

**PARTICIPATING ADDENDUM
UNDER THE
WESTERN STATES CONTRACTING ALLIANCE
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
BID NUMBER RFP: #1907 Utah Reference #MA153**

PARTICIPANT:

This Participating Addendum (the "Participating Addendum") is made this 24 day of September 2012 (the "PA Effective Date"), between **State of Utah** ("Participant"), and **Sprint Solutions, Inc.** ("Contractor") (Participant and Contractor are, at times, referred to individually as a "Party" or together as the "Parties").

Section 1. Recitals.

1.1 Contractor and the State of Nevada, acting through its Department of Administration, Purchasing Division, and the participating members of the Western States Contracting Alliance ("WSCA") are parties to that certain Western States Contracting Alliance contract, #1907, dated April 12, 2012 ("Master Agreement"). A true and correct copy of the Master Agreement is attached hereto as Exhibit "A".

1.2 Participant wants to participate in the Master Agreement pursuant to the terms and conditions of this Participating Addendum.

Section 2. Agreement. In consideration of the recitals set forth in §1 above, which are hereby re-stated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participant and Contractor hereby agree to the terms and conditions of this Participating Addendum (the Master Agreement and the Participating Addendum, together with all Purchase Orders submitted to Contractor by Participant or an authorized Buyer under this Participating Addendum, are collectively, the "Agreement"). Unless otherwise defined, capitalized terms in this Participating Addendum have the meanings ascribed to them in the Master Agreement.

Section 3. Authorized Buyers. Participant hereby designates:

the State of Utah including all State of Utah government agencies, cities, counties, towns, special districts ("special districts" are political subdivisions [or quasi-municipal entities] of the State of Utah [or county or municipality in the State of Utah] established to provide a single public service (as water supply or sanitation) within a specific geographic area which may include but is not limited to water districts, sewer districts, and fire districts), and school districts, including State institutions of higher education, located in the State of Utah as the only authorized Buyers under this Participating Addendum. Utilization of the Master Agreement (but not this Participating Addendum) by authorized non-profits shall be at the sole discretion of Contractor and shall require the execution of a separate Participating Addendum.

Section 4. Purchase Orders. Buyers must issue purchase orders hereunder that include the following mandatory language: (1) indicating that "all Purchase Orders for Sprint approved funding documents will be in accordance with and subject to WSCA Master Agreement #1907; Utah reference #MA153; (2) Your Name, Address, Contact Number, email address and Contractor's account numbers; and (3) purchase order amount. 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 and Equipment

Section 5. Primary Contacts.

Participant's primary contact under the Agreement will be as follows:

Name: Debbie Gundersen
Title: Purchasing Agent
Address: State of Utah, Div. of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, Utah 84114-1061

Telephone: 801-538-3150
Fax Number: 801-538-3882
E-Mail: dgundersen@utah.gov

Contractor's contacts under the Participating Addendum will be as follows:

Name: Gray Sigler
Address: See Secondary Contact below for correspondence
Telephone: (775) 450-2916
Fax: See Secondary Contact below
Email: Gray.R.Sigler@sprint.com

Contractor (Secondary Contact):

Name: Michaela Clairmonte, Manager Contracts Negotiations
Address: 12502 Sunrise Valley Drive; MS VARESA0208
Reston, VA 20196
Telephone: (703) 433-8581
Fax: (703) 433-8798
Email: Michaela.Clairimonte@sprint.com

Section 6. Authority to Enter into the Participating Addendum. By signing below, the corresponding Party's representative represents that such person is duly authorized by Contractor or Participant, as applicable, to execute this Participating Addendum on behalf of the respective Party, and that the Contractor and Participant agree to be bound by the provisions hereof.

Section 7. Order of Precedence. See Section 5 of the Master Agreement.

Section 8. Entire Agreement. See Section 5 of the Master Agreement.

Section 9. Utah Specific Terms and Conditions. The following terms and conditions will be added to the Participating Addendum for the Participant:

- 1) **AUTHORITY:** Provisions of this Participating Addendum are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
- 2) **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
- 3) **RECORD ADMINISTRATION:** See Section 20 of the Master Agreement.
- 4) **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts

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issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

4.1 Status Verification System

A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

4.2 Indemnity Clause for Status Verification System

A. Contractor shall protect, indemnify and hold harmless, the State and its officers, employees, agents, and representatives, against any third party claim, damages or liability directly arising out of or directly resulting from violations of the above Section 4.1 Status Verification System, whether violated by employees or contractors of the following: (a) Contractor; and (b) Subcontractor at any tier..

5) INDEMNITY CLAUSE: See Section 25 of the Master Agreement. In addition, the following will apply to this Participating Addendum: Wherever in the Master Agreement, attachments or related documents a party is required to hold harmless or indemnify another party, it is acknowledged that Participant is a governmental entity under the Utah Governmental Immunity Act, Utah Code Ann. Section 63G-7-101 et. seq. ("UGIA"). Participant and Contractor agree that all hold harmless and indemnity obligations are subject to and do not waive the provisions of the UGIA applicable to Participant including limitations on damages that may be awarded and this Contract shall not be construed with respect to third parties as a waiver of any governmental immunity to which Participant is otherwise entitled including the provisions of section 63G-7-604 regarding limitation of judgments. In addition, it is further agreed that the indemnity and hold harmless obligations imposed by this Contract are limited to the UGIA damage cap amounts found at Utah Code Ann. § 63G-7-604 which are currently \$674,000 per person injured in an occurrence/\$2,308,400 aggregate.

6) EMPLOYMENT PRACTICES CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.

7) DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation

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in this transaction (Participating Addendum), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Participating Addendum period.

8) **TERMINATION:** Section 4 of the Master Agreement will apply with the following change: Any cancellation under this Participating Addendum shall cancel all future services on all existing orders. On termination of this Participating Addendum, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

9) **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this Participating Addendum or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

10) **TAXES:** The following shall be deemed to supplement (but not supersede or replace) Section 13 of the Master Agreement:

Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The Participant's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Participating Addendum, or contract orders. The Participant's Federal excise exemption number is 87-780019K.

11) **PARTICIPANTS:** See Section 3 of this Participating Addendum.

12) **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this Participating Addendum as Buyers by political subdivisions of the State of Utah (i.e., colleges, public school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

13) **REPORTS AND FEES:** As of the PA Effective Date, and subject to and conditioned upon the terms and conditions of the Master Agreement, including but not limited to Attachment AA, Section 3.2.3.2, the Participant may earn an administrative fee for Buyers that make purchases pursuant to this Participating Addendum equal to 1% of the CL Wireless Spend, including monthly recurring charges paid by authorized Participant or Buyer, ("State Admin Fee"). The Contractor agrees to provide the State Admin Fee to the Participant in the form of a check sent to the following address: State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The State Admin Fee will be payable to the "State of Utah Division of Purchasing" for the period.** The Contractors WSCA pricing to the Participating Entity may be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
March 31	April 30
June 30	July 31
September 30	October 31

December 31

January 31

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the Participating Entity during the associated fee period. The report will show the total quantities and total dollar volume of purchases by each agency and political subdivision, Billing Account Numbers (BAN), total subscribers, total eligible MRC's and total State Admin Fee payment amount. The report will be provided in secure electronic format and/or submitted electronically to the Purchasing Agent in the Division of Purchasing over this Addendum and a copy to the Utah reports email address salesreports@utah.gov. If Contractor incorrectly pays the State Admin Fee to the Participant, then Contractor shall be permitted to reduce any future State Admin Fee payments by the incorrect amount. Contractor will not pay a State Admin Fee to the Participant if the Participating Addendum has expired or if the Participating Addendum has been terminated (before expiration) by either party.

14) PAYMENT: Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail, electronic funds transfer, or Purchasing Card.

15) HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

16) PUBLIC INFORMATION: Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Participating Addendum, Master Agreement, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the Participating Addendum, Master Agreement, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's Response (Attachment CC to the Master Agreement) to the Solicitation (Attachment BB to the Master Agreement) will be a public document, and copies may be given to the public under GRAMA laws.

17) PROCUREMENT ETHICS: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

18) ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The Participant also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the solicitation.

19) INDIVIDUAL CUSTOMERS: Each State agency and each political subdivision, as a State Entity, that uses this Participating Addendum will be treated as if they were individual Customers.

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Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each Buyer individually.

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

State of Utah, Division of Purchasing

By: 
for Kent Beers

Name: Paul MacLachlan

Title: Assistant Director
Director of Purchasing

Date: 9/20/12

Sprint Solutions, Inc.
By: 
Nancy A. Salisbury

Name: Nancy Salisbury

Title: RVP.
Regional Vice President

Date: 9/18/2012

Sprint — Approved as to Legal Form
KAC — 18 Sept 2012