard or negotiated service interval.

5. Financial Terms.

5.1 Rates and Terms.

(a) Each Service Exhibit references the section of the RSS where the Rates, terms and conditions for the particular Service are set forth. Customer agrees that the entire RSS, including but not limited to the particular provisions setting forth Rates, terms and conditions for each Service, is a part of this Agreement. Standard Rates are the Rates in the RSS.

(b) Qwest may, upon 30 calendar days written notice, impose discretionary increases to any of the MRCs, NRCs or other charges described in the RSS for month-to-month Services, new Service orders, and Services not yet installed, on the effective date. Customer's continued subscription to, usage of, or payment for Service after the effective date of such changes will be deemed to be Customer's acceptance of such changes. If Customer does not agree to such changes, Customer must contact Customer's Qwest sales representative and either terminate Service or make alternative arrangements with Qwest before the effective date of such changes. Qwest may charge a Termination Charge if Customer terminates a Service prior to the expiration of the Term Plan. Qwest may decrease Rates for Services immediately upon notice for new Service orders or for month-to-month Services. Promotional pricing will expire in accordance with the terms applicable to each promotion, without further notice to Customer. In the event of Regulatory Activity, Qwest may at any time upon 30 calendar days prior written notice to Customer, unless such notice is not reasonably practicable: (i) pass through to Customer all, or a portion of, any charges or surcharges directly or indirectly related to such Regulatory Activity in connection to the Service; or (ii) modify the Rates and/or other terms and conditions contained in the Agreement to reflect the impact of such Regulatory Activity in connection to the Service. Qwest may, upon 30 calendar days prior written notice, adjust its Rates or charges, or impose additional Rates and charges, to recover amounts that governmental or quasi-governmental authorities require it to collect from or pay to others to support statutory or regulatory programs.

(c) Customer agrees to pay Rates and charges that are in the RSS, but are not referenced in the Service Exhibits, which may include but are not limited to: (i) Expedites, including third-party charges incurred by Qwest in connection with the Expedite, (ii) CPE, (iii) Construction, (iv) Termination Charges, (v) charges for labor, testing, or design changes, (vi) inside wiring, or (vii) additional administrative charges that may be applied for services not described in the Service Exhibits, or for requests to provision Services in a manner inconsistent with Qwest's then-current practices. Customer agrees to pay applicable charges regardless of whether: (i) Customer cancels Service; or (ii) Service is not delivered on the requested Expedite date, unless such failure was caused by Qwest.

(d) Customer may also obtain pricing for Service via an amendment to the Agreement or a pricing exhibit or any other such Qwest-designated quoting tool or form collectively referred to herein as ("Pricing Exhibit"). Each Pricing Exhibit will contain a Qwest-generated Contract (QI) Number. Any Order Form submitted without a Contract (QI) Number on the Order Form will be subject to the prices stated in the RSS. By submitting an Order Form containing a Contract (QI) Number, Customer agrees to all terms and conditions contained in the applicable Pricing Exhibit, in addition to those in the Agreement, which become binding when Qwest accepts such Order Form. If there is a conflict between the terms of a Pricing Exhibit and the Agreement, the Pricing Exhibit will control. Customer may not submit an Order Form with pricing from a Pricing Exhibit after the expiration date stated on the Pricing Exhibit (the "Quote Expiration Date"). If no specific Quote Expiration Date is stated on the Pricing Exhibit, then the pricing stated in such Pricing Exhibit expires 45 calendar days after the Quote Date on such Pricing Exhibit. In addition to any MRCs and NRCs supplied by a Pricing Exhibit, Customer is also responsible for any and all ancillary charges as described in section 5.1(c) of the Agreement.

(e) Customer may request a technician visit for problems on the Qwest side of the Demarcation Point. Customer may retract its request prior to the Qwest technician's visit. Qwest will provide prior notice to Customer of any dispatch fee that will apply if Qwest determines that the problem is not caused by Qwest facilities or equipment on Qwest's side of the Demarcation Point; or if the problem is on Customer's side of the Demarcation Point.

5.2 Taxes, Fees, and other Governmental Impositions.

(a) In addition to other charges for Service, Customer will pay all Taxes set forth on the invoices unless Customer provides Qwest with an appropriately completed and valid exemption certificate or other evidence acceptable to Qwest that neither the Services nor Customer are subject to such Taxes for which an exemption is claimed. Qwest will not issue any exemption, credit or refund of any Tax

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payment for Services billed prior to the Customer's submission of that evidence. "Taxes" mean any and all applicable federal, state and local taxes, including, without limitation, all use, sales, value-added, goods and services, excise, franchise, commercial, gross receipts, license, privilege or other similar taxes, levies, surcharges, charges for universal support mechanisms, duties and fees, whether charged to or against the Customer, with respect to the supply of the Services or underlying facilities provided by a party under this Agreement, as well as any other imposition by any governmental authority which has the effect of increasing Qwest's cost of providing the Services or the underlying facilities. Such term will not include any imposition that is based upon Qwest's property, net income, net worth or capital stock.

(b) Customer will pay all amounts due on an invoice free and clear and without deduction or withholding for any and all present or future Taxes.

(c) Each party is solely responsible for all taxes on its own business, including taxes based on net income, property value, capital stock, or net worth. Each party is responsible for any tax filings, payment, protest, audit and litigation that are related to its own business.

6. Financial Responsibility, Payment and Security.

6.1 Customer will pay Qwest for all Services provided under this Agreement. Qwest will invoice Customer monthly for all Services. On or before the due date printed on the invoice ("Due Date"), Customer will pay all invoiced amounts to the address on the invoice, or will wire payment according to instructions provided by Qwest. Qwest may charge interest on any amounts not received by the Due Date at the rate of 0.000407 per day, compounded daily or, if applicable, the maximum rate allowed by law, until the past due amounts are paid. If Qwest does not receive payment in full by the Due Date or if amounts are not properly withheld by Customer under Section 6.2 below, Qwest may also take one or more of the following actions 30 calendar days after notifying Customer: (a) refuse to accept additional Order Forms; or (b) temporarily suspend or limit any Services until Customer pays all past due amounts, including interest. If Qwest does not refuse to accept additional Order Forms or temporarily suspend or limit any and all Services on the date specified in the 30 days' notice, and Customer's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional Order Forms or temporarily suspend or limit any and all Services without further notice. Customer may not claim outage credits for any Service interruptions resulting from Qwest exercising its rights under this Section. If a payment default constitutes Cause, Qwest may also offset all amounts due, including interest, against: (i) any security instruments provided by Customer to Qwest; or (ii) any amounts that Qwest owes to Customer under any agreement between the parties.

6.2 Customer may make a good faith assertion, supported by Complete Documentation, of a billing adjustment or credit that Customer reasonably believes it is entitled to under the Agreement ("Bona Fide Dispute"). Bona Fide Disputes, along with Complete Documentation, must be submitted to Qwest in accordance with Product Catalog guidelines which can be found at <http://www.qwest.com/wholesale/clecs/billdisputeprocess.html>, or in such other manner as Qwest may specify. The parties will promptly resolve disputed amounts in good faith. Qwest may request additional supporting documentation. Qwest may reject Customer's dispute as inadequate if not accompanied by Complete Documentation. If Qwest resolves such Bona Fide Dispute in Qwest's favor, Qwest will notify Customer, then either: (a) Customer will pay any withheld portion of the invoice, plus interest applied under Section 6.1 from the Due Date of the invoice, or (b) if Customer disputes Qwest's resolution of a Bona Fide Dispute in Qwest's favor and Customer and Qwest are not able to arrive at an agreeable resolution, then Customer may initiate dispute resolution proceedings under Section 13, and the parties will escrow all disputed amounts under Section 13.2 below.

6.3 Qwest's obligations under this Agreement are contingent upon its continuing credit approval of Customer; and Customer's compliance with the security requirements in Addendum 2, if attached. If Qwest reasonably deems itself insecure with respect to Customer's ability to pay for any reason, including but not limited to Customer's Change of Control or Qwest's reasonable belief that a material change in Customer's circumstances or financial condition has occurred or is imminent; Qwest may, at its election, take one or more of the following actions: (a) refuse to accept additional Order Forms; (b) temporarily suspend or limit any and all Services; or (c) require that Customer provide to Qwest, within ten calendar days, a deposit or other acceptable form of security.

6.4 Customer must not remit payment for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate Qwest to provide certain information or perform certain functions unless those functions and obligations are specifically agreed to by the parties in this Agreement or in an amendment to this Agreement.

7. Customer's Responsibilities.

7.1 Customer is solely responsible for obtaining all licenses, approvals, and regulatory authority for using the Services and reselling Services to its End Users, and Customer will have any required regulatory authorities before ordering Service. When reselling the Services, Customer is solely responsible for all billing and collections, customer service, and other requirements of its End Users. Customer's payment obligations to Qwest are not contingent upon Customer's ability to collect payments from any third parties, including its End Users.

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7.2 Customer agrees that its use of the Services will comply with all applicable laws. Customer will be liable for any intentional or illegal acts of Customer or its End Users related to the Services. Customer will defend and indemnify Qwest, its Affiliates, agents, and contractors against any third party claims, costs, judgments or other proceedings, obligations and expenses, including attorney fees, relating to Customer's or an End User's use, resale or modification of the Services or Customer's failure to comply with any regulatory requirements or failure to make any required payments (e.g., universal service support mechanisms).

7.3 If Qwest must access a building that houses Customer's premises to install, operate, or maintain Service or associated Qwest equipment, Customer will provide or secure, at Customer's expense, the following items: (a) appropriate space and power; and (b) rights or licenses. These items may include, for example, rights to use or install pathways, shafts, risers, conduits, telephone closets, interior wiring, service areas, racks, cages, and utility connections or entries required to reach point of termination.

7.4 Any facility or equipment repairs on Customer's side of the Demarcation Point are Customer's responsibility. If Customer requests a technician visit for a problem that Qwest determines: (a) not to be caused by Qwest facilities or equipment on the Qwest side of the Demarcation Point; or (b) is on Customer's side of the Demarcation Point, Qwest will assess a separate dispatch fee. Qwest will notify Customer and obtain Customer's authorization of charges before dispatching a technician. Any requested repairs of Customer facilities and/or equipment are not included in the dispatch fee and will be charged on a time and materials basis.

7.5 If a service interruption occurs due to Customer's failure to fulfill the obligations in this section, Qwest will be exempt from meeting the specified SLAs for that service interruption.

7.6 Upon Qwest's reasonable request, Customer will assist Qwest in complying with all reporting obligations or requirements imposed on Qwest by any third party or regulatory agency relating to this Agreement or the Services.

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

9 Confidentiality. Except as permitted by this Agreement or if required by law, or to achieve the purposes of this Agreement in any proceeding, neither party will, without the prior written consent of the other party: (a) disclose negotiated terms or pricing, if any, in this Agreement, or (b) disclose or use any other Confidential Information of the other party. If required or permitted by law to disclose Confidential Information, the receiving party will promptly notify the disclosing party (prior to the disclosure, if possible). The receiving party will cooperate with the disclosing party to seek or take appropriate protective measures; and will make such disclosure in a manner to best protect the Confidential Information from further disclosure. Each party will use reasonable efforts to protect the other's Confidential Information and will use at least the same degree of care that it would to protect its own Confidential Information. Only Qwest's Legal Department may provide consent to disclose Qwest Confidential Information.

10. Use of Name, Trademarks and Publicity.

10.1 When marketing the Services for resale, Customer, including its employees, representatives and agents, must not (a) use the Qwest name, brand or identity in any way, or (b) otherwise indicate, directly or indirectly, that Customer's End Users will have any relationship with Qwest. Customer must not use a name, trademark, service mark, copyright or other intellectual property owned by Qwest or its Affiliates, except that Customer may communicate that Qwest is one of the underlying carriers from which Customer purchases services if Customer has obtained the prior written consent of the Qwest Law Department.

10.2 Customer must not make any disclosure to any third party or publicize the existence or terms of this Agreement without Qwest's prior written consent and approval. Only Qwest's Executive Vice President of Corporate Communications or an authorized designee may grant authorization to disclose or publicize this Agreement or its terms, and if such authorization is granted, the parties must jointly approve and develop the content and timing of any press releases and all other publicity regarding the subject matter of this Agreement or Customer's relationship with Qwest.

11. Relationship. Neither party may bind the other by contract or otherwise, nor make any representations or guarantees on behalf of the other. The relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise.

12. Limitation of Liability and Disclaimer of Warranties.

12.1 Regardless of the legal theory of liability that is asserted and except for the indemnification obligations hereunder, neither party will be liable for any consequential, incidental, or indirect damages for any cause of action, whether or not the other party was aware or should have been aware of the possibility of these damages. Consequential damages include, but are not limited to, lost profits, lost revenue, loss of business opportunity. The outage credits outlined in the SLA or RSS are Customer's exclusive remedy for any breach by Qwest and Qwest's total liability will not exceed the aggregate amount of any applicable outage credits due under the SLA or RSS for the affected Service. Notwithstanding anything to the contrary hereunder, Customer's payment obligations will not be subject to a cap under this agreement.

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12.2 Qwest disclaims all warranties, including without limitation, implied warranties of title, non-infringement, merchantability or fitness for a particular purpose. Qwest disclaims (a) any liability for loss, damage, or injury to any party as a result of any CPE; and (b) all warranties for CPE.

13. Dispute Resolution.

13.1 A party must bring any legal proceeding relating to this Agreement in a United States District Court, or absent federal court jurisdiction, in a state court of competent jurisdiction, in the location of the non-initiating party's principal place of business. But Qwest may initiate proceedings in Denver, Colorado to collect undisputed amounts billed. In such event, Customer consents to jurisdiction and venue for any such court proceeding in Denver, Colorado.

13.2 If either party initiates a legal proceeding to resolve a billing dispute, the parties will, within five business days, place any disputed and withheld amounts with an Escrow Agent under a mutually agreeable escrow agreement.

13.3 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 relating to this Agreement on a class or consolidated basis or in a representative capacity.

14. Governing Law. Colorado state law, without regard to choice-of-law principles, governs all matters relating to this Agreement.

15. Assignment or Sale. Neither party may assign this Agreement without the other party's prior written consent (which will not be unreasonably withheld or delayed), except: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; (c) to an Affiliate; or (d) to satisfy a regulatory requirement imposed upon a party by a governmental body with appropriate authority; provided that in each case such party gives the other party 30 days prior written notice of such assignment. Additionally, Qwest may assign this Agreement or its rights hereunder, without notice or consent to disclose Confidential Information, for the purpose of: (x) collecting unpaid Customer balances or other funds due and owing Qwest or (y) factoring, financing or assigning its accounts receivable. Any assignee of the Customer must have a financial standing and creditworthiness equal to or better than Customer's, as reasonably determined by Qwest, through a generally accepted, third party credit rating index (i.e. D&B, S&P, etc.)

16. Survival. All terms that by their context are intended to survive the termination of this Agreement will survive.

17. Waiver. A party may waive a right under this Agreement only in a writing signed by an authorized representative of the waiving party. Such a waiver does not waive any future rights.

18. Severability. Any provision of this Agreement held to be unenforceable must be construed as nearly as possible to reflect the original intent of the parties. The remainder of the Agreement will remain in full force and effect.

19. Force Majeure. Neither party is liable for any delay or failure to perform that is caused by an unforeseeable event (other than a failure to comply with payment obligations) beyond the reasonable control of a party (e.g., act of God; fire; flood; labor strike; sabotage; cable cut; material shortages or unavailability; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder) (a "Force Majeure Event"). The affected party will send notice to the other party and is excused from performing under this Agreement only to the extent limited by such Force Majeure Event.

20. Headings. Headings are for convenience only and do not affect the meaning of any terms of this Agreement.

21. Remedies. No right specified in this Agreement limits Qwest's other rights or remedies under this Agreement, at law, or in equity.

22. Third Party Beneficiaries. This Agreement is intended solely for Qwest and Customer, and will not benefit or be enforceable by any other person or entity (e.g., Customer's Affiliates and End Users).

23. Compliance with Laws. In performing its obligations under this Agreement, each party will comply with applicable federal, state, or local laws or regulations relating to the subject matter of this Agreement.

24. Counterparts and Facsimile Signatures. The parties may execute this Agreement by facsimile copy or in any number of counterparts, which together will constitute one agreement. Only Qwest will provide the final version of the Agreement or any amendment for execution.

25. Integration. These General Terms and Conditions, the Service Exhibits, the RSS, Tech Pubs, and Qwest-accepted Order Forms constitute the entire agreement between the Parties and supersede all prior offers or agreements or communications between

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the parties relating to the subject matter of those documents. The following order of precedence will apply in descending order of control: a Service Exhibit, these General Terms and Conditions, the RSS, a Qwest-accepted Order Form, Qwest records, and if applicable, Tech Pubs. Amendments to this Agreement must be in writing and signed by the Parties. Electronic signatures will be accepted only in the form and manner prescribed by Qwest. Notwithstanding the foregoing, any non-disclosure or confidentiality agreement previously entered into by the Parties remains effective according to its terms for information shared between the Parties not covered by the Section of this Agreement entitled "Confidential Information."

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ADDENDUM 1-DEFINITIONS:

"Affiliate(s)" means, with respect to any party, any entity that directly, or indirectly controls, is controlled by, or is under common control with, that party (e.g., directly or indirectly, has power to direct the affairs or management of a party, by ownership of voting securities, as trustee, by contract or otherwise).

"Agreement" means these General Terms And Conditions, and all Addenda, Service Exhibits, RSS, and Qwest-accepted Order Forms.

"Cause" means the failure of a party to perform a material obligation under this Agreement that is not remedied, if curable: (a) in the event of a payment or security default, within five calendar days written notice, or (b) for any other default, upon 30 calendar days written notice (unless a different notice period is set forth in this Agreement). Cause includes, but is not limited to: (a) the Insolvency of a Customer that is a foreign entity (i.e. not incorporated, formed or organized in the United States); (b) any violation of the Sections of this Agreement entitled "Confidentiality" and "Use of Name, Trademarks and Publicity"; (c) failure to comply with any applicable federal, state, or local law or regulation relating to the subject matter of this Agreement; or (d) use of the Services for any purpose or in any manner other than as prescribed in this Agreement. Violations of the sections of this Agreement entitled "Confidentiality" and "Use of Name, Trademarks and Publicity" are not curable.

"Change of Control" means an instance when: (a) any entity having previously Controlled Customer, ceases to do so; (b) any entity acquires Control, or all, or substantially all, of the assets of Customer (e.g., by acquisition, merger, reorganization, operation of law or otherwise) or (c) Customer combines by merger with any other entity. Change of Control excludes any assignment permitted under this agreement.

"Control" or "Controlled" means ownership of 50% or more of any equity interests e.g., voting shares or partnership interests, or the right to exercise 50% or more of the voting rights, of any entity.

"Complete Documentation" means: (a) reasonable detail for the basis of the dispute and the charges subject to the Bona Fide Dispute, (b) the credit to which Customer reasonably believes itself entitled, (c) details of the amounts withheld by Customer pending resolution of such Bona Fide Dispute; and (d) any additional information that Qwest, in its discretion, requires as necessary to support a particular type of dispute. .

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

"Construction" means when Service may not be available due to facilities limitations and it is necessary for Qwest to construct facilities.

"Convenience" means any reason other than Cause.

"CPE" means Customer premise equipment, software and/or other materials associated with the Service.

"Demarcation Point" means the Qwest designated: (a) physical interface between the Qwest Domestic Network and Customer's telecommunications equipment; or (b) physical interface between a third-party carrier connecting the Qwest Domestic Network to Customer's telecommunications equipment.

"End User(s)" mean Customer's end-users or customers.

"Escrow Agent" means U.S Bank, unless Qwest notifies Customer otherwise in writing.

"Expedite" or "Expedited" means Customer's request to Qwest to provision a Service more quickly than the Qwest standard or negotiated interval. An additional Expedite charge will apply if Qwest agrees to provision Service more quickly than the Qwest standard or negotiated service interval.

"FCC1 Tariff" means Qwest Interstate Access Tariff F.C.C. No. 1., which can be viewed at <http://tariffs.qwest.com:8000>.

"Funding" means the expenditure of Qwest capital funds due to lack of network infrastructure availability in order to provide Service to Customer.

"Insolvent" means any of the following events Customer: (a) becomes or is declared insolvent or bankrupt; (b) is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it; (c) makes an assignment for

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the benefit of all or substantially all of its creditors; or (d) enters into an agreement for the extension or readjustment of all or substantially all of its obligations.

"Minimum Service Period" means 12 months following the date Service is made available to Customer, as evidenced by Qwest records. In the case of FR, this means 6 months following the date Service is made available to Customer.

"MRC" means monthly recurring charge.

"NRC" means nonrecurring charge.

"Order Form" means the form of Service order request provided by Qwest, such as an Access Service Request or ASR; or other method of ordering Service as may be prescribed by Qwest.

"Qwest Domestic Network" means the Qwest operated facilities located within Qwest's 14-state local service area listed above in the Section headed Applicable Services, and which consists of transport POPs, physical media, switches, circuits and/or ports that are operated solely by Qwest.

"Rates" means the MRCs and NRCs for the Service.

"Rates and Services Schedule" or "RSS" means the Qwest Corporation Rates and Services Schedule Interstate No. 1, and is the document that contains the standard descriptions, pricing and other terms and conditions for the Services, which can be found at http://tariffs.qwest.com:8000/idc/groups/public/documents/rss/htmltoc_qc_rss1.htm. Qwest reserves the right to modify the RSS.

"Regulatory Activity" means any regulation or ruling by any regulatory agency, legislative body or court of competent jurisdiction.

"Service" means the various optical and packet-switched special access services capable of transmitting 200 kbps or greater in each direction and made a part of this Agreement under a Service Exhibit.

"Service Exhibit" means the contract document specific to an individual Service and included with this Agreement at the time of signature or subsequently added via amendment.

"Service Term" means the specified period of time for which the Service will be provided by Qwest for Customer use as specified in the applicable Qwest accepted Order Form.

"SLA" means the service level agreement for each Service, if applicable, located at <http://www.qwest.com/legal>; SLAs are subject to change. Each SLA provides Customer's sole and exclusive remedy for Service interruptions or Service deficiencies of any kind whatsoever for the applicable Service. Not all Services have a Service-specific SLA.

"SONET" means Synchronous Optical Network.

"Tariff(s)" are documents that contain the standard descriptions, pricing and other terms and conditions for any services that Qwest files with a regulatory commission. You can find Qwest's Tariffs at <http://tariffs.qwest.com:8000> and such other places as Qwest may from time to time designate.

"Tech Pub" means each technical publication specific to a Service, all of which are located at <http://www.qwest.com/techpub/>. Each Service Exhibit stipulates the Tech Pub that applies to that Service, if any.

"Term Plan" means a fixed period service rate plan.

"Termination Charge" means the termination charges detailed in the Service Exhibits.

**QWEST CORPORATION WHOLESALE DATA SERVICES AGREEMENT
INTERSTATE QWEST METRO OPTICAL ETHERNET SERVICE EXHIBIT**

1. General; Definitions. Qwest will provide and Customer will purchase Qwest Metro Optical Ethernet or QMOE[®] service ("Service" or "QMOE") under the Agreement, this service exhibit ("Service Exhibit") and Section 8.8 of the RSS (additional sections of the RSS may include information relevant to the Service), and at the locations specified on an accepted Order Form. Qwest may change the section number or other reference to the RSS section at any time. Despite any such change, the RSS section for Service remains part of this Service Exhibit. Service is subject to Tech Pub 77411 and to the SLA.

2. Service.

2.1 Description. QMOE is a flexible transport service that uses established Ethernet transport technology. QMOE 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"). QMOE extends to the Demarcation Point. Service is available over three designs: (a) "Customer Premises," supporting transmission speeds as low as 5 Mbps and up to 1 Gbps in increments of 10 Mbps from 10 up to 100 Mbps, and in increments of 100 Mbps from 100 up to 1,000 Mbps; (b) "Central Office," supporting transmission speeds of up to 100 Mbps, 600 Mbps and 1,000 Mbps; and (c) "Ethernet with Extended Transport" (DS3 required and purchased separately from QMOE), supporting transmission speeds as low as 5 Mbps and up to 40 Mbps.

2.2 Changes. Customer may add or change Service with an Order Form. Subsequent Order Forms to add or change a Bandwidth Profile, Quality of Service or Protect Routing to an existing Service Term must be coterminous with the existing Service Term. Subsequent Order Forms to increase a QMOE Bandwidth during the Service Term, will not be assessed the QMOE Port NRC, unless the change in bandwidth requires a higher capacity QMOE Port that would result in a QMOE Port NRC; however, the MRC will be changed to the then-current QMOE Bandwidth Profile Charge specified in the RSS. Customer may subsequently decrease the QMOE Bandwidth Profile as low as the originally configured bandwidth without being assessed a Termination Charge. If Customer chooses to decrease the QMOE Bandwidth to a lower bandwidth than originally agreed to before the expiration date of the Service Term, Termination Charges will apply.

2.3 Moves. Customer requests for a physical move of Service to a new location will be treated as a termination of service at the original location. NRCs will apply and Minimum Service Period requirements must be met in the new location. If the remainder of the original Service Term is not long enough after the effective date of the move to meet the Minimum Service Period for the moved Service, then Customer must select a new Service Term. Customer requests 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.

3. Service Term; Termination.

3.1 Service Term. This Service Exhibit will begin on the Effective Date of the Agreement (or an amendment to the Agreement if Customer adds this Service Exhibit after the Effective Date of the Agreement) and will continue until the expiration or termination of the last to expire (or terminate) Service. Each Service ordered, including additions and renewals will have its own Minimum Service Period (as defined in the Agreement) and Service Term (as indicated on an Order Form). If Customer does not issue an Order Form to renew Service to a new Service Term by the expiration of an existing Service Term, Service will continue under the terms of the Agreement and this Service Exhibit and revert to the then-current month-to-month Rates specified in the RSS.

3.2 Termination.

(a) Either party may terminate Service or this Service Exhibit in accordance with the Agreement and RSS. Customer will remain liable for charges accrued but unpaid as of the termination date. If, prior to the conclusion of the Service Term, Service or this Service Exhibit is terminated either by Qwest for Cause or by Customer for Convenience, then Customer will also be liable for any Termination Charges.

(b) If that termination is before the date Service is available for use, the Termination Charge will be those reasonable expenses incurred by Qwest through the date of termination including, but not limited to, the standard installation charges for the Service, regardless of any waivers or promotions extended to Customer based on its completion of the Service Term.

(c) If that termination is during the Minimum Service Period, Customer will pay a Termination Charge of 100% of the Service MRCs being terminated, multiplied by the number of months remaining in the Minimum Service Period, plus 40% of the MRCs multiplied by the number of months remaining in the Service Term after the Minimum Service Period.

(d) If that termination is after the Minimum Service Period, Customer will pay a Termination Charge of 40% of the MRCs multiplied by the number of months remaining in the Service Term.

(e) Service is no longer subject to a Termination Charge once it goes month-to-month after the completion of the Service Term.

4. Rates.

4.1 Standard Rates for Service are set forth in the RSS and the Parties agree that the RSS Web pages containing the QMOE pricing are a part of this Service Exhibit. The actual Rates for any Service elements installed during the first 12 months of the Service Term will be those in effect in the RSS on the date the first Service element ordered under an Order Form is installed, as evidenced by Qwest records ("Phased-In Installation"). Additions or changes to Service beyond the Phased-In Installation period will be at the then-current RSS Rates on the installation date. If Service is renewed for a new Service Term on an Order Form, the Rates will be those in effect at the time the Service is renewed, as evidenced by Qwest's records.

4.2 Customer may also obtain pricing for Service via a Pricing Exhibit as described in section 5.1(d) of the Agreement. In order to receive nonstandard rates, Customer must include the Contract (QI) Number in the Order Form for the Service.