

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**CENTURYLINK COMMUNICATIONS COMPANY, LLC**  
**DBA CENTURYLINK QCC**

**1. Introduction**

**A. Parties**

This Contract for products and related 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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and CenturyLink Communications Company, LLC d/b/a CenturyLink QCC. (hereinafter “Vendor”), with its principal place of business at 1801 California Street, Denver, Colorado 80202.

**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-TSO-TMP-209, on December 6, 2013, for Data Communications and Networking Equipment and Related Services. DIR subsequently issued a BAFO opportunity on June 5, 2014. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-209 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Total Advantage Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-209, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-209, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 the 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. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to networking products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to related networking services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

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

If sent to the State:

Dana L. Collins, CTPM, CTCM

Manager, Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Rena Schrader  
CenturyLink Communications Company, LLC d/b/a CenturyLink QCC  
400 W. 15<sup>th</sup> St., Suite 315  
Austin, TX 78701  
Phone: 512-867-1057  
Facsimile: 855-258-6553  
Email: [rena.schrader@CenturyLink.com](mailto:rena.schrader@CenturyLink.com)

**7. Software License and Service Agreements**

**A. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**B. Service Agreement**

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

**C. Conflicting or Additional Terms**

In the event of a conflict between the terms of the Vendor Software License Agreements, Service Agreements or linked or supplemental documents and the Contract which amend or diminish the rights of DIR Customers or the State provided for in the Contract, such conflicting terms shall not take precedence over the terms of this Contract. In no event will any linked document alter or override any term of the

Contract, nor will it change fees, prices, or the method of computing any of the foregoing.

**8. Authorized Exceptions to Contract or any Appendices.**

**A. Appendix A, Section 1, Contract Scope**, is hereby restated in its entirety as follows:

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. Terms used in this document shall have the meanings set forth below in Section 3. Customer agrees to purchase, and CenturyLink agrees to provide, Products by issuing a PO to CenturyLink, or executing a SOW. This Agreement may not be used for the purchase of Long Distance Services, Internet Services (including SOHO), Voice over Internet Protocol (VoIP), Local Voice Service, Wireless Service, Fixed Satellite and Access and Transport.

**B. Appendix A, Section 7, Product Terms and Conditions, C. Product Warranty and Return Policies**, is hereby restated in its entirety as follows:

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS". CENTURYLINK DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF TITLE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN BY CENTURYLINK, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE A WARRANTY. CENTURYLINK is not responsible for any Solutions defects or damages resulting from mishandling, abuse, misuse, accident, electrical power surges or current fluctuations. Force Majeure Events, improper storage, or operation including use in conjunction with equipment electrically or mechanically incompatible with or of inferior quality to the supplied equipment or failure to maintain the environmental conditions specified by the manufacturer or licensor.

**C. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions**, is hereby restated in its entirety as follows:

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 any 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.

**D. Appendix A, Section 10, Vendor Responsibilities, A. Indemnification, 3) Infringements**, is hereby restated in its entirety as follows:

**3) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. 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.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or

service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**E. Appendix A, Section 10, Vendor Responsibilities, N. Required Insurance Coverage**, is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A-rated by A.M. Best, authorized in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be included as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- d) Vendor agrees to provide DIR of any Termination; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer for losses caused by Vendor's wrongful, negligent or intentional acts or omissions.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 PER DISEASE PER EMPLOYEE.

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 Vendor's wrongful, negligent or intentional acts or omissions;
- b) Vendor agrees to provide DIR notice of any termination; and
- b) Additional Insured.

**(Remainder of page intentionally left blank)**

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

**CENTURYLINK COMMUNICATIONS COMPANY, LLC DBA CENTURYLINK QCC**

**Authorized By:** Signature on File

**Name:** Constantine N. Gartelos

**Title:** Manager Offer Management

**Date:** 9/25/14

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

**Authorized By:** Signature on File

**Name:** Martin Zelinsky on behalf of Karen Robinson

**Title:** Executive Director

**Date:** 9/29/14

**Office of General Counsel:** drb 9/26/14