

**Amendment Number 2**  
**to**  
**Contract Number DIR-SDD-1860**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**AT&T Corp, Inc.**

This Amendment Number 2 to Contract Number DIR-SDD-1860 (“Contract”) is between the Department of Information Resources (“DIR”) and AT&T Corp, Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract through December 28, 2015, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to one (1) additional one-year renewal term.

2. **Contract, Section 4. Pricing**, is hereby restated in its entirety as follows:

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

3. **Contract, Section 4. Pricing A - H** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 8, Pricing, Purchase Orders, Invoices and Payment dated 02/04/15 as attached hereto.
4. **Contract, Section 7. Software License and Service Agreements** is hereby amended by adding **C. Conflicting or Additional Terms** stated as follows:

**C. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

5. **Contract, Section 8. Intellectual Property Matters, A - L** is deleted and is hereby restated in its entirety in Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 5, A - L dated 02/04/2015 as attached hereto.
6. **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts dated 12/14/11**, is hereby restated in its entirety and replaced with the

attached **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts** dated 02/04/2015.

7. **Authorized Exceptions to Contract, Appendix A, Standard Terms and Conditions for Product and Related Services Contracts**, is hereby Amended and renumbered in its entirety as follow:

A. **Appendix A, Section 3. Definitions**, the following Definitions are added as follows:

- I. **Affiliate** of a party means any entity that controls, is controlled by, or is under the common control with, such party.
- J. **Damages** means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.
- K. **Effective Date** for any Service Agreement means, the date on which the last party signs the Service Agreement unless a later date is required by regulation or law.
- L. **Service Agreement** means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.
- M. **Service** means a service (including AT&T use of AT&T owned equipment necessary to provide the Services) provided under this contract.
- N. **Service Component** means an individual component of a Service provided under this Contract.
- O. **Site** means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.
- P. **Order Fulfiler** means the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

B. **Appendix A, Section 4. General Provisions, B.2) through 3) Modification of Contract Terms and/or Conditions**, is hereby restated in its entirety as follows:

2) Customers shall not have the authority to modify the terms of the Contract; however, (a) additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Customer and Vendor may be added in a Purchase Order and (b) custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Service Agreement, and given effect. No additional term or condition added in a Purchase Order issued by either party 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.

3) Customers and Vendor may negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

**C. Appendix A, Section 4. General Provisions, E. Survival,** is hereby restated in its entirety as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer 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 prior to the expiration or termination of the Contract shall survive expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including, but not limited to any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality, disclaimers, limitations of liability and indemnification will remain in effect after termination or expiration hereof.

**D. Appendix A, Section 4. General Provisions, F. Choice of Law,** is hereby restated in its entirety as follows:

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 or to waive any rights or defenses of Vendor.

**E. Appendix A, Section 4. General Provisions, G. Limitation of Authority,** is hereby restated in its entirety as follows:

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. Vendor 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.

**F. Appendix A, Section 5. Intellectual Property Matters,** is hereby restated in its entirety as follows:

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

authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

**G. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, B. Customer Discount,** is hereby restated in its entirety as follows:

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

**H. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price,** is hereby restated in its entirety as follows:

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

Customer Price = MSRP – Customer Discount

2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, Vendor shall furnish DIR on a monthly basis with copy of such better offerings. DIR Customers may choose between the lower of a Vendor special promotional offering or the DIR discounted price offered under this Contract but are not eligible to combine the two.

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

**I. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, E. Tax-Exempt,** is hereby restated in its entirety as follows:

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

**J. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, G. Changes in Prices,** is hereby restated in its entirety as follows:

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. This section will not require Vendor to revise prices for products where Vendor has already placed an order.

**K. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, I. Invoices,** is hereby restated in its entirety as follows:

1) Invoices shall be submitted by the Vendor 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 Vendor.

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.

3) The administrative fee as set forth in Section 5.A., DIR Administrative Fee, of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**L. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, J. Payments,** is hereby restated in its entirety as follows:

(1) Texas governmental Customers which are subject to Chapter 2251, Texas Government Code shall comply with its provisions in making payments to Vendor. Payment under the Contract shall not foreclose the right to recover wrongful payments, and disputing of amounts invoiced shall not excuse Texas Customer of payment obligations imposed under Texas Government Code Chapter 2251.

(2) For Customers who are not subject to Chapter 2251, payment is due within thirty (30) days after the date of the invoice, and payment must refer to the invoice number. AT&T may charge late payment fees at the lower of 1.5% per month or the maximum rate allowed by law for overdue payments.

**M. Appendix A, Section 9. Contract Administration, B.4) DIR Administrative Fee,** is hereby restated in its entirety as follows:

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon ninety (90) days written notice to Vendor without the need for a formal contract amendment.

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

**N. Appendix A, Section 9. Contract Administration, B.5) Accurate and Timely Submission of Reports**, is hereby restated in its entirety as follows:

a) The reports and 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 administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and 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. Any such audit under this subsection 9.B.5.b) shall be at the Vendors expense.

c) Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

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

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in

a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) the Customer's use of such product or services in combination with any product, materials or information not provided by Vendor or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

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

**P. Appendix A, Section 10. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE** is hereby restated in its entirety as follows:

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

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF EMPLOYMENT 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.

**Q. Appendix A, Section 10. Vendor Responsibilities, G. Responsibility for Actions,** is hereby restated in its entirety as follows:

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 Certification Statement of Appendix A to the RFO and/or Section 10.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 in accordance with Section 9. C. (xii) above.

**R. Appendix A, Section 10. Vendor Responsibilities, H. Confidentiality,** is hereby restated in its entirety as follows:

1) Vendor acknowledges that DIR and Customers that are governmental entities under Texas law are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental entities under Texas law will comply with the Texas 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 such Customer information to any party in any manner.

3) Confidential Information means: information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.

a) Obligations. Each party's Confidential Information will permanently following its disclosure to the other party: (i) be held in confidence; and (ii) not be disclosed, except to the receiving party's employees, agents and contractors having a need- to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and

disclosure restrictions as restrictive as this Section 5), or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process). These obligations will survive the expiration or termination of the Contract or any Purchase Order under it.

b) Exceptions. The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

c) Privacy Laws. Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

**S. Appendix A, Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel,** is hereby restated in its entirety as follows:

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. The Customer will give Vendor a written copy of any applicable security requirements, and a reasonable opportunity to review the requirements and discuss the requirements and their impact on project performance, schedule and price with the Customer before agreeing to the security requirements. If Vendor is in breach of a security requirement, Customer will provide reasonable notice and opportunity to cure before Customer terminates its Purchase Order and related Service Agreement in accordance with Section 11.B.4) a).

**T. Appendix A, Section 10. Vendor Responsibilities, L. Overcharges,** is hereby restated in its entirety as follows:

Vendor hereby assigns to DIR or Customers as appropriate and all of its

claims against its suppliers for overcharges associated with products and services provided to DIR and Customers under this contract, if such claims arise 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.

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

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

1) Commercial General Liability

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

- a) Blanket contractual liability coverage;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- and
- d) 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 policy limits for Employers' Liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease policy limit and \$1,000,000 per

disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per accident 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 in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) Vendor shall provide at least 30 days' advance written notice to DIR and Customer of any cancellation of any required coverage that is not replaced; and
- c) Additional Insured.

**V. Appendix A, Section 10. Vendor Responsibilities, T. Deceptive Trade Practices,** is hereby restated in its entirety as follows:

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

**W. Appendix A, Section 11. Contract Enforcement, B.1), Termination for Non-Appropriation,** is hereby restated in its entirety as follows:

**a) Termination for Non-Appropriation by Customer**

By executing the Purchase Order or Service Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under the Purchase Order or Service Agreement, Customer may terminate the Purchase Order or Service Agreement without liability for the termination charges set forth in Section 8.B.9. Termination of the Purchase Order or Service Agreement for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available.

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated ("Date of Termination"), without being subject to termination charges set forth in the applicable Service Agreement; provided, however; that Customer shall be obligated to pay all charges incurred through the Date of Termination. Customer will make reasonable effort to notify Vendor thirty (30) days before the end of available

appropriations; however, failure to do so will not subject customer to liability beyond the available appropriation.

**b) Termination for Non-Appropriation by DIR**

If DIR as a Customer terminates a Purchase Order or Service Agreement under subsection a) above, because funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code, then the DIR may also terminate this Contract. In such event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR 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, except for all charges incurred through the date of termination subject to the availability of appropriated funds, nor shall it be liable for any damages which are caused by or associated with such termination.

**X. Appendix A, Section 11. Contract Enforcement, B.3), Termination for Convenience,** is hereby restated in its entirety as follows:

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 within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

**Y. Appendix A, Section 11. Contract Enforcement, B.4), Termination for Cause,** is hereby restated in its entirety as follows:

**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.

(i) First, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute.

(ii) Second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved or if Chapter 2260 is not applicable, then the non-defaulting party shall give written notice of default and allow 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 Contract for default

**b) Purchase Order or Service Agreement**

Customer or Vendor may terminate a Purchase Order or Service Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Service Agreement in accordance with Section 10.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 if applicable; second, after complying with Chapter 2260, Texas Government Code if applicable, 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 or Service Agreement.

**Z. Appendix A, Section 11. Contract Enforcement, B.5), Customer Rights Under Termination, is hereby restated in its entirety as follows:**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and as it relates to any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract. However, such Purchase Order shall expire no later than the end of its then effective term, and shall not be subject to renewal and/or extension unless the Vendor and Customer mutually agree in writing.

**AA. Appendix A, Section 11. Contract Enforcement, B.6), Vendor or Order Fulfiller Rights Under Termination, is hereby restated in its entirety as follows:**

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 by Customer, and 2) (in the event of early termination of Purchase Order) any applicable early termination charges as set forth in subsection 9) below.

**BB. Appendix A, Section 11. Contract Enforcement, B. 7. Termination, is amended by adding the following subsections:**

**7) SUSPENSION AND TERMINATION OF SERVICES**

The following additional suspension and termination of Services provisions apply:

a) Fraud or Abuse. AT&T may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.

(b) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.

(c) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from AT&T, AT&T may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, AT&T may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.

## **8) EFFECT OF TERMINATION.**

a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Service Agreement. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

## **9) TERMINATION CHARGES.**

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Service Agreement for convenience or Vendor terminates a Purchase Order or Service Agreement for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

If termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by AT&T

from a third party (e.g., not an AT&T Affiliate) identified in the Service Agreement, due to the termination.

**CC. Appendix A, Section 11. Contract Enforcement, C. Force Majeure** is hereby restated in its entirety as follows:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to any cause beyond such non-performing party's reasonable control, including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, 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 within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event, Vendor will not be able to deliver products or services in a timely manner to meet the business needs of the Customer.

**DD. Appendix A, Section 14, Import/Export Control**, is added as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

**EE. Appendix A, Section 15, No Third Party Beneficiaries**, is added as follows:

This Agreement is for the benefit of permitted Customers and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

**FF. Appendix A, Section 16, Survival,** is added as follows:

The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations set forth in Sections related to Confidentiality, Disclaimers and Limitations of Liability, and Indemnification, will survive termination or expiration.

**GG. Appendix A, Section 17, AT&T Deliverables,** is added as follows:

**A. Services.** AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

**B. AT&T Equipment.** Services may include use of certain equipment owned by AT&T that is located at the Site (“AT&T Equipment”), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

**C. Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software. **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.**

**HH. Appendix A, Section 18, Customer’s Cooperation,** is added as follows:

**A. Access Right.** Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer’s expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer’s connection to AT&T’s network. Customer must provide AT&T timely information and access to Customer’s facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer’s reasonable security policies. Customer will furnish any conduit,

holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

**B. Safe Working Environment.** Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. “Hazardous Materials” means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer’s expense in accordance with applicable law.

**C. Users.** “User” means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users’ use of any Services, unless expressly provided to the contrary in applicable Service Publications.

**D. Resale of Services.** Customer may not resell the Services to third parties without AT&T’s written consent. Where permitted under applicable law, Customer may resell the Services to Customer’s Affiliates without AT&T’s consent.

**E. Internet Services.** If a Service is provided over or accesses the Internet, Customer, Customer’s Affiliates, and Users must comply with the AUP.

**II. Appendix A, Section 19, Overview of Documents,** is hereby added as follows:

The terms and conditions governing the Services that AT&T provides to Customer are set forth in the Contract, Service Agreement and the following additional documents, and any other documents executed by the parties and referencing this Contract (which documents together with this Contract are called “this Contract”):

**(a) Pricing Schedules.** A Pricing Schedule (including related attachments), attached to and a part of a Service Agreement, which identifies the Services AT&T may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect (“Pricing Schedule Term”).

**(b) Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to Services provided over or accessing the Internet. The AUP may be found at [att.com/aup](http://att.com/aup), or other locations AT&T may designate.

**(c) Service Guides.** The description, pricing, and other terms and conditions for the Service may be contained in a Service Guide, which may be found at [att.com/service](http://att.com/service) publications or other locations AT&T may designate.

8. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C - Pricing Index attached hereto.

(Remainder of this page intentionally left blank)

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 2, then Amendment 1, and then the Contract.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than December 28, 2014.

**AT&T, Inc.**

**Authorized By:** Signature on File

**Name:** Jamie Byma

**Title:** Contract Manager

**Date:** July 20, 2015

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

**Authorized By:** Signature on File

**Name:** Dale Richardson

**Title:** Chief Operations Officer

**Date:** 7/24/15

**General Counsel:** D.R. Brown 7/21/15