

Amendment Number 2
to
Contract Number DIR-TSO-3432
between
State of Texas, acting by and through the Department of Information Resources
and
Sprint Solutions, Inc.

This Amendment Number 2 to **Contract** Number **DIR-TSO-3432** ("**Contract**") is between the Department of Information Resources ("**DIR**") and Sprint Solutions, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for two (2) years through March 9, 2021, or until terminated pursuant to the termination clauses contained in the Contract, completing all renewal options. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Appendix A, Standard Terms and Conditions for Products and Related Services** dated 09/24/2015 is hereby replaced in entirety by **Appendix A Standards Terms and Conditions for Products and Related Services Contracts** dated 01/24/2018.
3. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

- A. **Appendix A, Section 4 General Provisions, D. Assignment is hereby updated in its entirety with the following:**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature and for Vendor, entity that has purchased all or substantially all of its assets, and accepts all past, present, and future responsibilities under the Contract), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

- B. **Appendix A, Section 4 General Provisions, E. Survival is hereby updated in its entirety with the following:**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless either party terminates the Purchase Order sooner in accordance with the terms of the Contract. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee through Purchase Orders for this contract; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

C. Appendix A, Section 5. Intellectual Property Matters, Subsections A-L is hereby replaced in its entirety with the following:

This Contract does not contemplate, authorize or support the development or acquisition of custom software products or services. If Vendor seeks to offer such products or services to DIR Customers, DIR and Vendor must amend this Contract to include such services.

D. Appendix A, Section 7. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety with the following:

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 products and services available under the Contract. Vendor shall use its good faith efforts to ensure that potential Customers are made aware of the existence of the Contract. If Vendor has a written purchasing arrangement ("Purchasing Arrangement") with Customer through an existing federal, cooperative or standalone contract held by Vendor that were executed prior to the effective date of this Contract that allows for additional purchases ("Preexisting Contract"), Vendor may sell to eligible DIR Customer through the Preexisting Contract until the expiration or earlier termination of the then-current term of such Purchasing Arrangement (Vendor shall not renew or extend such Purchasing Arrangement). Upon the expiration or termination of the then-current term of the Purchasing Arrangement (Vendor shall not renew or extend such Purchasing Arrangement), if Vendor retains such eligible DIR Customer, then Vendor must transition Customer to the DIR Contract.

D. Appendix A, Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information. 5) Use of Access Data Prohibited is hereby replaced in its entirety with the following:

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor (and its Affiliates, agents and consultants with a need to know, if they are subject to a confidentiality agreement) for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes except as required by applicable law. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 3) is hereby replaced in its entirety with the following:

If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Texas Customer who is not purchasing those products or services under this Contract or (ii) to any other Texas customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted to Texas Customers by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases or to any purchases outside the State of Texas. This Contract shall be amended within ten (10) business days to reflect the lower price.

F. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, D. Telecommunications Fees and Surcharges and Taxes, (a) is hereby replaced in its entirety with the following:

The Federal Universal Service Fund charge is an applicable FCC authorized surcharge in effect as of the date of this Contract and will be charged on Customer invoices. Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed: (i) if the Vendor listed them in Bid Package 2 upon submission of Offer, or (ii) if the tax or fee is initially imposed by a governmental entity after the effective date of this Contract; and (iii) in the event of (ii), DIR and Vendor shall execute a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has

requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

G. Appendix A. Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Changes to Prices, 1) is hereby replaced in its entirety with the following:

Price increase change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.

H. Appendix A. Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Changes to Prices, is hereby amended by adding a new paragraph 4) Electronic Administrative Update (EAU) Process as follows:

The parties agree to use the Electronic Administrative Update Process (EAU) to submit, review and implement administrative changes to Appendix C, Pricing Index. Administrative updates may include, but are not limited to price decreases, format corrections, or the addition of new services that were not available at the time of submission to the RFO and that are within the original scope of the RFO. Appendix C, Pricing Index changes shall be provided to Customers via the Vendor's webpage and the DIR Contract web page.

I. Appendix A. Section 9. Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly Report, a) is hereby updated in its entirety with the following:

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the 15th calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, Electronic Product Environmental Assessment Tool (EPEAT) designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination. If the vendors non-performance is due to changes in DIR reporting requirements, then such termination or non-renewal will not be captured as a default.

J. Appendix A. Section 9. Records and Audit, C., 3) is hereby updated in its entirety with the following:

Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, Customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

K. Appendix A. Section 10. Vendor Responsibilities, A. Indemnification, 2) is hereby replaced in its entirety with the following:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES that is alleged to have resulted, in whole or in part, from the negligent, reckless, willful, intentional, or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY

GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

L. Appendix A. Section 10. Vendor Responsibilities, Section S. Secure Erasure of Hard Disk Products and/or Services

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's wireless Product's useful life or the end of the related Service Agreement Terms in Appendix D for such wireless Products and/ Services, in accordance with 1 TAC 202.

M. Appendix A. Section 10. Vendor Responsibilities, Section T. Deceptive Trade Practices; Unfair Business Practices, 1) is hereby replaced in its entirety with the following:

Vendor represents and warrants that (i) neither Vendor nor any of its Subcontractors within the last three years have been found liable in any administrative hearing, litigation or other proceedings of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, and (ii) it has no officers who have been found liable in any administrative hearing, litigation or other proceedings of Deceptive Trade Practices violations under Chapter 17, Texas Business and Commerce Code.

N. Appendix A. Section 10. Vendor Responsibilities, Section W. Vendor Reporting Requirements is hereby replaced in its entirety with the following:

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session requiring computer technicians to report images of child pornography. Vendor and DIR acknowledge this Contract is for telecommunications services.

O. Appendix A. Section 11. Contract Enforcement, Section 4. Termination for Cause, b) Purchase Order is hereby replaced in its entirety with the following:

Customer or Order Fulfiler may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then 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. Customer may immediately suspend or terminate a Purchase Order without

advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 2, Amendment Number 1, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 03/09/2019.

Sprint Solutions, Inc.

Authorized By: /Signature on File/

Name: Chris Felix

Title: Vice President

Date: 03/06/2019

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

Authorized By: /Signature on File/

Name: Wayne Egeler

Title: Director, CTS

Date: 03/07/2019

Office of General Counsel: /Initials on File/