

**PARTICIPATING ADDENDUM  
UNDER THE  
NASPO VALUEPOINT  
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT  
MASTER AGREEMENT NUMBER: MA149**

**PARTICIPATING ENTITY: STATE OF NORTH DAKOTA**

This Participating Addendum (the "PA") is made this 11<sup>th</sup> day of August 2020 (the "PA Effective Date"), between State of North Dakota, acting through its State Procurement Office ("Participating Entity"), and AT&T Corp. ("Contractor") (Participating Entity 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 Utah, acting through its Department of Administration, Purchasing Division, and the participating members of the NASPO ValuePoint, a division of the National Association of State Procurement Officials ("NASPO"), are parties to that certain wireless communication services and equipment contract #MA149, dated December 4, 2019, as amended (the "Contract" or "Master Agreement").

**1.2** Participating Entity wants to participate in the Contract pursuant to the terms and conditions of the PA for **Categories 1, 2 and 3- subcategory A. Participating Entity wants to participate in Category 3- subcategory B & C, excluding all State Agencies.**

**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, Participating Entity and Contractor hereby agree to the terms and conditions of the PA (the Contract and the PA, together with all valid Orders submitted to Contractor by Participating Entity, collectively, the "Agreement"). Unless otherwise defined, capitalized terms in the PA have the meanings ascribed to them in the Master Agreement.

**Section 3. Authorized Purchasing Entities.** Participating Entity hereby authorizes the following Purchasing Entities under the Agreement: 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").

**Section 4. Purchase Orders.** Participating Entity must issue purchase orders hereunder that reference both Master Agreement #MA149 and the PA. Upon issuance of any such valid purchase order, Participating Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service, Equipment, and related Products provided. Notwithstanding the foregoing, any purchase order submitted that does not properly reference the Master Agreement number and/or the PA may be accepted, at Contractor's 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. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement will not be added to or incorporated into the Agreement by any Purchase Order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement will prevail and govern in the case of any such inconsistent or additional terms.

**Section 5. Primary Contacts.****Participating Entity: State of North Dakota**

Name: Tricia Opp  
 Title: Procurement Officer II  
 Address: 600 East Boulevard Ave  
 14<sup>th</sup> Floor, Dept 012  
 Bismarck, ND 58505  
 Telephone: 701-328-1721  
 E-Mail: [topp@nd.gov](mailto:topp@nd.gov)

**Lead State: Utah**

Name: Christopher Jennings  
 Title: Assistant Director  
 Address: 3140 State Office Bldg.  
 Salt Lake City, UT 84114  
 Telephone: 801-538-3157  
 Fax Number: 801-538-3882  
 E-Mail: [ctjennings@utah.gov](mailto:ctjennings@utah.gov)

**Contractor Account Team:**

Name: Steven Duckett  
 Title: Client Solutions Executive  
 Address: 7900 Xerxes Ave S  
 Bloomington, MN 55431  
 Telephone: (952) 221-4864  
 E-Mail: [sd226v@att.com](mailto:sd226v@att.com)

**Contractor Main:**

Name: Bethani Cross  
 Title: Client Solutions Executive  
 Address: 311 S Akard St.  
 Dallas, TX 75202  
 Telephone: 214-679-9053  
 E-Mail: [bethani.cross@att.com](mailto:bethani.cross@att.com)

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

**Section 7. Miscellaneous.**

**7.1 Employee Benefit Program.** Participating Entity will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

**Section 8. Notice of Administrative Fees.** All Participating Entities are hereby on notice of the following charges being paid by Contractor under the Contract.

- **Contract Fees Under the Master Agreement,** Contractor is being charged an Administrative Fee of: (i) 0.25% of all CRUs' Total Wireless Spend; and (ii) 0.10% of all IRUs' Total Wireless Spend of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Contract.

**Section 9. Order of Precedence.** Notwithstanding the Order of Precedence set forth in the Master Agreement, the Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising the Agreement, the following order of precedence will control: (a) the PA and any amendments thereto (b) the Master Agreement; and (c) any valid purchase order issued in connection therewith.

**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.** Master Agreement and this Participating Addendum sets forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all previous communications, representations or agreements, whether oral or written, with respect thereto.

IN WITNESS WHEREOF, the Parties have executed the PA as of the PA Effective Date.

**STATE OF NORTH DAKOTA, ACTING THROUGH ITS STATE PROCUREMENT OFFICE**

By: eSigned - Tricia Opp  
\_\_\_\_\_  
, duly authorized

Name: \_\_\_\_\_

Title: Procurement officer  
\_\_\_\_\_

Date: 12 Aug 2020  
\_\_\_\_\_

**AT&T CORP.**

By: *Jack Wildermuth*  
\_\_\_\_\_  
, duly authorized

Name: Jack Wildermuth  
\_\_\_\_\_

Title: Senior Contract Manager  
\_\_\_\_\_

Date: 8/11/2020  
\_\_\_\_\_

EXHIBIT A – ADDITIONAL TERMS AND CONDITIONS

**Term of the Master Agreement:** The term of this PA is coterminous with the Master Agreement #MA149-1. (Supplements Master Agreement Attachment A, item 3)

**A. 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 will remain responsible for payment of all Charges and fees due to Contractor under this Agreement up to and including the date of termination.

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 28b)

- B. **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 23a)
- C. **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, items 23 and 24)
- D. **Limited Liability:** Notwithstanding the foregoing and the language of the Master Agreement, the Parties acknowledge and agree that in accordance with N.D.C.C. § 32-12.2-15, nothing herein or therein shall limit direct losses by either party.

- 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 safety, and grants to Participating Entity the opportunity to review and inspect the evidence, including the scene of an accident.
- 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 36b)
- 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 any reasonable attorney fees and costs actually awarded in connection with the lawsuit. (Supplements Master Agreement T&Cs)
- I. **Indemnification:** In addition to the indemnification obligations contained in section 34 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 reasonable 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)
- J. **Tax Exempt:** Participating Entity is not responsible for and will not pay local, state, or federal taxes. State of ND sales tax exemption number is E 2001. Participating Entity will furnish certificates of exemption upon request by the Contractor. (Supplements Master Agreement A, item 17b)