



NASPO ValuePoint

PARTICIPATING ADDENDUM

WIRELESS, DATA, VOICE AND ACCESSORIES

Led by the state of Utah

Master Agreement #: MA176-1

Contractor: **T-MOBILE USA, INC.**

Participating Entity: **STATE OF NORTH DAKOTA**

1. Scope: This Participating Addendum ("PA") covers the NASPO ValuePoint Wireless, Data, Voice and Accessories Master Agreement led by the State of Utah (Master Agreement No: MA176-1) for use by state agencies and other entities, as provided in the Master Agreement, and as more specifically detailed in Paragraph 2, "Participation," below. There were four categories included in the solicitation:

Category 1: Cellular Wireless Services

Category 2: Equipment and Accessories

Category 3: Turnkey Wireless and IoT Solutions offered as a Product

Category 4: Alternative Wireless Transport Options

Contractor was awarded Categories 1, 2, 3A, and 3C.

Participating Entity has elected to participate in **Categories 1 and 2**

2. Participation: This PA may be used by state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under North Dakota Century Code (N.D.C.C.) [ch. 39-04.2](#), and the International Peace Garden (collectively "Purchasing Entities"). It will be the responsibility of the Purchasing Entity to comply with any legal or regulatory provisions applicable to the Purchasing Entity. A Purchasing Entity may issue individual releases (Purchase Orders) against this PA on an as-needed basis.
3. Participating Entity Modifications or Additions are as follows:
 - A. **Term of the Master Agreement:** The term of this PA is coterminous with the Master Agreement #MA176-1. (Supplements Master Agreement Attachment A, item 3)
 - B. **Termination:**
 - i. Termination without cause. This PA may be terminated by mutual consent of both parties executed in writing.
 - ii. Early Termination in the Public Interest. Participating Entity is entering into this PA for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this PA ceases to further the public policy of the State of North Dakota, in its sole discretion, by written notice to the Contractor, may terminate this PA in whole or in part. Participating State



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- will remain responsible for payment of all Charges and fees due to Contractor under this Agreement up to and including the date of termination.
- iii. Termination for Lack of Funding or Authority. Participating Entity by written notice to CONTRACTOR, may terminate the whole or any part of this PA under any of the following conditions.
 - a. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
 - b. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this PA or are no longer eligible for the funding proposed for payments authorized by this PA.
 - c. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this PA under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination. (This section three supplements Master Agreement Attachment A, item 29)

- C. **Confidentiality:** Contractor shall not use or disclose any information it receives from Participating Entity under this PA that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this PA or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this PA. (Supplements Master Agreement Attachment A, item 22a)
- D. **Compliance with Public Records Laws:** Contractor understands that, except for disclosures prohibited in this PA, Participating Entity must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by Contractor under this PA, except for records that are confidential under this PA, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact Participating Entity immediately upon receiving a request for information under the open records law and to comply with Participating Entity's instructions on how to respond to the request. (Supplements Master Agreement Attachment A, item 23)
- E. **Spoliation – Preservation of Evidence:** Contractor shall promptly notify Participating Entity of all potential claims that arise or result from this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public

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safety, and grants to Participating Entity the opportunity to review and inspect the evidence, including the scene of an accident. (Supplements Master Agreement T&Cs)

- F. **Applicable Law and Venue:** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*. (Supplements Master Agreement Attachment A, item 34a)
- G. **Alternative Dispute Resolution – Jury Trial:** Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial. (Supplements Master Agreement T&Cs)
- H. **Attorney Fees:** In the event a lawsuit is instituted by Participating Entity to obtain performance due under this Contract, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit. (Supplements Master Agreement T&Cs)
- I. **Indemnification:** In addition to the indemnification obligations contained in section 32 of the Master Agreement, any attorney appointed to represent the Participating Entity must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the Participating Entity prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Participating Addendum. (Supplements Master Agreement T&Cs)
4. **Order of Precedence:** Except as specifically provided otherwise herein, this PA consists of and precedence is established by the order of the following documents:
- This PA as may be amended; and
 - The Master Agreement (including the Master Agreement Order of Precedence established in the NASPO ValuePoint Master Terms and Conditions).
5. **Administrative Fee and Reporting:**
- Administrative Fee - Not applicable.
- Reporting - The Contractor must maintain records of sales under this PA and furnish volume of sales information to the Participating Entity within 30 business days after the end of each quarter. Reports will include agency name, invoice date, invoice amount, and type of plan.



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6. Purchase Order Instructions:

No specific requirements.

7. Individual Customer:

Each state agency, political subdivision or other entity placing an order ("Purchasing Entity") under this PA, will be treated as if it was an Individual Customer. Except to the extent modified in this PA, each agency, political subdivision or other entity will be responsible for compliance with the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency, political subdivision or other entity will be responsible for its own charges, fees and liabilities. Each Purchasing Entity will have the same rights to any indemnity or to recover any costs allowed in the contract for its purchases; and Contractor will apply the charges to each Participating Entity individually. The Individual Customer agrees to the terms of the PA, including the disclosure of limited account information as part of the contractual reporting requirements to NASPO ValuePoint and/or the Participating Entity for purposes of monitoring the contract and calculating the administrative fee.

8. Primary Contacts: The primary contact individuals for this PA are as follows (or their named successors):

Contractor

Name:	David Bezzant, Sr. Director, T-Mobile For Government
Address:	c/o T-Mobile USA, Inc., 12920 SE 38 th Street, Bellevue, WA 98006
Telephone:	(480) 638-2608
Fax:	
Email:	David.Bezzant@T-Mobile.com

For Legal Notice – send a copy to:

Name:	Legal Department, T-Mobile USA, Inc.
Address:	c/o T-Mobile USA, Inc., 12920 SE 38 th Street, Bellevue, WA 98006

Participating Entity

Name:	Tricia Opp, Procurement Officer II
Address:	State of North Dakota, 600 E. Boulevard Avenue, Bismarck, ND 58501



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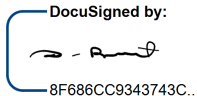

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Telephone:	(701)328-1721
Fax:	
Email:	topp@nd.gov

9. Software Terms and Conditions: Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software; however, in the event of a conflict in language between an end user license agreement (EULA) and the Master Agreement, the language in the Master Agreement will supersede and control. In addition, any language in a EULA which violates a Purchasing Entity’s constitution, statute or other applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.

The parties have executed this PA as of the date of final execution below.

Participating Entity: State of North Dakota	Contractor: T-Mobile USA, Inc.
Signature: 	Signature: 
Printed Name: Tricia opp	Printed Name: David Bezzant
Title: Procurement officer II	Title: Sr. Director
Date: 3/25/2020	Date: 3/14/2020
	Legal Approved by:  T-Mobile USA, Inc. Legal Department

[Additional signatures may be added if required by the Participating Entity]



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For questions on the Participating Addendum or NASPO ValuePoint cooperative contracting process, please contact the NASPO ValuePoint Cooperative Contract Coordinator assigned to this Portfolio, as provided on this Portfolio's webpage at www.naspovaluepoint.org or the NASPO ValuePoint team at ccc@naspovaluepoint.org.

***** Attach Exhibit 1 if necessary – Participating Entity Modifications or Additions*****

Contractor - email a fully executed PDF copy of this document to:

PA@naspovaluepoint.org

***To support documentation of participation and posting
in appropriate databases***