

Vendor Contract No. _____

TEXAS DEPARTMENT OF INFORMATION RESOURCES

**CONTRACT FOR
TECHNOLOGY BASED CONFERENCING SERVICES**

CenturyLink Communications, LLC

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 CenturyLink Communications, LLC (hereinafter “Vendor”), with its principal place of business at 400 West 15th Street, Suite 315 Austin, TX 78701.

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 8/29/2018. 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; Appendix D, CenturyLink Loyal Advantage® Agreement; Exhibit 1, Vendor’s Response to BAFO, including all addenda; Exhibit 2, the BAFO issued on 8/29/2018, 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 Appendix D, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

Vendor Contract No. _____

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 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.

Vendor Contract No. _____

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.

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

Vendor Contract No. _____

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.

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:

Rena Schrader
CenturyLink Communications, LLC
400 West 15th Street, Suite 315 Austin, TX 78701
Phone: (512) 867-1057
Facsimile: (855) 258-6335
Email: rena.schrader@centurylink.com

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

A. Service Agreement

Services provided under this Contract shall be in accordance with the Service Requirements as set forth in Appendix D, CenturyLink Loyal Advantage[®] Agreement, of 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**

Vendor Contract No. _____

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

A. 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 or 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. 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. Section 9.T, Deceptive Trade Practices; Unfair Business Practices, is hereby replaced in entirety as follows:

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors 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, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding as defined under Chapter 17, Texas Business & Commerce Code.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding as defined under Chapter 17, Texas Business & Commerce Code.as defined under Chapter 17, Texas Business & Commerce Code.

Vendor Contract No. _____

C. New Section 9.X, American Recovery and Reinvestment Act is added as follows:

CenturyLink may request that Customer inform CenturyLink of any funding it is receiving through the American Recovery and Reinvestment Act, or other similar stimulus grants or loans specifically identified by CenturyLink. If such funding is applicable, CenturyLink will work with Customer to address any obligations and costs to comply; however, CenturyLink is not at this time agreeing to provide any products or services that may be purchased using such funding.

Remainder of this page intentionally left blank

Vendor Contract No. _____

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

CenturyLink Communications, LLC

Authorized By: _____ /signature on file/

Name: Stephen Arneson

Title: Manager - Offer Management

Date: 2/25/2019 | 4:59 PM CST

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: 2/27/2019 | 9:27 PM CST

Office of General Counsel: _____ /initials on file/