

Vendor Contract No. _____

**TEXAS DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR
TECHNOLOGY BASED CONFERENCING SERVICES**

AT&T Corp.

1. Introduction

A. Parties

This Contract for Services (“Contract”) is entered into between the Department of Information Resources, an agency of the State of Texas (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and AT&T Corp. (hereinafter “Vendor”), with its principal place of business at 712 East Huntland Drive, Room 313 Austin, TX 78752.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-427, on 12/22/2017, for Technology Based Conferencing Services. DIR subsequently issued a BAFO opportunity on 08/28/2018. Upon execution of this Contract, a notice of award for DIR-TSO-TMP-427 shall be posted by DIR on the Electronic State Business Daily

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Technology Based Conferencing Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO issued on 08/28/2018, including all addenda; Exhibit 3, Vendor’s Response to RFO DIR-TSO-TMP-427, including all addenda; and Exhibit 4, RFO DIR-TSO-TMP-427, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. The documents listed in this paragraph shall be hereinafter referred to as the “Contract Documents”. In the event of a conflict between the Contract Documents, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then Exhibit 2, then Exhibit 3, and finally Exhibit 4. 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. DIR may extend this Contract, for up to two (2) optional one-year terms. Prior to expiration of each term, the contract will renew automatically under the

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same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Service Offerings

A. Services

Services available under this Contract are limited to audioconferencing, videoconferencing, webconferencing, and webcasting 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 add Emerging Technology in accordance with Subsection 3.B., below.

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

B. Emerging Technologies and Future Acquisitions

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of Software and Services for Technology Based Conferencing services. Vendor may propose such services throughout the term of the contract as long as the emerging technology relates to and is within the scope of services. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final.

4. Pricing

A. Customer Price

- 1) 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.

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B. DIR Administrative Fee

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

C. 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).

D. 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 Administrative Fee

A. The Administrative Fee (AF) 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 (2.0%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the AF for sales totaling \$100,000 shall be \$2,000.

B. All prices quoted to Customers shall include the applicable AF. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the AF rates 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.

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If sent to the State:

Aiko Neill, Director, Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: aiko.neill@dir.texas.gov

If sent to the Vendor:

Marcus Montemayor
AT&T Corp.
712 East Huntland Drive, Room 313
Austin, TX 78752
Phone: (512) 421 - 5160
Facsimile: (512) 870 - 4388
Email: marcus.montemayor@att.com

7. Service Agreement and Shrink/Click-wrap License Agreements

A. Service Agreement

There is no separate service agreement for this contract. Services provided under this Contract shall be in accordance with this Contract. No changes to the Service Requirements may be made unless previously agreed to by Vendor and DIR.

B. 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.**

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

The following exceptions have been agreed to by DIR and Vendor.

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- A. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 4. Intellectual Property Matters** is hereby replaced in entirety as follows:

This Contract does not contemplate, authorize or support the development or acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or services, they must use a separate contract or seek an amendment with DIR of this Contract.

- B. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 9.A.2)., Acts or Omissions** is hereby replaced in 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 THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any negligent, reckless, willful, intentional, or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. 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.

- C. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 9.A.3)., Infringements, is** hereby replaced in entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, 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 (“SERVICES”) 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 REASONABLE 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.

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b) Vendor shall have no liability under this section if the alleged infringement arises out of, results from, or 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 or service by Customer, its Affiliates or third parties, or combination of any service provided hereunder with any services or products not provided by Vendor, (iii) any modifications made to the product or service 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, (vi) Customer's, its Affiliate's or a User's content; (vii) AT&T's adherence to Customer's or its Affiliate's written requirements; or (viii) use of the Service in violation of this Contract (including the Service 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.

D. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 9.B., Taxes/Worker's Compensation/Unemployment Insurance Infringements is hereby replaced in entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEY FEES, AND

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EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE 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. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- E. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 9.N., Required Insurance Coverage** is hereby replaced in entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide evidence satisfactory to DIR of 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 have at least an A minus rating and a Financial Size Category Class of VII from A.M. Best and are licensed to do business 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:

Commercial General Liability

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expenses per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage

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- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured; and
- d) Waiver of Subrogation

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 PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following in favor of DIR and/or Customer: Waiver of Subrogation; and Additional Insured.

- F. Appendix A Standard Terms and Conditions for Technology Based Conferencing Services Contracts, Section 9.T, Deceptive Trade Practices** is hereby replaced in entirety as follows:

Vendor represents and warrants that neither Vendor nor any of its Subcontractors within the last ten years has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code and (ii) it has no officers who have been found liable or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

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

AT&T Corp.

Authorized By: /Signature on File/

Name: Linda Ruesch

Title: State of Texas – Sales Center Vice President

Date: 02/11/2019 rt228m

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

Authorized By: /Signature on File/

Name: Wayne Egeler

Title: Director, Communications Technology Services

Date: 02/15/2019

Office of General Counsel: /Initials on File/