

## CONSTRUCTION SERVICES SPECIFIC TERMS AND CONDITIONS

These Construction Services Specific Terms and Conditions supplement the Procurement Standard Terms and Conditions (together, the "Agreement") and apply to CenturyLink's purchase of Services, as further defined below, from Supplier. This Agreement is made and entered into as of the date it is last signed by both parties ("Effective Date").

### 1.0 SCOPE:

CenturyLink has entered into the Agreement with Supplier as part of its Construction Services program so that Supplier may provide ongoing, continuous services to CenturyLink. These Construction Services Specific Terms and Conditions outline the requirements, duties, and special terms and conditions that CenturyLink requires of all of its suppliers to participate in the Construction Services program.

### 2.0 DEFINITIONS:

"Completion Date" means the date on the Order that Supplier is obligated to complete the Services.

"Consultant" means an architect or other third party engaged by CenturyLink to perform design services, prepare Construction Documents and/or assist in the administration of any Project.

"Construction Documents" means all construction drawings, Project specifications, manuals and other construction documents applicable to the Services and any deliverables to be provided by Supplier to CenturyLink in connection with the Project. Construction Documents are considered Documentation under these Specific Terms and Conditions.

"CSI" means the Construction Specifications Institute.

"Contract Sum" means the total amount that CenturyLink agrees to pay for a Project pursuant to an Order.

"Cost" means the total amount to be paid for Services that is based on a cost plus arrangement, as described below.

"Cost Plus Order" means an order that is based on a cost plus pricing arrangement between CenturyLink and Supplier.

"Fee" means the Cost multiplied by the fee percentage set forth on the applicable Schedule or order.

"Fixed Price" means a fixed sum set forth on an order for a Project.

"Lump Sum Order" means an order that is based on a fixed pricing arrangement between CenturyLink and Supplier.

"Not to Exceed Price" means the "not to exceed" amount set forth in an order for a Project.

"Project" means the Services performed by Supplier pursuant to a single order.

"Retainage" means an amount to be retained by CenturyLink from each payment for a Project until payment by CenturyLink of an Approved Invoice for the Project, which amount will be retained by CenturyLink for the due and punctual performance of Supplier's obligations for a Project.

"Services" means construction work of any kind or nature that CenturyLink issues an order to Supplier to engage Supplier to perform the services described on the order. If Services are referred to as "Work" on an order, "Work" will mean "Services".

"Site" means the location to which the Services relate.

### 3.0 ASSIGNMENT OF WORK:

CenturyLink may issue Services to Supplier pursuant to an order. Supplier will receive a draft order via the system designated by CenturyLink which will describe the Services to be performed by Supplier in connection with a Project; the method by which Supplier will be compensated; the Fixed Price or Not to Exceed Price, as

applicable; the Completion Date, the Site, and the Construction Documents. Supplier must confirm receipt and its intent to respond within one (1) business days following receipt of the draft order from CenturyLink. Despite any contrary statements in the Procurement Standard Terms and Conditions, if Supplier is willing to perform a Project, Supplier will review, comment and /or approve the draft order and deliver it to CenturyLink. The formal order will not be submitted by CenturyLink unless the draft order has been approved by the Supplier and by CenturyLink. The fully executed order, together with the Agreement and any Change Orders, governs the rights and obligations of the parties with respect to the Project.

#### **4.0 CHANGE ORDERS:**

##### **4.1 Notification of Changes.**

Supplier will immediately deliver a written notice to CenturyLink and Consultant whenever it has reason to believe a change in a Project has occurred that will require a Change Order, which notice will clearly specify (a) Supplier's estimate of any necessary change in the Completion Date, (b) Supplier's estimate of any necessary change in the Contract Sum, (c) any other change that Supplier believes must be made and (d) a detailed rationale as to why the changes are required including, if applicable, an itemization of labor, overhead, profit, materials, and costs of Subcontractors and any other information required to evaluate the Change Order. Additional information will be provided by Supplier upon the request of CenturyLink or Consultant.

##### **4.2 Proposal of Changes.**

CenturyLink, Consultant and Supplier may at any time during the Term propose additions, alterations, deductions or deviations to or from any Project or the Construction Documents by issuing a proposed Change Order. Unless otherwise specifically agreed to in writing by CenturyLink, nothing contained in this Section may be construed to authorize Supplier to perform any Service that will cost more than the Contract Sum.

#### **5.0 COMPLETION DATE:**

##### **5.1 Completion Date.**

Supplier will complete each Project no later than the Completion Date set forth in the order. If Supplier fails to complete the Project by the Completion Date, CenturyLink may at its option immediately terminate the Agreement and/or Schedule and/or the order and/or complete all or any part of the Project itself (by using its own employees or by hiring another contractor) and bill Supplier for all related costs.

##### **5.2 Sufficient Personnel / Notification and Correction of Non-Compliance with Completion Dates.**

Supplier will furnish a sufficient quantity of materials, tools, equipment and qualified personnel to complete each Project by its Completion Date. Should the progress of a Project appear to CenturyLink or Consultant to be inadequate to ensure completion by the Completion Date, Supplier will, within seven (7) calendar days after notice from CenturyLink or Consultant, take appropriate steps to put the Project back on schedule. Should Supplier fail to institute appropriate measures, in CenturyLink's or Consultant's reasonable judgment, within such seven (7) calendar day period, or should the measures taken fail to put the Project back on schedule, CenturyLink may, but will not be required to, supplement Supplier's, materials, tools, equipment and/or forces with other, materials, tools, equipment and/or forces and bill Supplier for all related costs. Supplier will coordinate and work together with such forces, materials and/or equipment. CenturyLink's use of such supplemental, materials, tools, equipment and/or forces will not excuse Supplier from performing all of its obligations under the Contract Documents.

## **6.0 CONSULTANT:**

### **6.1 Use of Consultant.**

At CenturyLink's option, CenturyLink may use a Consultant. If CenturyLink decides to use a Consultant on any Project, the Consultant will be identified in the order for that Project or will be identified by CenturyLink in a written notice to Supplier. If CenturyLink does not designate a Consultant for a Project, all duties of Consultant set forth in these Specific Terms and Conditions will be performed by CenturyLink on that Project.

### **6.2 Communication with Consultant.**

Whenever practical, CenturyLink will endeavor to include Consultant in all communications regarding a Project on which Consultant is working. Consultant has no authority, and Supplier may not rely on any communication from Consultant, regarding any modification to the Contract Documents. CenturyLink approval must be obtained by Supplier in accordance with the Contract Documents for all Consultant decisions except with respect to clarifications or interpretations of Construction Documents.

### **6.3 Interpretation of Construction Documents.**

Consultant will be, in the first instance, the interpreter of the requirements contained in the Construction Documents and the judge of Supplier's proper performance of the Services. Consultant may reject any Service which does not conform to the Construction Documents, and to reject any Request for Receipt. In an attempt to reach agreement without resorting to the formal dispute resolution process set forth in this Agreement, claims, disputes and disagreements between CenturyLink and Supplier relating to the Contract Documents and Supplier's execution of or the progress of the Service will be referred initially to Consultant for an opinion which Consultant will render in writing as quickly as possible. CenturyLink will not be bound by any Consultant decision, and any unresolved issues will be determined in accordance with the section of the Agreement titled "Dispute Resolution".

### **6.4 CenturyLink Direction.**

In all circumstances, any information, communication, or directive of CenturyLink will supercede any conflicting information, communication, or directive of Consultant. If any resolution of a Construction Documents question by Consultant will result in increased Costs of any kind to CenturyLink, Supplier will not implement the clarification from Consultant until or if CenturyLink confirms the additional Costs in writing or CenturyLink executes a Change Order.

## **7.0 INVOICES AND PAYMENTS:**

### **7.1 Amounts to be paid for Services.**

Subject to CenturyLink's acceptance of Services, CenturyLink will pay Supplier the Contract Sum, which amount will be either (i) the Cost, plus a Fee, but never greater than the Not to Exceed Price, or (ii) the Fixed Price. The Contract Sum may only be modified by a proper Change Order. CenturyLink will pay the Contract Sum in accordance with the payment terms set forth below. The Contract Sum includes applicable sales, use and excise taxes and the cost of any permits, product licenses, other licenses and certificates required in connection with the Service.

### **7.2 Schedule of Values.**

Unless CenturyLink agrees in advance that it is not required, at the commencement of each Project, Supplier will submit to CenturyLink and Consultant a Schedule of Values in the form attached as Exhibit SV (the "Schedule of Values"). The Schedule of Values will indicate the breakdown of the Contract Sum in accordance with the divisions of work specified by CSI. Unless Consultant or CenturyLink notifies Supplier within ten (10) calendar days after receipt by CenturyLink and Consultant of the Schedule of Values that the Schedule of Values is unacceptable, the Schedule of Values will be deemed approved. Upon receipt of notification of disapproval,

Supplier and CenturyLink and Consultant will promptly work together to prepare a revised Schedule of Values acceptable to Consultant, CenturyLink and Supplier.

### **7.3 Progress Payments.**

Supplier may receive periodic payments of portions of the Contract Sum for each Project at intervals no more frequently than monthly.

### **7.4 Applications for Payment.**

In order to receive payments, Supplier must complete the Application for Payment process using a format approved by CenturyLink in advance, indicating the value of the Services completed by Supplier as of the date of the Application (and since submittal of the last Application), together with any reports, forms and supporting data (such as copies of invoices from Subcontractors, including material suppliers) reasonably required by Consultant or CenturyLink. Supplier will not submit any Approved Invoices until after the Schedule of Values (if required) and the Request for Receipt have been accepted by CenturyLink. Materials supplied by Supplier will be listed separately on the Application. Language included or inserted on an Application or on any other document submitted by Supplier with an Application that conflicts with the terms and conditions contained in the order will not be binding and is null and void.

### **7.5 Taxes.**

Tax that Supplier has paid on materials included in the Service will be included on the Approved Invoice, if applicable, in the tax field, as part of the cost of the materials. Failure of Supplier to itemize all taxes on an Approved Invoice will prohibit Supplier from collecting the taxes from CenturyLink at a later date. Upon request by CenturyLink, Supplier will provide to CenturyLink an original and/or copy of a receipt for all materials.

### **7.6 Submission of Application to Consultant.**

If a Consultant is assigned by CenturyLink, Supplier will send the Request for Receipt to the Consultant for review and verification. Within 3 days after the Consultant receives each Request for Receipt (other than the Final Request for Receipt) the Consultant will respond in writing either: (1) verifying and confirming the Request for Receipt and the amount due to the Supplier; or (2) rejecting the Request for Receipt or portion thereof along with the reasons for the rejection. Such reasons could include, without limitation:

- (a) unsatisfactory performance or prosecution of the Service by Supplier or defective Service;
- (b) liens or claims filed or reasonable evidence indicating the possible filing of claims;
- (c) failure of Supplier to make payments promptly to Subcontractors for labor, materials or equipment; or
- (d) incorrectness of the Application.

Following certification of the Request for Receipt by the Consultant, the Supplier will forward the Consultant's written confirmation of the Request for Receipt to CenturyLink for final approval. Once CenturyLink approves the Request for Receipt in writing, the Supplier may submit an Approved Invoice.

### **7.7 Retainage Amount.**

Unless CenturyLink notifies Supplier in writing that Retainage is required for a Project, there will not be Retainage. If CenturyLink does notify Supplier that there will be Retainage for a Project, the Retainage will be the lesser of ten percent (10%) (or other Retainage amount if CenturyLink notifies Supplier), or the highest amount allowable by law.

## **7.8 Correction of Services.**

If Consultant determines that all or part of the payment specified in any Request for Receipt should not be made, Supplier will immediately correct the problem, at its own expense, remedy any defects in the Service and pay for all damages resulting from the defects, including, but not limited to, additional testing, inspections, compensation for services, and expenses of CenturyLink made necessary by the faulty Service. Supplier and Consultant will work together in good faith to prepare a revised Request for Receipt acceptable to Consultant. Upon resolution of the dispute Consultant will deliver a revised or supplemental certification to the Contract or to be attached to the Request for Receipt and forward to CenturyLink for receipting (approval).

## **7.9 Waiver of Claims.**

In no event will Supplier be compensated for more than the Contract Sum, as modified by any Change Order. Supplier will bring a claim for amounts Supplier claims are due and owing from CenturyLink within one (1) year after issuance of the relevant Application. Any claim(s) not brought by Supplier within this one (1) year period will be waived.

## **7.10 Payment Claims.**

Supplier warrants that no Payment Claims will be filed or maintained by it, Subcontractors or any other third party against any CenturyLink equipment, real estate or other property, including property of third parties, on account of the Service. CenturyLink reserves the right, prior to making any payments or at any time during the Term, to require Supplier to furnish evidence in the form of Exhibit LW "Construction Services -- Affidavit, Release and Lien Waiver" or any format later designated by CenturyLink ("Lien Waiver"), that all Payment Claims for the payment of wages; salaries; and cost of materials, tools, machinery, supplies or labor have been satisfied, released or settled. Any failure by Supplier to submit a Lien Waiver requested by CenturyLink will be a material breach of this Agreement.

## **7.11 Final Application.**

Upon completion of a Project, Supplier will deliver to Consultant and CenturyLink a final Application for Payment (the "Final Application") and will notify Consultant and CenturyLink in writing that the Project is ready for final inspection. At such time, Supplier will deliver to Consultant and CenturyLink the following:

- (a) A Lien Waiver covering all Services included in the Project, including that of all Subcontractors (including suppliers of materials);
- (b) Printed or typewritten operating, servicing, maintenance and cleaning instructions for all Services included in the Project, including individual items of equipment and system operation and maintenance;
- (c) Records specified by CenturyLink or Consultant including, record drawings, other drawings, red-lined prints and as-built drawings, if applicable, on paper and electronically in AutoCAD format;
- (d) A written description of the sequence of controls for all mechanical, electrical, plumbing and other systems;
- (e) An Application for the net remaining Retainage, as applicable;
- (f) Consent of the surety, if any, to final payment;
- (g) Training of CenturyLink's designated employees in the operation of mechanical, electrical, plumbing and other systems;
- (h) Each written warranty with respect to the Project and assignment thereof, certificates of inspections, and bonds for CenturyLink's and Consultant's review;

- (i) Written evidence that all performance tests required in connection with the Project have been successfully completed;
- (j) Certificate(s) of occupancy, if required; and
- (k) Certification by Supplier that the Project has been completed in accordance with the Contract Documents.

#### **7.12 Process for Approval of Final Applications.**

Upon receipt of the last of the items set forth in the previous subsection, Consultant will inspect the Project. The process for payment of the Final Application will be the same as that set forth above for other Applications.

### **8.0 ADDITIONAL DUTIES OF SUPPLIER:**

#### **8.1 Representatives.**

Supplier will supervise and direct the Service using Supplier's best skill and attention. To that end, Supplier will keep on the Site a competent superintendent (to be on the Site full time if so specified in the Construction Documents) that is capable of communication in English ("Supplier's Representative") and any necessary assistants, all of whom will be satisfactory to CenturyLink. Supplier will not replace Supplier's Representative without the prior written approval of CenturyLink. "CenturyLink's Representative" is CenturyLink's project manager assigned to a Project as set forth in the order for the Project or otherwise designated by CenturyLink from time to time. CenturyLink's Representative and Consultant's Representative will act in such capacity only for the individual Project. CenturyLink may enter upon any location where Service is being performed to conduct inspections of the Service at any time to ensure compliance with the Construction Documents.

#### **8.2 Materials Provided.**

Materials provided by Supplier must be new and strictly of the type, manufacturer and quality specified by CenturyLink. Supplier will be responsible for the security of all materials received by Supplier, whether or not received from CenturyLink and whether located on the premises of Supplier, CenturyLink or otherwise. Supplier will be responsible for obtaining and providing to its employees and Subcontractors training on the proper use and installation of all materials, whether supplied by Supplier or CenturyLink.

#### **8.3 Coordination.**

Supplier will coordinate the Services with CenturyLink's Representative and will work with CenturyLink's Representative to establish acceptable communication lines. Supplier will promptly respond to all concerns, issues and questions raised by CenturyLink's Representative.

#### **8.4 Acts or Omissions.**

Supplier will be responsible to CenturyLink for acts and omissions of Supplier's employees and Subcontractors, their agents and employees and other persons performing portions of the Services on behalf of Supplier.

#### **8.5 Inspection.**

Supplier will be responsible for inspection of portions of work already performed on the Site to determine that such portions are in proper condition to receive Services to be performed by Supplier.

#### **8.6 Maintenance of the Site.**

Supplier will confine the Services to areas permitted by law, ordinances, permits and the Contract Documents and will not unreasonably encumber the Site with materials or equipment. Supplier will keep the Site and surrounding

area free from accumulation of waste materials or rubbish and will remove all waste materials, rubbish and any combustibles on a daily basis. Upon completion of the Service, Supplier will remove all waste materials, rubbish, Supplier's tools, construction equipment, machinery and surplus materials from the Site. If Supplier fails to clean up the Site as required in this subsection, CenturyLink may do so or hire another contractor to do so and bill Supplier for the cost of the cleanup.

#### **8.7 Access.**

Supplier will provide CenturyLink and Consultant access to the Service in preparation and progress wherever located.

#### **8.8 Compliance with Polices.**

Supplier will comply, and will cause its employees, agents and Subcontractors and their respective employees and agents to comply, with all CenturyLink or Consultant rules and regulations pertaining to each Site, and all amendments or supplements thereto, including without limitation rules regarding cellular telephone use. Supplier also will comply and will cause Supplier's employees, agents and Subcontractors and their respective employees and agents to comply with all health and safety directives issued by CenturyLink or Consultant while present at a Site, which will be made available to Supplier by CenturyLink, including but not limited to the following sections of the CenturyLink Fire Life Safety Policy (QFLSP):

No smoking policy  
QFLSP-D1 "Fire Protection During Construction"  
QFLSP-E3 "Fire Stopping Requirements"  
QFLSP-A6 "Fire Protection Impairment Program"

#### **8.9 Methods and Procedures.**

When directed by CenturyLink or Consultant, Supplier will prepare, submit and have approved by CenturyLink and Consultant methods of procedure ("MOP") that will include detailed work processes, time frames, and responsibilities. Supplier will comply with any approved MOP and will cause Supplier's employees, agents and Subcontractors and their respective employees and agents to comply with the MOP.

#### **8.10 Emergency Contacts.**

Supplier will maintain and provide to CenturyLink and Consultant in connection with each Project an emergency contact list with names and phone numbers for both business and non-business hours. If CenturyLink experiences an emergency situation impacting service or safety, Supplier will respond and will cause Supplier's employees, agents and Subcontractors and their respective employees and agents to respond in an expedited manner to assist CenturyLink in recovering from an emergency condition.

#### **8.11 Quality Control.**

Supplier will have in place a quality control program as necessary to ensure that all Service is completed in compliance with the Contract Documents. Supplier is solely responsible for quality control. Supplier will submit its quality control program manual to CenturyLink and Consultant for review or information if requested.

#### **8.12 Bond or Security.**

At any time during the Term of this Agreement, CenturyLink may request and Supplier will furnish a performance and/or payment bond or other financial instrument for any specific Job in an amount and on a form to be determined by CenturyLink. The bond must be written by a surety company having at a minimum a "Best's" rating of A- VII and be listed on the Department of the Treasury's Listing of Approved Sureties.

#### **8.13 Use of Information.**

No information or material provided to Supplier in connection with the Service may be used in connection with any other job or project, even if such job or project is for CenturyLink or its Affiliates, without the prior written consent of CenturyLink's Representative.

## **9.0 USE OF SUBCONTRACTORS:**

### **9.1 Submission of Subcontractor List.**

Supplier will submit to CenturyLink and Consultant a list of proposed subcontractors either as a part of bid documents for the Service or as a separate document prior to the execution by Supplier of any subcontract agreement. CenturyLink or Consultant will have ten (10) calendar days after the later of (i) the awarding of the bid or (ii) receipt of Supplier's list of proposed subcontractors to reject all or any proposed subcontractors. Any proposed subcontractor not rejected by CenturyLink or Consultant within such ten (10) day period will be deemed to have been accepted. Any acceptance or rejection of a proposed person or entity by CenturyLink or Consultant will not relieve Supplier of responsibility for the Service.

### **9.2 Contracts with Subcontractors.**

To the extent of the Service performed by a Subcontractor, all provisions of the Contract Documents that apply to the Service being performed by the Subcontractor will apply to the Subcontractor with the same force and effect as they apply to Supplier. Each subcontract agreement will be in writing and will preserve and protect the rights of CenturyLink and Consultant under the Contract Documents so that the subcontracting of the Service to be performed by the Subcontractor will not prejudice such rights. Supplier will make available to each proposed Subcontractor, prior to entering into a subcontract, copies of all relevant Contract Documents including without limitation, in every instance, a copy of this Agreement, applicable Schedule and/or order; provided, that Supplier is not required to provide to any Subcontractor the financial terms of this Agreement or any Schedule and/or order. Supplier will require in each subcontract that, to the extent of the Service to be performed by the Subcontractor, the Subcontractor agrees to be bound by and to comply with all terms and conditions contained in the Contract Documents that apply to the Service being performed by the Subcontractor (including, by specific reference, all change order, subcontractor, indemnification, confidential information, offset, compliance with laws, limitation of liability, dispute resolution, safety, hazardous materials, insurance, warranty, inspection and audit provisions contained in this Agreement) and that the Subcontractor assumes all obligations, liabilities and responsibilities under the Contract Documents jointly and severally with Supplier with respect to the Subcontractor's Service. No subcontracting of any of the Service will release Supplier from any of its obligations contained in the Contract Documents.

## **10.0 WARRANTY:**

### **10.1 Correction of Services.**

Supplier will promptly correct Services identified as defective or incomplete pursuant to the Section of these Specific Terms and Conditions titled "Invoicing and Payments" or any Services which fail to conform in any way to the requirements of the Construction Documents, whether observed before or after payment of the Final Application for the Project including the Service, and whether or not fabricated, installed or completed.

### **10.2 Minimum 12 Month Warranty.**

- (a)** In addition to any other express or implied obligations and assurances under this Agreement, Supplier hereby warrants for a period of twelve (12) months (or longer, if so provided by law, and to the extent provided by law) from and after the later of (i) the date of payment by CenturyLink of the Final Application for each Project, or (ii) the date that the defect was reasonably discoverable, that all labor, workmanship, components, materials and other parts of the Services in or covered by the Project will be free from defects in material and workmanship under normal use and service and will conform in all respects with the requirements of the Contract Documents.



- (b) Repair or Replacement. Upon notice from CenturyLink, Supplier will immediately, at its own expense, repair, correct, or replace:

  - (i) any defective materials supplied by Supplier or any Subcontractor; or
  - (ii) any defects in the Services occurring during the warranty period whether observed before or after payment of the Final Application for the Services and whether or not the Service is already installed or completed.
- (c) Additional Warranty Period. Any repaired or replacement materials will have a warranty period of equal to the greater of: (i) one (1) year from the date of incorporation in the Services, or (ii) the remainder of the original warranty period.
- (d) Payment of Costs to Remedy. Supplier will pay all documented and reasonable costs (including attorneys' fees, additional testing and inspection, and CenturyLink's own costs or compensation paid to third parties) incurred by or on behalf of CenturyLink in identifying a defect in Service or materials found to be the responsibility of Supplier.
- (e) Non-Exclusive Remedy. Establishment of the twelve (12) month period in the subsection above relates only to the specific obligation of Supplier to correct the Services, and has no relationship to the time within which CenturyLink may seek to enforce Supplier's obligations under the Contract Documents or Supplier must comply with the Contract Documents.

### **10.3 Possession of Project.**

Upon payment of the Final Application for a Project, CenturyLink will take possession of the Project and will assume responsibility for security, maintenance, heat, utilities, damage to the Project and insurance. Until such time, unless otherwise specifically provided in the Contract Documents, Supplier will be responsible for all such obligations. Notwithstanding the foregoing, CenturyLink may elect in writing at any time during a Project to place a portion of the Service included in the Project into service as of a date specified in CenturyLink's written notice. In such case, the warranty period set forth in the preceding subsection with respect to that selected portion of the Service only will commence on the date that CenturyLink elects to place the portion of the Service into service as set forth in the written notice. The warranty period for all other portions of the Service included in the Project will remain unchanged and will continue to be governed by the preceding subsection. If CenturyLink elects to place a portion of the Service in a Project into service, Supplier will retain responsibility for security, maintenance, heat, utilities, damage and insurance with respect to the portion of the Service that CenturyLink has elected to place into service unless CenturyLink agrees in writing to accept any or all of these responsibilities.

### **10.4 Correction by CenturyLink.**

If Supplier fails to promptly correct nonconforming Service, CenturyLink may correct the Service itself or hire another contractor to do so and CenturyLink will be entitled to bill Supplier for the cost of correction, including all costs incurred by CenturyLink.

## **11.0 ADDITIONAL INDEMNIFICATION OBLIGATIONS OF SUPPLIER:**

- 11.1 Supplier will indemnify, defend and hold harmless CenturyLink (including its officers, directors, employees and agents), and its Affiliates and customers from and against all suits, actions, fines, damages or claims of any character:

  - (a) for any personal injuries or property damage received or sustained by any person or property arising in whole or in part from the acts or omissions of Supplier, its Subcontractors and/or their respective officers, employees, agents or Affiliates in the performance of Services;
  - (b) because of any act or omission, of Supplier, its Subcontractors and/or their respective officers, employees, agents or Affiliates;

- (c) under the Workers Compensation Act, or any other law, regardless of whether such injuries or damages are caused in part by the negligence of the parties indemnified hereunder; and
- (d) in connection with any breach by Supplier of the Contract Documents or any default by Supplier under this Agreement.  
Supplier will reimburse any indemnified party for any and all costs, settlements, judgments, or expenses incurred by them in defending or investigating any such claim, including attorneys' fees, expert witness fees, investigative and court costs.

## **12.0 ADDITIONAL INSURANCE REQUIREMENTS:**

Supplier will carry and maintain the insurance coverage listed below:

### **12.1 Type of Insurance; Subcontractors.**

Supplier will at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having, at a minimum, a "Best's" rating of A- VII. Supplier will not commence any work hereunder until Supplier has fulfilled all insurance requirements in this section. Supplier will require its subcontractors who perform Work under this Agreement to maintain proper insurance applicable to the type and scope of the Work to be performed. It is expressly understood that Supplier is ultimately responsible for its subcontractors including without limitation ensuring that the appropriate insurance is maintained by its subcontractors.

### **12.2 Umbrella or Excess Liability Insurance.**

Umbrella or Excess Liability Insurance written on an occurrence form in an amount not less than \$5,000,000 each occurrence and \$5,000,000 aggregate.

### **12.3 Work around Railroads.**

Whenever any Service is performed within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy may be required of the Supplier, if determined by the Railroad. Such policy must be issued in the name of the Railroad with such limits as required by the Railroad. In addition, such policy must include the name of CenturyLink as the Supplier/Subcontractor on the declarations page with respect to its interest in the specific Project. The insurance policy must be in form and substance satisfactory both to CenturyLink and the railroad company and delivered to and approved by both parties prior to the entry upon or use of such railroad property.

### **12.4 Colorado Specific Requirements.**

Whenever any Service must be performed in the Colorado State Highway right-of-way, Supplier's policies and certificates of insurance must also name the State of Colorado as an additional insured. Similar coverage must be furnished by or on behalf of Supplier's subcontractor. Copies of such certificates must be available on site during the performance of the Service. This paragraph must appear in all of the Supplier's subcontracts executed in connection with the performance of this Agreement.

### **12.5 All Risk Builders Risk Insurance.**

CenturyLink will effect and maintain "All Risk" builders risk insurance to cover that portion of the Service, materials and equipment incorporated in the Service and upon all materials and equipment on or about the Site, and off-site storage within 1000 feet of the Site which are ultimately intended for permanent use or incorporation in the Service, or incidental to the construction thereof. The builder's risk policy specifically does not provide coverage for any construction manager's or any Supplier's or subcontractor's machinery, tools, equipment, appliances or other personal property owned, rented or used by any construction manager, or any Supplier or subcontractor or anyone employed by Supplier in the performance of the Service. The policy also covers renovations under

construction but does not cover buildings or structures existing prior to the construction of improvements, alterations or repairs.

- (a) The builder's risk insurance policy obtained by CenturyLink will provide sufficient limits of liability to cover the Service. In the event of a loss covered by this insurance and if the loss is due to the negligence of Supplier or any subcontractor, Supplier will be responsible for the first \$10,000 of any such loss.
- (b) CenturyLink releases and waives and will cause its builder's risk property insurers to release and waive any and all right of recovery, claim, action or cause of action against Supplier for any loss or damage to the Service, materials and equipment incorporated in the Service and upon all materials and equipment on or about the Site, off-site storage, and while in transit which are ultimately intended for permanent use or incorporation in the Service, or incidental to the Service. This release and waiver with respect to builder's risk insurance coverage does not apply to the first \$10,000 of any loss if such loss is due to the negligence of Supplier or any subcontractor.

#### **12.6 Insurance Terms**

- (a) Insurers waive subrogation against CenturyLink, its Affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities for the policies described in subsections of the Purchase Order 9.3 (a) Workers' Compensation and (b) Commercial General Liability and Commercial Auto Liability unless such endorsement is prohibited by law or regulation;
- (b) The policy described in subsection Purchase Order 9.3 (b) Commercial General Liability will be primary and not contributory to insurance which may be maintained by CenturyLink; and
- (a) CenturyLink, its Affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections of the Purchase Order 9.3 (b) Commercial General Liability and Commercial Auto Liability and Additional Insurance Requirement 11.1 above Excess/Umbrella Liability.

#### **13.0 COSTS:**

##### **13.1 Application to Cost Plus Orders.**

This Section 13 applies only to Cost Plus Orders.

##### **13.2 Included Costs.**

The Cost include the costs necessarily incurred in the proper performance of the Service and paid by Supplier. The costs must be at rates not higher (and should be less) than the standard paid in the area of the Site and include the following items:

- (a) Direct labor: Costs of on-Site craft and/or field labor and on-Site supervision for the performance of the Service (or, with CenturyLink's prior consent, craft and/or field labor and supervision at off-Site workshops), including the amounts set forth below and all fringe benefits required by collective bargaining agreements.
- (b) Indirect Labor: Costs of project management and field office personnel, including safety personnel, located on-Site and/or directly attributed to the Service including amounts set forth below.
- (c) MOPs: Costs incurred by Supplier in preparing, reviewing, or replying to MOPs, either on-Site or at Supplier's office.

- (d) **Materials and Supplies and Equipment:** Costs of materials, supplies and equipment incorporated in the Service, including costs of transportation and storage. Small tools and equipment will not be considered to have been incorporated in the Service and so may not be billed to CenturyLink in accordance with this subsection; instead they should be billed to CenturyLink below.
- (e) **Rental of Large Tools and Equipment:** Reasonable rental costs of tools, equipment and machinery needed for the Service having a purchase price of at least \$750.00 necessarily used for the completion of the Service. This item does not include those tools normally furnished by workers and small tools and equipment as described below.
- (f) **Bonds, Fees and Insurance:** Premiums for bonds and permit fees paid by Supplier and required in connection with the Service. Insurance required by CenturyLink and paid for by Supplier in connection with the Service. Insurance costs will be allocated by Supplier to all of its jobs, not just CenturyLink jobs, so that only a pro-rata amount of the cost of insurance will be charged to the Service.
- (g) **Subcontractors:** Payments made by Supplier to approved subcontractors for Service. Payments made to subcontractors must be determined by competitive bidding or, if approved by CenturyLink in writing in advance, on a cost reimbursable basis with the fee agreed to by CenturyLink in writing.
- (h) **Debris Removal:** Cost of removal of debris from the Site.
- (i) **Protection:** Costs of arrangements necessary for protection of the public including signs and barricades.
- (j) **Travel:** Transportation, hotel and meal costs when Supplier's employees necessarily are away from their residence overnight performing the Service, or a per diem charge per employee if approved by CenturyLink in writing in advance. Mileage (using the standard mileage rate as determined from time to time by the Internal Revenue Service) when driving between the Site and the closer of (i) an employee's home or (ii) Supplier's principal office, but only if the home or office is at least forty (40) miles away from the Site. Air fare will only be reimbursed at the lowest available coach rate if approved by CenturyLink's Representative in writing in advance.
- (k) **Taxes:** Sales and use taxes on the transaction between Supplier and CenturyLink as set forth in the Contract Documents. These taxes will be paid by Supplier and identified on the appropriate lines of the Application and Schedule of Values. Taxes paid by Supplier in connection with materials and subcontracted labor (i.e., any transaction between Supplier and its suppliers) are considered part of the cost of the materials or labor and included in the cost of the materials or labor listed on the Schedule of Values.
- (l) **Other:** Any other cost specifically identified in the Contract Documents as reimbursable.

### **13.3 Allocated Costs.**

The following items paid for by Supplier may be allocated to a Project on the basis of labor hours charged to the Project, but only to the extent that they are based on actual costs. These costs will be allocated by Supplier to all of its jobs, not just CenturyLink jobs, so that only a pro-rata amount of the costs will be charged to the Service:

- (a) Group insurance limited to health, dental, vision, life, disability, accidental death and dismemberment.
- (b) FICA and Medicare at the statutory rate.
- (c) State Unemployment.

- (d) Workers Compensation net of all premium, volume and other discounts granted to Supplier.
- (e) General Liability if assessed on the basis of wages.
- (f) Vacation, holiday, and sick leave accruals
- (g) Qualified 401(k), pension, profit sharing, and retirement benefits under a written plan.
- (h) State and local taxes assessed to employers on the basis of the number of employees.

#### **13.4 Excluded Costs.**

Supplier will not include any of the following items in the Cost unless specifically allowed in the Contract Documents:

- (a) Compensation of Supplier's officers, managers (other than Supplier's Representative), safety personnel, estimators, auditors, accountants, purchasing and contracting agents and other employees at Supplier's principal office or branch offices, except employees performing those specific tasks for CenturyLink as set forth in this Section or in a Schedule or order.
- (b) Overhead or general expenses of any kind including without limitation estimating, scheduling, project, or payroll accounting services, of the Supplier's principal or branch offices other than the field office, except as specifically allowable in an order.
- (c) Any part of Supplier's capital expenses, including interest on Supplier's capital used in connection with the Service.
- (d) Automobile costs, radios and mobile phones, warranty cost accruals, safety training, employee drug testing, safety personnel, human resources personnel, hiring fees, new hire expenses, clerical salaries, and bonuses.
- (e) Costs incurred due to the negligence of Supplier, any subcontractor, or anyone employed by them, including without limitation the correction of defective Service or the disposal of materials or equipment wrongly supplied.
- (f) Costs incurred by Supplier to enforce a subcontract or purchase order guarantee or warranty applicable to the Service or costs incurred by Supplier in complying with its warranty and indemnification obligations contained in the Contract Documents.
- (g) Other costs not specifically included in this Section or in an applicable order.
- (h) Costs in excess of the Not to Exceed Cost identified on an individual order as the same may be modified by properly executed Change Orders.
- (i) Costs incurred during the guarantee or warranty period in the event that Supplier is required to enforce a subcontract or purchase order, guarantee or warranty, or in the event that Supplier is required to honor any agreements or warranties applicable to Service performed by its own forces.
- (j) Sales and use taxes on the transaction between Supplier and CenturyLink. These taxes will be paid by Supplier and identified on the appropriate line of the Application. CenturyLink will reimburse Supplier for the actual amount of sales and use taxes incurred. Taxes paid on material and subcontract work (i.e., the transaction between Supplier and its suppliers) are considered part of the cost of that material and service and are included in the Cost.

#### **14.0 BACKGROUND SCREENING.**

- 14.1** Supplier will utilize thorough screening and selection of all Supplier Personnel assigned to perform services for CenturyLink, including appropriate background screening. The screening procedure will include an inquiry of official government record repositories for any federal, state, and local felony or misdemeanor adjudication (e.g., conviction, deferred judgment, nolo contendere or finding of criminal liability by a court of competent jurisdiction) and/or pending dispositions for all areas of residence/employment over the last seven (7) years, or longer if commercially feasible and the information is available through public records.
- 14.2** Supplier will consider all of the information provided from a background check when determining if the Supplier Personnel will provide services for CenturyLink. Supplier will not utilize any Supplier Personnel whose background screening indicates that the person has a material history of adverse credit, criminal adjudication as described above, or if the Supplier has any information which suggests that such person is unqualified, dishonest, untrustworthy, unreliable, or has any history of violence.
- 14.3** If Supplier Personnel are based outside of the U.S. and such credit and/or criminal checks are not available or applicable within the Supplier's country of operation, Supplier will notify CenturyLink of this fact and make every effort to utilize Supplier Personnel who could reasonably meet these standards. These efforts should include alternative screening to include verification of previous employment and education. Supplier must maintain security/criminal investigation results for review by CenturyLink upon request. Details of actual results will remain confidential.

#### **15.0 NOTICE:**

Whenever any notice, consent, approval, request, demand or authorization and the like (collectively, "Notice") is required or permitted under this Agreement, the same must be in writing. Notice must be delivered in person, by certified mail, return receipt requested, postage prepaid or by a nationally recognized overnight delivery service to the parties at the addresses listed below in the Signature Block or at such other addresses as may be later designated by notice.

#### **16.0 CONFLICT:**

In the event of a conflict between these Specific Terms and Conditions and the Purchase Order Terms and Conditions, these Special Terms and Conditions shall control.

#### **Signature Block**

The parties have caused this Agreement to be executed as of the Effective Date.

CenturyTel Service Group, LLC, a Louisiana limited liability company

Supplier \_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print or Type Name of Signatory)

\_\_\_\_\_  
(Print or Type Name of Signatory)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Execution Date)

\_\_\_\_\_  
(Execution Date)

\_\_\_\_\_  
Address for Purposes of Notices:

\_\_\_\_\_  
Address for Purposes of Notices:

\_\_\_\_\_

With a copy to:

CenturyLink Law Department  
Director, Procurement Law Group  
Agreement # \_\_\_\_\_

5454 W. 110th Street  
Mailstop: KSOPKJ0701-722  
Overland Park, KS 66211  
Fax:(913) 345-6683

**EXHIBIT LW**  
**AFFIDAVIT, RELEASE AND LIEN WAIVER**

**Agreement No.** \_\_\_\_\_  
**Supplier:** \_\_\_\_\_  
**Job No.** \_\_\_\_\_

This Affidavit, Release And Lien Waiver (the "Affidavit") is executed and delivered to CenturyTel Service Group, LLC ("CenturyLink") in connection with the Construction Services Specific Terms and Conditions, dated \_\_\_\_\_ (the "Agreement") between CenturyLink and \_\_\_\_\_ ("Supplier"). Any definitions not defined in this Affidavit shall have the meaning given to them in the Agreement.

1. Supplier has supplied labor and/or materials in connection with the Job identified above (the "Job") performed pursuant to the Agreement.
2. This Affidavit is delivered to CenturyLink to induce CenturyLink to pay to Supplier, and in consideration of receipt by Supplier, of \$ \_\_\_\_\_ (the "Payment"). Supplier acknowledges that upon receipt of the Payment Supplier has been paid for all of Work performed under the Agreement through the date of this Affidavit.
3. Supplier for itself, its successors and assigns, and on behalf of all persons able to claim through or under Supplier: (a) waives, relinquishes and releases all liens and right or claim to a lien for Work (including without limitation, for purposes of this entire Affidavit, any labor performed or materials supplied) furnished in connection with the Agreement through the date of this Affidavit; (b) agrees to save CenturyLink harmless from all liability, costs and expenses, including reasonable attorneys' fees, to: (1) discharge (by bond or otherwise) or to defend suit to enforce, any mechanics' or materialmen's lien or claim to or right of action for such lien which may be filed as a result of or in connection with any Work performed in connection with the Agreement by, through or under Supplier through the date of this Affidavit; and (2) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly in connection with any Work performed in connection with the Agreement by, through or under Supplier through the date of this Affidavit; and (c) hereby releases CenturyLink, its successors and assigns and any lender who may now or hereafter have a security interest in the CenturyLink property affected by the Job, from any claim, right, action, liability or lien which might accrue under the laws of the State in which the Job was performed located in connection with any Work performed in connection with the Agreement by, through or under Supplier through the date of this Affidavit.
4. Supplier warrants and represents that: (a) all materials delivered to the Job by or for Supplier are for use only for the Job; (b) title to all Work covered by the Payment, whether or not incorporated in the Job, is vested in CenturyLink, free and clear of all liens and claims (including, without limitation, mechanics' or materialmen's liens and claims), security interests or encumbrances; (c) all taxes applicable to the Work covered by the Payment have been fully paid; and (e) all laborers, mechanics, subcontractors, materialmen and suppliers for all Work covered by the Payment, and for any indebtedness connected therewith, for which CenturyLink could be responsible have been paid in full.
5. The person signing this Affidavit is duly authorized and empowered to sign and execute the Affidavit on behalf of Supplier.



**Supplier:**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print or Type Name of Signatory)

\_\_\_\_\_  
President  
(Title)

\_\_\_\_\_  
(Execution Date)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT SV**  
**CENTURYTEL SERVICE GROUP, LLC**  
**CONSTRUCTION SERVICES**  
**SCHEDULE OF VALUES OF WORK**

Submitted with Application No.:\_\_ Date: \_\_\_\_\_ Period covered by Application: \_\_\_\_\_

Name of Project: \_\_\_\_\_ Project Number: \_\_\_\_\_

Supplier Name: \_\_\_\_\_ ("Supplier")

[illegible]

**EXHIBIT AP**  
**CENTURYTEL SERVICE GROUP, LLC**  
**CONSTRUCTION SERVICES**  
**SWORN APPLICATION FOR PAYMENT**

Application No.: \_\_\_\_\_ Date: \_\_\_\_\_ Period covered by Application: \_\_\_\_\_  
Name of Project: \_\_\_\_\_ Project Number: \_\_\_\_\_  
Supplier Name: \_\_\_\_\_ ("Supplier")

**AGREEMENT SUMMARY**

The Construction Services Specific Terms and Conditions (the "Agreement") dated \_\_\_\_\_ between CenturyLink and Supplier.

Original Contract Sum		\$	_____
Change Orders Approved to Date	+/-	\$	_____
Contract Sum as of this Date		\$	_____

All capitalized terms in this Application that are not defined in this Application shall have the definitions given to the in the Agreement.

**CERTIFICATE OF SUPPLIER**

I, \_\_\_\_\_, am the \_\_\_\_\_ (title) of Supplier, a \_\_\_\_\_ (type of organization), and I hereby certify that:

1. I am authorized to make this certification on behalf of Supplier;
2. All items, units, quantities and costs of labor and materials shown in this Application are correct;
3. All Work indicated in this Application (including without limitation labor and materials) has been supplied by Supplier in accordance with the terms and conditions of the Contract Documents;
4. All bills and charges owed by Supplier to Subcontractors in connection with the Work included in prior Applications have been paid, except as noted on the attached Statement of Unpaid Accounts, if any;
5. All bills and charges owed by Supplier to Subcontractors in connection with the Work included in this Application will be paid within 10 calendar days after payment by CenturyLink of this Application; and
6. If this is a Final Application, (a) all of the Work required by the Contract Documents has been completed in accordance with the Contract Documents, (b) all bills for labor and materials owed by Supplier to Subcontractors in connection with the Work have been fully paid, (c) evidence of such payment is attached, (d) Lien Waivers from Supplier and all Subcontractors are attached, and (e) the Lien Waivers state the dollar amount of all payments to Supplier and any Subcontractor in connection with the Work.

Supplier Signature: \_\_\_\_\_

**PAYMENT INFORMATION**

	AMOUNT	TAX	TOTAL
1. Value of Work Completed to date: (Column 8 from Schedule of Values)	\$	\$	\$
2. Value of Work Completed this Application	\$	\$	\$
3. Amount of Retainage Retained (or Released) this Application	XXX	XXX	\$
4. Total Retainage to Date	XXX	XXX	\$
5. Total Payment Requested this Application (Line 2 minus line 3)	XXX	XXX	\$

## CONSULTANT'S CERTIFICATE OF PAYMENT

In accordance with the Agreement between Consultant and CenturyLink and the Contract Documents, I have examined the Work for which payment is requested in this Application number \_\_\_\_, dated \_\_\_\_\_ and I recommend payment of the Total Payment requested in this Application.

**Consultant Name:**

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(Authorized Signature)

(Title)

---

(Print or Type Name of Signatory)

(Execution Date)