

**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 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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and AT&T Corp (hereinafter “Vendor”), with its principal place of business at 208 S. Akard St. Dallas, TX 75203.

**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-TSO-TMP-234, on December 9, 2015, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-234 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-234, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-234, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 the Contract, upon mutual agreement, for up to two (2) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90)

additional calendar days.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to Wireless Voice and Data Products required for services offered in 3.B. below as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Services**

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

**4. Pricing**

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. Telecommunications Fees, Taxes, and Surcharges may not be included on Customer invoices unless they were submitted with response and verified as required by statute.

**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 two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

**B)** 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:

Shannon Kelley, CTPM, CTCM  
Manager, Enterprise Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300

Austin, Texas 78701  
Phone: (512) 463-7666  
Facsimile: (512) 475-4759  
Email: [shannon.kelley@dir.texas.gov](mailto:shannon.kelley@dir.texas.gov)

If sent to the Vendor:  
Marcus Montemayor  
AT&T Corp  
712 E. Huntland Dr. Rm 313  
Austin, Texas 78752  
Phone: (512) 421-5160  
Facsimile: (512) 870-4388  
Email: [marcus.montemayor@att.com](mailto:marcus.montemayor@att.com)

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

- A. **Appendix A, Section 3. Definitions, B. Compliance Check**, is hereby replace in it entirety with the following:  
**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. No third party or DIR designee shall be a direct commercial Vendor Competitor.
- B. **Appendix A, Section 3. Definitions, I. Affiliate**, is hereby added:  
“**Affiliate**” of a party means any entity that controls, is controlled by, or is under common control with, such party.
- C. **Appendix A, Section 3. Definitions, J. Damages**, is hereby added:  
“**Damages**” means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.
- D. **Appendix A, Section 3. Definitions, K. Effective Date**, is hereby added:  
“**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.
- E. **Appendix A, Section 3. Definitions, L. Service Agreement**, is hereby added:  
“**Service Agreement**” means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.
- F. **Appendix A, Section 3. Definitions, M. Service**, is hereby added:  
“**Service**” means a service (including Equipment) provided under this Contract.

**G. Appendix A, Section 3. Definitions, N. Site,** is hereby added:

“**Site**” means Customer’s physical location, including Customer’s collocation space on Vendor’s, its Affiliate’s, or subcontractor’s property, where Vendor installs or provides a Service.

**H. Appendix A, Section 4. General Provisions, B. Modification of Contract Terms and/or Amendments, 2)** is hereby replaced in its entirety with the following:

The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor. 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 Order Fulfiller 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 in writing) 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.

**I. Appendix A, Section 4. General Provisions, F. Choice of Law,** is hereby replaced in its entirety with the following:

The laws of the State 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.

**J. Appendix A, Section 5. Intellectual Property Matters,** is hereby replaced in its entirety with the following:

This Contract does not contemplate, authorize or support the development or acquisition of custom software products or services. If Vendor seeks to offer such products or services to DIR Customers, DIR and Vendor must amend this Contract to include such services.

**K. Appendix A, Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information, 5) Use of Access Data Prohibited** is hereby replaced in its entirety with the following:

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract Information, which shall be defined as all information contained in this Agreement, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under

the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

**L. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 3)** is hereby replaced in its entirety with the following:

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) to any other Texas customer under the same terms and conditions provided for the State for the same commodities and services under this contract, 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.

**M. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, F. Back-Billing** is hereby replaced in its entirety with the following:

Customer will not be required to pay charges for Services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Customer disputes a charge, Customer will provide notice to Vendor specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or Customer waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until Vendor completes its investigation of the dispute, but Customer may incur late payment fees in accordance with Appendix A, Section 8N (Payments). Following Vendor's notice of the results of its investigation to Customer, payments shall be in accordance with Appendix A, Section 8N. Vendor will reverse any late payment fees that were invoiced in error within 30 business days.

**N. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, I. Tax-Exempt** is hereby replaced in its entirety with the following:

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).

Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code. Vendor must request and receive any

exemption certificates that may apply from each assistance organization directly.

**O. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Changes to Prices, 2)** is hereby replaced in its entirety with the following:

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 Vendor has already placed an order.

**P. Appendix A, Section 9. Contract Administration, B. Reporting and Administrative Fees, 4) DIR Administrative Fee, a)** is hereby replaced in its entirety with the following:

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

**Q. Appendix A, Section 9. Contract Administration, C. Records and Audit, 3)** is hereby replaced in its entirety with the following:

Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

**R. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions** is hereby replaced in its entirety with the following:

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 THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any negligent, reckless, willful, intentional, or otherwise wrongful 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.

**S. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification,** is hereby replaced in its entirety with the following:

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 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 Vendor; (c) Vendor’s adherence to Customer’s or its Affiliate’s written requirements; or (d) use of the Service in violation of this Contract (including the Service Agreement). 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. 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 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.

**T. Appendix A, Section 10. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**, is hereby replaced in its entirety with the following:

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. 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, REASONABLE ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION 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 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.

**U. Appendix A, Section 10. Vendor Responsibilities, H. Confidentiality,** is hereby updated by adding the following:

**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 (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 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 Vendor 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 Vendor designates a dedicated account representative as Customer's primary contact with Vendor, 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.

**V. Appendix A, Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel,** is hereby replaced in its entirety with the following:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to

the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement. The Customer will give Vendor adequate notice any applicable security requirements.

**W. Appendix A, Section 10. Vendor Responsibilities, K. Limitation of Liability,** is hereby replaced in its entirety with the following:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this monetary limitation of Vendor's liability (as set forth in item (ii) above) shall not apply to claims of patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

**X. Appendix A, Section 10. Vendor Responsibilities, L. Overcharges,** is hereby replaced in its entirety with the following:

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, Section 15.01, et seq, Texas Business & Commerce Code.

**Y. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage,** is hereby replaced in its entirety with the following:

As a condition of this Contract with DIR, Vendor shall provide evidence satisfactory to DIR and/or the Customer of the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance

coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are at least rated A minus by A.M. Best eligible to do business in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be required as Additional Insureds on all required liability coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The 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 limit 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; and
- d) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and 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 occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

Vendor shall provide DIR at least thirty days' advanced written notice of cancellation of any required coverage that is not replaced.

**Z. Appendix A, Section 10. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices,** is hereby replaced in its entirety with the following:

Vendor represents and warrants that (i) neither Vendor nor any of its Subcontractors within the last three years have been found liable in any administrative hearing, litigation or other proceedings of Deceptive Trade Practices violations as defined 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 under Chapter 17, Texas Business and Commerce Code.

**AA. Appendix A, Section 10. Vendor Responsibilities, X. Disclaimer of Warranties,** is hereby added as follows:

**Disclaimer of Warranties.** EXCEPT AS SET FORTH IN SECTION 10. A. 3) INFRINGEMENTS, VENDOR 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, VENDOR 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 VENDOR'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

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

**Disclaimer of Liability.** VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY VENDORS'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.

**CC. Appendix A, Section 11. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation** is hereby replaced in its entirety with the following:

In the event Customer is unable to obtain the necessary appropriations or funding for the Services, Customer may terminate the Agreement without liability for early termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; and (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services. Customer must provide Vendor thirty (30) days' written notice of its intent to terminate under this section. Termination 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 Customer terminates the Agreement under this Section, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Term.

**DD. Appendix A, Section 11. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order** is hereby replaced in its entirety with the following:

**b) Purchase Order or Service Agreement**

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 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code 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.

**EE. Appendix A, Section 11. Contract Enforcement, B. Termination, 5) Customer Rights Under Termination**, is hereby replaced in its entirety with the following:

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and as related 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.

**FF. Appendix A, Section 11. Contract Enforcement, B. Termination, 7) Suspension and Termination of Services,** is hereby added as follows:

**7) Suspension and Termination of Services**

The following additional suspension and termination of Services provisions apply:

- a) **Fraud or Abuse.** Vendor may terminate or suspend an affected Service for cause immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon Vendor, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses Vendor’s network or Service, or (v) interferes with another customer’s use of Vendor’s network or services.
- b) **Withdrawal of Services.** Notwithstanding that a Pricing Schedule or Service Agreement may commit Vendor to provide a Service to Customer for a Term, and unless applicable law or regulation mandates otherwise, Vendor may discontinue providing a Service upon 12 months’ notice, or a Service Component upon 120 days’ notice, but only where Vendor generally discontinues providing the Service or Service Component to similarly-situated customers.
- c) **Materially Adverse Change.** If Vendor revises a Service Publication and the revision has a materially adverse impact on Customer, and Vendor 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 Vendor, 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.
- d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from Vendor, Vendor may suspend (and later terminate for cause) or terminate the Service for cause. If Services are provided over or access the Internet, Vendor 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 Vendor 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 Vendor’s network or networks with which Vendor is interconnected or interfere with another customer’s use of Vendor

services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to Vendor or Vendor's customers or their respective employees.

**GG. Appendix A, Section 11. Contract Enforcement, B. Termination, 8) Effect of Termination**, is hereby added as follows:

**8) Effect of Termination**

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

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination.

c) Termination Charges

(1) If Customer terminates a Purchase Order or Service Agreement for cause above in accordance with this Contract or if Vendor terminates a Purchase Order or Service Agreement other than for cause, Customer will not be liable for the termination charges.

(2) If Customer or Vendor terminates a Purchase Order or Service Agreement other than as set forth in Section 8.4(a) prior to the date Customer's obligation to pay for Services begins, Customer will reimburse Vendor for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

d) If, on or after Customer's obligation to pay for Services begins, Customer or Vendor terminates a Purchase Order or Service Agreement other than as set forth in Section 8.4(a), Customer will pay termination charges as follows:

(1) If such Service Agreement termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges specified in the Service Agreement for the terminated Service or Service Component multiplied by the months remaining in the Service Agreement term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by Vendor from a third party (e.g., not an Vendor Affiliate) identified in the Service Agreement, due to the termination.

**HH. Appendix A, Section 11. Contract Enforcement, C. Force Majeure,** is hereby replaced in its entirety with the following:

Except in the case of payment of amounts due, 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 including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that as a result of a Force Majeure event, Vendor or Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

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

**14. Import/Export Control**

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 Vendor, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

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

**15. No Third Party Beneficiaries**

This Agreement is for the benefit of permitted Customers and Vendor, 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.

**KK. Appendix A, Section 16. Vendor Deliverables**, is hereby added as follows:

**16. Vendor Deliverables**

**A. Services**

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

**B. Vendor Equipment**

Services may include use of certain equipment owned by Vendor that is located at the Site (“Vendor Equipment”), but title to the Vendor Equipment will remain with Vendor. Customer must provide electric power for the Vendor Equipment and keep the Vendor Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to Vendor Equipment (other than ordinary wear and tear) except to the extent caused by Vendor 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 Vendor or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

**LL. Appendix A, Section 17. Customer’s Cooperation**, is hereby added as follows:

**17. Customer’s Cooperation**

**A. Access Right**

Customer will in a timely manner allow Vendor 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 Vendor 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 Vendor’s network. Customer must provide Vendor timely information and access to Customer’s facilities and equipment as Vendor 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 Vendor to perform its work according to a mutually agreed schedule.

**B. Safe Working Environment**

Customer will ensure that the location at which Vendor 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. Vendor does not handle, remove or dispose of Hazardous Materials, and Vendor has no obligation to perform work at a location that is not a suitable and safe working environment. Vendor will not be liable for any Hazardous Materials. If Vendor encounters any Hazardous Materials at the Site where Vendor is to install, maintain or provide Services, Vendor 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 Vendor's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without Vendor'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.

**MM. Appendix A, Section 18. Overview of Documents**, is hereby added as follows:

**18. Overview of Documents**

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

**(a) Pricing Schedules**

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

**(b) Tariffs and Guidebooks**

“Tariffs” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that Vendor files with regulatory commissions. “Guidebooks” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs and Guidebooks may be found at [att.com/service](http://att.com/service) publications or other locations Vendor may designate.

**(c) Acceptable Use Policy**

Vendor’s Acceptable Use Policy (“AUP”) applies to Services provided over or accessing the Internet. The AUP may be found at [att.com/aup](http://att.com/aup), or other locations Vendor may designate.

**(d) Service Guides**

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

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

**AT&T Corp**

**Authorized By:** Signature on file

**Name:** John D. Irwin Jr.

**Title:** Senior Vice President

**Date:** 6/8/2016

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

**Authorized By:** Signature on File

**Name:** Wayne Egeler

**Title:** CTS Director

**Date:** 6/10/2016

**Office of General Counsel:** Signature on file 6/9/2016