Pole Attachment Amendment

**to the Interconnection Agreement between**

**Qwest Corporation dba CenturyLink QC and**

**for the State of Utah**

This is an Amendment (“Amendment”) to the Interconnection Agreement between Qwest Corporation dba CenturyLink QC (“CenturyLink”), a Colorado corporation, and (“CLEC”). CenturyLink and CLEC shall be known jointly as the “Parties”.

## RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement (“Agreement”) which was approved by the Utah Commission; and

WHEREAS, the Parties sometimes place and maintain poles or pole lines upon or along the same highways, streets or alleys and other public or private places for the purpose of supporting the wires and associated facilities used in their respective businesses; and

WHEREAS, the Parties desire to cooperate in establishing the common use of poles consistent with and in furtherance of and compliance with the rules and policies of the Public Service Commission of Utah; and

WHEREAS, access to poles is dependent upon considerations of safety, reliability, capacity and generally applicable engineering standards;

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

###### Amendment Terms

The Agreement is hereby amended by adding terms, conditions and rates for Pole Attachments as set forth in Attachment 1 and Exhibit A, to this Amendment, attached hereto and incorporated herein by this reference.

**Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by CenturyLink. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met. Additionally, CenturyLink shall implement any necessary billing changes within two (2) billing cycles after the latest execution date of this Amendment, with a true-up back to the latest execution date of this Amendmentby the end of the second billing cycle. The Parties agree that so long as CenturyLink implements the billing changes and the true-up as set forth above, the CLEC's bills shall be deemed accurate and adjusted without error.

###### Further Amendments

Except as modified herein, the provisions of the Agreement shall remain in full force and effect.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**Entire Agreement**

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

**Applicable Law**

The Parties agree that this Amendment shall be interpreted according to the laws of the State of Utah without consideration of the choice of law rules thereof. Judicial proceedings instituted pertaining to this Amendment shall be instituted only in the state or federal courts located in the State of Utah.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Qwest Corporation dba CenturyLink QC

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Signature Signature

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Title Title

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Date Date

## ATTACHMENT 1

## POLE ATTACHMENT FOR THE STATE OF UTAH

**SECTION 1. DEFINITIONS**

“Attachment(s)” means Pole Attachment(s) as defined in R746-345-2.C of the Utah Administrative Rules.

“Audit” includes a periodic examination of Pole Owner’s poles occupied by Licensee and any of Licensee’s Attachments or Equipment attached to such poles for the purpose of i) verifying the presence or location of all Attachments and any other pole-mounted Equipment of Licensee (“System Audit”), or ii) a special examination for cause to determine whether Licensee is in compliance with the requirements and specifications of Section 3.4 of this Amendment or any other obligation of Licensee under this Amendment (“Special Audit”).

“Electronic Notification System” or “ENS” means the electronic system or combination of electronic systems that may be approved by the Commission and adopted in Utah. When adopted, the Parties must utilize ENS to submit applications for permission to attach, relocate, or remove Equipment under the terms of this Amendment, and to respond to requests for work to be performed.

“Equipment” means all devices, articles or structures necessary to operate the business of the Parties including, but not limited to, antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, materials, appurtenances, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories.

“Fee Schedule” means the fees and charges set forth in Exhibit A attached hereto as may be amended from time to time in accordance with R746-345-3.A. of the Utah Administrative Rules.

“Licensee” means the specific Party named herein that has been granted access to the Pole Owner's poles pursuant to this Amendment or who is seeking or has obtained permission to place Equipment upon Pole Owner's poles as provided in Section 3 of this Amendment.

“Make-ready Work” means all engineering, inspection, design, planning, construction, or other work reasonably necessary to prepare poles for the installation of Licensee’s Attachments, including without limitation, work related to transfers, rearrangements and replacements of existing poles or Equipment, and the addition of new poles or Equipment.

“National Electrical Safety Code” or “NESC” means the current edition, and any supplements thereto and revisions or replacements thereof, of the publication, so named, published by the Institute of Electrical and Electronics Engineers, Inc., for the purpose of safeguarding persons and property during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

“Non-recurring Charges” means legally authorized and identifiable amounts payable by Licensee under this Amendment other than rental charges.

“Pole Owner” means an entity having ownership or control of poles used, in whole or in part, for any electric or telecommunications service.

“Unused Equipment” means any Equipment situated on Pole Owner’s poles, that Licensee has ceased operating or utilizing in the normal course of furthering the purposes of its business.

“UAR” means the Utah Administrative Rules.

## SECTION 2. SCOPE OF AGREEMENT

2.1 Poles; Geographic Scope - This Amendment shall apply to all areas served by the Parties in the State of Utah and shall cover all poles belonging to each of the Parties within Utah which are presently commonly used, as well as poles which are now existing or which shall hereafter be erected in areas mutually served when such poles are included within the scope of this Amendment in accordance with its terms.

2.1.1 This Amendment applies to the use of the Parties’ poles only. The use of electric transmission facilities, other than transmission poles, is expressly excluded from coverage under this Amendment. Any requests for permission to use excluded transmission towers, conduits, and other structures, will be considered individually and, if granted, shall be covered by a separate amendment.

## 2.2 Attachments; Purpose - Each Party’s use of the other Party’s poles shall be confined to the Attachments which Pole Owner has given Licensee written permission to install or as otherwise provided pursuant to the terms and conditions of this Amendment.

2.3 Reservation of Space - Pole Owner may reserve space on its poles if such reservation is consistent with a development plan that reasonably and specifically projects and identifies a need for that space in the provision of its core utility service. In granting permission to use a pole or poles upon which space has been reserved, Pole Owner shall inform Licensee of the space reservation. Pole Owner shall permit use of its reserved space until such time as Pole Owner has an actual need for that space, when Pole Owner may recover the reserved space for its own use. Pole Owner shall give the displaced Licensee commercially reasonable notice of the reclamation of space as well as the opportunity to make alternate arrangements, if available, including but not limited to allowing Licensee to pay for any reasonable modifications needed to continue to accommodate the Attachments that would otherwise be displaced.

# SECTION 3. USE OF POLES

## 3.1 Application for Permission to Install Attachment - With the exception of customer service drops, before Licensee places an Attachment upon any of Pole Owner's poles, Licensee shall request permission from Pole Owner in writing and submit payment for all applicable fees, pursuant to the Fee Schedule (attached as Exhibit A), upon receipt of an invoice from Pole Owner. A form of the invoice may be accessed at the following URL: [http://www.CenturyLink.com/wholesale/pcat/poleductrow.html](http://www.qwest.com/wholesale/pcat/poleductrow.html).

3.1.1 Licensee shall make its written application to Pole Owner at the address set forth in Article XI. The written application form may be accessed at [http://www.CenturyLink.com/wholesale/pcat/poleductrow.html](http://www.qwest.com/wholesale/pcat/poleductrow.html), Substantive changes to the written application shall be submitted to the Commission for approval as contemplated by the Commission rules. The application shall contain all required information including: the specific Equipment to be installed, the map number (to the extent that it is identifiable or provided by Pole Owner and part of the pole number), both Parties’ pole numbers (to the extent that the pole numbers are on the pole and identifiable as the Parties’ pole numbers), street address of nearest physical location identifier of the poles in question, the space desired on each pole, and any additional information requested by Owner as reasonably necessary to properly review the request for attachment. Pole Owner shall not unreasonably request such additional information. Licensee shall not unreasonably refuse to provide such additional information.

3.1.2 Additional permitting applications for overlashing are not required for a Licensee in its existing pole space. The Licensee will provide a fourteen (14) Day prior notice to the Pole Owner of the proposed overlashing, providing information (e.g., pole identification numbers for poles to be overlashed, identification of the type or specifications for the Equipment that is to be installed, etc.) needed by the Pole Owner to monitor and maintain its pole facilities

3.1.3 Third Party overlashing is not permitted without the third party submitting, to the Pole Owner, its own application for its attachments and paying any applicable fees and appropriate rental payments for its attachments to the Pole Owner.

3.1.4 In the event the Commission approves an ENS, the Parties will use the approved ENS to submit, approve and/or deny applications for permission to attach, relocate or remove Equipment and will follow all procedures required by such ENS.

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## 3.2 Licensee’s Right to Install Equipment - The Pole Owner shall process permit applications and provide estimates of the costs of Make-ready Work in accordance with R746-345-3(C) of the Utah Administrative Rules.

3.2.1 If the Pole Owner rejects the application, the Pole Owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the Pole Owners stated reasons are sufficient grounds for rejection.

3.2.2 If notice is not received from Pole Owner within the above mentioned time frames, Licensee must check back with the Pole Owner before it can proceed with installing the Attachment and can appeal to the Commission for permission to proceed.

3.2.3 After processing, Pole Owner shall inform Licensee that the application has been approved or denied by returning the application with an appropriate notation to the Licensee at the address set forth in Article XII. Any denial of an application by the Pole Owner must be in writing and describe with specificity the lack of pole capacity, safety or reliability problems, or generally applicable engineering standards that led to the denial of the application.

3.2.4 Licensee shall have the right, subject to the terms of this Amendment, to install, maintain, and use the Equipment only as specified in the approved application, upon the pole(s) identified therein.

3.2.5 Licensee shall have the right to install service drops without prior approval by Pole Owner. This would include service drops made from poles on which the attaching entity may not originally have had an attachment, as long as the pole is adjacent to poles on which the attaching entity does have authorized attachments. Prior notification is not required for the attachment of service drops where the attacher has an existing pole attachment. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except for filing applications and payment of fees (unless the service drop is the Licensee’s only attachment to the pole, in which case application and rental fees shall apply), and shall submit notification to Pole Owner on a quarterly basis. Notwithstanding the above, no notification shall be required for service drops that are self-supporting wire or wires that do not require the use of messenger strand and a lashed cable. Required notifications of service drop installations shall contain information identifying the pole to which the service drop was added.

3.2.6 If the Licensee rejects the Make-ready Work estimate as discussed in R746-345-3(C)8 the applicant may, at its own expense, use approved contractors to self-build the required Make-ready Work in lieu of Pole Owner performing same, with the following stipulations: 1) Make-ready Work plans must be approved by Pole Owner and conducted by a Licensee-chosen/ Pole Owner-approved contractor (which approval shall not be unreasonably withheld, conditioned or delayed) on a schedule shared with Pole Owner; 2) Pole Owner will inspect the Make-ready Work activity at Licensee’s expense at the rate set forth on Exhibit A; 3) Licensee will provide Pole Owner with a legible copy of drawings that reflect the Make-ready Work; and 4) Pole Owner will use Licensee-provided drawings and written documentation to update Pole Owner property records.

3.2.7 Pole Owner will approve or decline Licensee’s Make-ready Work plans in no more than fourteen (14) Days after receipt. When modification of a pole is necessary, ownership of the modified pole vests with the Pole Owner.

## 3.3 Labeling of Poles and Attachments - Pole Owner and Licensee shall conform to Utah Administrative Rule R746-345-4 pertaining to pole and attachment labeling. When Pole Owner renumbers a pole, it shall provide written notice of the new pole number and cross-reference to the old pole number and location to Licensee within thirty (30) Days. When the Pole Owner sells a pole or poles to a third party, such sale shall be documented by a Bill of Sale or other legal document and the Licensee shall be provided with the name and contact information for the new pole owner within thirty (30) Days of the sale. Pole Owner shall also provide to Licensee a detailed list of poles sold which includes pole numbers and any other available information which will assist Licensee in identifying the specific poles sold.

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## 3.4 Conformance to Requirements and Specifications - Licensee shall, at its own sole risk and expense, place and maintain its Equipment upon the poles in conformity with the requirements and specifications of the NESC, telecommunications industry standards, and other applicable laws, as well as any additional construction standards approved by the Commission. Licensee agrees that, consistent with Commission rules and industry practice and in consideration of safety and service concerns, twisted pair copper cable or wire should be the lowest Attachment on Pole Owner’s poles. All other cable or wire Attachments should be placed above twisted pair copper cable.

3.4.1 Licensee shall ensure that all overlashes conform with the construction and other standards and terms set forth in this Amendment and Licensee shall be responsible for any nonconformance whether made by Licensee or by a third party overlasher.

3.5 Access to Electric Utility Space - Unless Licensee is an electric utility or is using a qualified electrical contractor pre-approved by electric utility, Licensee shall not enter the electric utility space on Pole Owner’s poles for any purpose. When the Equipment sought to be installed on a pole bearing electric facilities is a wireless antenna, which is to be installed at the pole top or otherwise in or above the electric utility space, Licensee shall make special arrangements with the Pole Owner for installation of the wireless antenna by electric utility employees or qualified electric contractors approved by the electric utility. The electric utility shall provide a list of qualified electric contractors. A Licensee may request an electric contractor be added to the list. The electric utility shall respond to such request within thirty (30) Days. Installation work in the electric utility space to be performed by employees of the Pole Owner shall be performed pursuant to a separate installation agreement.

3.6 - Grounding - If Licensee requires grounding on an existing pole where a grounding conductor does not exist, Licensee shall request the Pole Owner to install grounding at the sole expense of Licensee. If the Pole Owner is unable to install said grounding within thirty (30) Days of the date requested, or sooner if necessary to meet the Commission’s service quality requirements, Licensee may hire qualified electrical contractors to perform this work. Licensee, its employees and its contractors, shall at all times exercise Licensee’s rights and perform Licensee’s responsibilities under the terms of this Amendment in a manner that treats all electric facilities of the Pole Owner as energized at all times. Licensee shall assume complete responsibility for its employees’ or contractors’ conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by Licensee’s employees and contractors. Licensee shall indemnify, defend, and hold Pole Owner harmless from any liability of any sort derived from Licensee or Licensee’s employees’ or contractors’ failure to abide by the terms of this paragraph.

3.7 - Nonconforming Equipment - If any Attachment is not placed and maintained in accordance with the Requirements and Specifications of Section 3.4, upon notice by Pole Owner, Licensee shall timely perform all work necessary to correct conditions of Licensee’s noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee’s regularly scheduled maintenance activities or under a plan approved by Pole Owner, unless such noncompliance creates an immediate safety or other threat as described below. Any such work will be performed at Licensee’s sole risk and expense. Pole Owner reserves the right to perform or authorize work necessary to bring Licensee’s Attachments into compliance upon Licensee’s failure to timely do so. Pole Owner will attempt to notify Licensee electronically or in writing prior to performing such work whenever practical.

3.7.1 If Pole Owner determines such conditions pose an immediate threat to the safety of utility workers or the public, interfere with the performance of Pole Owner’s or other pole attachers’ service obligations, or pose an immediate threat to the integrity of Pole Owner’s or other pole attachers’ poles or Equipment, Pole Owner may perform or authorize such work and/or take such action that it deems necessary without first giving written or electronic notice to Licensee and without subjecting itself to any liability, except to the extent of Pole Owner’s negligence or willful misconduct. As soon as practicable thereafter, Pole Owner will advise Licensee in writing of the work performed or the action taken and will endeavor to arrange for the accommodation of any affected Attachments. Licensee shall be responsible for paying Pole Owner or other pole attachers, if applicable, upon demand, for all costs incurred by Pole Owner or other pole attachers for all work, action, and accommodation performed by Pole Owner or other pole attachers under this Section.

3.8 Time to Complete Installation - Except as otherwise agreed to by the Parties in good faith, Licensee shall complete the installation of its Attachments upon the pole(s) covered by each approved application within ninety (90) Days of approval by Pole Owner. In the event Licensee should fail to complete the installation of its Attachments within the prescribed time limit, the permission granted by Pole Owner to place such Attachments upon Pole Owner’s pole or poles shall terminate and Licensee shall not have the right to place such Attachments upon the pole or poles without first reapplying for and receiving permission to do so, all as prescribed in Section 3.1 as applicable to the initial application.

3.9 Make-ready Work - If in the reasonable judgment of Pole Owner the accommodation of any of Licensee's Attachments necessitates Make-ready Work, in the response to Licensee’s application Pole Owner will indicate the Make-ready Work that will be necessary to accommodate the Attachments requested and the estimated cost thereof within the application processing time period identified in Section 3.2. If Licensee is willing to bear the cost of all Make-ready Work necessary, as determined by Pole Owner, Licensee shall so indicate via ENS or in writing within thirty (30) Days of the date of Pole Owner’s response to Licensee’s initial application. Pole Owner will provide Licensee an estimated completion date for any Make-ready Work, taking into account the overall scope of the Licensee’s project, the volume of applications received from other licensees, as well as the availability of crews to perform the work. The Licensee and the Pole Owner shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet the Licensee’s project requirements. At Licensee’s option, Licensee may request to perform the Make-ready Work using plans and contractors pre-approved by Pole Owner consistent with this Amendment.

3.9.1 Pole Owner will perform such Make-ready Work as may be required and Licensee will reimburse, upon demand, Pole Owner for the entire expense thereby actually and reasonably incurred. Licensee shall pay the costs of all Make-ready Work undertaken by Pole Owner where such work is initiated as a result of the proposed installation of Attachments on any poles without regard to whether Licensee elects not to use the pole or poles after Make-ready Work has commenced. An itemized statement detailing the actual material, hours, equipment costs, and any other associated costs will be provided to Licensee for payment of Make-ready Work.

3.10 Pole Owner’s Rights to Use Poles - Pole Owner reserves to itself the right to maintain the poles and to operate its Equipment thereon in such manner as will best enable it to fulfill its own core service requirements, and Pole Owner shall not be liable to Licensee or Licensee’s customers for any interruption to Licensee's service or for any interference with the operation of Licensee's Equipment arising in any manner, from the use, maintenance, and repair of the poles and the Equipment thereon or from the removal of Attachments or other Equipment from the poles by Pole Owner in accordance with the provisions of this Amendment, except for Pole Owner’s negligence or willful misconduct. Pole Owner will, however, except in cases of emergency, use reasonable efforts to contact Licensee prior to making changes that will affect Licensee’s Attachments, but in any event will contact Licensee as soon as practicable thereafter.

3.11 Third-party Consents, Permits, Licenses, Easements, Rights-of-way or Grants - The right of access to Pole Owner’s poles granted by this Amendment does not include any right of access to the land upon which the pole is situated nor does it include any right to cross the land from pole-to-pole with Licensee’s Equipment and such access rights are specifically disclaimed. Licensee is solely responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses, easements, rights-of-way or grants that are necessary for the lawful exercise by Licensee of the permission granted by Pole Owner in response to any application approved hereunder. Licensee agrees to indemnify, defend and hold harmless Pole Owner against and from any and all third party claims, demands, law suits, losses, costs and damages, including attorney’s fees, to the extent arising from Licensee failure, or alleged failure to have the requisite authority.

3.12 Interference with Pole Owner’s or other Licensees’ Equipment - If, in Pole Owner’s reasonable judgment, Licensee's existing Attachments on any pole interfere with Pole Owner’s or other pole attachers’ existing Equipment or prevent the placing of any additional Equipment by Pole Owner required for its core utility service and included in Pole Owner’s development plan as described in Section 2.3, Pole Owner will notify Licensee of the rearrangements or transfers of Equipment or pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If Licensee desires to continue to maintain its Attachments on the pole and so notifies Pole Owner in writing within thirty (30) Days, Licensee may perform the necessary work (subject to Pole Owner’s approval based on safety issues), or Licensee shall authorize Pole Owner to perform the work. Should Licensee authorize Pole Owner to perform the work, Pole Owner shall make such changes as may be required, and Licensee, upon demand, will reimburse Pole Owner for the entire expense thereby actually and reasonably incurred. If Licensee does not so notify Pole Owner of its intent to perform the necessary work or authorize Pole Owner to perform the work, Licensee shall remove its Attachments from the affected pole or poles within an additional ten (10) days from such original notification by Pole Owner for a total of forty (40) Days; provided, however, that Pole Owner in any emergency may require Licensee to remove its Attachments within the time required by the emergency. If Licensee has not removed its Attachments at the end of the forty (40) Day period, or in the case of emergencies, within the period specified by Pole Owner, Pole Owner may remove Licensee’s Equipment at Licensee’s sole risk and expense, and Licensee will pay Pole Owner, upon demand, for all costs thereby incurred by Pole Owner.

3.13 Pole Replacement for the Pole Owner’s Benefit - Where an existing pole is changed out solely for the Pole Owner’s benefit, the Pole Owner will bear the total cost of the pole replacement including the labor for the lower and haul of the old pole but not including the cost to transfer Licensee’s attachments to the new pole. After Pole Owner has completed its work it shall notify Licensee, and Licensee shall, at its own expense, transfer its attachments to the new pole within thirty (30) Days after the time specified in the notice given by the Pole Owner indicating that the pole is ready Licensee to transfer its equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities).

3.14 Pole Replacement for Licensee’s Benefit - Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole for the sole benefit of the Licensee, the Licensee shall reimburse the Pole Owner for all costs, including, but not limited to the cost in replacing the new pole, the remaining life value of the existing pole, lower and haul of the existing pole (to the extent that this is performed by the Pole Owner), and topping of the existing pole when performed either as an accommodation to Licensee or as required by NESC. Pole Owner shall credit the Licensee for salvage value of the existing pole if it is not topped and it is less than ten years old. Pole Owner shall remove and may retain or dispose of such pole as the sole owner thereof. Any payments for poles made or work performed by the Licensee shall not entitle Licensee to ownership of any part of said poles. If pole replacement under this Section benefits both Licensee and other pole attachers, the costs shall be pro-rated among all benefiting attachers.

3.15 Pole Placement or Replacement for Joint Benefit of Pole Owner and Licensee - Where Pole Owner requires a new pole and Licensee requires extra height or strength exceeding a basic 40 foot Class 5 pole to accommodate its new or existing attachments, Licensee shall pay a sum equal to the difference between the total cost of installing a new pole adequate to accommodate Licensee's new and existing attachments and the total cost of a basic 40 foot Class 5 pole. The balance of the cost of installing the pole actually installed shall be borne by Pole Owner.

3.16 Expense of Situating Pole Attachments - Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense except as otherwise expressly provided hereunder.

## 3.17 Relocation of Licensee’s Attachments - Licensee shall at any time, at its own sole risk and reasonable expense, upon reasonable notice from Pole Owner, relocate, replace or repair Licensee’s Attachments or transfer them to substituted poles. Provided, however, that in cases of emergency or if Licensee fails to relocate required by a Pole Owner’s notice, Pole Owner may, without incurring any liability except for negligence, relocate or replace Licensee’s Attachments or Equipment, transfer them to substituted poles, or perform any other work in connection with the Licensee’s Attachments or Equipment that may be required, or authorize a third party to perform such tasks, and Licensee will, upon demand, reimburse Pole Owner or such third party for the entire expense thereby incurred.

## 3.17.1 When the Licensee is required to relocate its facilities to accommodate a third party attaching to the pole, Pole Owner shall disclose the third party’s name and contact information to the Licensee at the time the relocation or rearrangement is requested. Licensee shall be entitled to seek reimbursement from the third party attacher prior to relocating its facilities.

3.18 Relocation of Joint Poles at Request of Land Owner - Where a jointly used pole is required to be replaced, moved or relocated due to a landowner request, Pole Owner shall provide notice to Licensee upon receipt of the land owner request and coordinate with Licensee and all other pole attachers to provide a coordinated response with respect to timelines and costs to land owner.

3.18.1 The Licensee shall promptly arrange to transfer its Equipment to the new pole and shall notify the Pole Owner when such transfer has been completed. In the event such transfer is not completed within thirty (30) Days after the time specified in the notice given by the Pole Owner indicating that the pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities), Pole Owner may transfer Licensee’s Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices upon Licensee’s failure to transfer its Equipment within the above mentioned thirty (30) Days notice, and Licensee will reimburse Pole Owner for all actual costs incurred.

3.18.2 If the Licensee performs any work for the Pole Owner to facilitate Pole Owner’s responsibilities in completion of the above work or in cases of emergency work, including without limitation transferring other equipment, setting or lowering poles, digging holes, or hauling poles, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the cost of such work. When setting a pole requires entering the electric utility space, the setting of the pole must be performed by a qualified electric contractor approved by the electric utility pursuant to Section 3.5, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of the electric utility.

3.19 Mid-span Poles - Any poles erected by Licensee shall not interfere with or be in-line with Pole Owner's poles and shall not create a structure conflict as defined in the NESC. If either Party requires placement of a pole in-line with any two existing poles owned by the other Party (“i.e., a mid-span pole”), the Party requiring the mid-span pole shall pay the cost of setting the pole, including the cost of the pole itself. The owner of the poles on either side of the mid-span pole will have sole ownership of the mid-span pole and the Party requesting the pole will pay pole rental fees to the Pole Owner in accordance with Section 5 of this Amendment.

3.20 Removal of Attachments by Licensee - Licensee may at any time remove its Attachments from any of the poles and, in each case, Licensee shall immediately give Pole Owner notice of such removal. Removal of all Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such voluntary removal. When Licensee removes Attachments, rental charges payable by Licensee will be prospectively reduced in the annual billing cycle following Licensee’s proper notice to Pole Owner of the removal.

3.20.1 When Licensee performs maintenance to or removes or replaces its Equipment on Pole Owner’s pole, Licensee must chemically treat all field-drilled holes and plug any unused holes caused by Licensee, including those resulting from removal of Equipment; if Licensee fails to adequately plug and treat such holes, Pole Owner may do so at Licensee’s sole risk and expense.

3.21 Unused Equipment - Except for seasonally used equipment, whenever Licensee has ceased using any Equipment situated upon Pole Owner’s poles with no intention of placing the Equipment back in service, Licensee will remove the Unused Equipment from Pole Owner’s poles within three hundred sixty-five (365) Days of the date of last use. If Licensee demonstrates to Pole Owner’s reasonable satisfaction that it is more likely than not that Licensee will resume using the Unused Equipment in the same location within a period of three-years from the date of last use; and that leaving Licensee’s Unused Equipment in place will not preclude Pole Owner or a third party from using the poles occupied by Licensee’s Unused Equipment; and that leaving Licensee’s Unused Equipment in place does not contravene any other obligation of Licensee under this Amendment, the Unused Equipment may remain in place, subject, in all cases to payment of the rental charges under this Amendment for the pole space occupied.

3.22 Limitations on Licensee’s Rights to Use Poles; Termination - No use, of any sort or duration, of any poles under this Amendment shall create or vest in Licensee any ownership or property rights therein; nor shall any such use constitute the dedication of the Pole Owner’s poles or Equipment to the public or to Licensee, subject to the UAR and other applicable laws and statutes. Nothing contained herein shall be construed to compel Pole Owner to maintain any particular pole or poles for a period longer than demanded by Pole Owner’s own service requirements.

3.23 Damage to Equipment - The Parties shall exercise all necessary precautions to avoid causing damage to the other Party’s poles and Equipment and other pole attachers’ Equipment and shall assume responsibility to each other for any and all loss from any damage to the other Party’s poles or Equipment and reimburse the other Party for the entire expense incurred in making such repairs. Each Party shall assume responsibility to third parties for any and all loss from any damage caused to third party’s Equipment by such Party and shall reimburse such third party for the entire expense incurred in making repairs.

3.24 Audits of Existing Attachments - Pole Owner may conduct a System Audit of Attachments made to its poles no more frequently than once every five (5) years. Pole Owner shall give Licensee at least ninety (90) Days prior notice of an initial meeting to plan the next System Audit. At such meeting, Pole Owner, Licensee and all other pole attachers in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the System Audit, as well as the scheduling, scope, extent and reporting of the System Audit results. Regardless of whether Licensee attends the System Audit planning meeting or expresses an intention to participate in the System Audit, Pole Owner shall notify Licensee at least sixty (60) Days prior to the commencement of the System Audit. Licensee shall advise Pole Owner if Licensee desires to participate in the System Audit with Pole Owner not less than thirty (30) Days prior to the scheduled date of such System Audit. The cost of the System Audit shall be included in the rental rate pursuant to the methodology approved by the Commission for such purposes. The data from the System Audit shall be made available to Licensee and all other attachers on the poles and used to update the Parties’ records. Any Party shall make any objections to the System Audit results within ninety (90) Days of receipt of the System Audit report or such objections are waived.

3.24.1 Pole Owner may conduct a Special Audit of Licensee’s Attachments upon cause. For purposes of this section, cause shall mean a good faith belief that Licensee has repeatedly violated the standards set forth in Section 3.4 or the application process or any other term of this Amendment. The cost of such Special Audit shall be borne by Licensee if such violations are discovered and not cured or formally disputed within 60 Days after written notice from Pole Owner. Violations that are formally disputed shall be resolved in accordance with Section 7 of this Amendment.

3.25 Inspections - In addition to audits as described in Section 3.24, Pole Owner shall have the right to inspect each of Licensee's Attachments and other Equipment attached to Pole Owner’s poles at any time.

3.26 Tax Liability - Licensee shall promptly pay any tax, fee, or charge that may be levied or assessed against Pole Owner’s poles or property solely because of their use by Licensee. If Licensee should fail to pay any such tax or assessment on or before the date such tax or assessment becomes delinquent, Pole Owner, at its own option, may pay such tax on account of Licensee and Licensee shall, upon demand, reimburse Pole Owner for the full amount of tax and any penalties so paid. Nothing in this provision in any way limits either Party’s rights to challenge such tax assessments.

**SECTION 4. MAINTENANCE OF POLES**

4.1 Expense of Maintenance - The expense of maintaining jointly used poles shall be borne by the Pole Owner thereof, and the Pole Owner shall maintain its jointly used poles in a safe and serviceable condition, and shall replace, reinforce, or repair such of those poles as become defective. The Pole Owner shall be solely responsible for collection of costs of damages for poles broken or damaged by third parties. The Licensee shall be responsible for collecting damages to its own Equipment. If a pole owned by one Party is replaced by the other Party because of auto damage or storm damage, the Pole Owner shall pay the other Party for the actual costs of such pole replacement.

4.2 Relocation of Joint Poles Required For Maintenance Purposes - Whenever it is necessary to replace, move, reset, or relocate a jointly used pole for maintenance purposes, the Pole Owner thereof shall, before making such replacement, move, or relocation, give written notice thereof to Licensee (except in case of emergency, when oral notice shall be given if practicable and subsequently confirmed in writing), specifying in such notice the work to be performed and the approximate time of such proposed replacement or relocation. Licensee may request that a pole be reset in the same location and Pole Owner shall attempt to do so when feasible, provided that the cost of accommodating this request shall be borne by Licensee.

4.2.1 The Licensee shall promptly arrange to transfer its Equipment to the new pole and shall notify the Pole Owner when such transfer has been completed. In the event such transfer is not completed within thirty (30) Days after the time specified in the notice given by the Pole Owner indicating that the pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities), Pole Owner may transfer Licensee’s Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices upon Licensee’s failure to transfer its Equipment within the above mentioned thirty (30) Days notice, and Licensee will reimburse Pole Owner for all actual costs incurred.

4.2.2 If the Licensee performs any work for the Pole Owner to facilitate Pole Owner’s responsibilities in completion of the above work or in cases of emergency work, including without limitation transferring other equipment, setting or lowering poles, digging holes, or hauling poles, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the cost of such work. When setting a pole requires entering the electric utility space, the setting of the pole must be performed by a qualified electric contractor approved by the electric utility pursuant to Section 3.5, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of the electric utility.

4.2.3 In the event Licensee desires to maintain its facilities on a pole that Pole Owner plans to replace, move or relocate, Pole Owner and Licensee may agree to transfer title of the pole upon agreeable terms and conditions. Upon receipt of a bill of sale or other legal transfer document, Licensee shall assume ownership of the original pole and shall indemnify and hold harmless the former Pole Owner of such pole from all obligations, liabilities, damages, costs, expenses or charges incurred after the date of transfer.

4.3 Abandonment Of Jointly Used Poles - If the Pole Owner of a jointly used pole desires at any time to abandon the use thereof, Pole Owner shall give Licensee notice in writing to that effect at least thirty (30) Days prior to the date upon which it intends to abandon such pole. Pole Owner may transfer Licensee’s Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices upon Licensee’s failure to transfer its Equipment within the above mentioned thirty (30) Days notice, and Licensee will reimburse Pole Owner for all actual costs incurred.

4.3.1 In the event Licensee desires to maintain its facilities on a pole that Pole Owner plans to replace, move or relocate, Pole Owner and Licensee may agree to transfer title of the pole upon agreeable terms and conditions. Upon receipt of a bill of sale or other legal transfer document, Licensee shall assume ownership of the original pole and shall indemnify and hold harmless the former Pole Owner of such pole from all obligations, liabilities, damages, costs, expenses or charges incurred after the date of transfer.

4.4 Wood Decay - If the Parties hereto are both pole owners, Pole Owner may, as an accommodation and by prior written approval by Licensee, by its own personnel or by a contractor selected by Pole Owner and agreed to by Licensee, inspect and/or treat for wood decay on poles it does not own, but that support Pole Owner’s facilities concurrently with inspection and/or treatment of Pole Owner’s poles located in same geographic area; however, any such re-inspection and/or treatment shall not be repeated more frequently than every ten (10) years. Licensee shall reimburse Pole Owner the cost of inspection and/or treatment in accordance with the mutually agreed to charges.

4.5 Tree Trimming and Brush Cutting - All tree trimming and brush cutting in connection with the initial placement of wires or other Equipment shall be borne entirely by the Party placing the wires or other Equipment. Unless agreed otherwise, each Party shall be responsible for any and all additional tree trimming and brush cutting related to the wires or Equipment it owns.

# SECTION 5. RENTAL PAYMENTS

5.1 Rental Amount - For authorized Attachments covered under this Amendment, Licensee shall pay to Pole Owner, in advance, on an annual basis, a rental amount computed in accordance with UAR R746-345-5.A, as set forth on Exhibit A, on a billing cycle beginning on January 1st of each year. Rentals for Attachments approved prior to the January 1st billing cycle shall be prorated and separately invoiced upon authorization of the Attachments. The rental amount for each year shall be based on Pole Owner’s tabulation of Licensee's Attachments situated upon Pole Owner's poles and Pole Owner’s current records.

5.1.1 Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates are subject to UAR R746-345-5.A and may not be changed, modified or replaced except as allowed by and in accordance with UAR R746-345-3.A.1. Parties recognize that rates may change consistent with the methodology. Notwithstanding, any changes to the rates consistent with the methodology shall be filed with the Commission prior to the effective date.

5.2 Unauthorized Attachments - Licensee shall not make Attachments to Pole Owner’s poles without obtaining the Pole Owner’s written permission as provided for in this Amendment. Pole Owner may charge License back rent from the date of the actual attachment or, if unable to provide evidence of such actual date, five (5) years or the date of the most recent audit, whichever is sooner, plus the unauthorized attachment fee contained in the attached Exhibit A upon the discovery of unauthorized Attachments belonging to Licensee. The imposition of such charges shall be without prejudice to Pole Owner’s right to utilize additional other remedies, including, but not limited, to the remedies available for default under the Agreement and any remedies available under Commission rules.

5.3 Billing and Payments - Pole Owner shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually or semi-annually. Invoices for all Non-recurring Charges, Unauthorized Attachment Charges, and other obligations amounts due under this Amendment other than rental charges will be sent at Pole Owner’s discretion within a reasonable time. Invoices for Non-recurring Charges will provide specific identifying information pertaining to each charge. Invoices for rental charges will provide summary information only. Licensee may obtain additional information pertaining to charges upon written request to Pole Owner.

5.3.1 Except as otherwise provided in this Amendment or agreed to by the Parties, Licensee shall pay all undisputed charges within thirty (30) Days from the invoice date. Licensee will have sixty (60) Days from the invoice date to pay disputed amounts unless the disputing Party has commenced an action consistent with UAR 746-345-6A.3. Upon resolution of any such dispute, Pole Owner will refund any amounts owed, with interest accruing at the rate specified in Section 5.3.2 below, from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Pole Owner notice of the amount in dispute. Late charges and interest shall be imposed on any delinquent amounts. All bills shall be paid to the address designated from time to time in writing by Pole Owner.

CenturyLink’s Billing Address:

Attn: Poles Asset Management Group - Supervisor

|  |
| --- |
| 700 W Mineral Ave  Room MTG28.24 |
| Littleton CO 80120-0000 |

CLEC’s billing address:

5.3.2 All amounts payable under the provisions of this Amendment shall, unless otherwise specified, be payable within thirty (30) days of the invoice date. An interest charge at the rate of one and one-half percent (1.5%) per month shall be assessed against all late payments. Interest under this Amendment shall not exceed the interest allowable under applicable law.

5.4 Third-Party Compensation - If Licensee permits its Equipment to be overlashed by a third party for compensation, the total compensation payable from the third party shall be paid directly to the Pole Owner by the third party.

## SECTION 6. RELATIONSHIP TO THIRD PARTIES

Nothing herein contained shall be construed as affecting, diminishing or interfering with any rights or privileges previously conferred by Pole Owner, by contract or otherwise, to others not parties to this Amendment to use any poles covered by this Amendment and Pole Owner shall have the right to continue, modify, amend, or extend such rights or privileges. The privileges herein granted to Licensee shall, at all times, be subject to the rights of other entities with attachments to Pole Owner’s poles under existing third-party contracts and arrangements. Further, nothing herein contained shall be construed as conferring or granting to Licensee the exclusive privilege or right to use any of the poles or other facilities of the Pole Owner. Nothing in this Amendment is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

**SECTION 7. APPLICABILITY OF UAR**

Licensee’s use of Pole Owner’s utility poles will be governed by applicable provisions of the UAR, as may be amended and the terms of this Amendment not inconsistent with the UAR as amended. Neither Party waives its right to petition the Commission for an order amending this Amendment consistent with any subsequent changes in the UAR.

**SECTION 8. REMOVAL OF EQUIPMENT UPON TERMINATION**

Each Party shall remove its Equipment from Pole Owner’s poles within three-hundred sixty-five (365) Days of Agreement termination, unless the Parties are in negotiations of a new contract. Should either Party fail to remove its Equipment within said three-hundred sixty-five (365) day period, Pole Owner may remove and dispose of Licensee’s Equipment at Licensee’s sole risk and expense. On the date of termination, all rights and privileges of both Parties hereunder shall cease. In the event that either Party successfully petitions the Commission for an order to amend the rates, terms or conditions specified in this Amendment, the Parties agree to execute an addendum to the Agreement, giving effect to the Commission’s order, within thirty (30) Days of the release of the Commission’s order or within such other period of time as the Commission may prescribe.

**SECTION 9. NOTICES**

Except as otherwise provided herein, any notice required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, or by personal delivery:

To CenturyLink:

CenturyLink, Attn: Joint-Use Supervisor

700 W. Mineral Ave. MT/H28.18

Littleton, CO 80120.

Attach a copy to the AldenOne conversation associated to this request.

and a copy to:

Qwest Corporation dba CenturyLink QC

Director Interconnection Agreements

930 15th Street, 6th Floor

Denver, CO 80202

Email: intagree@CenturyLink.com

Phone: 303-672-2879

and also to:

Qwest Corporation dba CenturyLink QC

General Counsel-Interconnection

931 14th Street, 9th Floor

Denver, CO 80202

To CLEC:\_\_\_\_\_\_\_\_\_\_: