

# Terms and Conditions – Private Service Contract – Ethernet Services

## SERVICE DESCRIPTION

LightCore will provide the domestic ethernet telecommunications transport services and internet access services which are specifically dedicated to Customer's use described in the Service Order to which these terms and Conditions are attached ("Services"). Services may include both On-Net and Off-Net circuits. "On-Net" circuits are defined as the entire circuit shall be located solely upon the LightCore operated network and other end points of such circuit shall originate or terminate at a LightCore point of present. "Off-Net" circuits are defined as circuits not entirely located on LightCore's operated network. An entrance facility charge plus any applicable mileage charges will be assessed at standard tariff rates if LightCore issues Carrier Facility assignments to the Off-Net circuit.

Customer hereby acknowledges that the Internet is not owned, operated, managed by or in any way affiliated with LightCore or any of its affiliates, and that it is a separate network of computers independent of LightCore. Access to the Internet is dependent on numerous factors, technologies and systems, many of which are beyond LightCore authority and control. Customer's use of the Internet is solely at its own risk and is subject to all applicable local, state, national and international laws and regulations. The LightCore internet access network may only be used for lawful purposes. The transmission of any material in violation of any United States or state regulations is prohibited. This includes, but is not limited to, copyrighted material, material legally judged to be threatening or obscene, material protected by trade secret or material that is otherwise deemed to be proprietary or judged by LightCore to be inappropriate or improper such as bulk e-mail messages.

## PAYMENT

Undisputed recurring charges for the Services shall be due within thirty (30) days of the date of the invoice; billing shall commence upon installation. Any amount not received within thirty (30) days of the date of the invoice will be subject to LightCore's standard late charge of 1.5% per month.

Customer agrees to pay any sales use, gross receipts, excise, access, bypass or other local, state and federal taxes or charges, imposed on or based upon the provision, sale or use of the Services provided. Taxes will be separately stated on Customer's invoice.

## USE

Customer may use the Services for any lawful purpose for which they are intended, provided that Customer will not use the Services so as to interfere with or impair service over any of the facilities and associated equipment comprising the LightCore fiber optic cable network and associated equipment, or to impair the privacy of any communications over the fiber optic facilities and associated equipment of LightCore.

## TERM

LightCore shall use reasonable efforts to make Services available by the estimated Service delivery date in the Service Order. LightCore shall not be liable for any damages whatsoever for late delivery, including delays incurred for reasons beyond the reasonable control of LightCore such as casualty, condemnation, loss of rights-of-way, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right of way approvals, and weather related delays in actual construction work ("Force Majeure Events"). If Customer is not ready to accept LightCore Services on the actual Service delivery date, LightCore shall nevertheless commence billing.

Unless Customer provides LightCore with written notice within thirty (30) days prior to the expiration of the term of On-Net Services, or ninety (90) days prior to the expiration of the term of Off-Net Services, upon the expiration of the original term for a Service, the term of that Service will be automatically renewed for a period of one (1) year at the existing Service Order price for that Service and on the same other terms and conditions. Any changes to these terms and conditions for the Service after expiration must be approved in writing by both parties.

Expedite, Cancellation and Supplement Orders are subject to additional fees.

## CUSTOMER RESPONSIBILITIES

**Access** – Customer will cooperate with arranging access to any of the rights of way, conduit and equipment space necessary to provide the Service on the Customer premises so that LightCore-authorized personnel, employees, or agents may install, repair, maintain, inspect, replace or remove any and all facilities and associated equipment provided by LightCore. Access to such sites shall be made available at a time mutually agreeable to Customer and LightCore. LightCore shall also have the right to obtain access to its cable installed in Customer-provided conduit at any splice or junction box.

**Governmental Authorizations** – Customer shall be responsible to obtain and continue in effect all government authorizations necessary to permit Customer to receive Service and comply with its obligations under this Contract.

## EQUIPMENT

**Title** – Customer agrees that all right, title and interest in all the fiber optic or other facilities and associated equipment provided by LightCore hereunder shall at all times remain exclusively with LightCore. Customer shall not create or permit to be created any liens or encumbrances relating to Customer's use of the Service or arising from the location of the LightCore equipment. Upon termination of the term of a Service, LightCore shall remove its equipment and shall have the right, but not the obligation, to remove all other facilities from any applicable premises.

**Maintenance** – LightCore shall use reasonable efforts to maintain the Services in accordance with applicable performance standards therefore. There are no additional charges for LightCore maintenance services for the LightCore facilities. However, LightCore shall have no responsibility for maintenance and repair of facilities and equipment which it does not furnish and LightCore may assess Customer its standard charge for all such call outs.

## DEFAULT

If a party (a) shall fail to pay any amount under this Contract not reasonably disputed and such failure continues for ten (10) days after written notice to the other party that the same is due and payable, or (b) fails to comply with any other material provision of this Contract and such noncompliance continues for thirty (30) days after written notice to the other party thereof, then the non-defaulting party, at its sole option, may elect to pursue one or more of the following courses of action: (i) terminate this Contract and collect all sums then due and payable pursuant to Section 9, (ii), take appropriate action to enforce payment, including suspension of all or any part of the Service, and/or (iii) pursue and other remedies as may be provided at law or in equity.

## LIMITATIONS OF LIABILITY

**Liability for Service Interruptions** – To the extent that any part or portion of the Service is unavailable, interrupted, degraded or otherwise unsatisfactory for any reason, LightCore and Customer agree that Customer's sole and exclusive remedies are provided for in Section 9.

**Liability for Damages to Property** – LightCore shall not be liable for any damages whatsoever to property at any Customer premises resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by LightCore's willful misconduct or negligence.

**Liability for Services and Equipment Not Provided by LightCore** – LightCore shall not be liable for any damages whatsoever associated with Service, channels, or equipment which it does not furnish or for any act or omission of any entity furnishing to Customer facilities or equipment used for or with the Service.

**Force Majeure Events/Negligence of Customer** – LightCore shall not be liable for any failure of performance or Service due to Force Majeure Events. LightCore shall not be liable for any interruptions or damages due to the fault or negligence of Customer or due to the failure or malfunction of Customer-provided equipment or facilities.

**Liability Regarding Governmental Authorization** – LightCore shall use reasonable efforts to obtain and keep in effect all government authorizations necessary in order to provide Service under this Contract. LightCore shall be entitled to take and shall have no liability for any action necessary including termination to bring the service into conformance with any governmental regulations or authorizations, and Customer shall fully cooperate in and take such action as may reasonably be requested by LightCore as part of such compliance.

**No Special Damages** – In no event shall LightCore be liable for special, consequential, exemplary, or punitive damages as a result of its performance or nonperformance of this Contract.

## TERMINATION

a) LightCore may terminate this Contract without liability and Customer's payment obligation will be proportioned if the facilities used to provide the Service are taken by reason of condemnation or exercise of eminent domain.

b) Following the date of this Contract, if Customer terminates a Service prior to the full term indicated on the Service Order (other than for LightCore's material default of which LightCore has been notified and has failed to cure in accordance with this Contract), Customer shall pay LightCore any prorated charges then due and owing for Services provided through the date of termination and Customer shall pay LightCore as liquidated damages and not as a penalty one hundred percent (100%) of the monthly recurring charges for the remaining unexpired portion of the term of the Service, plus any third party or local access provider termination ability or cancellation charges.

c) LightCore will work jointly with Customer and the third party to help limit cancellation and termination charges and mitigate costs incurred by Customer.

## SLAs and CREDIT ALLOWANCES

**Ring Protected Network**. If ring protected Services delivered along the backbone of the LightCore network

time set forth in Table A. Outage mean that a Service is degraded to a level in which the Bit Error Rate is in excess of 10<sup>-3</sup> for a period of ten (10) or more consecutive seconds as defined in ANSI T1.231-1997. A Outage shall be deemed to have commenced upon the earlier of (i) an alarm signifying such Outage, (ii) the LightCore learns of same or (iii) Customer otherwise learns of such and notifies the LightCore network control center, and shall end at the earlier of the time when Service is no longer unavailable or the condition causing the alarm has been rectified.

Table A

Outage Length	Credit	Outage Length	Credit
Less than 10 seconds	None	1 minute – 1 hour	1/2 day
10 seconds – 1 minute	1/10 day	1 hour or more	one day

Note: No more than one full day's credit will be allowed for any period of 24 hours.

b) **Non-Ring Protected Network**. In the event of Outages due to a failure in non-ring protected or single threaded Services facilities, Customer shall be entitled to request credits against future monthly charges, as set forth in Table B, for each Service that is the subject of an Outage for more than the period of time set forth in Table B:

Table B

Outage Length	Credit	Outage Length	Credit
Less than 5 hr 59 min	None	9 hr - 11 hr 55 min	3/5 day
6 hr - 8 hr 59 min	2/5 day	12 hr - 14 hr 59 min	4/5 day
		15 hr - 24 hr	One day

Note: No more than one full day's credit will be allowed for any period of 24 hours.

c) None of the above credit allowances apply to Outages: (i) caused by a failure in the Customer provided connection facilities, (ii) caused by Customer; (iii) due to failure of power or equipment provided by Customer or others; (iv) during any period in which LightCore is not given access to the Service premises; (v) of Off-Net Services; or (vi) due to scheduled maintenance and repair. Customer shall be responsible for all maintenance and repair of the Customer provided connection facilities. If an Outage occurs in Off-Net Services, as LightCore receives a credit or other payment from a third party for such Outage of Off-Net Services, such credit or other payment will be passed through to Customer by LightCore. Notwithstanding any other provision herein, the above credits shall be the sole and exclusive remedy of Customer for Outages.

## 11. INDEMNIFICATION

LightCore and Customer shall be indemnified, defended and held harmless by the other party hereto against all claims, suits, proceedings, expenses, losses, liabilities, or damages (collectively "Claims") arising from this Contract involving all claims arising out of any act or omission of the indemnifying party, or customers or patrons of Customer, including Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any use of the Service, in connection with the Services made available under the terms of this Contract. The indemnifying party agrees to defend the other party against any such claim and to pay, without limitation, all litigation costs, reasonable attorneys' fees and court costs, settlement payments, and any damages awarded (including reasonable attorneys' fees) resulting from any such claim.

## 12. WARRANTIES

THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

## 13. MISCELLANEOUS

This Contract may be modified, waived or amended only by a written instrument signed by the party again which enforcement thereof is sought, shall be binding upon the parties' respective successors and assigns, and constitutes the entire agreement between LightCore and Customer. LightCore may assign its rights or obligations hereunder without Customer's prior consent and all of LightCore's rights, title and interest herein shall inure to the benefit of such assignee, its successors and assigns. Customer may not assign its rights or obligations hereunder except with the prior written consent of LightCore. Subject to the foregoing, the rights or obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## 14. BUILDING/PREMISES

Customer hereby releases the building owner/manager of the premises in which the Services are delivered from and with respect to (i) any liability for the installation, operation, maintenance, use, repair or replacement of LightCore's provision of Services, or telecommunication equipment, or the quality of such Services and equipment, (ii) expressly acknowledges that the Services are being provided and maintained solely by LightCore and not the building owner/manager, (iii) nothing in any service agreements shall alter the respective obligator or relationship between Customer and building owner/manager under any lease agreement, and (iv) neither building owner/manager, nor any other party is a third party beneficiary of this Contract.

## 15. JURISDICTION/LAW

This Agreement may be subject to state and/or federal Tariffs. In the event that provisions set forth in this Agreement differ from those set forth in the applicable federal and/or state tariffs, the terms of this Agreement shall be deemed to waive or modify the terms of the applicable tariff, to the extent permitted by law. The rights and obligations of the parties under this Contract shall be governed by and construed and enforced in accordance with the laws of the State of Missouri, without regard to its choice of law provisions.

CenturyTel Fiber Company II, LLC  
d/b/a LightCore, a CenturyTel Company

Date

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CUSTOMER NAME] Date

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_