

## INMATE COMMUNICATION SERVICES COR-2017-0041T

**THIS CONTRACT** is entered into by and between the State of Montana, Department of Corrections, (State), whose address and phone number are PO Box 201301, Helena, MT 59620-1301, 406-444-3930 and CenturyLink Public Communications, Inc. (Contractor), whose address and phone number are 600 New Century Pkwy, New Century, KS 66031 and 913-353-7430.

### 1. EFFECTIVE DATE, DURATION, AND RENEWAL

**1.1 Contract Term.** The Contract's initial term is upon contract execution, through April 30, 2020, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions in one-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of ten years.

### 2. SERVICES AND SUPPLIES

Contractor agrees to install and provide to State an Inmate Communications System (ICS) and subsequent services per the specifications as detailed in the response to the Request for Proposal COR-RFP-2017-0041T and Contractor's response to COR-RFP-2017-0041T.

**2.1 Facilities and Video Visitation.** The locations and number of Video Visitation stations initially required are listed below, but may be adjusted during the course of the contract. Contractor shall adjust the number of inmate Video Visitation stations as needed, during the term of the contract, and at no cost to State.

Facility	Address	# Inmate Video Visitation	Portable Video Visitation Station
Montana State Prison (MSP)	500 Conley Lake Rd Deer Lodge MT, 59722	34	12
Montana Women's Prison (MWP)	701 South 27 <sup>th</sup> Billings, MT 59101	0	2
Pine Hills Correctional Facility (PHYCF)	4 N Haynes Miles City, MT 59301	4	1
Riverside Correctional Facility (RYCF)	3700 Hwy 69, Bldg 13 Boulder, MT 59632	0	1
Lewistown Infirmary	800 Casino Creek Drive Lewistown, MT 59457	0	1

**2.2 Facilities and Telephones.** The locations and number of telephones initially required are listed below, but may be adjusted during the course of the contract. Contractor shall adjust the number of inmate telephones or to relocate existing telephones, as needed and at no cost to MDOC.

Facility	Address	# Inmate Telephones	Portable Telephones	TTD/TTY
Montana State Prison (MSP)	500 Conley Lake Rd Deer Lodge MT, 59722	100	8	3
Montana Women's Prison (MWP) <b>Multi-Function Kiosks</b>	701 South 27 <sup>th</sup> Billings, MT 59101	18	1	1
Pine Hills Correctional Facility (PHYCF)	4 N Haynes Miles City, MT 59301	5	0	1
Riverside Correctional Facility (RYCF) <b>Multi-Function Kiosks</b>	3700 Hwy 69, Bldg 13 Boulder, MT 59632	2	0	1
Lewistown Infirmary	800 Casino Creek Drive Lewistown, MT 59457	0	2	1

**2.3 Investigative Suite.** Contractor shall install and implement Investigative Services to include:

- The Verifier as the Enforcer's inmate voice biometrics module.
- Inmate Inter-Communications Evaluation and Reporting System (ICER)
- Argus Echo continuous voice identification
- Argus CRIMES case management to be implemented by mutual agreement
- Data Detective intelligence tools
- Location Based Services – will be provided at an administrative level and not globally for all calls.
- Contraband Cell Phone Detection
- Investigative Reporting Capabilities

**2.4 Commissary and Online Grievances.** Commissary orders shall be accommodated by phone, by kiosk, and by tablet. The system shall interface with the Cashless Commissary and Trust Accounting (CACTAS) offender banking system for commissary ordering.

Online Grievances will be available by kiosk, or by tablet. The kiosks should be able to accommodate inmate kites (staff communication to/from inmates) and medical kites as necessary. State shall assign staff users to the system as needed throughout the facility with the system roles needed to receive and answer inmate kites.

State reserves the right to load all department content to be available on the tablets and kiosks including the inmate handbook and PREA guidelines. In addition, the Lexis Nexis legal library shall be made available on the Edovo tablets. State also reserves the right to provide customized messages and notifications to inmates when necessary.

**2.5 Pre-Paid Debit Cards for Post Release Assistance.** Contractor shall implement the Access Corrections Debit Release Card System. Pre-Paid Debit Cards integrate with the CACTAS system. Contractor shall provide informational pamphlets to all cardholders with each card outlining all fees associated with the program. Fees associated with this program are not the responsibility of the State.

**2.6 Tablets.** Contractor shall provide the Edovo Tablet solution to State to be checked out by the inmates. Edovo tablets shall include an Edovo Connect appliance and firewall at each participating facility to maintain connectivity to the Edovo Private Cloud and shall include a charging station to accommodate all units.

Contractor shall supply a Keefe tablet solution for music and game downloads to State that will be for purchase by the inmates. Inmates with existing MP3 players will receive Keefe tablets at no charge from the Contractor upon implementation. Songs shall be available for download to Keefe tablets. Upon implementation and once the existing player has been turned in or the MP3 players mortality has expired, previously purchased/downloaded music shall be transferred to Keefe tablets at no charge.

Tablets shall not include e-messaging capabilities, video call capabilities, or movie downloads. However, State reserves the right to add these additional services at a later day if deemed appropriate.

**2.7 Additional Language.** The Department would like to incorporate the following additional language:

- All data and content is the property of the State with the exception of any content subject to digital media rights, copyright, or other existing licensing agreements.
- All system upgrades will be provided to State free of charge within 60 days of release;
- State reserves the right to amend the contract at any time to add additional features and services outlined in the solicitation response, or to remove services as the State desires;
- State reserves the right to work with Contractor to customize fields within the system to meet State needs.
  - For any work performed at MDOC facilities, employees working under the direction and control of Contractor must pass a background check by State staff before admission onto the secure grounds will be allowed.
- Storage: All call detail records must be stored on-line and available for retrieval by authorized users at the system workstation or at authorized remote computers for the entire duration of the contract. Call data should be stored at a minimum for two years on-line and four years off-line. Flagged calls and visits by investigative staff must be kept for the life of the contract. Video visits will be stored for a mutually agreed upon timeframe. Video visits flagged by investigative staff must be kept for the life of the contract, and available for download by State staff prior to the end of the contract.

**2.8 System Equipment.** The system's controlling and visit processing equipment shall be housed and maintained at a location provided by the Contractor. The system's controlling and visit processing equipment shall be continuously monitored and maintained by the Contractor's trained personnel. Equipment shall be new and unused. Equipment classified as demonstrators, refurbished, prototype or discontinued are not acceptable. The equipment shall be the latest model offered and must be tried, proven and in current use. The Contractor shall provide all mounting devices, carousels, hardware, any applicable software, and maintenance.

**2.9 Security and System Integrity Requirements.** All services provided by the Contractor shall be hosted in a manner that the State of Montana has no responsibility for the database or the technical infrastructure and associated processes and procedures. The database must be accessible through the Web and must be secure. The Contractor must prevent unauthorized access to the system. The hosting services description shall document that the system is accessible through a web-enabled personal computer by accessing the Contractor's computer system(s) via the Internet.

All of the personal information shall be kept safe and protected, regardless of its confidentiality. All personal information used by or available to the contractor, its employees, its subcontractors, and the employees of its subcontractors must be kept confidential and shared by no one for any reason.

The solution shall provide data integrity, validation and verification. It shall ensure the integrity of the data from the time it leaves the user's entry point until it is recorded in the database, as well as when the information is provided for reporting and analysis.

**2.10 Separate Data Network.** All system traffic is to be on a separate physical data network. No portion of the States data network resources shall be used for system infrastructure.

### **3. WARRANTIES**

**3.1 Warranty For Services.** Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.

**3.2 Warranty for Hardware.** Contractor warrants that hardware provided is free from defects in materials and workmanship and conforms to the specifications. The warranty period for provided hardware is a fixed period commencing on the date specified in a statement of work or applicable Contract. If the hardware does not function as warranted during the warranty period and Contractor is unable to either: i) make it do so; or ii) replace it with one that is at least functionally equivalent, State may return it to Contractor for a full refund.

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

These warranties are State's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

#### **4. COSTS AND COMMISSION**

**4.1 Costs.** The costs and expenses of providing the Services, including but not limited to installation charges, materials and labor costs, shall be the sole responsibility of the Contractor and shall not be charged to State except as otherwise expressly provided for.

**4.2 Commission.** Contractor shall pay to State, commissions in connection with the telephone usage at each Facility. Monthly Commission payments of twenty-three thousand dollars (\$23,000). Contractor shall be responsible for maintaining records sufficient to permit the proper determination of commissions due to State. Contractor shall send a statement to State setting forth the current commissions due to State.

**4.3 Rates.** MDOC understands that the rates shown below are exclusive of Federal, State, Local Taxes, Tariff's and Regulatory Fees. It is understood that these taxes/fees will be charged as a pass-through from the taxing/regulating agency to the called party and that no commission will be paid on these items.

#### **Telephone Call Rate per minute \$0.143**

Base phone rate - \$.036/min

Location Based Services - \$.001/min

Argus Voice Biometrics - \$.002/min

Portable Cell Phone Detection - \$.002/min

ShawnTech Cell Phone Detection - \$.028/min (provides for 2 cell assessments per year. If phone minutes are below 6.7 million for the prior year, one will be provided)

Keefe Tablet Solution free with purchase of Edovo tablet solution\*

Edovo Tablet Solution (free to inmates to check out) - \$.074/min

#### **\* Keefe Song and Device Costs**

- Per Song Download is \$2.00/song
- Tablet Costs, for purchase by inmates, not the responsibility of the Department – 8GB = \$109.99 and 40GB = \$129.95

#### **30-minute video visitation \$4.50.**

#### **5. CONTRACTOR REGISTRATION (for construction)**

The Contractor will be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered (39-9-401, MCA).

#### **6. PREVAILING WAGE REQUIREMENTS**

**6.1 Montana Resident Preference.** The nature of the work performed, or services provided, under this Contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded

by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or non-construction services. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

**6.2 Standard Prevailing Rate of Wages.** In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

The standard prevailing rate of wages paid to workers under this Contract must be adjusted 12 months after the date of the award of the public works contract per 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

**6.3 Notice of Wages and Benefits.** Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

**6.4 Wage Rates, Pay Schedule, and Records.** 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for Building Construction 2016 and Non-construction Services 2016.

## **7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under section 20, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**7.2 Retention Period.** Contractor shall create and retain all records supporting the ICS for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or

agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

**9. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this Contract.

**10. LIMITATION OF LIABILITY**

Contractor's liability for Contract damages is limited to direct damages and further to no more than twice the Contract amount. Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

**11. REQUIRED INSURANCE**

**11.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**11.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**11.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**11.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**11.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**11.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

**11.7 Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal acquisition such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgments as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

## **12. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **13. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression,

national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

#### **14. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

#### **15. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

#### **16. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

#### **17. INTELLECTUAL PROPERTY/OWNERSHIP**

**17.1 Mutual Use.** Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

**17.2 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**17.3 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.



**17.4 Copy of Work Product.** Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

**17.5 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-Existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 17.3, Ownership of Work Product, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

## **18. PATENT AND COPYRIGHT PROTECTION**

**18.1 Third-Party Claim.** If a third party makes a claim against State that the products furnished under this Contract infringe upon or violate any patent or copyright, State shall promptly notify Contractor. Contractor shall defend such claim in State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**18.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by State shall be prevented by injunction, State will determine whether the Contract has been breached.

## **19. CONTRACT OVERSIGHT**

**19.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order.

**19.2 Right to Assurance.** If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

**19.3 Stop Work Order.** State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension

expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract shall be amended in writing accordingly.

## **20. CONTRACT TERMINATION**

**20.1 Termination for Cause with Notice to Cure Requirement.** State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**20.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**20.3 Reduction of Funding.** State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**20.4 Noncompliance with Department of Administration Requirements.** The Department of Administration, under the provisions of 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

## **21. EVENT OF BREACH – REMEDIES**

**21.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching section 26.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**21.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**21.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Terminate this Contract under Section 20.1, Termination for Cause and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under section 20.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

**22. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

**23. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

**24. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

**25. LIAISONS AND SERVICE OF NOTICES**

**25.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Paul Szczepaniak is State's liaison  
5 S. Last Chance Gulch  
Helena, MT 59601  
406-444-5386  
[pszczepaniak3@mt.gov](mailto:pszczepaniak3@mt.gov)

Bryan Osler is Contractor's liaison  
600 New Century Pkwy  
New Century, KS 66031  
913.353.7423  
[bryan.r.osler@centurylink.com](mailto:bryan.r.osler@centurylink.com)

**25.2 Notifications.** State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

## **26. MEETINGS**

**26.1 Technical or Contractual Problems.** Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

**26.2 Progress Meetings.** During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

## **27. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

## **28. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

## **29. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**30. AUTHORITY**

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**31. SEVERABILITY**

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

**32. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**32.1 Contract.** This Contract consists of 14 numbered pages, any Attachments as required, Solicitation # COR-RFP-2017-0041T, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**32.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**33. WAIVER**

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**34. EXECUTION**

The parties through their authorized agents have executed this Contract on the dates set out below.

**STATE OF MONTANA**  
**Department of Corrections**  
**PO Box 201301**  
**Helena, MT 59620-1301**

**CENTURYLINK PUBLIC COMMUNICATIONS, INC.**  
**600 New Century Pkwy**  
**New Century, KS 66031**  
**FEDERAL ID # 59-3268090**

BY: Loraine wodnik Director  
(Name/Title)

BY: Paul Cooper VP/GM  
(Name/Title)

DocuSigned by:  
Loraine Wodnik  
77B406A42D09446... (Signature)

DocuSigned by:  
Paul Cooper  
E1AA06B918D6462... (Signature)

DATE: 6/13/2017

DATE: 6/13/2017

Approved as to Legal Content:

DocuSigned by:  
Colleen Ambrose 6/13/2017  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
Tia Snyder 6/6/2017  
Procurement Officer (Date)  
State Procurement Bureau

Chief Information Officer Approval:

Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

DocuSigned by:  
Lynne Poggioli 6/13/2017  
Chief Information Officer (Date)  
Department of Administration