

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

AT&T CORP.

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 Corp. (hereinafter "Vendor"), with its principal place of business at One AT&T Plaza, Dallas, Texas 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-174, on December 20, 2011, for Managed Services for Information Technology. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-174 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Supplemental Agreement; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-171, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-174, 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 Appendix D, then Exhibit 1, and finally 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to one (1) optional one-year term.

3. Service Offerings

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation 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 for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

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 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. 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 Texas Customer who is not purchasing those products or services under this Contract or (ii) any other Texas entity or consortia authorized by Texas law to sell said products and services to eligible Texas Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted to Texas Customers 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.

D. DIR Administrative Fee

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

E. 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.

F. Tax-Exempt

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

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) The DIR Administrative Fee described in 5. A) above is imposed on the Vendor. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to

change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Such Administrative Fees may change over time and DIR will provide Vendor with 90 days written notice.

6. Notification

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

If sent to the State:

Robin Abbott, Manager
Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759

If sent to the Vendor:

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

7. Software License and Service Agreements

A. Shrink/Click-wrap License and Service Agreements

Any software used with the Services shall 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 shall 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.**

B. Service Agreement

Services provided under this Contract shall be based upon the Sample Supplemental Agreement as set forth in Appendix D of this Contract. Customers may negotiate the terms and conditions of a Supplemental Agreement to suit their business needs so long as the Supplemental Agreement terms and conditions do not conflict with this Contract.

8. Intellectual Property Matters

At present, no development of new code or other customization, Intellectual Property is contemplated under this contract. At such time as Vendor and Customer agree to a scope of work involving new code development, the parties agree to negotiate applicable Intellectual Property provisions.

9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. **Appendix A, Section 2, Definitions, A. Customer**, is restated in its entirety as follows:

Customer - any Texas state agency, 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 Texas local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

B. **Appendix A, Section 2, Definitions**, the following definitions are added to the Contract as follows:

H. **Affiliate** of a party means any entity that controls, is controlled by, or is under the common control with, such party.

I. **Damages** mean collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

J. **Effective Date** for any Statement of Work means, the date on which the last party signs the Statement of Work unless a later date is required by regulation or law.

K. **Service Agreement** means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.

L. **Service** means a service (including equipment) provided under this contract.

M. **Service Component** means an individual component of a Service provided under this Contract.

N. **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.

O. **Order Fulfiller** means the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

C. **Appendix A, Section 3, General Provisions, B. Modification of Contract Terms and/or Amendments, 2)**, 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 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 Statement of Work, 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.

D. **Appendix A, Section 3, General Provisions, E. Survival**, is hereby restated in its entirety as follows:

All applicable software license agreements, warranties or statement of work 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.

E. **Appendix A, Section 3, 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.

F. **Appendix A, Section 5, Contract Fulfillment and Promotion, A. Service, Sales, and Support of the Contract**, is hereby restated in its entirety as follows:

Subject to the availability and operation limitations of the Customer's necessary facilities and equipment, 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 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 services available under the Contract shall be processed through the Contract.

G. Appendix A, Section 5, Contract Fulfillment and Promotion, C. Services Warranty and Return Policies, is hereby restated in its entirety as follows:

Vendor will adhere to the Vendor's then-currently published policies concerning services warranties and returns. Such policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like services.

H. Appendix A, Section 6, Purchases Orders, Invoices and Payments, C. 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.

I. Appendix A, Section 8, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions, is hereby restated in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas, DIR and Customers, 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 arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, Subcontractors, or suppliers of Subcontractors in the execution or performance of the Contract, Customer Services Agreement and any Purchase Orders issued under the Contract. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED (I) BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR DIR AND FOR TEXAS 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 THE DEFINITIONS SECTION OF THIS APPENDIX A. IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE 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, EXCEPT THAT NO CLAIM OR DEFENSE OF CONTRIBUTORY NEGLIGENCE SHALL APPLY. THE PARTIES AGREE THAT TEXAS LAW, INCLUDING THE TEXAS TORTS CLAIMS ACT, SHALL GOVERN ANY CLAIMS OR DEFENSES ARISING UNDER THIS PROVISION.

J. Appendix A, Section 8, Vendor Responsibilities, C. Vendor Certifications, A. Indemnification, 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, AND/OR PERMITTED ASSIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR ("SERVICES") PURSUANT TO THIS CONTRACT, but not in circumstances where the claimed infringement solely arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Contract (including the Statement of Work). VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES FOR STATE AGENCY CUSTOMERS. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND, TO THE EXTENT ALLOWED BY LAW, BY VENDOR'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 service, or (ii) modify or replace the affected portion of the service with functionally equivalent or superior service so that Customer's use is non-infringing. If neither option (i) nor (ii)

are reasonably available, Vendor may terminate the affected service without liability other than as stated in section a), above.

K. Appendix A, Section 8, 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, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE 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 REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE 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.

L. **Appendix A, Section 8, Vendor Responsibilities, H. Confidentiality**, is hereby restated in its entirety as follows:

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 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 8.H., 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. Customer proprietary network information (CPNI) is defined as data collected about a customer's network and call records including call detail reports. Personally Identifiable Information (PII) is defined as information which can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual. 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 CPNI to any

employee or agent of Customer without a need for further authentication or authorization. Any PII identified by the Customer and specifically designated physically or electronically as Customer PII disclosed to the AT&T personnel through any service effort must not be communicated, transmitted or disclosed in any manner without the written authorization of the Customer. If Customer does not want AT&T personnel to comprehend or transmit Customer CPNI or PII data to which they may have access in performing services, Customer should identify such data, encrypt, mask, obfuscate, or otherwise protect such data so that it will be unintelligible.

M. Appendix A, Section 8, 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 Customer before agreeing to the security requirements.

N. Appendix A, Section 8, Vendor Responsibilities, L. Purchase of Commodity Items (Applicable to State Agency Purchases Only), is hereby restated in its entirety as follows:

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 8.L.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 use commercially reasonable efforts to coordinate all State agency commodity item sales through existing DIR contracts, but Vendor cannot be responsible for the actions of State agencies. Institutions of higher education are exempt from Subsection 8.L.

O. **Appendix A, Section 8, Vendor Responsibilities, M. Overages**, is hereby restated in its entirety as follows:

Vendor hereby assigns to DIR any 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.

P. **Appendix A, Section 8, Vendor Responsibilities, O. Required Insurance Coverage**, is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide evidence of 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 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 \$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;
- b) Independent Contractor coverage;

- c) State of Texas, DIR and Customer included as an additional insured;
- d) underwriters will endeavor to provide at least 30-day Notice of cancellation to 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 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) underwriters will endeavor to provide at least 30-day Notice of Cancellation; and
- c) Additional Insured.

Q. Appendix A, Section 8, Vendor Responsibilities, U. 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.

R. Appendix A, Section 8, Vendor Responsibilities, W. Disclaimer of Warranties, is hereby added to the Contract as follows:

Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 8.A.3) "Infringements" OF THIS AGREEMENT, AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF

TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

- S. **Appendix A, Section 8, Vendor Responsibilities, X. Disclaimer of Liability**, is hereby added to the Contract as follows:

Disclaimer of Liability. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S *GROSS* NEGLIGENCE OR *WILLFUL* MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A Statement of Work); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

- T. **Appendix A, Section 8, Vendor Responsibilities, Y. Application and Survival**, is hereby added to the Contract as follows:

Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 8 will survive failure of any exclusive remedies provided in this Contract.

- U. **Appendix A, Section 9, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation**, is hereby restated in its entirety as follows:

By executing the Purchase Order or Statement of Work, 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 Statement of Work, Customer may terminate the Purchase Order or Statement of Work without liability for the termination charges set forth in Section 8.B.9. Termination of the Purchase Order or Statement of Work 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 Statement of Work; 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.

V. Appendix A, Section 9, Contract Enforcement, B. Termination, 3) Termination for Convenience, 3), 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.

W. Appendix A, Section 9, Contract Enforcement, B. Termination, 4) Termination for Cause, a) Contract, 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, if the claim is raised by Vendor, 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 because the claim is raised by DIR or otherwise, 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

(iii) Vendor has the right to terminate or suspend provision of an affected Service or Service component with respect to a Customer that is either a private institution of higher education or an assistance organization as both are described in the Definitions section of this Appendix A, upon thirty (30) days prior written notice (or such other timeframe as is reasonably practicable under the circumstances) to DIR and the affected Customer (1) if such Customer (A) commits a fraud upon Vendor; (B) utilizes the Service to commit a fraud upon another party; (C) unlawfully uses the Services; (D) abuses or misuses Vendor's network of Service; or (E) materially interferes with another customer's use of Vendor's network of Service; or (2) if such Customer fails to pay undisputed charges due for the affected Service or Service component, provided such failure continues remedied for 30 days after receipt of notice.

- X. **Appendix A, Section 9, Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order or Statement of Work**, is hereby restated in its entirety as follows:

b) Purchase Order or Statement of Work

Customer or Vendor may terminate a Purchase Order or Statement of Work upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Statement of Work in accordance with Section 9.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 or Statement of Work.

- Y. **Appendix A, Section 9, Contract Enforcement, B. Termination, 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.

Z. Appendix A, Section 9, Contract Enforcement, B. Termination, 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 if such products or services have been and ultimately accepted by Customer, and 2) (in the event of early termination of Purchase Order) any applicable early termination fees agreed to in such early terminated Purchase Order.

AA. Appendix A, Section 9, Contract Enforcement, B. Termination, 7) Suspension and Termination of Services, is hereby added to the Contract as follows:

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.

BB. Appendix A, Section 9, Contract Enforcement, B. Termination, 8) Effect of Termination, is hereby added to the Contract as follows:

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 Statement of Work. 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.

CC. Appendix A, Section 9, Contract Enforcement, B. Termination, 9) Termination Charges, is hereby added to the Contract as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Statement of Work for convenience or Vendor terminates a Purchase Order or Statement of Work 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 Statement of Work, 50% (unless a lower percentage is specified in the Statement of Work) 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 Statement of Work, plus any charges incurred by AT&T from a third party (e.g., not an AT&T Affiliate) identified in the Statement of Work due to the termination.

DD. Appendix A, Section 9, 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 an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts not caused by AT&T or its agents, power blackout, earthquake, flood, embargo, , acts of civil or military authority, acts of a public enemy, acts or omissions of carriers, acts of regulatory or governmental agencies, or court order, or other events recognized as force majeure under Texas law, 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 services in a timely manner to meet the business needs of the Customer.

EE. **Appendix A, new Section 12, Import/Export Control**, is hereby added to the Contract 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.

FF. **Appendix A, new Section 13, No Third Party Beneficiaries**, is hereby added to the Contract 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.

GG. **Appendix A, new Section 15, AT&T Deliverables**, Is hereby added to the Contract 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.
- HH. **Appendix A, new Section 16, Customer's Cooperation,** is hereby added to the Contract 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, new Section 17, Overview of Documents,** is hereby added to the Contract as follows:

The terms and conditions governing the Services that AT&T provides to Customer are set forth in the Contract, Statement of Work 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"):

(This space intentionally left blank)

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

AT&T Corp.

Authorized By: signature on file

Name: Larry D. Gibson

Title: Contracts Specialist

Date: 9/12/13

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

Authorized By: signature on file

Name: Karen Robinson

Title: Executive Director

Date: 9/18/13

Office of General Counsel: signature on file 9/18/13