

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

AT&T Corp.

1. Introduction

A. Parties

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and AT&T Corp. (“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. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-215, on December 6, 2013, for Cisco Branded Equipment and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-215 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Appendix E, Service Agreement; Appendix F, Master Operating Lease Agreement; Appendix G, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-215, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-215, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix F, Master Operating Lease Agreement; Appendix G, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-215, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-215, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. 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 Appendix E, then Appendix F, then Appendix G, 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 one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend the Contract, by amendment for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional renewal terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Cisco Branded products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Cisco Branded services as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

C. Emerging Technologies

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of data communications and networking equipment and related services. Vendor may propose such products or services throughout the term of the contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

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 three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

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 ninety (90) days advance written notice of such change.

6. Notification

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

If sent to the State:

Dana L. Collins, CTPM, CTCM
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
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

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

7. Software License and Service, Leasing Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix D of this Contract. No changes to the End User License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Vendor and Order Fulfiller shall make the End User License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the End User License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the End User License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the End User License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix E of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix F of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix G of this Contract for DIR authorized entities as Lessees that are not Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions.

F. 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.

8. Authorized Exceptions to Contract or any Appendices.

A. **Contract, Section 5, DIR Administrative Fee, B)** is hereby restated as follows:

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 ninety (90) days advance written notice of such change.

B. **Contract, Section 7, Software License, A & B**, are hereby deleted and replaced with A) as follows:

A. **Software License and Shrink/Click-wrap License Agreement**

Title to software remains with AT&T or its supplier. Customer must comply with all written terms and conditions applicable 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.

C. **Appendix A, Section 3, Definitions**, is hereby amended and replaced as follows:

- A. **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 local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.
- B. **Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. **Contract** – the document executed between DIR and Vendor into which Appendices are incorporated.
- D. **CPA** – refers to the Texas Comptroller of Public Accounts.
- E. **Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. **Order Fulfiler** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. **State** – refers to the State of Texas.
- I. **Affiliate** - of a party means any entity that controls, is controlled by, or is under common control with, such party.
- J. **Damages** - means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.
- K. **Effective Date** - means, for any Service Agreement, 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 Equipment) 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.

D. Appendix A, Section 4. General Provisions, B.2) Modification of Contract Terms and/or Amendments is hereby replaced in its entirety as follows:

2) Customers shall not have the authority to modify the terms of the Contract; however, any additional or 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 a Customer can conflict with or diminish 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.

E. Appendix A, Section 4, General Provisions, F. Choice of Law is hereby replaced 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, Intellectual Property Matters, is hereby deleted and replaced 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 7, Contract Fulfillment and Promotion, A. Service, Sales, and Support of the Contract, is hereby replaced as follows:

Subject to the availability and operation limitations of the necessary facilities and equipment, AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that

potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

H. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C.3) Customer Price, is hereby replaced as follows:

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.

I. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, F. Tax Exempt, is hereby replaced 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, H.2) Changes to Prices, is hereby replaced as follows:

2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately. This section shall not require Vendor to revise prices for products where Customer has already placed an order.

K. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, K, Payments, is hereby replaced as follows:

Texas Customer shall comply with Chapter 2251, Texas Government Code in making payments to Order Fulfiller. The statute states Texas government entities' payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. The standard and timeframes concerning payments by state agencies in Chapter 2251, Texas Government Code, will apply to all Texas government entities purchasing or selling under the Contract.

L. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions, is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

M. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced 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, or (v) 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.

N. **Appendix A, Section 10. Vendor Responsibilities, B. Taxes /Worker's Compensation/UNEMPLOYMENT INSURANCE**, is hereby replaced 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.

O. **Appendix A, Section 10. Vendor Responsibilities, H. Confidentiality,** is hereby replaced 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 Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

a) Customer and Vendor agree that in connection with this Contract and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Vendor shall be authorized to disclose Customer's Confidential Information to contractors or employees of a Vendor entity who have a legitimate business need to have access to such information. As allowed under record and retention policies and laws, the receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. Customer may disclose information necessary to comply with the Texas Public Information Act.

Vendor shall not disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the Customer. Any press release or publication by Vendor regarding this Agreement is subject to prior review and written approval of DIR and Customer. Customer may publish the contract in its customary manner or as required by law or for the conducting of public business.

3) Confidential Information. Confidential Information means: (a) 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 (b) 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 (iii) 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 9), 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.

P. Appendix A, Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data, and Personnel, is hereby replaced 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. 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.

Q. Appendix A, Section 10. Vendor Responsibilities, L. Overcharges, is hereby replaced in its entirety as follows:

Vendor hereby assigns to DIR any and all 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.A. Section 1, et seq. (1973), as amended and the antitrust laws of the State of Texas, Section 15.01, et seq, Texas Business and Commerce Code.

R. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced 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 five (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- financially rated by A.M. Best or A by Standard and Poors and duly eligible to do business in the State of Texas. The Customer and DIR will be included as Additional Insureds on all required auto and general liability coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. In the event Vendor receives notice of cancellation of coverage, Vendor shall promptly replace such coverage so that no lapse in insurance occurs. 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. Agencies may require additional Umbrella/Excess Liability insurance. 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 any required coverage that is not replaced 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 \$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) underwriters will endeavor to provide at least 30-day Notice of cancellation of any required coverage that is not replaced; and
- c) Additional Insured.

S. Appendix A, Section 10.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.

T. Appendix A, Section 10.X. Disclaimer of Warranties, is hereby added as follows:

EXCEPT AS SET FORTH IN SECTION 10.A. 3) "INFRINGEMENTS", 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.

U. **Appendix A, Section 10.Y. Disclaimer of Liabilities**, is hereby added as follows:

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 SERVICE AGREEMENT); 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.

V. **Appendix A, Section 11.B. Termination, 1)a) Termination for Non-Appropriation by Customer**, is hereby replaced in its entirety as follows:

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 11 B. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Purchase Order or Service Agreement. 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 or universal service discounts are not received to enable Customer to pay 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 or universal service discounts were received (“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.

W. Appendix A, Section 11.B. Termination, 4)b) Purchase Order, is hereby replaced in its entirety as follows:

Customer or Order Fulfiller 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 11.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 or if Chapter 2260 is not 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.

X. Appendix A, Section 11.B. Termination, 7) Effect of Termination and Termination Charges, is hereby added as follows:

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.

If a Purchase Order or this Agreement is terminated by the Customer, Customer will pay Vendor within 30 business days of the effective date of termination (or as soon as practical thereafter) any amounts due and third party charges associated with all approved and accepted products or services owing under such terminated Purchase Order or this Agreement, whichever is applicable, as of the effective date of termination.

Customer further agrees to reimburse Vendor within 30 business days of the effective date of termination of the Purchase Order or this Agreement, whichever is applicable

(or as soon as practical thereafter) an amount equal to any charges, equitably adjusted, for any accrued or outstanding liabilities and third party charges associated with a Purchase Order for product or services placed prior to the effective date of termination, notwithstanding the fact such product or services have not been accepted by the Customer. AT&T will use commercially reasonable efforts to mitigate such liabilities and third party charges.

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 such termination occurs before the end of the term of the Service Agreement, one month of the monthly recurring charges for the terminated Service or Service Component, 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. AT&T will use commercially reasonable efforts to mitigate such third party charges.

- Y. **Appendix A, Section 11. Termination, C) Force Majeure**, is hereby replaced in its entirety as follows:

DIR, Customer, or Order Fulfiller 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, as the result of 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, Order Fulfiller will not be able to deliver products or services in a timely manner to meet the business needs of the Customer.

- Z. **Appendix A, Section 14. Import/Export Control**, is hereby 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.

AA. **Appendix A, Section 15. No Third Party Beneficiaries** is hereby 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.

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

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 16 will survive failure of any exclusive remedies provided in this Contract.

CC. **Appendix A, Section 17. Customer's Cooperation**, is hereby 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 to provide Services. 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.

(Remainder of page 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: Contract Specialist

Date: 10/2/14

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: 10/10/14

Office of General Counsel: MH 10/10/14