

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

CENTURYLINK COMMUNICATIONS, LLC

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and CenturyLink Communications, LLC (hereinafter "Vendor"), with its principal place of business at 100 CenturyLink Drive, Monroe, Louisiana, 71203.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-201, on June 13, 2013, for Technology Based Conference Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-201 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-201 including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-201, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Service Offerings

Services available under this Contract are limited to Technology Based Conferencing Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

Excluded Telecommunications Service Offerings

Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001. The following services were awarded under the TEX-AN Next Generation Procurement:

- a. Long Distance Services
- b. Internet Services (including SOHO)
- c. Voice over Internet Protocol (VoIP)
- d. Local Voice Service
- e. Wireless Service
- f. Fixed Satellite
- g. Access and Transport

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the sales price suggested by the manufacturer or publisher of the service.

B. Customer Price

The minimum Customer price for all services will be the price as specified in Appendix C, Pricing Index. Customer Price includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) Customers purchasing services under this Contract may negotiate more advantageous pricing for volume purchases or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

2) If pricing for services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or

special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. Rates, Taxes and Telecommunication Fees

- 1) There are no applicable FCC authorized fees; surcharges and assessments in effect as of the date of this Contract which may appear on billings to Customers. No FCC or PUC authorized fee, surcharge or assessment applicable to Technology Based Conferencing Services may be imposed during the term of this Contract, without the prior amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers, that are political subdivisions, are exempt from the imposition and collection of certain Texas telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, state agency Customers have additional exemptions from Texas fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC or PUC and which are otherwise not applicable to Technology Based Conferencing Services. Vendor also agrees to not bill for items for which a Customer has an exemption. Vendor agrees to promptly correct any incorrect billings that occur.
- 2) During the term of this Contract, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted fee on these Services, which Vendor desires to impose under this Contract, shall require an amendment in order to be effective against the State of Texas and Customers. In the event of a change in the law or fee structures, which results in an exemption from payment in favor of the State of Texas and/or Customers, Vendor shall give effect to the exemption without the necessity of a contract amendment.
- 3) Vendor acknowledges that Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivision. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. Customers may issue a tax exemption certificate upon request.

E. DIR Cost Recovery Fee

The cost recovery fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

5. DIR Cost Recovery Fee

- A) The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for telecommunications Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF for sales totaling \$100,000 shall be \$2,000.
- B) All prices quoted to Customers shall include the applicable CRF. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Grace Windbigler, Manager
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Colleen Parker
CenturyLink Communications, LLC
11921 N Mopac Ste 100
Austin, Texas 78759
Phone: (512) 338-5705
Facsimile: (855) 258-6553
Email: colleen.parker@centurylink.com

7. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Intellectual Property Matters

A. Definitions

1. “Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or elements that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or elements, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and

upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the

Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts:

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

A. **Appendix A, Section 8, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions**, is hereby restated in its entirety as follows:

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor's ultimate financial responsibility will be limited to the percentage of fault finally attributed to

Vendor. The defense of contributory negligence will not be available to Vendor. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- B. **Appendix A, Section O. Required Insurance Coverage, 3) Business Automobile Liability Insurance**, is hereby restated in its entirety as follows:

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation for losses caused by and to the extent of Vendor's negligence;
- b) Additional Insured.

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This Contract is executed to be effective as of the date of last signature.

CenturyLink Communications, LLC

Authorized By: Signature on File

Name: Susan Baker

Title: Manager – Offer Management

Date: 7/3/2014

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Karen Robinson

Title: Executive Director

Date: 8/1/2014

Office of General Counsel: Signature on File