CMS 50505

PARTICIPATING ADDENDUM
UNDER THE
WESTERN STATES CONTRACTING ALLIANCE
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
BID NUMBER RFP: #1907

PARTICIPANT: STATE OF COLORADO

This Participating Addendum (the "PA") is made this 7th day of November, 2012 (the "PA Effective Date"), between State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing Office ("Participant" or "State"), and AT&T Mobility National Accounts LLC ("Contractor") (Participant and Contractor are, at times, referred to individually as a "Party" or together as the "Parties").

Section 1. Recitals.

1.1 Contractor and the State of Nevada, acting through its Department of Administration, Purchasing Division, and the participating members of the Western States Contracting Alliance ("WSCA"), and the NASPO Cooperative, are parties to that certain Western States Contracting Alliance contract, #1907, dated March 15, 2012, successor contract to that certain Western States Contracting Alliance contract number 1523, dated October 10, 2006, as amended, successor contract to that certain Western States Contracting Alliance contract number 10-00115, dated June 29, 2001, as amended (the "Master Service Agreement").

1.2 Participant wants to participate in the Contract pursuant to the terms and conditions of this PA.

Section 2. Agreement. In consideration of the recitals set forth in §1 above, which are hereby re-stated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participant and Contractor hereby agree to the terms and conditions of this PA (the Master Service Agreement and the PA, together with all valid purchase orders submitted hereunder collectively, the "Agreement"). Unless otherwise defined, capitalized terms in this PA have the meanings ascribed to them in the Contract.

Section 3. Authorized Participating Entities. Participant hereby designates State Agencies, Institutions of Higher Education, Registgered Non-Profit Organizations and political subdivisions as the only authorized Ordering Entities under the Agreement.

Section 4. Purchase Orders. Ordering Entities must issue purchase orders hereunder that reference both Master Service Agreement #1907 and the PA. Upon issuance of any such valid purchase order, Ordering Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service and Equipment provided. Notwithstanding the foregoing, purchase orders submitted that do not properly reference the Master Service Agreement number and/or the PA may be accepted, at Contractors sole discretion, if Contractor can reasonably ascertain that such purchase order was properly authorized and intended for use with the PA. In such instances, the corresponding purchase order will be similarly valid and binding.

Section 5. Primary Contacts.

Participant:

Name: Judson Byrn
Title: State Purchasing Director
Address: 633 17th Street, Suite 1520
Denver, CO 80202
Telephone: (303)866-6181
Fax Number:

Lead State:

Name: Teri Smith
Title: Purchasing Officer
Address: 515 E. Musser St., Suite 300
Carson City, NV 89701
Telephone: 775-684-0178
Fax Number: 775-684-0188

E-Mail: Judson.byrn@state.co.us

E-Mail: tlsmith@admin.nv.gov

Contractor Account Team:

Name: Erich Weeks
Title: Sales Executive
Address: 2535 E 40th Street
Denver, CO 80205
Telephone: (303) 391-7330
Fax Number:
E-Mail: eweeks@att.com

Contractor Main:

Name: Twila Lively
Title: Manager, Sales Operations
Address: 2600 Camino Road
San Ramon, CA 94583
Telephone: (925) 487-9945
Fax Number: (510) 261-2155
E-Mail: twilalively@att.com

Section 6. Authority. By signing below, the corresponding Party's representative represents that such person is duly authorized by Contractor or Participant, as applicable, to execute this PA on behalf of the respective Party, and that the Contractor and Participant agree to be bound by the provisions hereof. In addition, Participant represents that it has received the requisite approvals from the applicable Chief Procurement Official and WSCA to participate in the Agreement.

Section 7. Miscellaneous.

7.1 American Recovery and Reinvestment Act of 2009 ("ARRA"). If or when Contractor is notified in writing by ordering entity that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB) that are legally required of vendors as providers of goods and services to recipients or sub-recipients of ARRA funds. Each Ordering Entity is responsible for informing Contractor in writing prior to ARRA funds being used for a purchase or purchases under the Agreement. Contractor will provide the required report, if any, to the Ordering Entity with the invoice presented to the Ordering Entity for payment. Contractor, as it relates to purchases under the Agreement, is not a sub-contractor, recipient, sub-recipient or sub-grantee, but simply a vendor, as defined in the OMB guidelines, and assumes no responsibilities under ARRA beyond those required of a vendor.

7.2 Employee Benefit Program. Ordering Entities choosing to participate in the Employee Benefit Program will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

Section 8. Notice of Administration Fees. Participant and any and all other Ordering Entities under this PA are hereby on notice of the following administration fees being paid by Contractor under the Agreement.

- **WSCA.** Contractor is being charged a WSCA Administration Fee of 1/10th of 1% (one-tenth of one percent) of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Agreement.

- **Participant.** See Exhibit A to this PA for description of Participant's Administrative Fee.

Section 9. Order of Precedence. The Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising this Agreement, the following order of precedence will control: (a) this PA; (b) the Master Service Agreement; and (c) any purchase order issued in connection therewith. This section specifically supersedes any order of precedence provisions set forth elsewhere in the Agreement.

Section 10. Additional Terms and Conditions. The Parties acknowledge and agree to the additional terms and conditions set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 11. Entire Agreement. The Agreement sets forth the entire agreement between the Parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement shall not be added to or incorporated herein by any subsequent purchase order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement shall prevail and govern in the case of any such inconsistent or additional terms.

THE PARTIES HERETO HAVE EXECUTED THIS PA

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR	STATE OF COLORADO
AT&T Mobility National Accounts LLC	**John W. Hickenlooper, GOVERNOR**
By: Theresa Page	Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director
Title: Sr Contract Manager	
*Signature	By:
Date: 11/2/2012	or Judson Byrn, State Purchasing Director
	Date: 11/6/12

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This PA is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: ______________________ Date: 11-7-2012

Print Name: Andrea Sluga

-or- Delegated Signatory

STATE OF COLORADO
Exhibit A
with
ADDITIONAL TERMS AND CONDITIONS

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1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This PA shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the “Effective Date”).

2. DEFINITIONS

A. Defined Terms

The following terms as used herein shall be construed and interpreted as follows:

i. “Agreement” shall mean the integrated agreement consisting of this, PA, the Master Services Agreement, their respective attachments, and any Orders issued in connection therewith.

ii. Equipment” means wireless receiving and transmitting equipment or SIM (Subscriber Identity Module) Card that AT&T has authorized to be programmed with a number or identifier, and any accessories.

iii. “IFB” means Invitation for Bid, IFB/RFP #1907 of the State of Nevada.

iv. "Order" means any purchase order or other authorized agreement used to place orders in connection with the Equipment.

v. "Ordering Entity" means a State Agency, a Political Subdivision, or a Registered Non-Profit Organization within the Participating State that places an Order.

vi. “Participating State” means the State of Colorado.

vii.“Parties” means the Participating State and Contractor.

viii “Political Subdivision” means any Colorado governmental entity such as cities, towns, counties, libraries, etc. Political Subdivisions of the State of Colorado may either (i) execute a separate addendum with Contractor, but to the extent any terms of such addendum incorporate additional terms, Contractor shall not be obligated to execute or accept such addendum or (ii) issue an Order in accordance with the terms of this PA..

ix."Registered Non-Profit Organization" means a non-profit organization that has contacted the State Purchasing Office, met the non-profit organization eligibility of section 501(c)(3) under the Internal Revenue Code of 1986, as amended, and obtained a Colorado registered assigned number.

x."State Agency" means any department, agency, or institution of higher education of the State of Colorado, not including Political Subdivisions.

xi."State Purchasing Agent" means the Participating State's purchasing agent identified in Section 5 of this PA, or such other purchasing agent as the Participating State's Chief Procurement Office may designate, from time to time, by written notice to Contractor and the Lead State.

xii."State Purchasing Office" means the State Purchasing Office, Colorado Department of Personnel and Administration.

xiii."**Uniform Commerical Code"** means the Uniform Commerical Code as enacted in the State of Colorado, CRS §4-1-101 et seq.

B. **Other Definitions**

Capitalized terms used and not otherwise defined in this **Exhibit A** shall have the meanings ascribed to them in the PA or the Master Service Agreement.

3. TERM AND ORDERS

A. **Term**

The Parties' respective performances under this PA shall commence on the Effective Date and will terminate on the earlier of (a) October 31, 2016, or (b) the termination of the Master Service Agreement, unless terminated sooner.

B. **Orders**

Orders may be placed consistent with the terms of this PA during the term specified in **§3(A)**. All Orders for Equipment issued pursuant to this PA, at a minimum, shall include (collectively, the **"Minimum Required Information"**):

i. Order date, when the Order was placed by the Ordering Entity;

ii. A brief description of the Equipment being purchased, including item number and quantity;

iii. The place and time of delivery;

iv. The billing address;

v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for Agency designation: "Colo. Dept. of Transportation," "CDOT" is not acceptable);

vi. The price by item and the total amount of the Order for Equipment being purchased;

vii. The WSCA Master Service Agreement Number: 1907;

viii. The Participating State's Statewide Master Agreement Number: 72551YYY07M/WSCA

Unless otherwise agreed in writing, any Equipment ordered pursuant to this PA shall be delivered F.O.B. destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Equipment until such Equipment has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to Equipment shall pass to the Ordering Entity upon acceptance of delivered items.

Orders under this PA may be placed at any time prior to the termination hereof. All Orders must be placed prior to the expiration date of the Master Service Agreement, but may have a delivery date or performance period up to 120 days past the then-current expiration date of this PA. Financial obligations of State Agencies and Political Subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration or termination of this PA or the Master Service Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor will not honor any Orders placed after the expiration or termination of this PA, or otherwise inconsistent with its terms. Orders for any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced under the Master Service Agreement shall not be placed after the expiration or termination of this PA, notwithstanding the term of any such indefinite delivery order agreement.

The Statewide Price Agreement will be "mandatory" and State Agencies subject to the Participating State's Procurement Code shall be required to satisfy requirements through the Statewide Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved. This "mandatory" Statewide Price Agreement is not an exclusive price agreement to a specific vendor and the State of Colorado reserves the right to create multiple "mandatory" price agreements. While Political Subdivisions and Registered Non-Profit Organizations may order from this PA whether the agreement is designated as "mandatory" or "permissive" for such Political Subdivision or Registered Non-Profit Organization shall be at the discretion of each Political Subdivision or Registered Non-Profit Organization.

4. MODIFICATIONS TO MASTER SERVICE AGREEMENT

The Master Service Agreement shall be modified with respect to this PA only as follows:

A. **Public Records**
Section 33 of the Master Service Agreement is deleted in its entirety and the following is inserted in lieu thereof:

To the extent not prohibited by federal law, this PA and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

B. **Payment**
(i) The section entitled "12 Payment" in the Master Service Agreement will have the following language added:

"Uncontested amounts not paid by the Ordering Entity within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate."

(ii) Any applicable cash discount period or deliquency period will start from the date of receipt of an uncontested invoice, or from the date of receipt of uncontested equipment as the specified destination by an authorized representative of the Ordering Entity, whichever is later.

5. REPORTING

A. Volume Reports

The Participating State intends to use the new centralized method of volume reporting directly to to the Lead State and ("WSCA") as noted in the Master Service Agreement. Contractor will furnish sales reports each calendar quarter that will include ("Volume Reports")

i. The total dollars spent by State Agencies in conjunction with the Agreement,

ii. The total estimated dollars saved by State Agencies on the Contract for that period,

iii. The total estimated dollars saved by State institutions of higher education (State universities and State colleges) on the Agreement for that period,

iv. The total dollars spent by Political Subdivisions in conjunction with the Agreement,The total estimated dollars saved by Political Subdivisions and Registered Non-Profit Organizations on the Agreement,

v. The total dollars spent by Registered Non-Profit Organizations in conjunction with Agreement,

vi. The total estimated dollars saved by Registered Non-Profit Organizations on the Agreement,

vii. The total dollars paid for with procurement card as opposed to traditional methods of payment for each category, and

viii. The total dollars spent by each of these aforementioned Ordering Entities on **Environmentally Preferable** products, including applicable discount savings, as such item is defined in Participating State's Environmentally Preferable Purchasing Policy.

The foregoing requirements shall be in addition to using the required WSCA reporting template. Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the Participating State Purchasing Office: https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView .

Contractor will submit the Volume Reports on a quarterly basis within forty (45) days after the end of the quarter or sooner, as described above. The comprehensive Volume Report shall set forth the date of sale, the name of the customer, the invoice number, quantity of Equipment sold, description, unit price and extended dollar amount. Failure to provide these reports shall constitute cause for cancellation of this PA and may disqualify Contractor from the award of future price agreements by the Participating State.

6. REMEDIES

In addition to other remedies provided for in the Master Service Agreement, this PA or any Order, and without limiting its remedies otherwise available at law, the Ordering Entity may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in the Agreement. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

A. **Suspend Performance**. Suspend Contractor's performance pending necessary corrective action as specified in writing by the Ordering Entity without Contractor's entitlement to adjustment in price/cost or schedule; and/or

B. **Withhold Payment**. Withhold payment to Contractor until the necessary Services or corrections in performance are satisfactorily completed or the Order has been terminated; and/or

C. **Termination**. Terminate the Order for default.

The above remedies are cumulative and the Ordering Entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

Except as otherwise provided for by law or this PA, the rights and remedies of the Ordering Entities shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages.

7. TERMINATION

1. **THE FOLLOWING NEW PARAGRAPHS ARE ADDED TO SECTION 4 OF THE MASTER SERVICE AGREEMENT.**

A. Termination for the Public Interest.

The Participating State is entering into this PA for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this PA ceases to further the public policy of the Participating State, the Participating State, in its sole discretion, may terminate this PA in whole or in part. Exercise by the Participating State of this right shall not constitute a breach of the Participating State's obligations hereunder. This subsection shall not apply to a termination of this PA by the Participating State for cause or breach by Contractor, which shall be governed by **§21** or as otherwise specifically provided for herein.

i. Method and Content

The Participating State shall notify Contractor's Primary Contact of such termination in accordance with **§13(B)** of this Exhibit A. The notice shall specify the effective date of the termination and whether it affects all or a portion of this PA.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§21**.4 and Contractor shall preserve, protect and promptly deliver into the State's or such Ordering Entity's possession all of such Participating State's or Ordering Entity's proprietary information, as applicable, in accordance with Section 31.

iii. Payments

If this PA is terminated by the Participating State pursuant to this Section, the Contractor will be entitled to reimbursement only for accepted performance up to the date of termination.

B. For purposes of this PA, Section 31 of the Master Service Agreement is deleted in its entirety and the following is inserted in lieu thereof:

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, or materials, (collectively, "Work Product"), including drafts, prepared by Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the Participating State and, all Work Product shall be delivered to the Participating State by Contractor upon completion or termination hereof. For avoidance of doubt, Work Product shall not include any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, or materials created prior to or independently of this Agreement by Contractor or a third party, but shall not include any Participating State or Ordering Entity information, photographs, negatives or data. The Participating State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Participating State.

C. Section 32 of the Master Service Agreement is deleted in its entirety and the following is inserted in lieu thereof.

PATENTS, COPYRIGHTS, ETC. The Contractor shall release, indemnify and hold WSCA, the Lead State, and Participating States and their officers, agents and employees, and Ordering Entities, harmless from liablility of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted compostiion, secret process, patented or unpatented invention, ariticle or appliance furnished or unfurnished or used in the performance of this PA or any Agreement.

8. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this PA, even the appearance of a conflict of interest is harmful to the Participating State's interests. Absent the Participating State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Participating State hereunder.

If a conflict or appearance of a conflict exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Participating State a disclosure statement setting forth the relevant details for the Participating State's consideration. Failure to promptly submit a disclosure statement or to follow the Participating State's direction in regard to the apparent conflict constitutes a breach of this PA.

9. INSURANCE

Contractor and its subcontractors, if any, shall obtain and maintain insurance as specified in this section at all times during the term of this PA. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the Participating State.

10. INTELLECTUAL PROPERTY

If any part or whole Equipment, or service provided to the Participating State or or any Ordering Entity by Contractor under this Agreement is determined to infringe a patent, copyright, trademark, trade secret or other intellectual property of a third party, Contractor shall, at the Contractor's option, **(a)** obtain for the Participating State or Ordering Entity the right to use such products and services; **(b)** replace any Equipment or Services involved with non-infringing products or services of substantially similar functionality or modify them so that they retain substantially similar functionality but become non-infringing; or, **(c)** if neither of the forgegoing alternatives are reasonably available, remove any infringing Equipment or products and refund the price paid for such Equipment or services to the Participating State, or such Ordering Entity, as applicable, on a pro-rate basis, such price to be based upon a five year straight amortization schedule.

11. LICENSES, PERMITS, ETC.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it will have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this PA, without reimbursement by the Participating State or Ordering Entity. Additionally, all employees, agents, and subcontractors of Contractor performing services under this PA shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of the PA is a material breach by Contractor and constitutes grounds for termination of this PA .

12. CONFIDENTIAL INFORMATION

Contractor shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and other records or information concerning individuals. To facilitate Contractor's efforts to protect confidential information, it shall be marked as "confidential" by the State or designated as "confidential" by the State at the time of disclosure. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq. In addition, the restrictions on use and disclosure of information do not apply to information that: (A) is in the possession of Contractor at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of Contractor; (C) is received without restriction from a third party free to disclose it without obligation to State; (D) is developed independently by Contractor without reference to the confidential information; (E) is required to be disclosed by law, regulation, or court or governmental order; or (F) is disclosed with the advance written consent of State.

A. **Confidentiality.**
Contractor shall keep all Participating State's confidential information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for Participating State confidential information in the possession of Contractor shall be immediately forwarded to the State Purchasing Agent.

B. **Notification.**
Contractor shall notify its agent, employees, subcontractors and assigns who may come into contact with Participating State's confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. **Use, Security, and Retention.**
Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this PA or approved in writing by the Participating State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this PA or approved in writing by the Participating State.

D. **Disclosure-Liability.**
Disclosure of participating state confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the Participating State, a Ordering Entity or their respective agents. Contractor shall indemnify, save, and hold harmless the Participating State, the Ordering Entities and their respective employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to this Section.

13. GENERAL PROVISIONS

A. **Jurisdiction and Venue**
All suits or actions related to this PA shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

B. **Notices**
Each individual identified in Section 5 is the principal representative of the designating Party. All notices required to be given hereunder shall be:

i. Hand delivered with receipt required, or
ii. Sent by certified or registered mail to such Party's principal representative at the address set forth in Section 5, or
iii. Sent by e-mail to the e-mail addresses, if any, set forth in Section 5.

Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

C. **Modification**

i. By the Parties

Except as specifically provided in this , modifications of this PA shall not be effective unless agreed to in writing by both parties in an amendment to this PA , properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this PA, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii.By Operation of Law

This PA shall be subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this PA on the effective date of such change, as if fully set forth herein.

D. **Taxes.**

It is hereby recognized and acknowledged by Contractor that the Participating State and each State Agency is tax-exempt and is not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The Participating State's tax exemption number is 98-02565. The Participating State is also not liable for any taxes of Contractor for franchise or related to the income of the Contractor. No taxes of any kind shall be charged to the Participating State.

Contractor is hereby notified that when materials are purchased for the benefit of the Participating State or a State Agency, some Political Subdivisions require Contractor to pay sales or use taxes even though the ultimate product or service is provided to the Participating State or a State Agency. These sales or use taxes will not be reimbursed by the Participating State or State Agency, nor will any prices or rates in the Master Price Agreement or this PA be adjusted on account of such taxes. Contractor will accord the same tax free treatment to Political Subdivisions and Registered Non-Profit Organizations to the extent that they establish like exemption from taxes.

E. **Litigation Reporting.**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency related to this PA or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State Purchasing Agent of such action and deliver copies of such pleadings to the State Purchasing Agent. If a State Purchasing Agent is not then serving, such notice and copies will be delivered to the Chief State Procurement Official.

F. **Assignment and Subcontracts.**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the Participating State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

G. **Severability.**
Provided this PA can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this PA in accordance with its intent.

H. **Survival of Certain Contract Terms.**
Notwithstanding anything herein to the contrary, provisions of this PA requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Participating State if Contractor fails to perform or comply as required.

I. **Waiver.**
Waiver of any breach under a term, provision, or requirement of this PA, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

J. **CORA Disclosure.**
To the extent not prohibited by federal law, this PA and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

14. PARTICIPATING STATE ADMINISTRATIVE FEE

The Colorado General Assembly has authorized the State Purchasing Office to collect a fee for the administration of statewide contracts. On a quarterly basis, Contractor shall return to the Participating State a fee of 1.00 % (.0100 multiplication factor) of the total wireless spend within the Participating State by all Ordering Entities during that quarter, to assist with the cost of contract administration by the Participating State. The administration fee shall be remitted to the Participating State within **forty-five (45)** days of the end of each quarter. Fees shall be made payable to the Colorado State Treasurer by a check submitted to the Participating State's Primary Contact identified in **§4** of thisPA , or to the Participating State's assigned replacement Contact. The quarter periods are **January 1 to March 31**, **April 1 to June 30**, **July 1 to September 30**, and **October 1 to December 31** of any given year. Contractor shall provide a report setting forth the total wireless spend to State Agencies and other Ordering Entities within the Participating State. The report and a check in the amount of the administration fee due and owing shall be submitted to the Participating State on or before the 45^{th} day after the end of the quarter.

Contractor shall be permitted to adjust the pricing under the Master Service Agreement pricing to include the Participating State's administration fee by adding the fee to the Master Service Agreement price of each Equipment product on the invoice.

15. COLORADO SPECIAL PROVISIONS

For the purposes of this Section, references to "State" shall be deemed to be references to the Participating State and references to "contract" shall be deemed to be references to this PA.

These Special Provisions apply to all contracts except where noted in *italics*.

1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [***Not Applicable to intergovernmental agreements***] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [***Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services***] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract