



NASPO Value Point Cloud Services Arizona Participating Addendum

Contract No. CTR048565
Contractor: AT&T Corp.

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

In accordance with A.R.S. §41-2632, AAC R2-7-1002, Cooperative Purchasing, the following document shall relay all additional requirements for the State of Arizona in its use and participation in the NASPO Value Point contract for Cloud Services as awarded by the State of Utah, Lead State, for this competitively procured contract (the "Master Agreement").

Contractors are strongly encouraged to read this document in its entirety. All requirements stated within this document are allowable under any respective Master contract, and shall be viewed as such. Any attempt to modify or change this document without consent from the State of Arizona shall result in the nullification of this contract.



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Arizona Participating Addendum**

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Phoenix, AZ 85007

Table of Contents

OFFER AND ACCEPTANCE FORM.....	3
SCOPE OF WORK.....	4
SPECIAL TERMS AND CONDITIONS.....	7
UNIFORM TERMS AND CONDITIONS.....	18



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Administration
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OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

AT&T BUSINESS - GLOBAL BUSINESS

Company Name

X

Signature of Person Authorized to Sign Offer

1 AT&T Way Room 4AQ272

Address

Brian Troup

Printed Name

Bedminster

NJ

07921

City

State

Zip

Vice President State, Local and Education

Title

Phone:

(908) 234-4400

Fax:

(214) 486-1510

bt3149@att.com

Contact Email Address

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization IS/ X IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached Master Agreement #AR2470(the "Master Agreement"), and this Arizona Participating Addendum (the "Arizona PA") (at times, the Master Agreement and the Arizona PA are referred to together as the "Agreement").

This Arizona PA shall henceforth be referred to as Contract No: CTR048565

The effective date of the Arizona PA is FEBRUARY 27, 2020.

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona

Awarded this 27 day of February 2020

Stephen Nettles

Stephen Nettles

Procurement Officer



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	NASPO Value Point Cloud Services Arizona Participating Addendum Contract No: CTR048565 Contractor: AT&T Corp.	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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Scope of Work

1. Introduction

The State of Arizona, its Agencies, Boards and Commissions (State), as well as authorized Cooperative Members, have an ongoing requirement for the products and services as described herein. This Arizona PA is developed by and for the State of Arizona. This PA is based on the award of a competitively solicited procurement, performed in concert with NASPO Value Point and the State of Utah.

2. Background

The State of Utah competitively solicited offers from national and regional Contractors for the provision of Cloud Services. Specifically, the categories are; IaaS, PaaS and SaaS. Per the procedure outlined on the NASPO Value Point website and other materials, an interested participating state, must develop a Participating Addendum (PA) with the Contractors of their choosing.

The Participating Addendum (PA) must adhere to the requirements of the Master Agreement as awarded and negotiated by the State of Utah. However, each individual PA may stipulate specific requirements, such as terms and conditions and other contract features are mandated or desired by each participating State and agreed to by Contractor.

3. State of Arizona Requirements

The State of Arizona shall engage AT&T Corp. through the Arizona PA process and award. As per award, the Contractor shall provide the services as specified and awarded in the Master Agreement.


4. Participating Addendum Allowances and Restrictions

This Arizona PA shall allow and restrict the following:

- A. This Arizona PA is restricted to only Rapid Deploy Products and Services. All other services are not allowed, including, but not limited to:
- B. Wireless phone is not allowed;
- C. Cellular equipment and accessories are not allowed;
- D. Managed Print Services is not allowed
- E. Employee Purchase Programs are not allowed in this PA; and
- F. Trade-In and Recycle Programs or other similar offerings are not allowed in this PA.

5. Reporting

At a minimum the Contractor shall provide sales reports as outlined in the Master Agreement. Sales reports will only be requested as needed by either the State or any Purchasing Entity. More importantly for this

	NASPO Value Point Cloud Services Arizona Participating Addendum Contract No: CTR048565 Contractor: AT&T Corp.	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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Arizona PA, is Contractor's compliance to Item 8, Usage Reports as stated in the Special Terms and Conditions of this document.

6. Utilization of Partners

The Contractor may offer partners to provide additional services in support of this Arizona PA. The partners may provide the following:

- A. Marketing and Sales;
- B. Product Fulfillment;
- C. Customer Service;
- D. Expediting Services; and
- E. Administrative Services;
 - E1. Purchase Order Acceptance, and
 - E2. Accounts Receivable

If the Contractor chooses to allow partners to provide administrative services as noted above, Contractor has the responsibility to vet or ensure the partners capabilities including their financial systems and business processes to accept and process contract obligation and financial documents timely and accurately. The ultimate responsibility for the performance of these partners rests with the Contractor. The State or any Purchasing Entity shall not be obligated or forced to utilize a partner or partners.

Contractor may remove and add partners within the Arizona PA term, as long as the State receives timely notification of these changes. All notifications shall be in writing. At a minimum, the notification shall include:

- A. The name of the Partner;
- B. Address;
- C. Contact Name(s);
- D. Phone and Email Contact Information; and
- E. Description of the Services they will provide.

7. Current Product and Pricing Schedules

The Contractor is responsible to ensure that any changes made to the Product and Pricing Schedules are current and are accurate. It is required that the Contractor provide a Product and Pricing Schedule update to the State for each update provided to the NASPO Value Point Lead State. Notification regarding any changes shall be made in writing within thirty (30) days of when notification was provided to the NASPO Value Point Lead State.



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**Contract No: CTR048565
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Arizona Department of
Administration
State Procurement Office
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Phoenix, AZ 85007

8. Ordering Instruments

Any order for equipment, or services, shall be placed with the Contractor or their approved Partner by a valid purchase order.

	NASPO Value Point Cloud Services Arizona Participating Addendum Contract No: CTR048565 Contractor: AT&T Corp.	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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Special Terms and Conditions

1. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a contract for the Services as listed herein.

2. Term of Arizona PA

The term of the resultant Arizona PA shall be effective on the date specified on the Offer and Award or Signature page and shall remain unless (a) the Master Agreement expires or is terminated; or (b) the Arizona PA is terminated, cancelled, or extended as otherwise provided herein. The initial first term shall be from date of signature through March 13, 2023.

3. [RESERVED]

4. Master Agreement and Arizona PA Order of Precedence

As stated in the Master Agreement, the Arizona PA, and as posted on the NASPO Value Point website, the following order of precedence shall apply:

- 4.1 Arizona PA;
- 4.2 Master Agreement; and
- 4.3 Pricing Schedule attached hereto and incorporated herein as Exhibit A.

5. Non-Exclusive Contract

This Agreement has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

6. Eligible Agencies


This Agreement shall be for the exclusive use of the Arizona Department of Administration – Office of Grants and Federal Resources.

7. Estimated Quantities

The State anticipates considerable activity resulting from contract(s) that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

8. Usage Reports

At the completion of each quarter, the Contractor shall submit a Usage Report summarizing all sales including total amounts for the following:

	NASPO Value Point Cloud Services Arizona Participating Addendum Contract No: CTR048565 Contractor: AT&T Corp.	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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8.1 Total sales receipts from the Arizona Department of Administration – Office of Grants and Federal Resources;

Submission of Reports. Within thirty (30) days following the end of the quarter, the Contractor submits their Usage Report to the Department of Administration, State Procurement Office. Contractors are required to submit their Usage Report <https://spo.az.gov/invoiceusage>.

The submission schedule for Usage reports shall be as follows:

FYQ1 – July through September	Due October 31
FYQ2 – October through December	Due January 31
FYQ3 – January through March	Due April 30
FYQ4 – April through June	Due July 31

9. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

10. Authorization to Purchase

Authorization for the purchase of equipment or services shall be made only upon the issuance of a Purchase Order ("Purchase Order"). The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform up to the amount on the Purchase Order or the accepted quotation document, as stated on the Purchase Order. The State shall not have any legal obligation to pay for goods or services in excess of the amount indicated on the Purchase Order or accepted quotation document referenced on the Purchase Order. No further obligation for payment shall exist unless:

10.1 The Purchase Order is changed or modified with an official Change Order, and/or

10.2 An additional Purchase Order is issued for the purchase of good and services under this Arizona PA.

11. Invoicing

All billing notices or invoices shall be sent to the agency whose address appears on the Arizona PA release order/purchase order as the 'bill to address' and should contain, at a minimum, the information listed below.

11.1 The Agreement number, as applicable, the Task Order number, and the Agreement release/purchase order number;

11.2 Name and address of the Contractor;

11.3 The Contractor's remittance address;

11.4 Applicable taxes; and

11.5 Description of Materials or Products delivered.

12. Compliance with Applicable Laws

The Materials and Services supplied under this Agreement shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements. Contractor

	<p>NASPO Value Point Cloud Services Arizona Participating Addendum</p> <p>Contract No: CTR048565 Contractor: AT&T Corp.</p>	<p>Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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represents and warrants to the State that Contractor has the skill and knowledge .possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized Subcontractors shall perform the Services described in this Agreement.

Contractor represents and warrants that the Materials provided through this Arizona PA shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Arizona PA.

13. Price Adjustment

Contractor prices accepted and subsequently awarded by this Agreement shall remain in effect for a minimum of one (1) term. The Contractor may request a price adjustment, but the State will not review or approve an increase until the Arizona PA has been in effect for the initial term. Contractor shall provide written justification for any price adjustment requested. Any price increase adjustment, if approved, will be effective upon execution of a written amendment to the Arizona PA. In the advent of a price increase authorization allowed by the Lead State of Utah, the Arizona PA will be modified accordingly.

14. Payment Procedures

Contractor shall accept electronic payment from the State principally through, but not limited to, electronic transfer via Automated Clearing House remittance. The State also may make payment, at its discretion, by payment card, credit card, debit card, warrant, federal wire, etc. Contractor shall cooperate with the State by providing the State information—including, but not limited to Contractor's bank information—to support the State's selected means of payment. The Contractor shall not charge the State an amount to recover any convenience fee, discount fee, processing fee or service fee related to the acceptance of the State's payment.

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor shall complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State shall indicate consent on the form. A written amendment shall be signed by both parties and a new W-9 form shall be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

15. Order Process

The award of the Agreement shall be in accordance with the Arizona Procurement Code. Any attempt to represent any Material and/or Service not specifically awarded as being under contract with the State is a



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
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Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

violation of the Agreement and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

16. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this Arizona PA shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Arizona PA. This provision applies to Work performed by Subcontractors at all tiers.

17. [RESERVED]

18. Access Constraints and Requirements

Contractor access to State facilities and resources under a SOW shall be properly authorized by State personnel, based on business need and **will be restricted to least possible privilege**. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA / ASET Policies/ Procedures, and Arizona Revised Statutes (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

Failure of the Contractor, its agents or Subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

19. Section 508 Compliance

Unless specifically authorized in the Arizona PA, any electronic or information technology developed by Contractor offered to the State of Arizona under this Arizona PA shall comply with A.R.S. § 41-2531 and § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

20. Health Insurance Portability and Accountability Act of 1996

The Contractor represents that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Arizona PA to the extent performance of Services under the Arizona PA involves individually identifiable health information ("PHI"). Contractor warrants that it will cooperate with the State in the course of performance of the Arizona PA so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the ADOA-ASET Office, the Statewide Information Security and Privacy Office (SISPO) Chief Privacy Officer and HIPAA Coordinator, and other compliance officials required by HIPAA and its regulations.

	NASPO Value Point Cloud Services Arizona Participating Addendum Contract No: CTR048565 Contractor: AT&T Corp.	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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Contractor will negotiate with State any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements, provided that Contractor's performance of the Services qualify Contractor to be a "Business Associate".

21. [RESERVED]

22. [RESERVED]

23. Insurance

Contractor and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Arizona PA, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or Subcontractors.

The insurance requirements herein are minimum requirements for this Arizona PA and in no way limit the indemnity covenants contained in this Arizona PA. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Work under this Arizona PA by the Contractor, its agents, representatives, employees or Subcontractors, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.

- General Aggregate \$2,000,000
 - Products - Completed Operations Aggregate \$2,000,000
 - Personal and Advertising Injury \$1,000,000
 - Damages to Rented Premises \$1,000,000
 - Each Occurrence \$1,000,000
- a. The policy shall be endorsed by **Blanket Endorsements** to include the following additional insured: **The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.** State's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Contractor, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of State, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of State, its employees, agents or independent contractors; and, (iii) not exceed Contractor's indemnification obligation



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

under this Agreement, if any The additional insured shall be covered for claims caused in whole or in part by Contractor's operations under this Agreement.

- b. Policy shall contain a waiver of subrogation by **Blanket Endorsements** as respect to the "**State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees**" for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Arizona PA.


- Combined Single Limit (CSL) \$1,000,000
- a. The policy shall include by **Blanket Endorsements** the following additional insured: **The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.** The additional insured shall be covered for claims caused in whole or in part by Contractor's operations under this Agreement.
- b. Policy shall contain a waiver of subrogation by **Blanket Endorsements** the "**State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees**" for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$1,000,000
 - Disease - Each Employee \$1,000,000
 - Disease - Policy Limit \$1,000,000
- a. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Technology Errors & Omissions Insurance

- Each Claim \$5,000,000
- Annual Aggregate \$5,000,000
- a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the Contractor's performance under this Arizona PA.

	<p>NASPO Value Point Cloud Services Arizona Participating Addendum</p> <p>Contract No: CTR048565 Contractor: AT&T Corp.</p>	<p>Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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- b. In the event that the Tech E&O insurance required by this Arizona PA is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Arizona PA and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time Work under this Arizona PA is completed.

5. Network Security (Cyber) and Privacy Liability coverage


- Each Claim \$1,000,000
 - Annual Aggregate \$1,000,000
- a. Such coverage shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, where insurable by law, computer program and electronic data restoration expenses coverage (data asset protection), and network interruption,.
- b. In the event that the Network Security and Privacy Liability coverage required by this Arizona PA is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Arizona PA and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time Work under this Arizona PA is completed.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed by **Blanket Endorsements** to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance for claims arising from Contractor's operations with respect to this Agreement and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this Arizona PA in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **the Department**.

D. ACCEPTABILITY OF INSURERS: Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

	<p>NASPO Value Point Cloud Services Arizona Participating Addendum</p> <p>Contract No: CTR048565 Contractor: AT&T Corp.</p>	<p>Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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Notwithstanding the foregoing, Contractor shall have the right to self-insure the coverages required in Section 23. In the event Contractor elects to self-insure its obligation to include the State of Arizona as an additional insured, the following provisions shall apply (in addition to those set forth in Section 23): (i) Contractor or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00); (ii) Contractor continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this Section 23, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Contractor shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of the State of Arizona, at Contractor's sole cost and expense, with counsel selected by Contractor and reasonably acceptable to the State of Arizona; (iv) Contractor shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Contractor's election to self-insure; (v) Contractor shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Contractor had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; and (vi) All amounts which Contractor pays or is required to pay and all loss or damages resulting from risks for which Contractor has elected to self-insure shall not limit Contractor's indemnification obligations set forth in this Agreement.

- E. VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Arizona PA. The certificates for each insurance policy are to be signed by an authorized representative of the insured.

All certificates and required endorsements are to be received and approved by the State of Arizona before Work commences. Each insurance policy required by this Arizona PA must be in effect at or prior to commencement of Work under this Arizona PA and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Arizona PA, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Arizona PA shall be sent directly to **the Department**. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance.

- F. APPROVAL:** Any modification or variation from the insurance requirements in this Arizona PA shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will require a formal amendment to the Arizona PA.

- G. EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

24. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: e-Verify Requirement

The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.")



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Arizona PA and the Contractor may be subject to penalties up to and including termination of the Arizona PA.



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
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Administration
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Uniform Terms and Conditions

1. Definition of Terms

Unless otherwise defined below or within the Arizona PA, all capitalized terms in the Arizona PA have the meanings ascribed to them in the Master Agreement. As used in the Arizona PA, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"PA Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes to the Arizona PA.
- 1.3. *"Days"* means calendar days unless otherwise specified.
- 1.4. *"Exhibit"* means any item labeled as an Exhibit in the Arizona PA.
- 1.5. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.6. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.7. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer contracts and make written determinations with respect to the Arizona PA.
- 1.8. *"Subcontract"* means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Agreement.
- 1.9. *"State"* means the State of Arizona and Department or Agency of the State that executes the Arizona PA.
- 1.10. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Arizona PA including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Arizona PA are a part of this Arizona PA as if fully stated in it.
- 2.3. Order of Precedence. In the event of a conflict in the provisions of the Arizona PA, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits; and
- 2.3.7. The Pricing Schedule
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The State shall have the right to test, at its own cost, the materials to be supplied under this Agreement. If the State determines that any materials are non-compliant with the agreed-upon requirements as set forth in a Purchase Order or Statement of Work, then AT&T shall either replace or modify the materials so that they are compliant. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract pursuant to A.R.S. § 41-2547.
- 3.5. Notices. Notices to the Contractor required by the Agreement shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Agreement. Notices to the State required by the Agreement shall be made by the Contractor to the Contact Person indicated in the Arizona PA. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

amendment to the Arizona PA shall not be necessary.

Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail with signature required (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post with signature required (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent).

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any copies of reports ("Reports"), created under this Arizona PA are the sole property of the State. The Contractor grants to the State under Contractor's copyrights on those materials the perpetual, non-exclusive, personal and non-transferable right to reproduce and modify the Reports for State's own internal purposes. For avoidance of doubt, "internal purposes" exclude public distribution, except as required by law, or resale to third parties and revenue generation purposes. The Contractor shall not use or release these reports for purposes unrelated to this Agreement without the prior written consent of the State.
- 3.8. Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor represents that it is in compliance with all Federal immigration laws and regulations relating to employees; and further represents its compliance with Section A.R.S. § 23- 214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

submit a complete and accurate invoice for payment from the State within thirty (30) days.

- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for remitting all its applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes, unless otherwise exempt. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract. Notwithstanding the foregoing, the State agrees it will pay all amounts due for Services incurred through date of termination at, as necessary, a pro-rated amount to be determined by the Contractor and State. The State shall not be liable for any termination fees, charges, or time and materials costs (incurred by the Contractor or any third party) in addition to the amount due to the Contractor for Services.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements.

Notwithstanding the foregoing, the State agrees it will pay all amounts due for Services incurred through date of termination at, as necessary, a pro-rated amount to be determined by the Contractor and State. The State shall not be liable for any termination fees, charges, or time and materials costs (incurred by the Contractor or any third party) in addition to the amount due to the Contractor for Services.



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

**Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007**

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Force Majeure and Anti-Trust Violations

6.1 Force Majeure.

- 6.1.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.1.2 Force Majeure shall not include the following occurrences:
- 6.1.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.1.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.1.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.1.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.1.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.2 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Arizona PA are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Agreement description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Agreement may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Agreement and all representations of the Contractor, and shall be fit for all purposes and uses required by the Agreement.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance with Applicable Laws. The materials and services supplied under this Arizona PA shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

**Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007**

warranties made by the Contractor under this Agreement shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

- 7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Agreement, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Arizona PA.

8. Arizona PA Termination

- 8.1 Cancellation for Conflict of Interest. Pursuant to **A.R.S. § 38-511**, the State may cancel this Arizona PA within three (3) years after Arizona PA execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Arizona PA on behalf of the State is or becomes at any time while the Arizona PA or an extension of the Arizona PA is in effect an employee of or a consultant to any other party to this Arizona PA with respect to the subject matter of the Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Arizona PA as provided in A.R.S. § 38-511.
- 8.2 Gratuities. The State may, by written notice, terminate this Arizona PA, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Arizona PA, an amendment to the Arizona PA, or favorable treatment concerning the Arizona PA, including the making of any determination or decision about Agreement performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 8.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Arizona PA if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 8.4 Additional Rights and Remedies. In addition to any and all rights and remedies available to the State in the Arizona PA, the State shall have any additional rights and remedies available to it under the Master Agreement including, but not limited to, the right to terminate the Arizona PA for default in §10, with the follow modification:
- 8.4.1 Should the State terminate the Arizona PA for default as allowed under the Master Agreement, the State shall not be liable for any termination fees, charges, or time and materials costs (incurred by the Contractor or any third party) detailed in the Master Agreement §§ 10(D)(5) and 10(D)(6).



**NASPO Value Point Cloud Services
Arizona Participating Addendum**

**Contract No: CTR048565
Contractor: AT&T Corp.**

Arizona Department of
Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

9. Agreement Claims

All contract claims or controversies under this Arizona PA shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

10. Arbitration

The parties to this Arizona PA agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

11. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 402, Phoenix, Arizona, 85007.