



Amendment No. 7
of
Contract No. MA 5600 NC150000015
for
Wireless Communications Services and Equipment
Between
AT&T Mobility, T-Mobile USA, Inc. & Celco Partnership dba Verizon
City of Austin

1.0 The City hereby is extending the contract term by up to 12 additional months and adding up to \$4,200,000.00 to the subject contract per City Council Agenda Item # 37, March 26, 2020.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 06/27/15 – 06/26/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase, 02/06/16	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase, 03/23/16	\$27,999.00	\$2,557,999.00
Amendment No 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00
Amendment No. 4: Option 2 04/01/17 – 03/31/18	\$2,652,250.00	\$7,785,249.00
Amendment No. 5: Option 3 04/01/18 – 03/31/19	\$2,731,818.00	\$10,517,067.00
Amendment No. 6: Option 4 04/01/19 – 03/31/20	\$2,813,772.00	\$13,330,839.00
Amendment No. 7: Administrative Increase & Contract Extension 04/01/20 – 03/31/21	\$4,200,000.00	\$17,530,839.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Contract.

Signature: Jack Wildermuth
Date: February 21, 2020
Printed Name: Jack Wildermuth
Authorized Representative

AT&T Mobility
PO Box 79075
Phoenix, AZ 85062

Signature: JAMES T HOWARD
Date: _____
Jim Howard
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701

Digitally signed by JAMES T HOWARD
DN: cn=JAMES T HOWARD,
o=CITY OF AUSTIN, ou=FINANCE,
email=JIM.HOWARD@AUSTINTEX
AS.GOV, c=US
Date: 2020.03.27 10:56:35 -05'00'



Amendment No. 7
of
Contract No. MA 5600 NC150000015
for
Wireless Communications Services and Equipment
Between
AT&T Mobility, T-Mobile USA, Inc. & Cellico Partnership dba Verizon
City of Austin

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5.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Contract.

Signature: John Bether

Date: 3/11/2020

Printed Name: John Bether
Authorized Representative

T-Mobile USA, Inc.
3801 Capital of TX Hwy, Ste #300
Austin, TX 78704

Signature: JAMES T

Date: HOWARD

Jim Howard
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701

Digitally signed by JAMES T HOWARD
DN: cn=JAMES T HOWARD, o=CITY OF
AUSTIN, ou=FINANCE,
email=JIM.HOWARD@AUSTINTEXAS.G
OV, c=US
Date: 2020.03.27 10:57:42 -05'00'



Amendment No. 7
of
Contract No. MA 5600 NC150000015
for
Wireless Communications Services and Equipment
Between
AT&T Mobility, T-Mobile USA, Inc. & Celco Partnership dba Verizon
City of Austin

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5.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Contract.

Signature: _____

Date: March 10, 2020

Printed Name: Todd Luccisano, VP – Contract Management
Authorized Representative

Celco Partnership dba Verizon
One Verizon Way
Basking Ridge, NJ 07920 - 1097

Signature: _____

Date: _____

Jim Howard
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701

**JAMES T
HOWARD**

Digitally signed by JAMES T HOWARD
DN: cn=JAMES T HOWARD, o=CITY OF AUSTIN,
ou=FINANCE,
email=jim.howard@cityofaustin.gov,
serial=2020.03.10.14.0000



Amendment No. 6
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Cellco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2019 through March 31, 2020. No additional options remain.
- 2.0 The total contract amount is increased by \$2,813,772.00 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14-07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 03/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/17 – 03/31/18	\$2,575,000.00	\$5,132,999.00
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Amendment No. 6: Option 4 04/01/19 – 03/31/20	\$2,813,772.00	\$13,330,839.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: James Kirby 2/5/2019
Printed Name: JAMES KIRBY Vice President
Authorized Representative

Sign/Date: [Signature]
Printed Name: James T. Howard
Authorized Representative

T-Mobile USA, Inc
3801 Capital of TX Hwy S., Ste. #300
Austin, TX 78704

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Reviewed and Approved as to Form:

DocuSigned by:
[Signature]
0B531AD6CE8C41C...

T-Mobile USA, Inc. Legal Dept.



Amendment No. 6
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between
Cellco Partnership dba Verizon Wireless
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2019 through March 31, 2020. No additional options remain.
- 2.0 The total contract amount is increased by \$2,813,772.00 by this extension period. The total contract authorization is recapped

below:

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14-07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
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Amendment No. 6: Option 4 04/01/19 – 03/31/20	\$2,813,772.00	\$13,330,839.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Todd Luccisano March 12, 2019

Printed Name: Todd Luccisano, Executive Director -
Authorized Representative Enterprise and Government Contracts

Cellco Partnership, d/b/a Verizon
One Verizon Way
Basking Ridge, NJ 07920-1097

Sign/Date: E. S. Folio 3/14/19

Printed Name: E. S. Folio
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 6
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Celco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2019 through March 31, 2020. No additional options remain.
- 2.0 The total contract amount is increased by \$2,813,772.00 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14-07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
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Amendment No. 3: Option 1 04/01/17 – 03/31/18	\$2,575,000.00	\$5,132,999.00
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Amendment No. 5: Option 3 04/01/18 – 03/31/19	\$2,731,818.00	\$10,517,067.00
Amendment No. 6: Option 4 04/01/19 – 03/31/20	\$2,813,772.00	\$13,330,839.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Jack Wildermuth 2/28/19

Printed Name: Jack Wildermuth
Authorized Representative

AT&T Mobility
PO Box 79075
Phoenix, AZ 85062

Sign/Date: T. Howard
Printed Name: T. Howard
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 5
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Cellco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2018 through March 31, 2019. One (1) option will remain.
- 2.0 The total contract amount is increased by ~~\$2,813,772.00~~ by this extension period. The total contract authorization is recapped below:

\$2,731,818.00 BST

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14-07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 03/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00
Amendment No. 4: Option 2 04/01/17 – 03/31/18	\$2,652,250.00	\$7,785,249.00
Amendment No. 5: Option 3 04/01/18 – 03/31/19	\$2,813,772.00	\$10,599,021.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:
Sign/Date: James Kirby 3/12/2018
54BE389356F9490
Printed Name: James Kirby
Authorized Representative

T-Mobile USA, Inc.
3801 Capital of TX Hwy. S. Ste #300
Austin, TX 78704

Sign/Date: [Signature]
Printed Name: JAMES T. HOWARD
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 5
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment

Between

Cellco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2018 through March 31, 2019. One (1) option will remain.
- 2.0 The total contract amount is increased by ~~\$2,813,772.00~~ by this extension period. The total contract authorization is recapped below:

\$2,731,818.00
BST

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14-07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 03/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00
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- 5.0 All other terms and conditions remain the same.

\$2,731,818.00
BST *\$10,517,067.00*
BST

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: *[Signature]* February 9, 2018

Printed Name: Todd Loccisano, Executive Director -
Enterprise and Government Contracts
Authorized Representative

Cellco Partnership dba Verizon
One Verizon Way
Basking Ridge, NJ 07920-1097

Sign/Date: *[Signature]*

Printed Name: JAMES T. HOWARD
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 5
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Celco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2018 through March 31, 2019. One (1) option will remain.
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\$2,731,818.00 BJT

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- 5.0 All other terms and conditions remain the same.

\$2,731,818.00 BJT

\$10,517,067.00 BJT

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: *Jack Wildermuth* 2/2/2018

Sign/Date: *[Signature]*

Printed Name: Jack Wildermuth
Authorized Representative

Printed Name: JAMES T. HOWARD
Authorized Representative

AT&T Mobility
PO Box 79075
Phoenix, AZ 85062

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



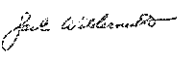
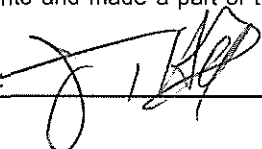
Amendment No. 4
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Cellco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 1, 2017 through March 31, 2018. Two options will remain.
- 2.0 The total contract amount is increased by \$2,652,250.00 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
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Amendment No. 1: Administrative Increase 02/06/2016	\$30,000.00	\$2,530,000.00
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- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: <u></u> 2/20/17 <small>Digitally signed by Jack Wildermuth DN: cn=Jack Wildermuth, o=AT&T Mobility National Accounts, ou, email=jw5001@att.com, c=US Date: 2017.02.20 13:06:07 -0500</small>	Sign/Date: <u></u>
---	--

Printed Name: Jack Wildermuth
Authorized Representative

AT&T Mobility
PO Box 79075
Phoenix, AZ 85062

Printed Name: JAMES T. HOWARD
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 4
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Cellco Partnership dba Verizon
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City of Austin

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- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: [Signature], February 17, 2017

Printed Name: Todd Loccisano – Executive Director,
Enterprise & Government Contracts
Authorized Representative

Cellco Partnership dba Verizon
One Verizon Way
Basking Ridge, NJ 07920-1097

Sign/Date: [Signature]

Printed Name: JAMES T. HOWARD
Authorized Representative

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 4
to
Contract No. 5600 NC150000015
for
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Cellco Partnership dba Verizon
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City of Austin

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- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

<p>DocuSigned by: <u>Sign/Date: James Kirby</u> 2/6/2017 11:25 AM PST <small>54BE389356F9490..</small> Printed Name: <u>James Kirby</u> Authorized Representative T-Mobile USA, Inc 3801 Capital of TX Hwy S. Ste #300 Austin, TX 78704</p>	<p><u>Sign/Date: [Signature]</u> Printed Name: <u>JAMES T. HOWARD</u> Authorized Representative City of Austin Purchasing Office 124 W. 8th Street, Ste. 310 Austin, Texas 78701</p>
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Amendment No. 3
of
Contract No. NC150000015
For
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility, DIR-SDD-1777
T-Mobile USA, Inc. - DIR-SDD-1778
& Cellco Partnership dba Verizon - DIR-SDD-1779
and the
City of Austin

- 1.0 The City hereby exercises an early extension option for the above referenced contract.
- 2.0 Effective April 1, 2016, the term for the extension option will be April 1, 2016 to March 31, 2017 and there are three remaining options.
- 3.0 The total contract amount is increased by \$2,575,000.00 between multiple contractors for the extension-option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 05/01/14 – 04/30/15	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 2/6/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 3/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: Todd Loccisano 4/11/16
Todd Loccisano, Executive Director -
Printed Name: Enterprise & Government Contracts
Authorized Representative

Signature & Date: Shawn Willett 4/11/16
Shawn Willett, Deputy Purchasing Officer
City of Austin
Financial Services
Purchasing Office

Cellco Partnership dba Verizon
One Verizon Way
Basking Ridge, NJ 07920-1097



Amendment No. 3
of
Contract No. NC150000015
For
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility,
T-Mobile USA, Inc.
& Celco Partnership dba Verizon
and the
City of Austin

- 1.0 The City hereby exercises an early extension option for the above referenced contract.
- 2.0 Effective April 1, 2016, the term for the extension option will be April 1, 2016 to March 31, 2017 and there are three remaining options.
- 3.0 The total contract amount is increased by \$2,575,000.00 between multiple contractors for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/14 – 07/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 2/6/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 3/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: Sonia Cardenas 4-5-2016
Printed Name: Sonia Cardenas
Authorized Representative

Signature & Date: [Signature] 4/11/16
Shawn Willett, Deputy Purchasing Officer
City of Austin
Financial Services
Purchasing Office

AT&T Mobility
PO Box 79075
Phoenix, AZ 85062



Amendment No. 3
of
Contract No. NC150000015
For
Wireless Communications Services and Equipment
Between Multiple Contractors
AT&T Mobility, DIR-SDD-1777
T-Mobile USA, Inc. DIR-SDD-1778
& Cellco Partnership dba Verizon DIR-SDD-1779
and the
City of Austin

- 1.0 The City hereby exercises an early extension option for the above referenced contract.
- 2.0 Effective April 1, 2016, the term for the extension option will be April 1, 2016 to March 31, 2017 and there are three remaining options.
- 3.0 The total contract amount is increased by \$2,575,000.00 between multiple contractors for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 05/01/14 – 04/30/15	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase 2/6/2016	\$30,000.00	\$2,530,000.00
Amendment No. 2: Administrative Increase 3/23/2016	\$27,999.00	\$2,557,999.00
Amendment No. 3: Option 1 04/01/16 – 03/31/17	\$2,575,000.00	\$5,132,999.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

4/6/16

Printed Name: Matt Millen, VP
Authorized Representative

Signature & Date:

4/11/16

Shawn Willett, Deputy Purchasing Officer
City of Austin
Financial Services
Purchasing Office

T-Mobile USA, Inc
3801 Capital of TX Hwy S. Ste #300
Austin, TX 78704

Jon Schorpfilm
512-828-9173



Amendment No. 2
of
Contract No. MA 5600 NC150000015
for
Wireless Communications Services and Equipment
between
T-Mobile, USA, Inc., Verizon Wireless and AT&T Mobility National Accounts LLC
and the
City of Austin

1.0 Section 1.5, Compensation, is hereby increased by an additional \$30,000

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 06/27/15 – 06/26/16	\$2,500,000	\$2,500,000
Amendment No. 1 Administrative Increase	\$30,000.00	\$2,530,000
Amendment No. 2 Administrative Increase	\$27,999.00	\$2,557,999

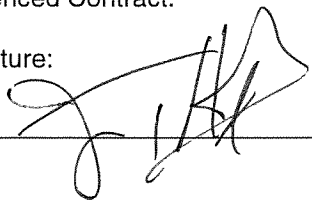
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced Contract.

Signature:



Date:

March 23, 2016

Printed Name: James Howard
Corporate Purchasing Manager

City of Austin
Purchasing Office



Amendment No. 1
to
MA 5600 NC150000015
for
Wireless Communications Services and Equipment
between
T-Mobile USA, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise the Compensation Section to **increase the Not to Exceed for the initial term** to \$2,530,000.00. This is an increase of \$30,000.00; and

2.0 The total Contract authorization is recapped below:

Term	Action Amount (Cost)	Total Contract Amount
Original Contract: Initial Term 7/28/15 – 7/27/16	\$2,500,000.00	\$2,500,000.00
Amendment No. 1: Administrative Increase	\$30,000.00	\$2,530,000.00

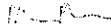
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:



Digitally signed by Matt Millen, Vice President
DN: cn=Matt Millen, Vice President,
ou=T-Mobile USA, ou=email@tmo-
mcsa-t-mobile.com, c=US
Date: 2016.02.05 15:07:32 -08'00'

Contractor Signature: _____

Printed Name: Matt Millen

Date: 2/5/2016

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006

Signature: _____

City of Austin Purchasing Office

Printed Name: JAMES T. HOWARD

Date: 2/6/2016

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701



Financial Service Department
Purchasing Office
124 W. 8th St., Austin, Texas, 78701

August 10, 2015

AT&T Mobility
Rita Thompson
Account Manager
7855 Walker Drive, Suite 100
Greenbelt, MD 20770

The Austin City Council approved the execution of a contract with your companies for wireless communications services and equipment through the State of Texas DIR contract.

Project Name:	Wireless Communications Services and Equipment
Contractor Name:	Verizon Wireless, T-Mobile USA and AT&T Mobility
Contract Number:	MA-5600-NC150000015
Contract Period:	July 28, 2015 through July 27, 2016
Extension Options:	Four 12-month Options
Dollar Amounts:	Not to Exceed \$2,500,000 combined for all companies for the initial term and Not to Exceed \$2,575,000 combined for all companies for the first extension option, \$2,652,250 combined for all companies for the second extension option, \$2,731,818 combined for all companies for the third extension option, and \$2,813,772 combined for all companies for the last extension option,
Agenda Item Number:	6
Council Approval Date:	May 21, 2015

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please let me know.

Sincerely,

Shawn M. Willett
Corporate Purchasing Manager
IT Contract Management and Procurement Team
City of Austin, Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
And
AT&T MOBILITY NATIONAL ACCOUNTS LLC
For
TELEPHONE, LONG DISTANCE AND LOCAL SERVICES

This Contract is between AT&T Mobility National Accounts LLC having offices at 7855 Walker Drive, Ste 100, Greenbelt, Maryland 20770 (the "Contractor") and the City of Austin, a home-rule municipality incorporated by the State of Texas (the "City"). Solicitation requirements are met by using Department of Information Resources Contract No. DIR-SDD-1777. This Contract replaces Amendment 3A under Contract NC090000045, which was executed on 5/2/14 by AT&T Mobility National Accounts LLC and the City of Austin.

1.1 This Contract is composed of the following documents:

1.1.1 **DIR-SDD-1777**

1.1.2 This Contract

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 DIR-SDD-1777

1.2.2 This Contract

1.3 Term of Contract. The Contract shall be in effect on June 27, 2015 (Effective Date) for an initial term of 12 months (the "Initial Term") and may be extended thereafter for up to 4 additional 12 month periods (each an "Extension Term") upon written notice to Contractor delivered sixty (60) days prior to the end of the Initial Term or an Extension Term, as applicable, indicating the City's intent to extend the Contract and , subject to the approval of the Contractor and the City Purchasing Officer or his designee.

Compensation. This contract is being awarded to multiple Providers. The Contractors combined shall be paid a total not-to-exceed amount of \$2,500,000 for the initial 12-month term, \$2,575,000 for the first extension option, \$2,652,250 for the second extension option, \$2,731,818 for the third extension option, and \$2,831,772 for the fourth extension option (each annual "not-to exceed amount" shall be referred to herein as the "Budget Cap"), for a total contract amount not-to -exceed \$13,272,840. The City shall use best efforts to ensure that the City does not exceed the Budget Cap for the Initial Term or any Extension Term.

This Contract (including any Exhibits and DIR-SDD-1777) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

AT&T MOBILITY NATIONAL ACCOUNTS LLC

CITY OF AUSTIN

Jack Wildermuth

Printed Name of Authorized Person



Digitally signed by Jack Wildermuth
DN: cn=Jack Wildermuth, o=AT&T Mobility National
Accounts, ou, email=jw8001@att.com, c=US
Date: 2015.08.07 08:20:49 -07'00'

Signature

Senior Contract Manager

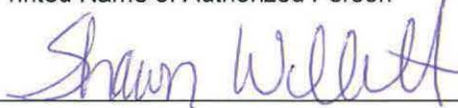
Title:

8/7/2015

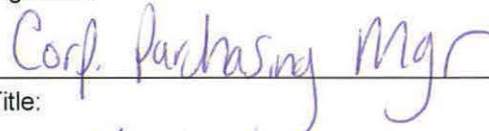
Date:



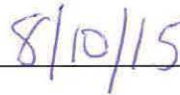
Printed Name of Authorized Person



Signature



Title:



Date:



Financial Service Department
Purchasing Office
124 W. 8th St., Austin, Texas, 78701

July 28, 2015

Verizon Wireless
Todd Loccisano
Executive Director
7600 Montpelier Road
Laurel, MD 20723

The Austin City Council approved the execution of a contract with your companies for wireless communications services and equipment through the State of Texas DIR contract.

Project Name:	Wireless Communications Services and Equipment
Contractor Name:	Verizon Wireless, T-Mobile USA and AT&T Mobility
Contract Number:	MA-5600-NC150000015
Contract Period:	July 28, 2015 through July 27, 2016
Extension Options:	Four 12-month Options
Dollar Amounts:	Not to Exceed \$2,500,000 combined for all companies for the initial term and Not to Exceed \$2,575,000 combined for all companies for the first extension option, \$2,652,250 combined for all companies for the second extension option, \$2,731,818 combined for all companies for the third extension option, and \$2,813,772 combined for all companies for the last extension option,
Agenda Item Number:	6
Council Approval Date:	May 21, 2015

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Shawn M. Willett".

Shawn M. Willett
Corporate Purchasing Manager
IT Contract Management and Procurement Team
City of Austin, Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
And
VERIZON WIRELESS
For
TELEPHONE, LONG DISTANCE AND LOCAL SERVICES

This Contract is between Verizon Wireless having offices at One Verizon Way, Basking Ridge, New Jersey 07920-1097 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Department of Information Resources Contract No. DIR-SDD-1779 ("State Contract").

1.1 This Contract is composed of the following documents:

1.1.1 **DIR-SDD-1779**

1.1.2 This Contract

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 DIR-SDD-1779

1.2.2 This Contract

1.3 Term of Contract. The Contract shall be in effect on June 27, 2015 (Effective Date) for an initial term of 12 months. The State Contract expires March 21, 2016. Contractor will continue to perform under the pricing, terms and conditions of the State Contract throughout the initial term of the contract, and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee. Notwithstanding, the City may elect to move to new price plans that are available under any contract subsequently awarded by Texas DIR, Verizon Wireless will honor that new pricing for the balance of the term of its agreement with the City.

1.4 Compensation. This contract is being awarded to multiple Providers. The Contractors combined shall be paid a total not-to-exceed amount of \$2,500,000 for the initial 12-month term, \$2,575,000 for the first extension option, \$2,652,250 for the second extension option, \$2,731,818 for the third extension option, and \$2,831,772 for the fourth extension option, for a total contract amount not-to -exceed \$13,272,840.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

VERIZON WIRELESS

Todd Loccisano

Printed Name of Authorized Person

Todd Loccisano

Signature

Executive Director – Enterprise & Government
Contracts

Title:

June 29, 2015

Date:

CITY OF AUSTIN

Shawn Willett

Printed Name of Authorized Person

Shawn Willett

Signature

Corp. Purchasing Manager

Title:

July 22, 2015

Date:



**Financial Service Department
Purchasing Office**
124 W. 8th St., Austin, Texas, 78701

July 27, 2015

T-Mobile USA
Matt Miller
Vice President
3801 Capital of Texas Highway South, Suite 300
Austin, TX 78704

The Austin City Council approved the execution of a contract with your companies for wireless communications services and equipment through the State of Texas DIR contract.

Project Name:	Wireless Communications Services and Equipment
Contractor Name:	Verizon Wireless, T-Mobile USA and AT&T Mobility
Contract Number:	MA-5600-NC150000015
Contract Period:	July 28, 2015 through July 27, 2016
Extension Options:	Four 12-month Options
Dollar Amounts:	Not to Exceed \$2,500,000 combined for all companies for the initial term and Not to Exceed \$2,575,000 combined for all companies for the first extension option, \$2,652,250 combined for all companies for the second extension option, \$2,731,818 combined for all companies for the third extension option, and \$2,813,772 combined for all companies for the last extension option,
Agenda Item Number:	6
Council Approval Date:	May 21, 2015

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please let me know.

Sincerely,

Shawn M. Willett
Corporate Purchasing Manager
IT Contract Management and Procurement Team
City of Austin, Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
And
T-MOBILE USA, INC.
For
TELEPHONE, LONG DISTANCE AND LOCAL SERVICES

This Contract is between T-Mobile USA having offices at 3801 Capital of Texas Highway South, Suite 300, Austin, TX 78704 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Department of Information Resources Contract No. DIR-SDD-1778

1.1 This Contract is composed of the following documents:

1.1.1 DIR-SDD-1778

1.1.2 This Contract

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 DIR-SDD-1778

1.2.2 This Contract

1.3 Term of Contract. The Contract shall be in effect on June 27, 2015 (Effective Date) for an initial term of 12 months and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.4 Compensation. This contract is being awarded to multiple Providers. The Contractors combined shall be paid a total not-to-exceed amount of \$2,500,000 for the initial 12-month term, \$2,575,000 for the first extension option, \$2,652,250 for the second extension option, \$2,731,818 for the third extension option, and \$2,831,772 for the fourth extension option, for a total contract amount not-to-exceed \$13,272,840.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

T-MOBILE USA, INC.

Matt Miller

Printed Name of Authorized Person

[Signature]

Signature

Vice President

Title:

June 8, 2015

Date:

Approved as to Form:

[Signature]

T-Mobile USA, Inc. Legal Department

CITY OF AUSTIN

Shawn Willett

Printed Name of Authorized Person

[Signature]

Signature

Corp. Purchasing Manager

Title:

July 22, 2015

Date:

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
AT&T MOBILITY NATIONAL ACCOUNTS LLC

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 15th Street, Suite 1300, Austin, Texas 78701, and AT&T Mobility National Accounts LLC (hereinafter “Vendor”), with its principal place of business at 208 South Akard, Dallas, TX 75202.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

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; Exhibit 1 Vendor’s Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then 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

- A.** The term of this Contract shall be one (1) year 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 three (3) optional one-year terms.
- B.** DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees

that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

3. Product and Service Offerings

A. Products

Wireless Voice and Data Products available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

B. Services

Wireless Voice and Data services available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

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

B. Customer Discount

The minimum Customer discount from the Vendor for all published AT&T Wireless Voice and Data Service Plans will be 26%.

The minimum Customer discount from the Vendor for all AT&T accessories is 30% off of current retail price.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

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

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement

applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. Telecommunications Fees and Surcharges and Taxes

- (a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. Any additional, or updates to, FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.
- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001,

Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

E. Other Fees

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

F. Back-billing

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

G. DIR Cost Recovery Fee

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

H. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

I. Tax-Exempt

As per Section 151.309, Texas Tax Code, certain Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each assistance organization directly.

J. 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. 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.

K. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Cost Recovery Fee

A) The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

B) All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR. Notwithstanding the foregoing, all products and services are to be provided and billed in full compliance with applicable laws and regulations.

6. Notification

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

If sent to the State:

Director, Communications Technology Services Division
With a copy to:
Attorney, Communications Technology Services Division
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Facsimile: (512) 475-4759

If sent to the Vendor:

Tatum Minister
AT&T Mobility National Accounts LLC

712 East Huntland Drive
Austin, TX 78752
Phone: (512) 914-1918
Facsimile: (210) 222-3602
Email: tm6230@att.com.com

7. 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 Product and Related Services Contracts.

1. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts;** all references to "administrative fee(s)" are hereby deleted in their entirety.

2. **Appendix A, Section 4.F. Choice of Law** is hereby restated as follows:

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity, nor as a waiver of any Vendor's defenses under Texas law.

3. **Appendix A, Section 7.C. Payments** is hereby restated as follows:

C. Payments

Customers eligible under Chapter 2251 shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

Customers who are assistance organizations (as described in the definition of "Customer" in Section 3 to this Appendix A ("Definitions")) will make payment within 30 days after the date of the invoice. Such Customers will reimburse Vendor for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees.

In addition, Vendor may charge such Customers with late payment fees for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments. All checks remitted in payment of amounts due hereunder will refer to the invoice number. Restrictive endorsements or other statements on checks are void.

4. **Appendix A, Section 9.A. Indemnification** is hereby restated as follows:

A. Indemnification

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any 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 REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY (I) THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS (INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS) AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN THIS APPENDIX A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (I) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE, VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW.

2) 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 CUSTOMERS 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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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.

3) Independent Contractor

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

5. **Appendix A, Section 9.K. Limitation of Liability** is hereby restated as follows:

K. Limitation of Liability.

(a) For any claim or cause of action arising under or related to the Contract, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO DIR IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT

(c) Exceptions to Limitations of Liability. This *Section* will not apply with respect to:

(1) Losses occasioned by the fraud (except as rendered inapplicable to the State, DIR and all state agency and local government Customers), willful misconduct, or gross negligence of a Vendor.

- (2) Losses that are the subject of Indemnification under this CONTRACT.
- (3) Losses occasioned by any breach of a Party's obligations under the Confidentiality and Disclosure provisions of this Contract.

6. **Appendix A, Section 9.L. Overcharges** is hereby restated as follows:

L. Overcharges

Vendor hereby assigns to DIR any and all claims for overcharges associated with products and services provided to DIR and Customers under this Contract arising under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* (1973), as amended, and the antitrust laws of the State, Sections 15.01, *et seq.*, Texas Business & Commerce Code.

7. **Appendix A, Section 9.S. Deceptive Trade Practices; Unfair Business Practices** is hereby restated as follows:

S. Deceptive Trade Practices; Unfair Business Practices

Vendor represents and warrants that to the best of its knowledge and belief neither Vendor nor any of its Subcontractors has within the last 3 years been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or it has no officers who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations.

8. **Appendix A, Section 10.A. Enforcement of Contract and Dispute Resolution** is hereby restated as follows:

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding any such Dispute, the Vendor must continue to perform the Services in compliance with the terms of this Contract pending resolution of Disputes so long as all undisputed amounts continue to be paid to Vendor.

9. **Appendix A, Section 10.C. Force Majeure** is hereby restated as follows:

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract except for payment obligations for services already rendered for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

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

AT&T Mobility National Accounts LLC

Authorized By: Signature on File

Name: Roland Saenz

Title: Director of Contracts

Date: 4-11-2012

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

Authorized By: Signature on File

Name: Carl Marsh

Title: Chief Operating Officer

Date: 4/12/12

Legal: Signature on File

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

T-MOBILE USA, INC.

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 15th Street, Suite 1300, Austin, Texas 78701, and T-Mobile USA, Inc. (hereinafter “Vendor”), with its principal place of business at 12920 SE 38th Street, Bellevue, WA 98006.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Exhibit 1 Vendor’s Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Exhibit 1, then 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

A. The term of this Contract shall be one (1) year 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 three (3) optional one-year terms.

B. DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees

that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

3. Product and Service Offerings

Wireless Voice and Data Products and Services available under this Contract are all published T-Mobile USA Voice and Data Service Plans. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

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

B. Customer Discount

The minimum Customer discount from the Vendor for all published T-Mobile USA Wireless Voice and Data Service Plans will be 17%.

The minimum Customer discount from the Vendor for all T-Mobile USA accessories is 30% off of current retail price. With respect to equipment, Vendor will, subject to availability, offer Customers free entry level equipment.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

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

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. Telecommunications Fees and Surcharges and Taxes

- (a) Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.
- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

E. Other Fees

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

F. Back-billing

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

G. DIR Cost Recovery Fee

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

H. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

I. Tax-Exempt

As per Section 151.309, Texas Tax Code, Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code.

J. 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. 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.

K. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Cost Recovery Fee

A) The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

B) All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

6. Notification

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

If sent to the State:

Director, Communications Technology Services Division
With a copy to:
Attorney, Communications Technology Services Division
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Facsimile: (512) 475-4759

If sent to the Vendor:

Jerry Southerland
T-Mobile USA, Inc.
3801 South Capital of Texas Highway
Suite 300
Austin, TX 78704
Phone: (512) 228-1195
Facsimile: (813) 353-6420
Email: jerry.southerland@t-mobile.com

7. 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 Product and Related Services Contracts.

No exceptions have been agreed to by DIR and Vendor.

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

T-Mobile USA, Inc.

Authorized By: Signature on File

Name: Femi Lakeru

Title: Vice President, Business Sales

Date: Mar 14 2012

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

Authorized By: Signature on File

Name: Carl Marsh

Title: Chief Operating Officer

Date: 3/21/12

Legal: Signature on File

Appendix A

Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by qualifying Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

A. Customers - any Texas state agency, including each house of the legislature and legislative agencies, a unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education, as authorized under Section 2170.004 (5), Texas Government Code, and assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and

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their families; and

9) A nonprofit organization that provides affordable housing.

- B. Compliance Check** – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

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2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customers under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

5. Product Terms and Conditions

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

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2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

C. Purchase of Telecommunications Products and Services

Vendor agrees that it will sell telecommunications products and services available under this Contract only to the Telecommunications Customers as defined in Section 3 A.

6. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed

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through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

2) Changes in Order Filler List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 6.B.1.a above.

3) Order Filler Pricing to Customer

Order Filler pricing to the Customer shall comply with the applicable Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Filler 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

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similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website, and when appropriate to guide Customers, distinguish the products and services available by category - telecommunications and ICT separately. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the

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purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

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J. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

7. Purchase Orders, Invoices, and Payments

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

B. Invoices

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

8. Contract Administration

A. Contract Administrators

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

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1) State Contract Administrator

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

2) Vendor Contract Administrator

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

B. Reporting and CRF/Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the applicable CRF/administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period, broken out by telecommunications sales and ICT sales. Reports for each type of sale shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report, broken out by telecommunications and ICT sales. The monthly report, per category of telecommunications and ICT, shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, applicable CRF/administrative fee assessed, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall

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also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR CRF

a) The applicable CRF/administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract and to recover costs of the telecommunications program. The CRF/ fee is as specified in Section 5 of the Contract. Payment of the CRF fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on all remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and payment of the applicable CRF/administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or CRF/administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late CRF/administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF/administrative fee payments or deliver late reports and applicable fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records

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shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If, as a result of any other audits listed in Section 8(b) above, DIR determines that Vendor has overcharged the Customers, DIR will notify Vendor in writing of the amount of such overcharge, and provide to the Vendor the work papers supporting such position. Vendor will promptly pay to DIR the undisputed amount of the overcharges, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR Customers which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for all products and services for such period, Vendor will reimburse DIR for the reasonable cost of this audit.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the CRF based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's CRF/ fee is correct.

D. Audit of Telecommunications Taxes, Fees and Surcharges, Customer Prices for Telecommunications Services.

(a) Vendor will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation reasonably requested by DIR to audit telecommunications taxes,

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fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index.

- (b) DIR may audit the applicable telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services under Appendix C, Pricing Index to determine that such telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index, are accurate and in accordance with this Contract.

E. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

9. Vendor Responsibilities

A. Indemnification

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any 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 REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

2) 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 CUSTOMERS AGREE TO FURNISH TIMELY

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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 THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) 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.

3) Independent Contractor

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

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. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. 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 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, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR

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WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

C. Vendor Certifications

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other

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pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; (xv) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and (xvi) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

D. Ability to Conduct Business in Texas

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

E. Equal Opportunity Compliance

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional

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subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 18 of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

H. Confidentiality

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

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K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

L. Overcharges

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 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+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named 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 \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where

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appropriate, with a separate aggregate of \$500,000. 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 listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

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 \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 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;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

O. Use of State Property

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude

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compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

R. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

S. Deceptive Trade Practices; Unfair Business Practices

- (a) 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 under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.
- (b) 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 any other unfair business practices or (ii) have outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.

10. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

B. Termination

1) Termination for Non-Appropriation

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget

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execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. Assistance organizations and private institutions of higher education do not have the right to terminate for non-appropriation.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the

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Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

11. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a

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party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

12. Captions

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS AND ITS RELATED
ENTITIES**

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 15th Street, Suite 1300, Austin, Texas 78701, and Cellco Partnership d/b/a Verizon Wireless and its Related Entities (hereinafter "Vendor"), with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920-1097.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

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, Exhibit 1 Vendor's Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then 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

A. The term of this Contract shall be one (1) year 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 three (3) optional one-year terms.

- B. DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Wireless Voice & Data 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 Wireless Voice & Data 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

A. Manufacturer's Suggested Retail Price (MSRP)

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

B. Customer Discount

The minimum Customer discount from the Vendor for all published commercial Verizon Wireless Voice and Data National Plans is 23%; it should be noted, however, Custom State of Texas Calling Plans, Nationwide Flat Rate Calling Plan, Enterprise Messaging, Static IP Isolated Pool w/Fixed End System, Machine to Machine and ZipIt Now Messaging Solution 3MB Price Plan are firm fixed prices and identified in Appendix C Product and Pricing Index. Verizon consumer plans are not within the scope of this contract. Promotional price plans may become available to the State in the future that may already be discounted and not eligible for further discounting. Future plans offered by Verizon under alternative terms and/or discounts will be subject to mutual agreement by both parties before being sold under this contract.

The minimum Customer discount from the Vendor for all eligible accessories is 35% off of current retail price.

C. Customer Price

- 1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

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

- 3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. Telecommunications Fees and Surcharges and Taxes

- (a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. This fee may appear on billings to Customers. Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

E. Other Fees

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

F. Back-billing

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

G. DIR Cost Recovery Fee

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

H. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

I. Tax-Exempt

As per Section 151.309, Texas Tax Code, Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code.

J. 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. 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.

K. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Cost Recovery Fee

A) The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

B) All prices quoted to Customers shall include the applicable CRF fee. 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 CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

6. Notification

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

If sent to the State:

Director, Communications Technology Services Division
With a copy to:
Attorney, Communications Technology Services Division
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Facsimile: (512) 475-4759

If sent to the Vendor:

Russ Brown
Verizon Wireless
70 NE Loop 410, Suite 395
San Antonio, TX 78216
Phone: (210) 347-1406
Facsimile: (210) 592-5080
Email: russ.brown@verizonwireless.com

7. 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 Product and Related Services Contracts.

1. **Appendix A, Section 8.C.2. Records and Audit** is hereby restated as follows:

2) Vendor and Order Fulfillers shall maintain all billing records related to state funds and all other records adequate to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number,

description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

2. **Appendix A, Section 9.I. Security of Premises, Equipment, Data and Personnel** is hereby restated as follows:

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

Other than matters of promulgated laws and regulations and matters of general knowledge and prudence, Customers shall provide to Vendor or post prominently any and all safety/security procedures that Vendor should comply with when on the Customers' premises.

3. **Appendix A, Section 9.N. Required Insurance Coverage, first paragraph** is hereby restated as follows:

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 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- financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named 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 \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. 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 listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

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 \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 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;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

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

Cellco Partnership d/b/a Verizon Wireless and its Related Entities

Authorized By: Signature on File

Name: Todd Loccisano

Title: Executive Director - Contracts

Date: 14-March-2012

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

Authorized By: Signature on File

Name: Carl Marsh

Title: Chief Operating Officer

Date: 3/21/12

Legal: Signature on File