BRIGHTSPEED WHOLESALE BROADBAND SERVICE AGREEMENT (WBSA)

This Brightspeed Wholesale Broadband Service Agreement (“WBSA”), together with any Schedule, Exhibit or Attachment hereto, all of which are hereby incorporated herein by reference (the “Agreement”) is between the Brightspeed Legal Entity(ies) listed in Exhibit A for the state and legacy organizations identified in the Applicable States section below,dba Brightspeed (“Brightspeed”), and [Customer Legal Entity], (“Customer”), (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a “Party” or collectively as the “Parties”). The undersigned Parties have read and agree to the terms and conditions set forth in this Agreement.

|  |  |
| --- | --- |
| **Brightspeed:**By: Name: Title: Date:  | **[Customer Legal Entity]:**By: Name: Title: Date: Email:  |

##### NOTICE INFORMATION: ALL WRITTEN NOTICES REQUIRED UNDER THIS AGREEMENT SHALL BE SENT TO THE FOLLOWING:

**Brightspeed:**

Legal Department / Regulatory Notices

1120 South Tryon Street, Suite 700

Charlotte, NC 28203

Phone: 833-692-7773

Email: CarrierAgreements@Brightspeed.com

**[Customer Legal Entity]:**

Attention:

Address:

City, State, Zip:

Phone:

Email:

Wholesale Broadband Service Agreement (WBSA)

Attachment 1 Definitions

Attachment 2 Brightspeed WBSA Attachment

Attachment 3 Rates for WBSA to Business and Residential End User Customers

**APPLICABLE STATES:**

Brightspeedagrees to offer and Customer intends to purchase Service in the states indicated below.

|  |  |
| --- | --- |
| **Alabama**  |  |
| **Arkansas**  |  |
| **Georgia**  |  |
| **Illinois**  |  |
| **Indiana**  |  |
| **Kansas**  |  |
| **Louisiana**  |  |
| **Michigan**  |  |
| **Mississippi**  |  |
| **Missouri**  |  |
| **New Jersey**  |  |
| **North Carolina**  |  |
| **Ohio**  |  |
| **Oklahoma** |  |
| **Pennsylvania**  |  |
| **South Carolina**  |  |
| **Tennessee**  |  |
| **Texas**  |  |
| **Virginia**  |  |
| **Wisconsin**  |  |

WHEREAS, the Parties desire to enter into this Wholesale Broadband Service Agreement, together with the Attachments, incorporated herein by reference, (“Agreement”) to establish the rates, terms and conditions that apply to the Services (as defined below) provided by Brightspeed to Customer pursuant to this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Parties mutually agree as follows:

**1.** **Definitions**. Capitalized terms used herein are defined in Attachment 1.

**2. Effective Date**. The Effective Date of this Agreement shall be the date of final signing and execution by both Parties

**3**. **Term and Post-Term Obligations.**

3.1 **Term**. This Agreement shall have an initial term (the “Initial Term”) that expires three (3) years after the Effective Date. Upon expiration of the Initial Term the Agreement shall automatically continue on a monthly basis at the same rates in effect upon expiration of the Initial Term, until a new contract has been executed unless either Party provides written notice to the other Party at least ninety (90) Days in advance of the expiration of the Initial Term or, if the Initial Term has expired, ninety (90) Days in advance of the desired date of expiration of this Agreement, advising that such renewal will not go into effect.

3.2 **Post-Term Obligations**. If this Agreement expires or terminates for any reason other than the actions specifically delineated in Section 8 of this Agreement, then:

 3.2.1 Customer shall immediately stop accepting and placing orders for new activations of the Service from its End User Customers.

3.2.2 Unless instructed otherwise in writing by Customer, Brightspeed shall process all orders for Service validly submitted by Customer prior to such termination or expiration of the Agreement.

 3.2.3 Each Party’s rights and obligations under this Section 3.2 shall survive expiration or earlier termination of this Agreement for any reason or no reason indefinitely.

**4.** **Services;** **Eligibility for Services; Proof of Authorization**.

4.1 **Services**. Brightspeed will provide Customer with the services, as more fully described in Attachment 2 hereto (individually a “Service” and collectively, the “Services”), for the purpose of allowing Customer to provide Services to its residential and business End User Customers. Service will only be provided in Brightspeed’s Incumbent Local Exchange Carrier (as such term is commonly understood within the telecommunications industry) service territory in the Applicable States indicated in the table set forth in the preamble to this Agreement.

* 1. **Proof of Authorization**. Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA), as required by Applicable Law, as amended from time to time. Each Party will make POAs available to the other Party upon request. In the event of an allegation of an unauthorized change or unauthorized service in accordance with all Applicable Law, the Party charged with the alleged infraction shall be responsible for resolving such claim, and it shall indemnify and hold harmless the other Party for any losses, damages, penalties, or other claims in connection with the alleged unauthorized change or service.

**5. General Terms**.

5.1 **Repair & Maintenance**. Brightspeed will provide general repair and maintenance services on its facilities, including those facilities supporting Services purchased by Customer under this Agreement, at a level that is consistent with other comparable services provided by Brightspeed.

5.2 **Network Modernization**. Brightspeed may make necessary modifications and changes to its network on an as needed basis in order to properly maintain and modernize its network. Customer acknowledges that such changes may result in minor changes to transmission parameters or modem replacements; provided that all such network maintenance and modernization activities will result in transmission parameters or modem replacements for the Service that are consistent with the Service ordered by Customer.

5.3 **Implementation Plan**

##  5.3.1 *Coordination.* The Parties understand that the arrangements and provision of Service to Customer’s End User Customers as contemplated by this Agreement requires technical and operational coordination between the Parties. Accordingly, the Parties agree to work cooperatively to implement this Agreement and Customer agrees to provide Brightspeed information necessary to establish and maintain Customer’s account and services under this Agreement.

## 5.3.2 *Expansion*. Provision of the Service may be expanded to specified geographic areas over time, at Brightspeed’s sole discretion. Brightspeed shall provide Customer with formal notification of which wire centers can provide Service for resale by Customer as new geographic areas are added. Such formal notification shall be made no later than sixty (60) Days after the date that any such additional wire center is available to support resale of the Service.

5.4 **Network Security**

5.4.1 Each Party will exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own employees, agents, End User Customers and property, but in no case less than a commercially reasonable degree of care.

5.4.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions for any and all use of the Services by End User Customers. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide Service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. Customer is responsible for covering its employees on such security requirements and penalties.

5.4.3 The Parties' networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for their employees with respect to such security requirements and penalties.

5.4.4 Brightspeed shall not be liable for any losses, damages or other claims, including, but not limited to, uncollectible or unbillable revenues, resulting from accidental, erroneous, malicious, fraudulent or otherwise unauthorized use of Services or facilities (‘Unauthorized Use”), whether or not such Unauthorized Use could have been reasonably prevented by Brightspeed, except to the extent Brightspeed has been notified in advance by Customer of the existence of such Unauthorized Use, and fails to take commercially reasonable steps to assist in stopping or preventing such activity or such activity is the result of Brightspeed’s willful misconduct.

5.5 **Customer Information**. Customer agrees to work with Brightspeed in good faith to promptly complete or update required new customer information about Customer as applicable, (e.g., Brightspeed’s “Commercial WBSA Customer Questionnaire”) to the extent that Customer has not already done so, and Customer shall hold Brightspeed harmless for any damages to or claims from Customer caused by Customer’s failure to promptly complete or update such questionnaire.

**6.** **Financial Terms**.

6.1 **Rates**. The rates for Brightspeed’s provision of the Service are set forth in Attachment 3 which is attached hereto, and incorporated herein by reference. The Parties agree that the referenced rates are just and reasonable.

# 6.2 **Taxes, Fees, and other Governmental Impositions**.

6.2.1 Excluding taxes based on Brightspeed's net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service. This includes value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (e.g., regulatory and 911 surcharges), whether imposed on Brightspeed or a Brightspeed affiliate, along with similar charges stated in a Service Attachment (collectively “Taxes and Fees”). Some Taxes and Fees, and costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Brightspeed, then, notwithstanding anything to the contrary in this Agreement, the gross amount payable by Customer will be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Brightspeed will not be less than Brightspeed would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Brightspeed with an exemption certificate eliminating Brightspeed’s liability to pay certain Taxes and Fees. The exemption will apply prospectively.

**7. Intellectual Property.**

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive and use Services solely as provided in this Agreement or as specifically required by the then-applicable federal rules and regulations relating to Services provided under this Agreement, nothing contained in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trademark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as otherwise provided for in this Agreement, neither Party may use any patent, copyright, trade name, trademark, service mark, trade secret, nor other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party without execution of a separate written agreement between the Parties.

7.2 Subject to the general Indemnity provisions of this Agreement, Brightspeed shall defend Customer and its affiliates against any third party claim filed against Customer and alleging that a Service, as provided by Brightspeed, prospectively infringes any patent, copyright, trademark, service mark, trade secret or other intellectual property right (“IP Right”); provided however, the foregoing will not apply to any claim based on: (i) the combination of Service with other products, services or functionality, (ii) Brightspeed’s design or modification of a Service in accordance with Customer’s specific instructions, specifications or requirements; (iii) use or operation by or on behalf of Customer of a Service other than in accordance with this Agreement or other written documentation provided by Brightspeed; (iv) content, data, or other information provided by on or behalf of Customer (“Customer Content”). Brightspeed will also pay any costs of settlement or any damages finally awarded by a court of competent jurisdiction against Customer as a result of such third party claim, except that Brightspeed will have no liability or responsibility hereunder for any measure of costs or damages calculated upon Customer’s revenue or sales volume. Brightspeed’s obligations under this section are contingent upon Customer: (i) providing prompt notice of such claim to Brightspeed in writing, (ii) providing Brightspeed with sole control and authority over the defense and/or settlement of such claim, and (iii) cooperating with Brightspeed (at Brightspeed’s expense) in the defense and/or settlement of such claim upon Brightspeed’s written request. If a claim for which Brightspeed may have a defense or payment obligation hereunder is or may be made, Brightspeed may, at its option and expense: (i) obtain for Customer the right to continue to use the Service consistent with this Agreement; (ii) modify the Service so that it is non-infringing and in compliance with the Agreement; or (iii) replace the Service with an alternative, non-infringing Service with equivalent functionality. Notwithstanding the foregoing, any third-party service, system, CPE, equipment or software provided under this Agreement (each, a “Third Party Item”) is provided without any obligation of Brightspeed to defend or indemnify Customer against any claim of infringement of any IP Right arising in connection with any such Third Party Item, except that Brightspeed shall pass through to Customer any contractual obligations of a third party provider of any such Third Party Item to defend or indemnify Customer against such claims. The foregoing states Brightspeed’s only obligations (and Customer’s sole and exclusive remedy) for any claims, actions, liabilities, damages or losses arising in connection with alleged or actual infringement, violation or misappropriation of an IP Right by the Services.

7.3 Customer shall defend Brightspeed and its affiliates against any third party claim filed against Brightspeed and alleging that any service or Customer Content provided or delivered by or on behalf of Customer prospectively infringes any IP Right. Customer will also pay any costs of settlement or any damages finally awarded by a court of competent jurisdiction against Brightspeed as a result of such third party claim. Customer’s obligations under this section are contingent upon Brightspeed: (i) providing prompt notice of such claim to Customer in writing, (ii) providing Customer with sole control and authority over the defense and/or settlement of such claim, and (iii) cooperating with Customer (at Customer’s expense) in the defense and/or settlement of such claim upon Customer’s written request.

7.4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY’S (“INDEMNIFYING PARTY”) TOTAL AND CUMULATIVE LIABILITY UNDER THIS SECTION 7, INCLUDING DEFENSE RELATED COSTS AND INDEMNITY PAYMENT OBLIGATIONS (COLLECTIVELY, “INDEMNIFIED COSTS”), WILL NOT EXCEED THE GREATER OF: (a) $1 MILLION UNITED STATES DOLLARS AND (b) ANY FEES PAID BY CUSTOMER HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE UPON WHICH THE INDEMNIFYING PARTY IS FIRST NOTIFIED OF A CLAIM, IN EACH CASE (a) AND (b), LESS AGGREGATE INDEMNIFIED COSTS PREVIOUSLY PAID BY THE INDEMNIFYING PARTY UNDER THIS SECTION 7.

7.5 Neither Party shall without the express written permission of the other Party, state or imply that it is connected, or in any way affiliated with the other or its Affiliates; it is part of a joint business association or any similar arrangement with the other or its Affiliates; the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or with respect to its marketing, advertising or promotional activities or materials, state or imply that the services are in any way associated with or originated from the other Party or any of its Affiliates. In addition, Customer, including its employees, representatives and agents, will not state or otherwise indicate, directly or indirectly, to its end-users or prospective end-users: (a) that they will be Brightspeed customers or that they may obtain Brightspeed service from Customer or (b) that Customer has or the end-user will have any relationship with Brightspeed. Without limiting the foregoing, Customer must not use a name, trademark, service mark, copyright or any other intellectual property owned by Brightspeed or its Affiliates, except that Customer may communicate that Brightspeed is one of the underlying carriers from which Customer purchases services if Customer has obtained the prior written consent of the Brightspeed Law Department. This is a non-exclusive agreement. Nothing in this Agreement prevents Brightspeed from offering to sell or selling any services to other parties.

7.6 Nothing in this Section prevents either Party from truthfully describing the Services it uses to provide service to its End User Customers, provided it does not represent the Services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates. Brightspeed’s name and the names of its Affiliates are proprietary and nothing in this Agreement constitutes a license authorizing their use, and in no event will Customer, including its employees, representatives and agents, attempt to sell any Services to its end-users using the name, brand or identity of Brightspeed or Brightspeed’s Affiliates in any way. Notwithstanding the foregoing, Customer may identify Brightspeed as the underlying provider for Services provided to End User Customers.

7.7 Because a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

**8.** **Payment and Security Provisions; Cessation of Order Processing; Suspension of Service**.

8.1 **Payment**. Undisputed amounts payable under this Agreement are due and payable within thirty (30) Days after the date of invoice (the “Payment Due Date”) so long as no invoice is dated less than 28 days from the date of the immediately preceding invoice. Payment shall be made in U.S. currency by check or wire transfer of immediately available funds. If the Payment Due Date falls on a Saturday, Sunday or on a designated bank holiday, the payment shall be made the next Business Day. For invoices distributed electronically, the date of the invoice is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If Customer fails to make payment on or before the Payment Due Date, Brightspeed may invoke all available rights and remedies.

8.2 **Cessation of Order Processing**.Brightspeed may discontinue processing new orders for Services for any breach by Customer of this Agreement, including without limitation the failure of Customer to make full payment for Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date; provided that Brightspeed has first notified Customer in writing at least ten (10) Business Days prior to discontinuing the processing of orders for Services.

If Brightspeed continues to accept additional orders for Services on the date specified in such ten (10) Business Days’ notice, and Customer's non-compliance continues, nothing contained herein shall preclude Brightspeed's right to refuse to accept additional orders for Services from Customer at any time prior to Customer’s cure of such non-compliance without further notice. For order processing to resume, Customer will be required to cure any breach and make full payment of all past-due charges for Services not disputed in good faith under this Agreement, and Brightspeed may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, Brightspeedreserves the right to seek equitable relief including injunctive relief and specific performance. Upon cure of the breach or lack of payment resulting in the suspension of order processing, Brightspeed shall resume processing orders for Services from Customer within one (1) Business Day.

8.3 **Disconnection of Service**. Brightspeed may disconnect any Services provided under this Agreement for any breach by Customer of this Agreement that is not cured by Customer in accordance with Section 11 herein, including without limitation, failure by Customer to make full payment for such Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date provided that Brightspeed has first notified Customer in writing at least ten(10) Business Days prior to disconnecting Services. Customer will pay the applicable charge set forth under this Agreement required to reconnect Services for each End User Customer disconnected pursuant to this Section 8.3. In case of such disconnection, all applicable undisputed charges, including termination charges, will become due and payable. If Brightspeed does not disconnect Customer's Service on the date specified in the ten (10) Business Days’ notice, and Customer's noncompliance continues, nothing contained herein shall preclude Brightspeed's right to disconnect any or all Services. For reconnection of the Service to occur, Customer will be required to make full payment of all past and current undisputed charges under this Agreement for Services and Brightspeed may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, Brightspeed reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Brightspeed will not affect a disconnection pursuant to this Section 8.3 in such manner that Customer may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to Customer’s reasonable diligence in effecting such compliance.

8.4 **Billing Disputes**.Should Customer dispute, in good faith, and withhold payment on any portion of the charges under this Agreement, Customer will notify Brightspeed in writing within fifteen (15) Days following the Payment Due Date identifying the amount, reason and rationale of such dispute. Billed amounts for which written, itemized, good faith disputes or claims have been filed are not due for payment unless and until such disputes or claims have been escalated for resolution and resolved in accordance with the dispute resolution provisions set forth in Section 25 of this Agreement. Regardless of the status of any disputes, Customer shall at a minimum pay all undisputed amounts due to Brightspeed. Both Customer and Brightspeed agree to expedite the investigation of any disputed amounts, promptly provide reasonably requested documentation regarding the amount disputed, and work in good faith in an effort to resolve and settle the dispute through informal means prior to invoking any other rights or remedies.

 8.4.1 *Withheld Disputed Charges*. If Customer disputes charges and does not pay such charges by the Payment Due Date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of Brightspeed, Customer will pay the disputed amount and applicable late payment charges no later than within thirty (30) Days after the date of such dispute resolution. Customer may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of Customer, Brightspeed will credit Customer’s bill for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute.

8.4.2 *Paid Disputed Charges.*  If Customer pays the disputed charges and the dispute is resolved in favor of Brightspeed, no further action is required. If Customer pays the charges disputed at the time of payment or at any time thereafter, and the dispute is resolved in favor of Customer, Brightspeed will adjust the Billing, usually within two Billing cycles after the resolution of the dispute, as follows: Brightspeed will credit Customer’s bill for the disputed amount and any associated interest; or if the disputed amount is greater than the bill to be credited, pay the remaining amount to Customer. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, will any late payment charges be assessed on any previously assessed late payment charges.

8.4.3 *Dispute Period*. If Customer fails to dispute a rate or charge within one hundred eighty (180) Days following the invoice date on which the rate or charge appeared, adjustment will be made on a going-forward basis only, beginning with the date of the dispute.

8.5 **Credit Approval and Deposits**. Customer will provide Brightspeed with credit information as requested. Brightspeed may require Customer to make a deposit as a condition of Brightspeed’s acceptance of any orders for Services or continuation of non-usage based Service where Customer fails to timely pay Brightspeed hereunder or Brightspeed reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed two months’ estimated charges for Service and are due upon Brightspeed’s written request. When Service is discontinued, the deposit will be credited to Customer's account and the balance refunded.

8.6 **Interest on Deposits**. Any interest earned on cash deposits will be credited to Customer in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits are not subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to Customer's account or refunded, as appropriate, upon theearlier of the expiration of the term of this Agreement or the establishment of satisfactory credit with Brightspeed, which will generally be one full year of consecutive timely payments of undisputed amounts in full by Customer. Upon a material change in financial standing, Customer may request, and Brightspeed will consider, a recalculation of the deposit. The fact that a deposit has been made does not relieve Customer from any requirements of this Agreement.

8.7 **Late Payment Charge**. If any portion of the payment is received by Brightspeed after the Payment Due Date, or if any portion of the payment is received by Brightspeed in funds that are not immediately available, then a late payment charge will be due to Brightspeed. The late payment charge is the portion of the payment not received by the Payment Due Date multiplied by a late factor. The late factor is the lesser of: (i) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of Days from the Payment Due Date to and including the date that Customer actually makes the payment to Brightspeed; or (ii) 0.000407 per Day, compounded daily for the number of Days from the Payment Due Date to and including the date that Customer actually makes the payment to Brightspeed.

**9.** **Conversions**. If Customer is obtaining services from Brightspeed under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if Customer wishes to convert such services to a Service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein will be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

**10.** **Customer Contacts**. Customer, or Customer's authorized agent, shall be the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. Customer will inform its End User Customers that they are End User Customers of Customer and Brightspeed shall not represent or infer otherwise, but this shall not be interpreted to in any way restrict the ability of Brightspeed personnel to state factually correct information if a need has arisen to converse with such End User Customers. Customer's End User Customers contacting Brightspeed will be instructed to contact Customer, and Brightspeed's End User Customers contacting Customer will be instructed to contact Brightspeed. In responding to calls, neither Party will make disparaging remarks about the other Party. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider; however, nothing in this Agreement shall be deemed to prohibit Brightspeed or Customer from discussing its products and services with Customer's or Brightspeed's End User Customers who call the other Party in order to gain information on, or to switch to, such products and services.

**11.** **Termination**.

##  Termination. A Party may immediately terminate this Agreement without liability and without prejudice to any other right or remedy of the Parties under the following circumstances:

###  For Brightspeed only, if Customer has had all of its Services disconnected pursuant to Section 8 and further fails to cure the breach of the payment terms within thirty (30) Days after written notice from Brightspeed;

### The other Party fails to cure any other material breach of this Agreement, if capable of cure, within thirty (30) Days after written notice from the non-breaching Party;

### The other Party provides false or deceptive information establishing, providing, using or paying for Services or engages in false, deceptive, fraudulent, or harassing activities when establishing, providing, using or paying for Services; or

### The other Party fails to comply with Applicable Law and such noncompliance prevents the non-breaching Party’s performance under the Agreement;

### The other Party does not generally meet its undisputed obligations, including judgments, to third parties as those obligations become due;

### The other Party becomes subject to a bankruptcy, insolvency, administration, reorganization or liquidation proceeding, or any other similar or related company reconstruction, receivership or administration action, whether voluntary or involuntary;

### The other Party makes an assignment for the benefit of creditors; or

### The other Party becomes Insolvent. For purposes of this Agreement, the term “Insolvent” shall mean:

### The other Party does not meet its undisputed obligations, including judgments, to third parties as those obligations become due; or

### The other Party’s stock, or the stock of the other Party’s parent Affiliate, is involuntarily removed or delisted from a trading exchange.

## Effect of Termination on Liabilities. Notwithstanding the terms and conditions of Section 11.1 for terminating this Agreement, termination of this Agreement for any cause does not release either Party from any liability that:

### at the time of termination, has already properly accrued to the other Party, including, without limitation, all invoices, charges, and Services properly provided up to the termination date, whether or not invoiced by the termination date;

### may accrue in respect of any act or omission before termination; or

### from any obligation that is expressly stated to survive termination, including, without limitation, any obligation that accrues during the Post Termination Period.

* 1. **End User Customer Notices** In the event Brightspeed terminates Service to Customer for any of the reasons delineated in this Agreement, Customer shall provide any and all notices required under applicable law to its End User Customers. In no event shall Brightspeed be responsible to provide any notice of a termination of this Agreement to Customer’s End User Customers.

**12.** **Limitation of Liability**.

12.1 Customer’s sole remedies for any non-performance, outages, failures to deliver, or defects in Services are outage credits or other service credits as defined herein, in which case Brightspeed’s total liability will not exceed the aggregate amount of any applicable credits due.

12.2 Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement.

12.3 Brightspeed will incur no liability to Customer for any withdrawal of, interference with, or degradation to Service provided to Customer's End User Customers caused by Brightspeed's deployment of Remote-Based DSL. Notwithstanding the foregoing, Brightspeed shall use commercially reasonable efforts to resolve any issues as a result of the deployment of Remote-Based DSL.

**13.** **Indemnification**.

13.1 **Indemnity**. The Parties agree that unless otherwise specifically set forth in this Agreement, the following constitute the sole indemnification obligations between and among the Parties:

 13.1.1 *General*. Each Party (the “Indemnifying Party”) agrees to release, indemnify, defend and hold harmless the other Party and each of its Affiliates and its and their officers, directors, employees and agents (each, an “Indemnified Party”) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses by third parties (including attorneys' fees) (individually a “Claim” and collectively the “Claims”), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, caused by the gross negligence or willful misconduct of the Indemnifying Party.

 13.1.2 *Customer Provided Services*. Customer will provide Service to third parties (“Customer Provided Services”). Customer will indemnify, defend and hold Brightspeed and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer certifies that it has filed all required documentation and will at all times have the requisite authority with appropriate regulatory agencies respecting the same. Nothing in this Agreement confers upon any third party any right, benefit or remedy hereunder.

13.2 **Indemnification Procedures**. The indemnification provided herein is conditioned upon the following:

 13.2.1 *Notification*. The Indemnified Party will promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim.

 13.2.2 *Defense*. If the Indemnifying Party wishes to defend against such Claim, it will give written notice to the Indemnified Party of acceptance of the defense of such Claim. In such event, the Indemnifying Party has sole authority to defend any such action, including the selection of legal counsel (provided that such counsel must be reasonably acceptable to the Indemnified Party), and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the Claim, the Indemnified Party has the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party will be available to the other Party with respect to any such defense.

 13.2.3 *Settlement of Claims*. In no event will the Indemnifying Party settle or consent to any judgment for relief other than monetary damages pertaining to any such Claim without the prior written consent of the Indemnified Party. In the event that the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense; provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

**14.** **Disclaimer of Warranties**.

14.1 BRIGHTSPEED MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE ATTACHMENT.

**15**. **Relationship and Counterparts**. The relationship between the parties is not that of partners, agents, or joint venturers. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one instrument. Digital signatures and electronically exchanged copies of signed documents will be sufficient to bind the parties to this Agreement.

**16. Assignment**.

16.1 Neither party may assign its rights or obligations under this Agreement or any Service Attachment without the prior written consent of the other party, which will not be unreasonably withheld. However, either party may assign its rights and obligations under this Agreement or any Order without the consent of the other party: (1) to any subsidiary, parent, or affiliate that controls, is controlled by, or is under common control with that party; (2) pursuant to the sale or transfer of substantially all of the business or relevant assets of that party; or (3) pursuant to any financing, merger, or reorganization of that party. This Agreement and all Service Attachments will apply to any permitted transferees or assignees. Any assignee of Customer must have a financial standing and creditworthiness equal to or better than Customer's.

**17.** **Reporting Requirements**. If reporting obligations or requirements are imposed upon either Party by any third party or regulatory agency in connection with this Agreement or the Services, including use of the Services by Customer or its End User Customers, the other Party agrees to reasonably assist that Party in complying with such obligations and requirements.

**18.** **Survival**. The expiration or termination of this Agreement does not relieve either Party of those obligations that by their nature are intended to survive.

**19.** **Confidentiality/ Nondisclosure**.

19.1 Neither party will: (a) disclose any of the terms of the Agreement; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information received from the other party. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. Each party will limit disclosure and access to confidential information to those of its employees, contractors, attorneys or other representatives who reasonably require such access to accomplish the Agreement’s purposes and who are subject to confidentiality obligations at least as restrictive as those contained herein. “Confidential Information” means any commercial or operational information disclosed by one party to the other in connection with the Agreement and does not include any information that: (a) is in the public domain without a breach of confidentiality; (b) is obtained from a third party without violation of any obligation of confidentiality; or (c) is independently developed by a party without reference to the Confidential Information of the other party.

**20.** **Waiver**. Except as otherwise provided herein, neither Party’s failure to enforce any right or remedy available to it under this Agreement will be construed as a waiver of such right or a waiver of any other provision hereunder.

**21.** **INTENTIONALLY LEFT BLANK**

**22.** **Notices**. Notices will be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided below) or sent by U.S. Postal Service or First Class International Post. Customer failure to follow this process and/or provide complete information may result in continued charges that will not be credited. All legal notices will be addressed to Brightspeed at: Legal Department/Regulatory Notices, 1120 South Tryon Street, Suite 700, Charlotte, NC 28203; Email: CarrierAgreements@Brightspeed.com; and to any electronic or physical address of Customer as provided in the Agreement or in its absence, to Customer’s address as reflected in Brightspeed's records.

**23.** **Force Majeure**. Neither party will be liable, nor will any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party’s reasonable control (“force majeure event”).

**24.** **Law**.

24.1 **Governing Law**. This Agreement will be governed and construed in accordance with the Telecommunications Act of 1996 and applicable decisions of the FCC and other regulatory authorities, where applicable. Otherwise, the laws of the State of North Carolina will govern, without regard to its choice of law rules. Each party will comply with all applicable laws, rules and regulations associated respectively with Brightspeed’s delivery or Customer’s use of the Service under the Agreement. This Agreement, including any Service Attachments, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. Brightspeed is not subject to any obligations that are not explicitly identified in this Agreement. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder will constitute a waiver of such right(s).

24.2 **Legal Positions; Changes in Law**.

24.2.1. The provisions in this Agreement are intended to be in compliance with and based on the existing state of Applicable Law as of the Effective Date (the “Existing Rules”). Nothing in this Agreement shall be deemed an admission by Brightspeed or Customer concerning the interpretation or effect of the Existing Rules or an admission by Brightspeed or Customer that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or stop Brightspeed or Customer from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

 24.2.2 If any change in Applicable Law materially impairs a Party’s ability to perform or obtain a benefit under this Agreement, both Parties agree to negotiate in good faith such changes to the Agreement as may be necessary to address such material impairment.

**25. Dispute Resolution**.

25.1 **Negotiation by Representatives**. The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will, within ten (10) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute. The Parties intend that these negotiations be conducted by business representatives who are not attorneys, and the locations, format, frequency, duration, and conclusions of these discussions will be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures to assist in these negotiations. The discussions and correspondence among the representatives pursuant to this Section 25 shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state rules of evidence, shall be exempt from discovery and production, and shall not be admissible in any subsequent proceedings without the concurrence of both Parties.

25.2 **Civil Action**. If the designated representatives have not reached a resolution of the dispute within twenty (20) Days after the written notice (or such longer period as agreed to in writing by the Parties), then either Party may commence a civil action. Any action will be brought in the United States District Court for the District of North Carolina if it has subject matter jurisdiction over the action, and shall otherwise be brought in the Charlotte District Court for the State of North Carolina. The Parties agree that such courts have personal jurisdiction over them.

25.3 **Waiver of Jury Trial and Class Action**. Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to: (i) a trial by jury in any court action arising among the Parties, whether under or otherwise related to this Agreement, and whether made by claim, counterclaim, third party claim or otherwise; and (ii)any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.

25.4 **Finality of Billing**. All amounts invoiced by a Party, including without limitation, amounts invoiced pursuant to Section 8 of the Agreement, will be deemed final and uncontestable by the other Party, unless the invoiced Party disputes such charges and/or calculations in writing within three-hundred sixty-five (365) Days following the date of the applicable invoice.

**26.** **Headings**. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement.

**27.** **Authorization**. Each Party represents and warrants that:

i. the full legal name of the legal entity intended to provide and receive the benefits and Services under this Agreement is accurately set forth herein;

ii. the person signing this Agreement has been duly authorized to execute this Agreement on that Party’s behalf;

iii. the execution hereof is not in conflict with Applicable Law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected; and

iv. each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

**28.** **Third Party Beneficiaries**. The terms, representations, warranties and agreements of the Parties set forth in this Agreement are not intended for, nor will they be for the benefit of or enforceable by, any third party (including, without limitation, Customer’s Affiliates and End User Customers).

**29. Insurance**

29.1 Without limiting the liabilities or indemnification obligations of the Parties, each Party will, at its own cost and expense, maintain during the term of this Agreement, such insurance as required hereunder. The insurance coverage will be from a company, or companies, with an A.M. Best’s rating of A-VII or better and authorized to do business in each state where services are provided under this Agreement. Each Party may obtain all insurance limits through any combination of primary and excess or umbrella liability insurance. Each Party will require its subcontractors to maintain proper insurance applicable to the type and scope of work to be performed under this Agreement.

### 29.1.1 Commercial General Liability with limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, property damage and personal and advertising injury liability insurance to include coverage for contractual and products/completed operations liability;

### 29.1.2 Business Auto liability, including all owned, non-owned and hired automobiles, in an amount of not less than $1,000,000 combined single limit per accident for bodily injury and property damage liability;

### 29.1.3 Workers Compensation with statutory limits applicable in each state where the services are performed including Employer's Liability with limits of not less than $1,000,000 per accident or disease; and

### 29.1.4 Umbrella or excess liability in an amount not less than $5,000,000 per occurrence and aggregate in excess of the above-referenced Commercial General, Business Auto and Employer's Liability; and

29.2 Each Party shall list the other Party, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities as additional insureds on the policies described in subsections 29.1.1, 29.1.2 and 29.1.4 above. The coverage described in 29.1.1 shall be primary and not contributory to insurance which may be maintained by the other Party subject to Section 13 of this Agreement. Prior to commencement of services under this Agreement, each Party will make available to the other Party evidence of the insurance required herein. Brightspeed’s evidence of insurance is available at www.Brightspeed.com/moi.

**30. Communications Assistance Law Enforcement Act of 1994**. Each Party represents and warrants that any equipment or Services provided to the other Party under this Agreement comply with the Communications Assistance for Law Enforcement Act under Section 229 of the Act. Each Party will indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and will at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or Services provided to the other Party under this Agreement to ensure that such equipment, facilities and Services fully comply with the Communications Assistance for Law Enforcement Act.

**31. Entire Agreement; Controlling Document**. This Agreement (including all schedules, exhibits or attachments and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subject of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Agreement.

**32. Cooperation on Fraud**. The Parties agree that they shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties’ fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

**33. Amendment.** This Agreement may only be modified by a written amendment signed by an authorized representative of each Party.

**34. Severability**. If any provision of this Agreement is found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the Parties will negotiate a mutually acceptable replacement provision consistent with the Parties' original intent.

**35. Construction.** The parties agree that this Agreement will not be construed against the drafter since each Party has sufficient business experience and has had sufficient opportunity to seek the assistance of legal counsel prior to the execution of the Agreement.

**36. Remedies Cumulative.** All rights and remedies of the Parties, under this Agreement, in law or at equity, are cumulative and may be exercised concurrently or separately. For clarity, the exercise of one remedy will not be an election of that remedy to the exclusion of other remedies.

**ATTACHMENT 1- DEFINITIONS**

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"Applicable Law" means all laws, statutes, common law including, but not limited to, the Act, the regulations, rules, and final orders of the FCC, a state regulatory authority, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or a state regulatory authority.

“Asymmetric Digital Subscriber Line” (ADSL) is one form of the Digital Subscriber Line technology, a data communications technology that enables faster data transmission over copper telephone lines than a conventional voice band modem can provide. It does this by utilizing frequencies that are not used by a voice telephone call.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

“Business Day(s)” means the days of the week excluding Saturdays, Sundays, and any day on which banks located in New York, New York are closed for business.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

“Claim” or “Claims” shall have the meaning set forth in Section 13.1.1.

“Collecting Party” shall have the meaning set forth in Section 6.2.3.

“Confidential Information” means any information that is not generally available to the public, whether of a technical, business, or other nature and that: (i) the receiving Party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party; and/or (ii) is of such a nature that the receiving Party should reasonably understand that the disclosing Party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Agreement by the receiving Party or is already known or is independently developed by the receiving Party.

“Customer” means the Person purchasing a Telecommunications Service or an information service or both from a Carrier.

“Contesting Party” shall have the meaning set forth in Section 6.2.3.

"Day" means a calendar day unless otherwise specified.

“DSL” means Digital Subscriber Line, as more particularly described in Attachment 2.

"End User Customer" means a third-party retail Customer that subscribes to a Telecommunications Service or information service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

“Ethernet” is a family of frame-based computer networking technologies for local area networks. The name came from the physical concept of the ether. It defines a number of wiring and signaling standards for the physical layer of the OSI networking model as well as a common addressing format and media access control at the data link layer.

“Existing Rules” shall have the meaning set forth in Section 24.2.1.

"FCC" means the Federal Communications Commission.

“Force Majeure Event” shall have the meaning set forth in Section 23.

“Indemnified Party” shall have the meaning set forth in Section 13.1.1.

“Indemnifying Party” shall have the meaning set forth in Section 13.1.1.

“Initial Term” shall have the meaning set forth in Section 3.1.

“Insolvent” shall have the meaning set forth in Section 11.1.8.

“Payment Due Date” shall have the meaning set forth in Section 8.1.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

“Proof of Authorization” shall have the meaning set forth in Section 4.3 of this Agreement.

"Remote-Based DSL" refers to a network architecture where the DSLAM serving End User Customers is not located in the Serving Wire Center. The DSLAM is generally located in a cabinet outside of the Serving Wire Center.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

“Tax” or “Taxes” shall have the meaning set forth in Section 6.2.1.

"Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Term” shall have the meaning set forth in Section 3.1.

“Very-high-bit rate Digital Subscriber Line” or “VDSL” is a DSL technology providing faster data transmission (up to 52 Mbit/s downstream and 16 Mbit/s upstream) over a single flat untwisted or twisted pair of copper wires. These fast speeds mean that VDSL is capable of supporting high bandwidth applications such as HDTV, as well as telephone services (voice over IP) and general Internet access, over a single connection. VDSL is deployed over existing wiring used for POTS and lower-speed DSL connections.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act or elsewhere in this Agreement, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

**Exhibit A**

**LIST OF BRIGHTSPEED ILEC ENTITIES**

| **ENTITY LIST (By State)** |
| --- |
| **ALABAMA**  |
| CenturyTel of Alabama, LLC d/b/a Brightspeed |
| **ARKANSAS** |
| Brightspeed of Louisiana, LLC |
| CenturyTel of Arkansas, Inc. d/b/a Brightspeed |
| CenturyTel of Central Arkansas, LLC d/b/a Brightspeed |
| CenturyTel of Missouri, LLC d/b/a Brightspeed |
| CenturyTel of Mountain Home, Inc. d/b/a Brightspeed |
| CenturyTel of Northwest Arkansas, LLC d/b/a Brightspeed |
| CenturyTel of Redfield, Inc. d/b/a Brightspeed |
| CenturyTel of South Arkansas, Inc. d/b/a Brightspeed |
| **GEORGIA** |
| Coastal Utilities, Inc. d/b/a Brightspeed |
| **ILLINOIS** |
| Gallatin River Communications L.L.C. d/b/a Brightspeed GRC |
| **INDIANA** |
| CenturyTel of Central Indiana, Inc. d/b/a Brightspeed |
| CenturyTel of Odon, Inc. d/b/a Brightspeed |
| United Telephone Company of Indiana, Inc. d/b/a Brightspeed |
| **KANSAS** |
| Embarq Missouri, Inc. d/b/a Brightspeed |
| United Telephone Company of Eastern Kansas d/b/a Brightspeed |
| United Telephone Company of Kansas d/b/a Brightspeed |
| United Telephone Company of Southcentral Kansas d/b/a Brightspeed |
| **LOUISIANA** |
| Brightspeed of Louisiana, LLC |
| CenturyTel of South Arkansas, Inc. d/b/a Brightspeed |
| **MICHIGAN** |
| CenturyTel Midwest – Michigan, Inc. d/b/a Brightspeed |
| CenturyTel of Michigan, Inc. d/b/a Brightspeed |
| CenturyTel of Northern Michigan, Inc. d/b/a Brightspeed |
| CenturyTel of Upper Michigan, Inc. d/b/a Brightspeed |
| **MISSISSIPPI** |
| CenturyTel of Adamsville, Inc. d/b/a Brightspeed |
| CenturyTel of North Mississippi, Inc. d/b/a Brightspeed |
| **MISSOURI** |
| CenturyTel of Missouri, LLC d/b/a Brightspeed |
| CenturyTel of Northwest Arkansas, LLC d/b/a Brightspeed |
| Embarq Missouri, Inc. d/b/a Brightspeed |
| Spectra Communications Group, LLC d/b/a Brightspeed |
| **NEW JERSEY** |
| United Telephone Company of New Jersey, Inc. d/b/a Brightspeed |
| **NORTH CAROLINA** |
| Carolina Telephone & Telegraph Company LLC d/b/a Brightspeed |
| Central Telephone Company d/b/a Brightspeed |
| Mebtel, Inc. d/b/a Brightspeed |
| **OHIO** |
| CenturyTel of Ohio, Inc. d/b/a Brightspeed |
| United Telephone Company of Indiana, Inc. d/b/a Brightspeed |
| United Telephone Company of Ohio d/b/a Brightspeed |
| **PENNSYLVANIA** |
| The United Telephone Company of Pennsylvania LLC d/b/a Brightspeed |
| **SOUTH CAROLINA**  |
| United Telephone Company of the Carolinas LLC d/b/a Brightspeed |
| **TENNESSEE** |
| CenturyTel of Adamsville, Inc. d/b/a Brightspeed Adamsville |
| CenturyTel of Claiborne, Inc. d/b/a Brightspeed Claiborne |
| CenturyTel of Ooltewah-Collegedale, Inc. d/b/a Brightspeed Ooltewah-Collegedale |
| United Telephone Southeast LLC d/b/a Brightspeed |
| **TEXAS** |
| Central Telephone Company of Texas d/b/a Brightspeed |
| Brightspeed of Louisiana LLC (f/k/a CenturyTel of Northwest Louisiana, Inc. d/b/a Brightspeed) |
| CenturyTel of Lake Dallas, Inc. d/b/a Brightspeed |
| CenturyTel of Port Aransas, Inc. d/b/a Brightspeed |
| CenturyTel of San Marcos, Inc. d/b/a Brightspeed |
| United Telephone Company of Texas, Inc. d/b/a Brightspeed |
| **VIRGINIA** |
| Central Telephone Company of Virginia d/b/a Brightspeed |
| United Telephone Southeast LLC d/b/a Brightspeed |
| **WISCONSIN** |
| CenturyTel of Central Wisconsin, LLC d/b/a Brightspeed |
| CenturyTel of Fairwater-Brandon-Alto, LLC d/b/a Brightspeed |
| CenturyTel of Forestville, LLC d/b/a Brightspeed |
| CenturyTel of Larsen-Readfield, LLC d/b/a Brightspeed |
| CenturyTel of the Midwest-Kendall, LLC d/b/a Brightspeed |
| CenturyTel of the Midwest-Wisconsin, LLC d/b/a Brightspeed |
| CenturyTel of Monroe County, LLC d/b/a Brightspeed |
| CenturyTel of Northern Wisconsin, LLC d/b/a Brightspeed |
| CenturyTel of Northwest Wisconsin, LLC d/b/a Brightspeed |
| CenturyTel of Southern Wisconsin, LLC d/b/a Brightspeed |
| CenturyTel of Wisconsin, LLC d/b/a Brightspeed |

 **ATTACHMENT 2 BRIGHTSPEED WHOLESALE BROADBAND SERVICE ATTACHMENT**

**1.0** Brightspeed will provide wholesale Brightspeed Wholesale Broadband Service (the “Service”), to those qualified residential and business End User Customers as determined by Brightspeed’s standard qualification process according to the terms and conditions set forth in the Wholesale Broadband Service Agreement between the Parties (the “Agreement”) and in this Attachment 2 to the Agreement, which is incorporated into and made a part of the Agreement (this “Attachment”). Except as otherwise set forth in this Attachment, capitalized terms used but not otherwise defined herein have the definitions assigned to them in the Agreement.

**1.1** **Service** **Description**

1.1.1 The Service utilizes a number of access protocols including without limitation, Asymmetric Digital Subscriber Line (ADSL2+) and Very-high-bit rate [Digital](http://en.wikipedia.org/wiki/Digital_subscriber_line) Subscriber Line (VDSL2 and any other access technologies approved by ATIS. Service is offered at different speeds based on the “downstream” and “upstream” speed combinations chosen by the Customer.

1.1.2 Ethernet technologies are used to allow transmission of voice and data over a single local loop and provide End User Customers continuous, dedicated access to an Internet Service Provider (“ISP”). For any Service utilizing Ethernet technologies, Brightspeed must be the ISP.

1.1.3 Pure Broadband Service also referred to asstandalone or dry loop is strictly a data service and does not include analog voice transmission capabilities or 911 services.

1.1.4 Currently Offered Service Tiers – See <https://www.brightspeed.com/ew/aboutus/legal/privacy-notice/> for links to Brightspeed’s published policies related to this service.

 **Service Tiers offered as Pure Broadband (no voice line, data only)**

|  |  |
| --- | --- |
| **Residential:**500Kbps1.5Mbps3Mbps6Mbps10Mbps 15Mbps20Mbps30Mbps40Mbps60Mbps80Mpbs100Mbps140Mbps200Mbps500Mbps750Mbps940Mbps  | **Business:**500Kbps1.5Mbps 3Mbps6Mbps10Mbps15Mbps20Mbps30Mbps40Mbps60Mbps80Mpbs100Mbps140Mbps200Mbps500Mbps750Mbps940Mbps |

* 1. **Intentionally Left Blank**

**1.3** **Authority**

Customer may: (i) order Service for End User Customers not receiving Service from Brightspeed immediately prior to the time of receiving Service from Customer pursuant to this Agreement (each a “New Signup”); or (ii) convert existing Brightspeed retail End User Customers who are receiving Service from Brightspeed immediately prior to the time of receiving Service from Customer pursuant to this Agreement (each a “Conversion“), in either case, where qualified. For clarity, Brightspeed’s retail high speed internet service offerings, marketing, sales, and/or pricing promotions are not available under the Agreement.

1. **Terms and Conditions**

**2.1** **Responsibilities for provisioning of Service**

 The Parties agree that the following allocation of responsibilities shall apply to the provisioning of Service to Customer’s residential and business End User Customers:

1. Brightspeed will install and maintain DSL or other broadband technology for such End User Customer up to the Network Interface Device. As used herein, the term “Network Interface Device” or “NID” (which may or may not include an optical networking terminal) is a device installed by Brightspeed at the demarcation point between the End User Customer’s premises and Brightspeed’s outside plant facilities to link the customer’s premises’ wiring to such outside plant facilities. In the event that a NID is not present, Brightspeed will install one and ensure service is delivered to the NID;
2. As part of its order for the Service, Customer must order a “full installation,” as set forth in the Product Catalog, which will include a modem from Brightspeed and may include Inside Wiring, jacks, and/or filters, as needed for up to 1 jack, in Brightspeed’s sole discretion. As used herein, the term “Inside Wire” shall mean the telephone wire or cable, along with necessary incidental supplies associated therewith and excluding CPE (as defined below), located within the residential and/or business End User Customer’s contiguous premises such End User Customer’s side of the NID or other distinguishable point of demarcation.
3. Customer is responsible for all requested work activities at the End User Customer premises and shall obtain all permissions and authorizations that may be necessary for any work activities performed by Brightspeed at the End User Customer premises.
4. All negotiations with the End User Customer and or premises owner are solely the responsibility of Customer.  Customer’s use of a Letter of Authorization or similar document with the End User Customer shall not alter Customer’s obligations under this Agreement.  Furthermore, Customer agrees to release, indemnify, defend and hold harmless each Brightspeed Indemnitee in accordance with the terms and provisions of Section 13 of the WBSA Agreement for any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement made, instituted, or asserted by any Person or entity resulting from Customer's breach of or failure to perform under this Section 2.1. A due date for delivery of Services cannot be established until Brightspeed receives an acceptable Letter of Authorization from Customer.
	1. **Customer Provided Equipment (“CPE”) and Minimum Service Requirements**

In order for the Service to function properly, the End-User Customer must be equipped with certain CPE including computers, software, and Brightspeed certified modems that meet Brightspeed’s minimum system requirements.

2.2.1 Customer will be solely responsible for initial End User Customer trouble isolation and resolution.  Customer must purchase certain modems, filters, adapters and installation instructions from Brightspeed pursuant to the terms of the Agreement and this Attachment.

2.2.2 Brightspeed will be responsible for modem fulfillment and Customer will be responsible for providing accurate address information to Brightspeed for modem fulfillment;

2.2.3 Customer acknowledges and agrees that installing or using the Service with CPE that does not meet Brightspeed’s minimum system requirements limits functionality, availability, and support and may damage such CPE.

* 1. **Service Conditions**

Customer and Customer’s End User(s) must adhere to the applicable policies at https://www.brightspeed.com/ew/aboutus/legal/ which may be updated from time to time.

* 1. **Broadband Service Technology**

In certain areas, Brightspeed is changing or upgrading its network to differing technologies to support different speeds. Brightspeed shall follow FCC guidelines regarding the disclosure requirements therefore.

* 1. **Name Change** Brightspeed reserves the right at any time to modify or change the name(s) of the Service.
	2. **Service Withdrawal**

Nothing in the Agreement or in this Attachment precludes Brightspeed from withdrawing or discontinuing the availability of any high speed internet service and/or any related technology from its retail End User Customers. In the event of any such withdrawal and/or discontinuation of high speed internet service and/or any related technology, it is expressly agreed and understood that Brightspeed may also, in its sole and absolute discretion, withdraw the availability of any equivalent Service and/or any equivalent supporting technology under the Agreement.

1. **Changes to Service Availability and Rates**

Provided that any such changes are made with respect to all of Brightspeed’s End User Customers or Brightspeed’s wholesale customers and not solely with respect to Customer’s End User Customers or Customer, as applicable, upon thirty (30) days’ notice, Brightspeed may introduce new Services, modify existing Services, and/or any of the terms and conditions contained in any Brightspeed documentation.

## Rates and Charges for Service

## For each Service provided to a Customer End User Customer provided by Brightspeed pursuant to this Agreement, Customer will be billed for the specific monthly recurring rates (the “Rates”) and any associated ancillary non-recurring charges (each a “NRC”) specified in Attachment 3 to this Agreement. The rates are offered for services on a month to month basis, without requirements for term commitment lengths.

## Billing Statement

## Brightspeed will deliver a monthly statement for the Services in a standard Billing format or other such format as mutually agreed upon.

## Monthly Service Charge

## For billing purposes, all charges and fees for Services will be prorated based on the actual date of activation and/or disconnection of Service(s). Each month is presumed to have thirty (30) days.

##

## Responsibility for Billing Customer’s End User Customers

## Customer shall be solely responsible for billing its End User Customers all applicable charges for the Service and any surcharges required of Customer by applicable statute, regulation or other governmental authority. Customer shall determine the rate(s) it charges its End User Customers for the Service(s) in its sole and absolute discretion.

3.1.3 **Notice of Service Withdrawal**

Upon ninety (90) Days’ notice, the availability of Service(s) may be withdrawn if Brightspeed has also withdrawn the availability of similar high-speed internet service from its retail End User Customers. Brightspeed may reduce the foregoing notice period if such withdrawal is based upon new regulatory requirements.

## 3.1.4 Replacement Service

## If Brightspeed withdraws or eliminates the new ordering of any existing Service(s) defined in this Agreement, it will provide a replacement service that it deems equivalent to or better than the replaced service in a reasonable timeframe, based on its operational and business needs.

3.1.5 **Availability of Newer Speeds**
Brightspeed will provide faster speeds than the current offerings when available but no later than when said speeds are provided to any other wholesale customer serving the consumer market. Brightspeed may also choose to grandfather an existing Service(s) at its current speed and rate during the term of this Agreement. Any changes or modification would require ordering of an equivalent available Service(s). Should the Service(s) be withdrawn or eliminated in its entirety Brightspeed agrees to provide a replacement Service(s). Brightspeed agrees to provide replacement Service(s) deemed equal to or better than the existing Service(s).

1. **Ordering, Due Dates & Rejections**

## Customer understands and agrees that the sole methods of ordering the Services to the Customer’s residential and business End User Customers are as set forth in this Section 4 of Attachment 2:

## Submission of Orders

Customer will submit orders to Brightspeed for Customer’s residential and business End User Customer’s locations to receive the Service as described in Section 4.3. Brightspeed will reject and return to Customer any orders that Brightspeed cannot provision due to technical reasons, missing information or for other reasons as delineated elsewhere in this agreement. Orders for Service accepted by Brightspeed will be provided to Customer in a manner consistent with the same services it provides itself.

* 1. **System Support**

Brightspeed and Customer will work cooperatively to continue to provide Brightspeed interfaces and current operational business rules for the Service as such interfaces and rules may evolve over time. If Brightspeed maintains that changes to interfaces or rules are necessary, it will provide notice of such changes to Customers and the Parties will cooperatively implement such changes.

**4.3** **Ordering**

The Service is ordered according to the requirements in the Product Catalog for the Service.

The Customer shall verify service is available according to the process outlined in the Product Catalog. For verified service address(s), the customer must use the processes identified in the Product Catalog for submission to provisioning. Customer is solely responsible for ensuring that accurate information sufficient for order processing is provided at the outset of the order request.

**4.4** Prior to placing an order on behalf of each End User Customer, Customer shall be responsible for obtaining and shall have in its possession a Proof of Authorization.

When Brightspeed or another provider of choice, at the End User Customer’s request, orders the disconnection of the End User Customer’s existing Service with Customer, Brightspeed will render its closing bill to Customer effective with the disconnection. Brightspeed will notify Customer by FAX, OSS interface, or other agreed upon processes when an End User Customer moves to Brightspeed or another service provider. Brightspeed shall not provide Customer or Brightspeed retail personnel with the name of the other service provider selected by the End User Customer

**4.5** **Order Confirmation**

Upon submission of a successful order, Brightspeed shall supply customer a confirmation defining the service, circuit ID and committed installation date (FOC).

**4.6 Order of Ancillary Services**

The customer must order ancillary services including a Brightspeed modem, full tech installation and static IP address(s) on the Order Form. Static IP addresses only apply to Business WBSA.

**4.7 Order Visibility**

The customer shall use the processes identified in the Product Guide for visibility into completed/active orders.

**5.0 Maintenance; Network Management**

## 5.1 Maintenance of Facilities

## Brightspeed will maintain and repair its facilities and equipment that comprise the Service provided to Customer in a manner consistent with the same services it provides itself. Customer or its End User Customers may not rearrange, move, disconnect or attempt to repair Brightspeed facilities or equipment, other than by connection or disconnection to any interface between Brightspeed and the End User Customer, without the written consent of Brightspeed.

## 5.2 Repairs of Facilities

## Without limiting the generality of Section 5.1, Brightspeed shall repair and restore any equipment or any other maintainable component that may adversely impact Customer’s use of the Service, except that Brightspeed may not be able to restore Service in the event of interference or degradation caused by deployed access technologies or due to the withdrawal and/or discontinuation of Brightspeed’s retail high speed internet service and/or any related technology. Brightspeed and Customer shall cooperate with each other to implement procedures and processes for handling service-affecting events.

 5.2.1 Reporting Repair Issues – Customer will report trouble or repair issues using the following methods:

By Telephone – 833-692-7773.

## 5.3Network Management

## Brightspeed reserves the right to perform preventative maintenance and software upgrades to the Brightspeed-provided network at its sole discretion on a scheduled or as-needed basis.

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| **ATTACHMENT 3****WBSA Rates to Business End User Customers**

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| Rates effective in the identified operating entities as defined in Exhibit A.Pure Broadband, no voice line. |
| **Category and Description** | **Contract Rate** |
| **BRIGHTSPEED HIGH-SPEED INTERNET® SERVICE - NO E-MAIL INCLUDED \***  |   |
| 500Kbps/250Kbps | $36.75 |
| 1.5Mbps/500Kbps | $36.75 |
| 3Mbps/500Kbps | $36.75 |
| 6Mbps/500Kbps | $36.75 |
| 10Mbps/750Kbps | $36.75 |
| 10Mbps/1Mbps | $36.75 |
| 10Mbps/10Mbps | $36.75 |
| 15Mbps750Kbps | $36.75 |
| 20Mbps/1.5Mbps | $44.25 |
| 30Mbps/1.5Mbps | $44.25 |
| 40Mbps/3Mbps | $59.00 |
| 40Mbps/40Mbps | $59.00 |
| 60Mbps/5Mbps | $89.00 |
| 80Mps/10Mbps | $89.00 |
| 100Mbps/10Mbps | $89.00 |
| 100Mbps/100Mbps | $89.00 |
| 140Mbps/20Mbps | $105.00 |
| 200Mbps/40Mbps | $129.00 |
| 200Mbps/200Mbps | $129.00 |
| 500Mbps/100Mbps | $159.00 |
| 500Mbps/500Mbps | $159.00 |
| 750Mbps/750Mpbs | $199.00 |
| 940Mbps/940Mbps | $199.00 |
| **Non-Recurring Charge Table \*** | **NRC** |
| Brightspeed Wi-Fi Capable Modem (under 40M) | $99.00 |
| Brightspeed Wi-Fi Capable Modem (40M and up to 1G) | $150.00 |
| DSL Activation | $19.99 |
| Technician Installation (under 40M) | $139.00 |
| Technician Installation (40M and up to 1G) | $243.00 |
| Static IP - Initial Setup charge | $37.50 |
| **PROMOTION - For orders submitted from May 20, 2019 through December 20, 2022, the following NRC rates would apply:** | **NRC** |
| Brightspeed Wi-Fi Capable Modem (all bandwidths) | **$99.00** |
| Technical Installation (all bandwidths) | **$99.00** |
| Activation Charge | $0.00 |
| **Monthly Recurring \*** | **MRC** |
| Static IP - 1 (for modem only) – monthly recurring | $5.00 |
| Static IP - 8 (5 usable) – monthly recurring | $10.00 |
| Static IP - 16 (13 usable) – monthly recurring | $20.00 |
| Static IP - 32 (29 usable) – monthly recurring | $32.00 |
| Static IP - 64 (61 usable) – monthly recurring | $64.00 |
| **\*Ancillary charges subject to change based upon 30 days written notice** |

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**ATTACHMENT 3**

**WBSA Rates to Residential End User Customers**

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| Rates effective in the identified operating entities as defined in Exhibit A. |
| Pure Broadband, no voice line. |
| **Category and Description** | **Contract Rate** |
| **BRIGHTSPEED HIGH-SPEED INTERNET® SERVICE - NO E-MAIL INCLUDED \*** |   |
| 500Kbps/250Kbps | $26.00 |
| 1.5Mbps/500Kbps | $26.00 |
| 3Mbps/500Kbps | $26.00 |
| 6Mbps/500Kbps | $26.00 |
| 10Mbps/750Kbps | $31.00 |
| 10Mbps/1Mbps | $31.00 |
| 10Mbps/10Mbps | $31.00 |
| 15Mbps/750Kbps | $31.00 |
| 20Mbps/1.5Mbps | $35.00 |
| 30Mbps/1.5Mbps | $35.00 |
| 40Mbps/3Mbps | $40.00 |
| 40Mbps/40Mbps | $40.00 |
| 60Mbps/5Mbps | $40.00 |
| 80Mbps/10Mbps | $40.00 |
| 100Mbps/10Mbps | $43.00 |
| 100Mbps/100Mbps | $43.00 |
| 140Mbps/20Mbps | $45.00 |
| 200Mbps/40Mbps | $45.00 |
| 200Mbps/200Mbps | $45.00 |
| 500Mbps/100Mbps | $60.00 |
| 500Mbps/500Mbps | $60.00 |
| 750Mbps/750Mbps | $72.00 |
| 940Mbps/940Mbps | $72.00 |
| **Non-Recurring Charge Table \*** |  **NRC** |
| Brightspeed Wi-Fi Capable Modem (under 40M) | $99.00 |
| Brightspeed Wi-Fi Capable Modem (40M and over) | $150.00 |
| DSL Activation | $3.99 |
| Technician Installation (under 40M) | $139.00 |
| Technician Installation (40M and over) | $243.00 |
| **PROMOTION - For orders submitted from May 20, 2019 through December 20, 2022, the following NRC rates would apply:** | **NRC** |
| Brightspeed Wi-Fi Capable Modem (all bandwidths) | $99.00 |
| Technical Installation (all bandwidths) | $99.00 |
| Activation Charge | $0.00 |
| **\*Ancillary charges subject to change based upon 30 days written notice** |  |