



at&t

DIR-SPD-1368

Renewal

Smart Order Details for					
FORT BEND COUNTY, TEXAS					
Corresponding Tab (below)	Part Number (Quote Number)	Description (Service Maintenance Level)	Annual List Price	Pro-rated List Price	AT&T Discounted Price
000001	1000000000	SNAT	\$5,612.00	\$5,612.00	\$50,428.54
000002	1000000000	SNAT	\$5,106.00	\$5,106.00	\$1,987.29
All prices are USD			\$71,722.00	\$64,710.89	\$52,415.83
			Annual Total	Pro-rated total	QUOTE AMT:

Laura Langen
 W: (720) 889-8629
 F: (415) 962-5967

Please Note: Prices may be subject to change 60 days from Quote Date



PLEASE PRINT NAMES OF ALL PERSONS FOR WHOM THIS CARD IS FOR

[illegible]

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR PRODUCTS AND RELATED SERVICES

AT&T Corp.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and AT&T Corp. (hereinafter "Vendor"), with its principal place of business at One AT&T Plaza, Dallas, Texas 75202.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-153, on December 18, 2009, for Data Communications & Telecommunications Networking Equipment and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-153 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Pricing Schedule; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-153, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-153, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Data Communications & Telecommunications Networking Equipment and Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to those services specifically related to Data Communications & Telecommunications Networking Equipment and Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C. Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

DIR Customers may choose between the lower of a Vendor special promotional offering or the DIR discounted price offered under this Contract but are not eligible to combine the two.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one percent (1.00%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$1,000.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Jimmie Zimmerman
AT&T Corp.
712 E. Huntland Drive, Room 313
Austin, Texas 78752
Phone: (512) 465-4696
Facsimile: (512) 870-4388
Email: jimmie.zimmerman@att.com

7. Software License and Service Agreements

A. Shrink/Click-wrap License Agreement

Any software used with the Services shall be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this contract as to such software.

It is the Customer's responsibility to read the Shrink/Click-wrap License agreement and determine if the Customer accepts the license terms. If the Customer does not agree with the license terms, Customer shall be responsible

for negotiating with the reseller to obtain changes in the Shrink/Click-wrap License Agreement language from the software publisher.

B. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract, including any Statements of Work and/or schedules. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Section 3. Definitions, is hereby restated in its entirety as follows:

- A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.
- B. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- C. CPA** – refers to the Texas Comptroller of Public Accounts
- D. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- E. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- F. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- G. State** – refers to the State of Texas.
- H. Affiliate** of a party means any entity that controls, is controlled by, or is under common control with, such party.
- I. Damages** - means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.
- J. Effective Date** - means, for any Service Agreement, the date on which the last party signs the Service Agreement unless a later date is required by regulation or law.
- K. Service Agreement** - means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.
- L. Service** - means a service (including Equipment) provided under this Contract.
- M. Service Component** - means an individual component of a Service provided under this Contract.
- N. Site** - means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides

a Service.

B. Section 4. General Provisions, B. Modification of Contract Terms and/or Amendments is hereby replaced in its entirety as follows:

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, (a) additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and (b) custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Service Agreement, and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

C. Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety as follows:

Subject to the availability and operation limitations of the necessary facilities and equipment, Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

D. Section 9. Vendor Responsibilities, A. Indemnification, 1) Acts or Omissions is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES for bodily injury (including death) or physical damage to tangible or real property to the extent directly arising out of, or resulting from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, or subcontractors, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

E. Section 9. Vendor Responsibilities, A. Indemnification, 2) Infringements is hereby replaced in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND PERMITTED ASSIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR ("SERVICES") PURSUANT TO THIS CONTRACT, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Contract (including the Service Agreement). VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES FOR STATE AGENCY CUSTOMERS. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND, TO THE EXTENT ALLOWED BY LAW, BY VENDOR'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the service with functionally equivalent or superior service so that Customer's use is non-infringing. If neither option (i) nor (ii) are reasonably available, Vendor may terminate the affected service without liability other than as stated in section a), above.

F. Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE is hereby replaced in its entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES,

Vendor Contract No. _____

AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE EMPLOYMENT BENEFIT OR EMPLOYMENT BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF EMPLOYMENT BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

G. Section 9. Vendor Responsibilities, H. Confidentiality is hereby replaced in its entirety as follows:

1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

3) **Confidential Information.** To the extent consistent with the Texas Public Information Act, Confidential Information means: information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing.

a) **Obligations.** Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this

Vendor Contract No. _____

Agreement (including in the case of AT&T, the ability to monitor Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 9), or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

b) **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; (c) becomes generally available to the public other than by breach of this Agreement; or (d) is required to be disclosed pursuant to the Texas Public Information Act.

c) **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

H. Section 9. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety as follows:

1) AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO AT&T WITH RESPECT TO THE ORDER OUT OF WHICH THE LIABILITY AROSE. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T.

2) SECTION 1) WILL NOT APPLY TO:

a) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;

b) BREACH OF SECTION 9.H (Confidentiality), OR SECTION 6.F and 6.G (DIR Logo and Vendor Logo);

c) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 9.A.2) (Infringements); OR

d) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

3) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

I. Section 9. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall provide evidence of the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A-minus financially rated and duly admitted and authorized to do business in the State of Texas. The Customer and DIR will be included as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- d) underwriters will endeavor to provide at least 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Vendor Contract No. _____

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) underwriters will endeavor to provide at least 30-day Notice of Cancellation; and
- c) Additional Insured.

J. Section 9. Vendor Responsibilities, S. Disclaimer of Warranties, is hereby added as follows:

AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

K. Section 9, Vendor Responsibilities, T. Disclaimer of Liabilities, is hereby added as follows:

AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY

Vendor Contract No. _____

CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A SERVICE AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

L. Section 9, Vendor Responsibilities, U. Warranties, is hereby added as follows:

(a) **Equipment**. The Equipment will be provided to Customer on an "As Is" basis. (i) AT&T DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE). (ii) AT&T WILL NOT HAVE ANY OBLIGATION OR BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN ANY EQUIPMENT OR ANY OF THE SERVICES. AT&T DOES NOT WARRANTY THAT THE OPERATION OF EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE. AT&T HAS NO WARRANTY OBLIGATION FOR EQUIPMENT THAT CUSTOMER ACQUIRES THROUGH AT&T AND EQUIPMENT THAT IS NOT MANUFACTURED BY AT&T AND THAT DOES NOT BEAR AN AT&T LOGO OR COPYRIGHT NOTICE. Customer, not AT&T, is responsible for selecting Equipment to achieve its intended results and for promptly verifying that the Equipment performs as specified by the manufacturer or licensor.

(b) **Manufacturer's Warranty**: Notwithstanding the disclaimer set forth in the subsection (a) of this section, AT&T shall pass through to Customer any hardware warranties available from Equipment manufacturers and subsection (a) does not negate any software warranty that Customer may obtain directly from the licensor under the particular licensor's standard software license.

M. Section 9, Vendor Responsibilities, V. Application and Survival, is hereby added as follows:

The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 9 will survive failure of any exclusive remedies provided in this Contract.

N. Section 10. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation is hereby replaced in its entirety as follows:

By executing the Purchase Order or Service Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under the Purchase Order or Service Agreement, Customer may terminate the Purchase Order or Service Agreement without liability for the termination charges set forth in Section 10.B.9. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Purchase Order or Service Agreement. Termination of the Purchase Order or Service Agreement for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available.

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in the applicable Service Agreement; provided, however; that (i) Customer shall be obligated to pay all charges incurred through the Date of Termination, and (ii) Customer shall exercise such right to terminate by delivery to AT&T of a 30 day written notice setting forth the reason for termination.

O. Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience is hereby replaced in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

P. Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause, b) Purchase Order is hereby renamed **Purchase Order or Service Agreement** and replaced in its entirety as follows:

b) Purchase Order or Service Agreement

Customer or Vendor may terminate a Purchase Order or Service Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Service Agreement in accordance with Section 4.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails

to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order or Service Agreement.

Q. Section 10. Contract Enforcement, B. Termination, 7) Suspension and Termination of Services is hereby added as follows:

The following additional suspension and termination of Services provisions apply:

a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.

b) **Withdrawal of Services.** Notwithstanding that a Pricing Schedule or Service Agreement may commit AT&T to provide a Service to Customer for a Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

R. Section 10. Contract Enforcement, B. Termination, 8) Effect of Termination is hereby added as follows:

a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Service Agreement. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.

b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

S. Section 10. Contract Enforcement, B. Termination, 9) Termination Charges is hereby added as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Service Agreement for convenience or Vendor terminates a Purchase Order or Service Agreement for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

Vendor Contract No. _____

If termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by AT&T from a third party (*e.g.*, not an AT&T Affiliate) identified in the Service Agreement, due to the termination.

T. Section 10. Contract Enforcement, C. Force Majeure, is hereby replaced in its entirety as follows:

Except in the case of payment of amounts due, DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to any cause beyond such non-performing party's reasonable control, including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event, Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

U. Section 13. Import/Export Control is hereby added as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

V. Section 14. No Third Party Beneficiaries is hereby added as follows:

This Agreement is for the benefit of permitted Customers and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for

any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

W. Section 15. Survival is hereby added as follows:

The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations set forth in Section 9.H (Confidentiality), Section 9.K (Disclaimers and Limitations of Liability) and Section 9.A.2 and 3) (Indemnification), will survive termination or expiration.

X. Section 16. AT&T Deliverables is hereby added as follows:

A. Services. AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

B. AT&T Equipment. Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

C. Software. Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

Y. Section 17. Customer's Cooperation is hereby added as follows:

A. Access Right.

Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to

perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

B. Safe Working Environment.

Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

C. Users.

"User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

D. Resale of Services.

Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

AT&T Corp.

Authorized By: Signature on File

Name: Larry D. Gibson

Title: Contracts Specialist

Date: 5/19/10

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Cindy Reed

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 5/20/10

Legal: cjk 5/20/10

Appendix C to DIR Contract No. DIR-SDD-1368
Pricing Index

Product Line	Customer Discount
Cisco Hardware	43%
Ironport Hardware	20%
Related Services	
Smartnet Maintenance (State & Govt)	19%
Smartnet Maintenance (Education)	29%
Ironport Maintenance	20%
Staging	10%
Installation	10%
Project Management	10%
Telephony Site Survey	10%
Wireless Site Survey and Assessment	5%
Rapid Assessment – Essential	5%
Rapid Assessment - Complete	10%
Structured Cabling Services	10%
Technical Services	5%
Security	15%