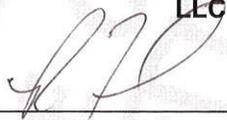


**MASTER SERVICE AGREEMENT  
BY AND BETWEEN  
QWEST COMMUNICATIONS COMPANY, LLC AND  
THE STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE  
SERVICES**

**THIS MASTER SERVICE AGREEMENT (the "Agreement")**, is by and between Qwest Communications Company, LLC including its subsidiaries ("Service Provider") having an office at 1801 California, Denver, CO 80202, and the State of Ohio, through its Department of Administrative Services ("the State"), having its principal place of business at 30 East Broad Street, 40<sup>th</sup> Floor, Columbus, OH 43215 (jointly referred hereto as the "Parties") and is effective as of the last signature herein below.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective on the date signed by the State, "Effective Date."

**QWEST COMMUNICATIONS COMPANY,  
LLC**



Signature

Richard Fernandez

Printed Name

Director of Offense Mgmt

Title

8/23/11

Date

04-6141739

Federal Tax ID

**STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES**



Signature

STUART R. DAVIS

Printed Name

State CIO/Asst. Dir

Title

9/29/11

Effective Date

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Sections 1 through Section 14 of this Agreement are hereby defined as the Standard State Terms and Conditions. These Standard State Terms and Conditions are derived from Ohio statutory law, rules and procedures. As such, the Standard State Terms and Conditions will remain as written by the State and construed in conjunction with the applicable laws, rules and procedures.

## **1 General Information**

### **1.1 Headings**

The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

### **1.2 Relationship of Parties and Subscribing Entity(s)**

- A. The Parties are independent contractors and nothing herein creates or implies an agency relationship or a joint venture or partnership between the Parties. Considering the Parties are independent contractors, the Service Provider, their employees, contractors and/or subcontractors who may attend meetings and work in other situations where their independent contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of the members of the public that they are Government officials. In addition, the Service Provider, their employees, contractors and/or subcontractors may not make any representation that they are acting, speaking, representing or otherwise advocating any position, agreement, service or otherwise on behalf of the State.
- B. For purposes of this Agreement and any Service Attachments, the Department of Administrative Services and Subscribing Entity(s) shall be authorized to inquire of the Service Provider's Services, invoices, payment and receive reports or other information from the Service Provider.

### **1.3 Subscribing Entity(s)**

"Subscribing Entity(s)", when context is so applicable, means Agencies, Boards, Commissions, Cooperative Purchasing Members, and other entities, or institutions that State of Ohio deems as a government entity or authorize as able to participate as a Subscribing Entity.

### **1.4 Cooperative Purchasing Members**

Cooperative Purchasing Members are defined in Section 125.04 of the Ohio Revised Code ("ORC") and include counties, townships, municipal corporations, regional transit authorities, regional airport authorities or port authorities and school districts, conservancy districts, township park districts and park districts created under ORC Chapter 1545; any other political subdivision that has been approved by the Department of Administrative Services to participate in the Cooperative Purchasing Program; and other entities set forth in ORC Section 125.04. Cooperative Purchasing Members may purchase services from the Service Provider subject to the Terms and Conditions of this Agreement so long as they have entered into a Cooperative Purchasing Agreement with the Department of Administrative Services as detailed in the ORC 125.04. All records concerning the Services purchased under this Agreement shall be made available to State by the Service Provider.

## **1.5 Subscribing Entity Reliance on Agreement.**

Subscribing Entities may rely on this Agreement. Whenever a Subscribing Entity relies on this Contract to issue a purchase order, the Subscribing Entity will step into the shoes of the State under this Agreement for purposes of its order, and, as to the Subscribing Entity's order, this Agreement will be between the Service Provider and the Subscribing Entity. The Service Provider must look exclusively to the Subscribing Entity for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Subscribing Entity's performance and payment. The State will have the right to terminate this Agreement and seek such remedies on termination as this Agreement provides should the Service Provider fail to honor its obligations under an order from a Subscribing Entity.

## **1.6 Third-Party Suppliers.**

- A. The Service Provider will be solely responsible for payment of its suppliers and any claims of those suppliers for any failure of the Service Provider to meet its obligations under this Agreement in the required manner. The Service Provider will hold the State harmless for and will indemnify the State against any such claims.
- B. The Service Provider assumes responsibility for all services provided under this Agreement whether it or one of its suppliers provides them in whole or in part. Further, the Service Provider will be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Agreement and all service requests.

## **1.7 Non-Exclusivity**

This Agreement is non-exclusive. Nothing herein prevents either Party from entering into similar agreements with other entities.

## **1.8 Entire Agreement**

- A. This Agreement, together with any Service Attachments or Amendments and all applicable tariffs incorporated herein by this reference, sets forth the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings and negotiations between the Parties.
- B. Any modifications, amendments, supplements to or waivers of this Agreement must be submitted and approved in writing in accordance with this Agreement and executed by authorized representatives of both parties. The Service Provider may be required to file a copy of this Agreement with the Public Utilities Commission of Ohio.

## **1.9 Severability**

If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall

remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

### **1.10 Survival**

A. An Order for Service hereunder, together with the terms and conditions of this Agreement and/or Service Attachments and any associated Amendments will survive the expiration or other termination of this Agreement for the remainder of the term of the Order only to the extent that the Minimum Service Period has not been fulfilled for such Service(s). Notwithstanding anything to the contrary herein the following sections shall survive termination or expiration of this agreement: 1.17 Confidentiality, 2 Indemnification/Limitation of Liability, 3.10 Antitrust, and 3.11 Use of Name.

B. If any Service Attachment should expire, terminate or cancel, the terms and conditions of this Agreement shall survive as to all other Service Attachments not expired, terminated or cancelled.

### **1.11 No Waiver**

Either Party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

### **1.12 Governmental Authorization, Regulatory Changes**

This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with all applicable federal, state and local laws, rules and regulations and orders in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision. The Service Provider may discontinue, limit or impose additional requirements to the provision of Service, upon no less than thirty (30) days written notice, as required to meet regulatory or other lawfully imposed requirements.

### **1.13 Standard State Terms and Conditions**

A. As stated previously, Sections 1 through Section 16 of this Agreement are hereby defined as the Standard State Terms and Conditions. These Standard State Terms and Conditions are derived from Ohio statutory law, rules and procedures. As such, the Standard State Terms and Conditions will remain as written by the State and construed in conjunction with the applicable laws, rules and procedures.

B. The Service Provider may suggest additional language and incorporate such additional language, as agreed to and approved by the Ohio Department of Administrative Services' legal counsel, in Section 17, Service Provider Added Language. Such additional language shall not modify or supersede the Standard State Terms and Conditions. If such a conflict exists at the time of execution of the Agreement and thereafter, the Standard State Terms and Conditions shall prevail.

### **1.14 Service Specific Terms and Conditions and Service Attachments**

Service Attachments describe services the Service Provider may offer under this Agreement, along with any special terms or conditions applicable to them, descriptions

of those services, features, and any fees associated with such services, as well as any other provisions the Parties may agree to therein. Such Service Attachments, when executed by the Parties, are incorporated into this Agreement and become a part hereof.

### **1.15 Order of Precedence**

- A. In event of a conflict related to the general Terms and Conditions between the Agreement and the Service Attachment(s), the Agreement shall prevail.
- B. In the event of a conflict related specifically to the service, between the Agreement and the Service Attachment(s), the Service Attachment(s) shall prevail.

### **1.16 Required Service Level Performance**

Specific service descriptions, performance objectives and penalties will be outlined in the Service Provider Service Level Agreement section of the Service Attachment and/or Amendments.

### **1.17 Confidentiality**

- A. The Service Provider may learn of information, documents, data, records, or other material that is confidential in the performance of this Agreement. The Service Provider may not disclose any information obtained by it as a result of this Agreement, without the written permission of the State. The Service Provider must assume that all state information, documents, data, source codes, software, models, know-how, trade secrets, or other material is confidential. In addition, the Service Provider may not disclose any documents or records excluded by Ohio law from public records disclosure requirements.
- B. The Service Provider will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Service Provider agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

### **1.18 Competitive Pricing and Services**

For the purposes of maintaining pricing and service competitiveness through the term of the Agreement, the Service Provider agrees to an annual joint review of its pricing and service offerings. The annual review shall include, but is not limited to, a customer-like review wherein the Service Provider shall provide an analysis that will include retail prices of the service of other customers similar to the State to ensure the State and Subscribing Entity(s) receive cost-competitive and technologically competitive Services within the State of Ohio. Provided the cost savings is greater than 15%, the Service Provider agrees that written amendments to the Service Attachments to reduce rates and introduce technological service improvements may be submitted throughout the term of the Agreement.

## **1.19 Contract Compliance and Conflict Resolution**

- A. The Service Provider shall comply with all Terms and Conditions of this Agreement and the provisions of any Service Attachments. If the Service Provider fails to perform any one of its obligations under this Agreement or the Service Attachments, it will be in default and the State may proceed in the following manner:
1. The State may terminate this Agreement and/or Service Attachment as according to Section 7 of this Agreement; or
  2. The State may suspend rather than terminate this Agreement and/or Service Attachment where the State believes that doing so would better serve its interest. The notice of suspension whether, with or without cause, will be effective immediately, on the Service Provider's receipts of the notice. The Service Provider will be entitled to compensation for Services rendered before the suspension; or
  3. The State may withhold payment for any Service if the Service Provider is noncompliant with any Term and Condition of this Agreement or Service Attachment until the Service Provider cures the noncompliance or the Parties arrive at a mutual agreement as to the corrective action for the noncompliance. Service Provider shall have 30 days in which to cure such noncompliance; or
  4. The State may file a complaint with the Public Utilities Commission of Ohio for resolution of the matter. Such complaint may include a request by the State for treble damages if the noncompliance by the Service Provider includes any act prohibited by Chapters 4901, 4903, 4905, 4907, 4909, 4921, 4923 or 4925 of the Ohio Revised Code; or
  5. The State may file a complaint for damages with the appropriate court of jurisdiction in the State of Ohio.

**1.20 Disclaimer of Warranties.** EXCEPT FOR EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SERVICE EXHIBIT, SERVICE DESCRIPTIONS, OR DETAILED DESCRIPTION, QWEST DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE EXHIBIT, OR DETAILED DESCRIPTION, CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICES. QCC DISCLAIMS: (A) ANY LIABILITY FOR LOSS, DAMAGE, OR INJURY TO ANY PARTY AS A RESULT OF ANY CPE; AND (B) ALL WARRANTIES FOR CPE.

## **2 Indemnification / Limitation of Liability**

### **2.1 Indemnification**

A. The Service Provider must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Agreement, provided such bodily injury or property damage is due to the negligence of the Service Provider, its employees, agents, or subcontractors.

B. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, ITS AFFILIATES OR CONTRACTORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL

DAMAGES, INCLUDING LOST PROFITS EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

## **2.2 Limitation of Liability**

WITH REGARD TO ANY SERVICE-RELATED CLAIM BY THE STATE FOR DAMAGES THAT IS NOT LIMITED BY SECTION 2.1 PART B OF THIS AGREEMENT, THE STATE'S EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO: (A) THOSE REMEDIES SET FORTH IN THE APPLICABLE SERVICE LEVEL AGREEMENT; OR (B) IF NO SERVICE LEVEL AGREEMENT EXISTS, THE TOTAL USAGE CHARGES PAID BY THE STATE TO SERVICE PROVIDER FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. EACH PARTY'S TOTAL AGGREGATE LIABILITY RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL USAGE CHARGES PAID BY THE STATE TO SERVICE PROVIDER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP"). This limitation of liability and Damage Cap will not apply to Section 2.1 of this Agreement or the State's payment obligation for charges under this Agreement.

## **3 Standard Clauses**

### **3.1 Excusable Delay**

Neither Party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. In the event of any such excusable delay, the dates of performance or of delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause. The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Service Provider's subcontractors will be considered controllable by the Service Provider, except for third-party manufacturers supplying commercial items and over whom the Service Provider has no legal control.

### **3.2 Employment Taxes**

Each Party will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings for its own personnel, including, but not limited to, Federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and/or payments (together with any interest and penalties not disputed with the appropriate taxing authority).

### **3.3 Sales, Use, Excise, and Property Taxes**

The State and certain Subscribing Entity(s) are exempt from any Ohio sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Service Provider in connection with the Project, such will be billed only

on such Services and only to the extent the State and Subscribing Entity are not entitled to exemption from the specific tax.

### **3.4 Equal Employment Opportunity**

- A. The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.
- B. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>
- C. Use of MBE and EDGE Service Providers. The State encourages Contractor to purchase goods and services from Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) Service Providers.

### **3.5 Drug-Free Workplace**

The Service Provider will comply with all applicable state and Federal laws regarding keeping a drug-free workplace. The Service Provider will make a good faith effort to ensure that all Service Provider employees, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

### **3.6 Conflicts of Interest**

No personnel of the Service Provider may voluntarily acquire any personal interest that conflicts with their responsibilities under this Agreement. Additionally, the Service Provider will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement or the Project to acquire an interest in anything or any entity under the Service Provider's control if such an interest would conflict with that official's or employee's duties. The Service Provider will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Service Provider will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the State has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

### **3.7 Assignment**

The Service Provider may not assign this Agreement or any of its rights or obligations under this Agreement without the prior, written consent of the State, except that Service Provider may assign this Agreement without prior written consent (a) in connection with the sale of all or substantially all of its assets, (b) to the surviving entity in any merger or consolidation, (c) to an Affiliate, or (d) to satisfy a regulatory requirement imposed upon Service Provider by a governmental body with appropriate authority; provided Service Provider gives the State 30 days prior written notice of such assignment. "Affiliate" means any entity controlled by, controlling, or under

common control with a party.

### **3.8 Governing Law**

This Agreement will be governed by the laws of Ohio, and venue for any disputes will lie with the appropriate court in Franklin County, Ohio.

### **3.9 Finding for Recovery**

The Service Provider warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24. If the warranty was false on the date the Parties signed this Agreement, the Agreement is void ab initio.

### **3.10 Anti-trust**

The Parties recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by the Subscribing Entity(s). The Service Provider assigns to the State and Subscribing Entity(s) all state and federal antitrust claims and causes of action, which the Service Provider now has or may acquire, that related to the services that are attached to this Agreement.

### **3.11 Use of Name**

Neither Party will use the other Party's name in any marketing without the other Party's written consent.

### **3.12 Ethics Laws**

The Service Provider certifies that it has reviewed and is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

### **3.13 Campaign Contributions**

The Service Provider hereby certifies that all applicable parties listed in Division (I) or (J) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) and (J) of O.R.C. Section 3517.13.

### **3.14 Declaration Regarding Terrorist Organization**

In accordance with R.C. 2909.33(C), the Service Provider certifies that it meets one of the following conditions:

1. The Service Provider has not received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; or
2. The Service Provider has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year. and,
3. The Service Provider has either pre-certified with the Office of Budget and Management, or has completed the Declaration of Material Assistance ("DMA") form certifying that the Service Provider has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

### **3.15 Safety and Security Rules**

When accessing State networks and systems, the Service Provider must comply with all applicable policies and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Service Provider must comply with all security and safety rules applicable to people on those premises.

### **3.16 Prohibition Of Offshore Outsourcing**

3.16.1 The Service Provider affirms to have read and understands Executive Order 2011-12k and shall abide by those requirements, so long as such Executive Order remains in effect, in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States. The Executive Order is provided as an attachment.

3.16.2 The Service Provider and Subscribing Entity acknowledge that: (i) the purpose of this Agreement is the provision of telecommunications Services ("Purpose"); (ii) as stated in the preamble to the Agreement, Service Provider is located in the United States; and (iii) the services provided by Service Provider are integral to accomplishing the Purpose of the Agreement. As such, Service Provider represents that the services integral to the performance and Purpose of this Agreement will primarily be performed within the United States.

3.16.3 The Service Provider also affirms, understands, and agrees to immediately notify the Subscribing Entity as specified in each service exhibit of any change or shift in the location(s) of services performed by the Service Provider or its subcontractors under this Agreement such that services integral to the performance and Purpose are not primarily performed in the United States.

3.16.4 If Service Provider or any of its subcontractors perform services under this Agreement in violation of §3.16.2, the performance of such services shall be treated as a material breach of the Agreement. The Subscribing Entity is not obligated to pay and shall not pay for such services. If Service Provider or any of its subcontractors perform any such services, Service Provider shall immediately return to the Subscribing Entity all funds paid for the proportion of those services performed outside of the United States. The Subscribing Entity may also recover from the Service Provider all costs associated with any corrective action the Subscribing Entity may undertake, including but not limited to an audit or a risk analysis, as a result of the Service Provider performing services outside the United States.

3.16.5 The State may, at any time after the breach, terminate the Agreement and all Service Attachments, upon written notice to the Service Provider. The Subscribing Entity may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

3.16.6 If the Subscribing Entity determines that actual and direct damages are uncertain or difficult to ascertain, the Subscribing Entity may recover a

payment of liquidated damages in the amount of 1% percent of the value of the affected Service performed offshore.

3.16.7 The Subscribing Entity, in its sole discretion, may provide written notice to Service Provider of a breach and permit the Service Provider to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the Subscribing Entity may buy substitute services to replace the specific portion of the Service performed off-shore from a third party and recover from the Service Provider any costs associated with acquiring those substitute services.

3.16.8 Notwithstanding the Subscribing Entity permitting a period of time to cure the breach or the Service Provider's cure of the breach, the Subscribing Entity does not waive any of its rights and remedies provided the Subscribing Entity in this Agreement, including but not limited to recovery of funds paid for services the Service Provider performed outside of the United States, costs associated with corrective action, or liquidated damages.

3.16.9 The Parties agree that the Executive Order provisions above do not apply to:

(1) Services that are incidental to the total cost of the Service purchased. Services are incidental when the value of those incidental services is less than the price of the Service purchased (e.g. engineering, program management, installation, training, maintenance, repair, technical assistance, and professional services);

(2) Services that are supported through the "Follow the Sun" model which is an information technology business model for customer support that uses a strategically placed group of worldwide support centers so that there is always a support center open during business hours anywhere on the globe where, through automatic phone and data routing systems, customers can obtain support services from qualified technicians who are available to the customer 24 hours a day, 7 days a week.

### **3.17 Appropriation of Funds.**

The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

### **3.18 Certification of Funds**

None of the rights, duties, or obligations in this Agreement will be binding on the State, and the Service Provider will not begin its performance, until all the following conditions have been met: (a) all statutory provisions under the Code, including Section 126.07, have been met; (b) all necessary funds are made available by the appropriate state agencies; (c) if required, approval of this Agreement is given by the Controlling Board of Ohio; and (d) if the State is relying on Federal or third-party funds for this Agreement, the State gives the Service Provider written notice that such funds have been made available.

## **4. Orders Requesting Service, Cancellation, or Modification**

### **4.1 Service, Cancellation, or Modification.**

- A. All Orders for Service as well as any Cancellations, or Modifications to an order must be made through the State's Technology (formerly Telecommunications) Service Request ("TSR") system or any similar system in use by the State at the time an order for Service, Cancellation or Modification is requested. Therefore the Service Provider will notify the State when an order is received that was placed outside the TSR or similar system and the Service Provider will not accept the order. If a Service Provider accepts an order outside the TSR or similar system, the State may either withhold payment for the unverified order or request suspension of the Service occurring due to the unverified order without penalty to the State.
- B. The Service Provider agrees to keep Subscribing Entities' orders updated and current in the TSR System.
- C. The Service Provider is responsible for processing all orders, billing, payments, cancellations, and changes, and receiving and managing all Service calls in a consolidated manner. In this regard, the Service Provider must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribing Entities. The Service Provider may not require a Subscribing Entity to contact any of the Service Provider's third-party suppliers/carriers or otherwise transact business directly with such suppliers/carriers for any Services ordered under this Agreement, and in all respects, the Service Provider must maintain a seamless, single-point-of-contact business relationship with each Subscribing Entity for the Services ordered under this Agreement.

## **5. Term**

The current General Assembly cannot commit a future General Assembly to any expenditures. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the current biennium, which is June 30, 2013.

### **5.1 Agreement - Renewal**

The State may renew this Agreement in the next biennium by issuing written notice to the Service Provider of the decision to do so. Renewals will be initiated by the State in writing at least thirty (30) days prior to the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent biennium.

### **5.2 Service Attachment(s) - Renewal**

- A. The State may renew the Service Attachments for the next biennium by issuing written notice to the Service Provider of the decision to do so. Renewals will be initiated by the State at least thirty (30) days prior to the expiration of the then current term. This expiration and renewal procedure will also apply to any subsequent biennium.
- B. After the first renewal the Parties agree that pricing of services under the Service Attachment may be renegotiated to reflect more favorable rates to the State.

Upon termination of this Agreement, all rights of the Subscribing Entity(s) to order new Services cease and the Service Provider has no further obligations to furnish new Services to the Subscribing Entity(s). The Subscribing Entity(s) have the option anytime during the Agreement period to upgrade to a new technology or service offering with the Service Provider without incurring termination charges as more specifically outlined in the individual Service Attachments.

## **6. Termination - Agreement and Service Attachments**

- A. For the State's convenience, the State may terminate this Agreement and/or Service Attachment(s) during the Initial or any Renewal Term with thirty (30) days advanced written notice to the Service Provider. The Subscribing Entity(s) shall pay for all accrued and unpaid charges for Service and any Cancellation Charges as outlined in the appropriate Service Attachment(s) through the effective date of such termination.
- B. If the Termination of the Agreement and/or Service Attachments is for cause, the State and Subscribing Entity(s) will be held liable for any accrued but unpaid charges as of the effective date of such termination, but will not be held liable for Cancellation charges.
- C. In addition, it is understood that the State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and other obligations due as part of this Agreement, the State and Subscribing Entity(s) obligations under this Agreement are terminated as of the date that the funding expires without further obligation of the State and Subscribing Entity(s).

## **7. Cancellation of Services as Described in a Service Attachment**

Under this Agreement and Service Attachment(s), Service(s) may be cancelled by either the Subscribing Entity(s) or the Service Provider as follows:

### **7.1 By the Subscribing Entity(s)**

- A. For the Subscribing Entity(s) convenience, the Subscribing Entity(s) may cancel the service(s) at any time for any reason by providing written notice to Service Provider, and in accordance with the details of the Service Attachments, which govern the service being terminated. The Subscribing Entity(s) shall remain liable for charges accrued but unpaid as of the cancellation date as well as any Cancellation Charges as outlined in the appropriate Service Attachment(s) through the remaining months of the current biennium .
- B. If the cancellation of the service(s) is for cause or non-appropriation of funds as described in Section 6, the Subscribing Entity(s) will be liable for any accrued but unpaid charges through the termination/cancellation date.

### **7.2 By the Service Provider**

- A. If a Subscribing Entity(s) materially defaults in the performance of any of its duties or obligations under this Agreement and/or Service Attachment(s), the Service Provider may, by giving at least thirty days (30) written notice thereof to cancel the service and providing the cancellation date.

- B. If the Subscribing Entity(s) cures the default to the satisfaction of the Service Provider and prior to the cancellation of services date, the Agreement shall remain in full force and effect.
- C. The Subscribing Entity(s) shall remain liable for charges accrued but unpaid as of the cancellation date, and any Cancellation Charges as outlined in the appropriate Service Attachment(s) through the remaining months of the current biennium.

## **8 Financial – Charges, Claims and Disputes, Billing and Payment**

### **8.1 Charges**

- A. All applicable charges for services ordered are fully documented in the appropriate Service Attachment(s). The Subscribing Entity(s) will not be responsible for any charges not documented in the Service Attachment(s) nor will the Subscribing Entity(s) be responsible for any charges waived by the Service Provider as described in the Service Attachment(s) provided however, if a Subscribing Entity/state agency were to order a feature or Service that is not specified in a Service Attachment, but is delineated in a tariff, the order will be rejected or if the order is accepted, standard tariff rates will apply for such Service. Service Provider will not charge the following fees:
  - 1. Universal Connectivity Fee;
  - 2. Administrative Expense Fee;
  - 3. Property Tax Allotment; and
  - 4. Federal Regulatory Fee of 2.06%

Service Provider will pass through charges for the following fees:

- 1. federal and state Universal Service Fund charges;
  - 2. federal and state Telecom Relay Service (TRS) charges; and
  - 3. Other state and local government regulatory and public service fees.
- B. The Subscribing Entity(s) will pay ONLY any taxes, fees, surcharges or assessments, as outlined in the appropriate Service Attachment(s), to the extent the Subscribing Entity is not exempt from such taxes, surcharges or assessments, and will appear as a separate line item on the invoice.
- C. The Subscribing Entity(s) are not subject to increases in the monthly recurring charge or usage charges during the term of this Agreement.
- D. Subscribing Entities are not responsible for any charges from the Service Provider's third-party suppliers/carriers for any Services ordered under this Agreement, unless a Service Attachment expressly provides otherwise. In this regard, the Service Provider is the seller or reseller of all Services covered by this Agreement, and any payments due to the Service Provider's third-party suppliers/carriers for services under this Agreement are included in the Service Provider's fees specified in the applicable Service Attachment, unless that Service Attachment expressly provides otherwise.

## 9 Claims and Disputes

- A. The Subscribing Entity(s) are only authorized to pay a proper invoice as defined in Ohio Revised Code Section 126.30. B. Pursuant to Ohio Revised Code Section 126.30, if the state agency Subscribing Entity believes an invoice contains a defect or impropriety, the state agency Subscribing Entity shall send written notification to Qwest within fifteen days after receipt of the invoice. The notice shall contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety.
- B. Once the investigation into the disputed charge(s) has been completed by Service Provider in good faith and concurrence by the Subscribing Entity;
- If in favor of the Subscribing Entity, the Service Provider will issue a credit on the next invoice. If the credit exceeds the service charges on the next invoice, the Service Provider will issue payment to the State in the form of a check in the amount exceeding the service charges.
  - If in favor of the Service Provider, in accordance with Ohio Revised Code Section 126.30, if the state agency Subscribing Entity sent written notification to Qwest, the Subscribing Entity will submit payment within thirty (30) days of receiving notification and a proper invoice at the office designated to receive the invoice.

## 10 Billing

- A. Invoices will be issued at the account level, however the Subscribing Entity(s) may request a recap at the Agency, Division, or District level based on the organizational structure of the Subscribing Entity(s).
- B. Invoices must be submitted electronically, either in the form of an internet download or optical/media magnet which form is to be determined at the State's option, to the office of the Subscribing Entity. The invoice shall be submitted within sixty (60) days of the Service. Qwest shall use commercially reasonable efforts to invoice Service charges under this Agreement within sixty (60) days of the last day of the month in which the Services are rendered. To the extent Qwest is unable to invoice Customer for Services rendered during such time period, Customer shall be entitled to deny payment of the invoice. Notwithstanding the foregoing, Customer shall be liable for the following charges even if Qwest is unable to invoice for them within sixty (60) days: (i) those charges for which Customer was informed in writing will not be invoiced within such time period, (ii) disputed charges, or (iii) charges which are not discovered due to fraudulent activities by Customer.
- C. If a Service Provider is using additional Service Providers/entities to provide the Services described in the Service Attachments, the Service Provider, at the State's option, must generate a consolidated invoice and submit the consolidated invoice to the State, unless a Service Attachment expressly provides otherwise. If Qwest provides custom or specialized billing to the State in the future, the State or Subscribing Entity will be responsible for any charges associated with the processing of such bill, upon mutual agreement between OIT and Qwest.

- D. A proper invoice must include the following information and/or attached documentation:
1. Name and address of the Service Provider as designated in the Agreement or Amendment.
  2. Federal Tax Identification Number of the Service Provider as designated in this Agreement.
  3. Invoice remittance address as designated in the Agreement.
  4. A sufficient enough description of the Services that allows the State to identify the Services or perform an audit of the Services.

## **11 Payment**

- A. Payments for services under this Agreement will be due on the 30th calendar day after the receipt of the invoice, including electronic receipt in the office designated to receive the invoice.
- B. The date of the warrant issued in payment will be considered the date payment is made.
- C. Without diminishing the foregoing payment rights and obligations, the payment will be overdue if it is not received by Service Provider within 30 days after receipt of the invoice, including electronic receipt in the office designated to receive the invoice.
- D. At the Service Provider's option, if a payment is overdue, then interest will be paid under the provisions of Section 126.30 of the Ohio Revised Code ("Code").

## **12. State Reporting Requirements**

The Service Provider shall provide the State with a recap of all services provided to the Subscribing Entity on a monthly basis. Specific reporting data requirements will be outlined in the Service Attachment and/or Amendments.

## **13 Service Level Guarantee and Credits**

The Service Provider will issue credit allowances for service outages as set forth in the Service Level Agreement outlined in the Service Attachment and/or Amendments section(s). The credit will appear on the next invoice.

## **14 Cost Recovery**

- A. The Service Provider will establish a State of Ohio Cost Recovery Fee Account. This Cost Recovery Fee is an estimated charge to recover costs/fees incurred by the State in the management and administration of the Services for all the parties and/or Subscribing Entities in the Agreement described herein and/or the Service Attachments.
- B. The Cost Recovery Fee to be paid to State will be calculated by multiplying Two Percent (2%) times the total dollar amount of services invoiced for the services to which the Cost Recovery Fee applies as indicated in the Service Attachment.

The State will generate notification to the Service Provider via email on the last day of the quarter advising the Service Provider to complete a revenue reporting form provided by the State within thirty (30) days prior to the close of the quarter. The Service Provider will complete and return the revenue reporting form via email within thirty (30) days preceding the close of the quarter. The State will compare quarterly the revenue reporting forms provided by the Service Provider to expenditure data from the State's general ledger to insure minimum reporting amount was met. The minimum would include all state expenditures without cooperative purchasing expenditures. The State will generate an invoice to the Service Provider for the quarterly Cost Recovery Fee based on reported revenue but at least exceeding amount of general ledger statewide disbursements report.

Example of calculation of a Cost Recovery Fee:

Example 1

Service Provider Revenue Report	\$1,000.00	X 2%	\$20.00
State Expenditure Report	\$900.00		

Example 2

Service Provider Revenue Report	\$800.00		
State Expenditure Report	\$1,000.00	X 2%	\$20.00

- C. The Service Provider will remit to the State the 2% Cost Recovery Fee within thirty (30) days of receipt of the invoice from the State by check to the State of Ohio, Department of Administrative Services, Office of Information Technology. THE CHECK SHALL BE MADE OUT TO: TREASURER, STATE OF OHIO, FUND 133 and shall be sent to the State at the following address:

Department of Administrative Services  
Office of Information Technology  
Infrastructure Services Division  
30 E. Broad Street – 39<sup>th</sup> Floor  
Columbus, OH 43215  
Attn: Business Manager

- D. To ensure that the payment is credited properly, the Service Provider will identify the check as State of Ohio Cost Recovery Fee and reference this Agreement between the Service Provider and The State of Ohio, Office of Information Technology and reference the Quarterly Activity Reports supporting the check amount. The data requirements for the Quarterly Activity Reports will be detailed in the Service Attachment(s). Credit of the Cost Recovery Fee will begin in the month of execution of this Agreement.

- E. A copy of the Quarterly Activity Report shall be sent to the Contract Manager at the following address:

Department of Administrative Services  
Office of Information Technology  
Infrastructure Services Division  
1320 Arthur E. Adams Drive, 3rd Floor

Columbus, Ohio 43221  
Attention: Contract Manager

- F. The first payment will be calculated against all services rendered to the existing Subscribing Entity(s) transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribing Entity(s) as stated above.

## 16 Notices

Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by a) registered or certified mail, postage prepaid, in any post office in the United States; b) hand delivery; c) overnight courier; d) facsimile transmission or e) email upon confirmation of receipt.

If to the State:

Department of Administrative Services  
Office of Information Technology  
Infrastructure Services Division  
1320 Arthur E. Adams Drive, 3rd Floor  
Columbus, Ohio 43221  
Attention: Contract Manager

If to the Service Provider:

Qwest Communications Company, LLC  
1801 California  
Denver, CO 80202

With a copy to:

Qwest Communications Company, LLC  
Legal Department  
1801 California, 9<sup>th</sup> Floor  
Denver, CO 80202

## 17 Service Provider Added Language

This Section has been added to provide the Service Provider with the flexibility to add to the Terms and Conditions outlined in Sections 1 through 16 of this Agreement. Any additions or changes in this section must follow the format as outlined in the Master Service Agreement and Service Attachment instructions document. Please note that all Terms and Conditions which are specific to the services will be addressed in the Service Attachment(s) and not in this section. In lieu of adding additional Terms and Conditions to Section 17, Service Provider made changes throughout the body of this MSA.

**SIGNATURE PAGE TO FOLLOW**

**QWEST COMMUNICATIONS  
COMPANY, LLC**

**STATE OF OHIO,  
DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES**



Signature

Signature

Ruben Fernando

Printed Name

Printed Name

Director Offer Mgmt

Title

Title

8/23/11

Date

Effective Date

04-6141739

Federal Tax ID



JOHN R. KASICH  
GOVERNOR  
STATE OF OHIO

### **Executive Order 2011-12K**

Governing the Expenditure  
of Public Funds for Offshore Services

**WHEREAS**, State of Ohio officials and employees must remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio in particular, and must do so especially during Ohio's continuing efforts to recover from the recent recession.

**WHEREAS**, allowing public funds to pay for services provided offshore has the potential to undermine economic development objectives in Ohio.

**WHEREAS**, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

**NOW THEREFORE**, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

1. No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by subcontractors of those providing services purchased by an Executive Agency.
2. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
3. The Department of Administrative Services, through Ohio's Chief Procurement Officer, shall have in place, by July 1, 2011, procedures to ensure all of the following:
  - a. All agency procurements officers (APOs), or the person with equivalent duties at each Executive Agency, have standard language in all Executive Agency contracts which:
    - i. Reflect this Order's prohibition on the purchase of offshore services.

**DEPARTMENT OF ADMINISTRATIVE SERVICES**  
**STANDARD AFFIRMATION AND DISCLOSURE FORM**  
**EXECUTIVE ORDER 2011-12k**  
**Banning the Expenditure of Public Funds on Offshore Services**

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**SERVICE PROVIDER/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:**

By the signature affixed to this response, the Service Provider affirms, understands and will abide by the requirements of Executive Order 2011-12k issued by Ohio Governor John Kasich. The Service Provider affirms that both the Service Provider and any of its subcontractors shall perform no services requested under this Contract, along with all amendments, outside of the United States. The Executive Order is attached.

The Service Provider shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Service Provider to sanctions, termination or a damages assessment. If the Service Provider will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Service Provider:

**1801 California Street**  
\_\_\_\_\_  
(Address)

**Denver, Colorado 80202**  
\_\_\_\_\_  
(City, State, Zip)

Name/Principal location of business of subcontractor(s):

**Not Applicable**  
\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

2. Location where services will be performed by Service Provider:

**6000 Parkwood Place**  
\_\_\_\_\_  
(Address)

**Dublin, Ohio 43016**  
\_\_\_\_\_  
(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Service Provider:

**Not Applicable**  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

**Not Applicable** \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Service Provider:

**Not Applicable** \_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

**SERVICE PROVIDER**

By:  \_\_\_\_\_  
Contractor authorized representative

Date: 8/23/11