

NASPO ValuePoint
PARTICIPATING ADDENDUM



**WIRELESS VOICE, DATA &
ACCESSORIES**

Led by the State of **Utah**

Master Agreement #: **MA176** (hereinafter "Master Agreement")

Contractor: **T-Mobile USA, Inc.** (hereinafter "Contractor")

Participating State: **STATE OF HAWAII** (hereinafter "Participating State")

State of Hawaii, State Procurement Office (SPO) Price List Contract No. 21-07

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number MA176 with T-Mobile USA, Inc.

1. Scope: This addendum covers the Wireless Voice, Data, and Accessories led by the State of Utah for use by State Agencies and other entities located in the Participating State of Hawaii authorized by that State's statutes to utilize State contracts.
2. Participation: All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private non-profit Health or Human Services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) Chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	David Bezzant
Address:	12920 SE 38 th Street Bellevue, WA 98006
Telephone:	(480) 638-2608
Fax:	N/A
Email:	david.bezzant@t-mobile.com

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Participating State

Name:	Lori Cervantes
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	(808) 587-3355
Fax:	(808) 586-0540
Email:	lori.m.cervantes@hawaii.gov

4. Participating State Modifications or Additions to the Master Agreement: These modifications or additions apply only to actions and relationships within the Participating State and its Entities.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

Changes:

- A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero-dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 3 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The report shall identify each transaction and include the following information:

Department/Agency Name	Unit of Measure
Date of Purchase	Item No. Part Number (if applicable)
Product/Service Description	MSRP List Price (if applicable)
Quantity	NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustments from prior periods (i.e. exchanges and/or returns). The usage report shall not include information for Individual Responsible Accounts (IRU) but Corporate Responsible Accounts (CRU) only.

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B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <https://spo.hawaii.gov/wp-content/uploads/2017/12/AG-008-103D-1.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.

C. The following is amended in the Attorney General's General Conditions:

Termination for Default

Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in thirty (30) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

D. The following is removed from the Attorney General's General Conditions provided the Contractor will not develop any products, materials, software, etc. for the State of Hawaii:

Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

E. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.

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- F. Purchases by State of Hawaii government entities under this Master Agreement are not mandatory. This Addendum is secondary and non-exclusive.
- G. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit, or issue a purchase order.
- H. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
 - 1. Chapter 237, General Excise Tax Law;
 - 2. Chapter 383, Hawaii Employment Security Law;
 - 3. Chapter 386, Workers' Compensation;
 - 4. Chapter 392, Temporary Disability Insurance;
 - 5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green-certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial

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Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Contractor must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

I. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

J. Licensing

Contractors must be properly licensed and capable of performing the Work as described in the Master Agreement, in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain all required licenses through the duration of the contract and Participating Addendum.

K. Insurance

The Contractor shall and shall require any Subcontractors to obtain and maintain substantially the same insurance as required of Contractor, in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his Subcontractors, if any, from claims for damages for bodily injury (including death), and property damage which may arise from operations under this contract, whether such operations be by the or anyone directly employed by Contractor.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor where appropriate.

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Coverage

Limits

Commercial General Liability
(occurrence form)

\$1,000,000 per occurrence
\$2,000,000 general aggregate

Automobile Liability Accident

\$1,000,000 combined single limit

Telecommunications, Media, &
Technology Errors & Omission
Including Network Security and
Cyber Liability

\$2,000,000 per claim and aggregate

Cyber Liability covering claims and losses to network, internet (Cloud), or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) \$2,000,000 per claim and aggregate.

Each insurance policy required by this contract (Workers Compensation and Employer's Liability and Errors & Omission Policies) shall contain the following clauses:

- A. "The State of Hawaii is included as an additional insured as their interest may appear under this agreement as respects to operations performed for the State of Hawaii."
- B. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability, and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii Certificate(s) of Insurance necessary to satisfy the State the insurance provisions of this Addendum and have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price/vendor list and price/vendor list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the Insurance Certificate.

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Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all of the remedies provided in the contract and this RFP for a default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of the RFP. Notwithstanding said policy or certificates of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price/vendor list.

5. Subcontractors: All contractors, dealers, and resellers authorized in the State of Utah as shown on the dedicated Contractor (cooperative contract) website are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Subcontractors are allowed under this Addendum.

6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

7. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

8. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 21-07 and the NASPO ValuePoint Master Agreement Number MA176.

Purchase Orders and Payments shall be made to T-Mobile USA, Inc. or authorized subcontractors if any.

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Invoices and Payment Instructions:

Contractor(s) shall forward the original invoice(s), directly to the ordering agency. The GET or Use Tax and County Surcharge may be added to the invoice as a separate line item and shall not exceed the current max pass-on tax rate(s) for each island.

County Surcharges on State General Excise (GE) Tax or Use Tax may be visibly passed on but is not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at <http://tax.hawaii.gov/geninfo/countysurcharge>.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

9. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

10. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties, and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary, or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

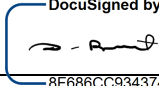
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.


Participating State: STATE OF HAWAII	Contractor: T-Mobile USA, Inc.
Signature: <i>Bonnie A Kahakui</i>	Signature: 
Name: BONNIE KAHAKUI	Name: <small>8F686CC9343743C...</small> David Bezzant
Title: Acting Administrator, SPO	Title: vice president
Date: March 1, 2021	Date: 2/25/2021

APPROVED AS TO FORM:

Stella M. Kam

 Deputy Attorney General

Approved as to Form:

 2/25/2021
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 T-Mobile USA, Inc. -Legal Department

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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Fay Tan
Telephone:	801-683-2409
Email:	ftan@naspovaluepoint.org