

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”), dated April \_\_, 2009 (“Effective Date”), between the Corporation for Education Network Initiatives in California, a **California not-for-profit corporation located at 16700 Valley View Avenue La Mirada, CA 90638** (“CENIC”) and Level 3 Communications, LLC, a **Delaware limited liability company located at 1025 Eldorado Blvd., Broomfield, CO 80021** (“Level 3”) each hereinafter referred to as a “Party” or together as the “Parties”, sets forth the willingness of the Parties to pursue mutual arrangements for the application of Federal stimulus funding for the purposes of expanding broadband infrastructure in California.

15. **General Description.** The mission of CENIC is to provide cost-effective, high-bandwidth networking to support the missions of California’s educational community and answer the needs of their faculty, staff, and students. CENIC designs, implements, and operates CalREN, the California Research and Education Network, a high-bandwidth, high-capacity Internet network specially designed to meet the unique requirements of these communities, and to which the vast majority of the state’s K-20 educational institutions are connected. CENIC’s statewide CalREN backbone network now operates over fiber optic systems using Level 3 inter-city fiber and associated optical amplifier sites.

CENIC continually strives to obtain and expand broadband infrastructure to better serve its member institutions, particularly those in un-served or underserved communities. The broadband funding portion of the American Recovery & Reinvestment Act (“ARRA”) provides an opportunity for CENIC to improve services to its members. However, CENIC needs the participation of private sector firms, such as Level 3, to accomplish this goal. At the same time, Level 3 can better serve commercial needs via working with CENIC in the development of additional broadband infrastructure capabilities.

Level 3 was founded on the principles of creating a global telecommunications network with the scale to reduce unit costs and stimulating demand through lower costs. Level 3 created a network that serves as a foundation for the communications services of the 21<sup>st</sup> century by providing, among other things, information transmission over a fiber optic network and media delivery over a content delivery network. Level 3 is uniquely situated to participate in projects funded by ARRA in order to help expand broadband coverage throughout California.

This MOU builds on a long and close relationship between the parties.

2. **Collaboration.** The Parties may collaborate with respect to the following matters:

- a) identifying, based on census data, areas that would benefit from the build out of additional broadband infrastructure, such infrastructure serving both the CENIC educational communities and the non-educational residential, and business communities;
- b) exploring ways in which the Parties can bring lower cost, higher speed broadband connectivity to un-served and underserved communities in California;
- c) using federal stimulus funding for the creation of new “middle mile” infrastructure, the most significant inhibitor to provision of broadband services in underserved areas; and
- d) using the above-mentioned funding to build out facilities in the Central Valley to enable connections to local network service providers serving un-served and underserved communities.

3. **Limitation.** Except as provided Sections 3 through 15 of this MOU, this MOU does not create any binding obligations on either Party. This MOU and any actions taken hereunder shall be subject to the Nondisclosure Agreement between the Parties dated May 22, 2001, which shall survive the termination of this MOU.

4. **Termination.** This MOU will terminate three years from the execution date, except that it shall automatically terminate upon the insolvency of either Party. Either Party may cancel the agreement on thirty (30) days’ notice.

5. **Publicity.** The Parties may jointly develop and distribute periodic press releases addressing activities and initiatives under the Agreement. Neither Party will issue a press release that addresses the activities of the Parties under this Agreement, without the prior written consent of the other.

6. **Relationship.** Each Party agrees that it shall not imply that it is a member or partner in a legal entity with the other party or that it has the authority to bind the other Party with respect to any matter whatsoever under this MOU, it being expressly understood and agreed by the parties that neither shall have any authority to bind the other.

7. **Ownership of Intellectual Property.** Nothing contained in this MOU shall be deemed to grant, either directly or by implication, estoppels or otherwise, any license under any patents, patent applications, copyrights or intellectual property rights. Under this MOU, neither of the Parties shall be obligated to indemnify or defend the other Party for infringement or alleged infringement by such other Party of intellectual property rights of a third party.

8. **Responsibility For Costs.** Each Party shall be responsible for all expenses incurred by it in the performance of the activities described hereunder from the Effective Date of this MOU.

9. **Third Parties.** Nothing in this MOU is intended or shall be construed or interpreted to give any person or entity other than Level 3 and CENIC any legal, equitable right, remedy or claim under or with respect to this MOU or any provision contained herein.

10. **Limitation on Liability.** NEITHER OF THE PARTIES SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, WHICH ARISE OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION CONTAINED HEREIN, WHETHER THE CLAIM IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY OR OTHERWISE.

11. **Assignment.** Neither Party may assign or transfer its rights or obligations under this MOU without the prior written consent of the other Party, except in connection with a merger or to a third party who succeeds to all or substantially all of its assets. Any other attempt to do so shall be null and void.

12. **Choice of Law.** This MOU shall be governed by, and construed and interpreted in accordance with the laws of the State of California.

13. **Approvals.** The following representatives concur with the terms of this MOU and are authorized to execute this MOU on behalf of their respective organizations.

14. **Non-exclusivity.** The relationship created by this MOU is non-exclusive. Neither Party shall be restricted from quoting and providing goods or services in the ordinary course of its business, nor from entering into relationships with other parties with respect to the same or similar matters. Neither Party shall use any information or materials received from or developed jointly with the other Party under this MOU, whether or not confidential or proprietary, in furtherance of any other relationship.

15. **Force Majeure.** Neither Party shall be liable for any failure of performance or delays due to causes beyond such Party's reasonable control.

*(Signatures on following page)*

**For: CENIC**

**For: Level 3 Communications, LLC**

  
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**Jim Dolgonas, President/CEO**

(Name/Title) \_\_\_\_\_

Date: 4.21.09

Date: \_\_\_\_\_