

Master Contract Number

T08-MST-911

for

**WIRELESS PAGING EQUIPMENT
AND SERVICES**

between the

Department of Information Services

and

USA Mobility Wireless, Inc.

Effective Date: January 1, 2008

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MASTER CONTRACT NUMBER T08-MST-911

for

WIRELESS PAGING EQUIPMENT AND SERVICES

PARTIES

This Master Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Information Services, an agency of Washington State government ("DIS" or "Purchaser") located at 1110 Jefferson Street Southeast, Olympia, WA, 98504, and USA Mobility Wireless, Inc., a corporation licensed to conduct business in the state of Washington ("Contractor"), located at 6677 Richmond Highway, Alexandria, VA 22306 for the purpose of providing Wireless Paging Equipment and Services.

RECITALS

The state of Washington, acting by and through DIS, issued a Request for Quotation (RFQ) dated November 14, 2007, (Exhibit A) for the purpose of purchasing wireless paging equipment and services in accordance with its authority under chapter 43.105 RCW.

USA Mobility Wireless, Inc. submitted a timely Response to DIS's RFQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQ and has identified USA Mobility Wireless, Inc. as the apparently successful Contractor.

DIS has determined that entering into a Master Contract with USA Mobility Wireless, Inc. will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DIS awards to USA Mobility Wireless, Inc. this Master Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the Wireless Paging Equipment and Services.

This Master Contract is an Optional Use Contract that neither financially binds the State nor otherwise obligates the State to purchase any Equipment or Service hereunder. Nor does this Master Contract prevent the State from purchasing the same or similar Equipment and services from other sources, *provided that*, all legal acquisition requirements are satisfied. This Master Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Contractor Account Manager" shall mean a representative of Contractor who is assigned as the primary contact person with whom the DIS Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the DIS Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

“Contractor Project Manager” shall mean a representative of Contractor who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled Contractor Project Manager.

“Delivery Date” shall mean the date by which the Products ordered hereunder must be delivered.

“DIS” shall mean the Washington State Department of Information Services.

“DIS Contract Administrator” shall mean the Master Contract Administrator, designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Equipment” shall mean the Wireless Pagers, components and features thereof, including embedded software, if any, and any other Equipment properly added to this Master Contract, all as set forth on Schedule A - *Authorized Product and Price List. Equipment also includes maintenance, as indicated on Schedule A.*

“Exhibit A” shall mean the RFQ.

“Exhibit B” shall mean Contractor’s Response.

“Help Desk” shall mean a service provided by Contractor for the support of Contractor’s Products. Purchaser shall report warranty or maintenance problems to Contractor’s Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Master Contract” or **“Contract”** shall mean this document, all schedules and exhibits, all amendments hereto and all Orders hereunder.

“Order” or **“Order Document”** shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Contractor under this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any Contractor-supplied Equipment, Software and documentation within the scope of this Contract.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean DIS and those government or nonprofit entities that have entered into an Interlocal or Customer Service Agreement with DIS.

“RCW” shall mean the Revised Code of Washington.

“RFQ” shall mean the Request for Quotations used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“**Response**” shall mean Contractor’s Response to the RFQ for Wireless Paging Equipment and Service, Exhibit B hereto.

“**Schedule A: Authorized Product and Price List**” shall mean the attachment to this Contract that identifies the authorized Products and Services and Prices available under this Contract.

“**Schedule B Escalation Procedures**” shall mean the attachment to this Contract that identifies Contractor’s escalation procedures.

“**Service**” or **Services**” shall mean the wireless communications services provided under this Contract combined with any end-user equipment or software supplied by Contractor for use in connection with such wireless communication services that are appropriate to the scope of this Contract .

“**Software**” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“**Specifications**” shall mean the technical and other specifications set forth in the RFQ, Exhibit A, any additional specifications set forth in Contractor’s Response, Exhibit B, and the specifications set forth in Contractor’s Product documentation, whether or not Contractor produces such documentation before or after this Contract’s Effective Date.

“**State**” shall mean the state of Washington.

“**Subcontractor**” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

“**Warranty Period**” shall mean the period of time as set forth in the section titled **Equipment Warranty** wherein Contractor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications.

Contract Term

2. Term

- 2.1. This Contract’s initial term shall be three (3) years, commencing upon the Effective Date.
- 2.2. This Contract’s term may be extended by three (3) additional one (1) terms, provided that the extensions shall be at Purchaser’s option and shall be effected by Purchaser giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Contractor accepting such extension prior to the then-current Contract term’s expiration. The total term of this Contract shall not exceed six (6) years. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Contractor agrees to provide the Equipment and Services at the prices set forth in the *Authorized Product and Price List* attached as Schedule A to this Master Contract. No other prices shall be payable to Contractor, except for the DIS Master Contract Administration Fee. No other Prices shall be charged by Contractor for implementation of Contractor's Response.
- 4.2. Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements.
- 4.3. Prices may not be increased during the initial term of the Contract.
- 4.4. If Contractor reduces its Prices for any of the Services during the term of this Contract, Purchaser shall have the immediate benefit of such lower Prices for new purchases. Contractor shall send notice to the Purchaser Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.5. Contractor agrees that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases.

5. Advance Payment Prohibited

No advance payment shall be made for Services furnished by Contractor pursuant to this Contract. Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

7. Invoice and Payment

- 7.1. Contractor will submit properly itemized invoices to Purchaser at. Invoices shall provide and itemize, as applicable:
 - a) This Master Contract number T08-MST-911;
 - b) Purchaser's name and address, and Purchase Order or Field Order number;
 - c) Contractor name, address, phone number, and Federal Tax Identification Number;
 - d) Description of Equipment, including price, quantity ordered, model and serial numbers;
 - e) Description of Services provided;
 - f) Date(s) of Delivery and date(s) Services were provided;
 - g) Contractor's Price for Services;
 - h) Applicable discounts;
 - i) DIS Master Contract Administration Fee;
 - j) Sales or other applicable taxes;
 - k) Other applicable charges;
 - l) Total invoice Price; and
 - m) Payment terms including any available prompt payment discounts.
- 7.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.3. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 7.4. The Contract number T08-MST-911 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.5. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

- 7.6. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Contractor's properly prepared invoice, whichever is later.

8. Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

Contractor's Responsibilities

9. In-State Presence and Statewide Coverage

Contractor shall have a place of business staffed by Contractor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Orders and communications and all sales and Services provided to Purchasers will be through this in-state location. Contractor's Products and Services shall be available under this Master Contract to Purchasers located throughout the state of Washington.

10. Purchaser Eligibility

In order to be eligible to purchase under this Master Contract, Purchasers shall have a Customer Service Agreement (Interlocal Agreement) with DIS. Contractor shall be responsible for verifying Purchaser eligibility. Contractor may use the search feature on the DIS website: <http://techmall.dis.wa.gov/CSA1/CSASearch.asp> or may contact the Office of Legal Services within DIS at 360-902-3551 to ascertain Purchaser eligibility.

11. RFQ Mandatory Requirements

The RFQ mandatory requirements are essential substantive terms of this Master Contract. Products and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQ.

12. Title to Equipment

Upon delivery, Contractor shall convey to Purchaser good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use any internal code (embedded software) in the Equipment. If Purchaser subsequently transfers title to the Equipment to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

13. Shipping and Risk of Loss

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery Date, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

14. Equipment Specifications

Contractor warrants that each item of Equipment delivered hereunder will conform to that item's detailed Specifications in all respects including, but not limited to: physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.

15. Delivery

- 15.1. Contractor shall deliver the Products ordered pursuant to this Contract on or before the agreed upon delivery date. For any exception to this delivery date, Contractor must notify Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and Contractor may be subject to termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.
- 15.2. All deliveries made pursuant to this Contract must be complete. Unless Contractor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Contractor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

16. Equipment Warranty

- 16.1. Contractor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of one (1) year, the Warranty Period, commencing upon the first day after Delivery.
- 16.2. During the Warranty Period, Contractor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Contractor's expense. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications.
- 16.3. Contractor agrees that all warranty service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Contractor further agrees to act as the sole point of contact for warranty service. Contractor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.

- 16.4. Contractor shall provide Help Desk Services for reporting warranty issues and for trouble-shooting problems. Contractor's Help Desk Services can be reached at (888) 957-7243.
- 16.5. Contractor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Contractor's employee(s) responding at each level and the elapsed time before the next level of response is invoked. Contractor's escalation procedures are attached as Schedule B.
- 16.6. Purchaser agrees that Contractor will not be liable for any damages caused by Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation.
- 16.7. **WARRANTY DISCLAIMER. THE LIMITED WARRANTIES AND REMEDIES CONTAINED HEREIN ARE THE EXCLUSIVE WARRANTIES AND REMEDIES OFFERED BY CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, CONCERNING THE SERVICE, THE EQUIPMENT OR ITS FACILITIES, NETWORK OR SYSTEM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WHICH CONTRACTOR SPECIFICALLY DISCLAIMS.** If any court finds any such warranty to exist, Contractor's liability for any imputed breach thereof shall not exceed the proportionate charges to Purchaser during the month in which such imputed breach occurs.
- 16.8. Without limiting the generality of the foregoing, telecommunications services, including the Services, may be adversely affected by various conditions, including but not limited to electrical interference, terrain, weather, Acts of God or governmental authority (including limitations on the availability of telephone numbers or spectrum), equipment failure, user error and the failure of any satellite or other connecting telecommunications facilities, or circumstances beyond Contractor's control (each a "Force Majeure Event"). Periodic service interruptions may be necessary to perform maintenance on the networks and facilities. Contractor, therefore cannot and does not guarantee the availability of the Services at all times and under all circumstances, nor that all messages will be received in a timely manner. Wireless messaging services are not secure methods of transmission, and Contractor cannot and does not guarantee against improper actions of third parties that interfere with the privacy of messages or the integrity of the Services. Services related to databases and information content may contain inaccuracies from time to time that occur at the source or in the transmission process (including but not limited to errors in stock quotations, sports results and news reports), and Contractor cannot and does not guarantee the accuracy or availability of such Services. Contractor's prices for the Services do not include insurance for these inherent risks.

17. Equipment Maintenance

At the expiration of the Warranty Period set forth in the section titled **Equipment Warranty**, Contractor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

- 17.1. Contractor shall provide contracted maintenance support twenty-four (24) hours per day, Seven (7) days per week, every day of the year including all holidays. An answering service may be used outside Business Hours to dispatch service calls; however, response time on service calls must never exceed twenty-four (24) hours without Purchaser's express consent.

- 17.2. Contractor personnel responding to maintenance calls, repairing or servicing the Products shall be authorized or certified by manufacturer.
- 17.3. Contractor shall provide a supply of spare paging devices and batteries at Purchaser's location(s) at no charge until activated.
- 17.4. Contractor's spare parts pricing for equipment that might be lost, stolen or damaged beyond repair is included in Schedule A.
- 17.5. Preventive Maintenance. Contractor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Contractor-supplied information Purchaser shall develop and provide to Contractor in writing the schedule within which Contractor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to Purchaser within or contiguous with remedial maintenance.

18. Equipment and Maintenance Documentation

Contractor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor's Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference. If Contractor maintains its technical, electrical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

19. Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

20. Compliance with Standards

Contractor represents that all Equipment, Software and elements thereof, including but not limited to documentation and source code, shall meet and be maintained by Contractor to conform to applicable industry standards.

21. Protection of Purchaser's Confidential Information

- 21.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, and information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. If a Purchaser determines that Contractor may come into contact with medical data, Contractor will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.
- 21.2. Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.
- 21.3. Contractor shall maintain a log documenting the following: any Confidential Information received and retained in the performance of this Contract; the purpose(s) for which the Confidential Information was received and retained; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with **Review of Contractor's Records**.
- 21.4. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 21.5. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Purchaser's Authority and Responsibilities

22. Purchaser Use of Master Contract

- 22.1. This Master Contract may be used only by Purchasers who have a Customer Service Agreement with DIS and is not for personal use. Purchaser shall comply with *all* the terms and conditions of this Master Contract.
- 22.2. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document signifies agreement to comply with these requirements. Failure to abide by these requirements

may result in Purchaser forfeiting the right to make future purchases under this or other Master Contracts.

23. Use of Services and Equipment by Purchaser

23.1. **General.** Contractor provides the Services through authority granted to it by the Federal Communications Commission (the “*FCC*”). The use and provision of the Services and Equipment are subject to the rules and regulations of the FCC and applicable federal, state and local regulatory authorities in effect during the term hereof, and Purchaser agrees to comply with all of such laws, and with such reasonable conditions as Contractor may require from time to time, including but not limited to compliance with USA Mobility Wireless, Inc.'s Acceptable Use Policy, its Privacy Policy, and all other policies and procedures related to the Services and Equipment, in connection with its use of the Services and Equipment under this Agreement. Purchaser may not use, nor permit any of its Subscribers to use, the Services and/or Equipment for promotional purposes or for resale. Contractor will designate, coordinate and assign for Purchaser and the Subscribers the capcodes, personal identification numbers, email addresses and telephone numbers (collectively, the “*Numbers*”) for all Equipment using Services provided by Contractor. Neither Purchaser nor the Subscribers shall obtain any ownership interest in, or exclusive right to use, such Numbers. Contractor reserves the right to assign, designate, reassign or change Numbers as reasonably necessary in the conduct of its business. Purchaser will not permit any Number to be used by more than one unit of Equipment.

23.2. Unlimited Use Plans/Excessive Use of Network.

23.2.1 Subject to Contractor’s Acceptable Use Policy, and other general terms and conditions contained in this Agreement or incorporated herein and available at www.usamobility.com, all uses of Contractor’s networks, including without limitation under Service plans that allow for an unlimited number of messages or characters (“Unlimited Use Plans”) are subject to all reasonable restrictions on use that Contractor may impose, at its sole discretion and without prior notice, for protection of the networks and other Contractor Purchasers. Unless otherwise expressly agreed by Contractor in writing, Services, including those under Unlimited Use Plans cannot be used for: (1) uploading, downloading or streaming of movies, music or games, (2) with server devices or with hosted computer applications, including, but not limited to, automatic data feeds, automated machine-to-machine connections, or peer-to-peer (P2P) file sharing, or (3) as a substitute or backup for dedicated data connections.

23.2.2 Unlimited Use Plans are for individual use only and not for resale. Contractor reserves the right to limit throughput or amount of data transferred, and deny or terminate service, without notice, to Purchaser if the Contractor believes Purchaser is using an Unlimited Use Plan in any manner prohibited herein or that adversely impacts Contractor’s network or service levels. Contractor reserves the right to protect its network from harm, which may impact legitimate data flows, by disconnecting Purchasers or limiting their access to the network in the event of any violations of these provisions. Contractor also reserves the right to treat excessive use of the Service as a material breach of this Agreement and to permanently terminate service to Purchaser for such excessive use.

Contract Administration

24. Legal Notices

- 24.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid to the parties at the addresses fax number, and e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

USA Mobility Wireless, Inc.
Attn: Counsel

6677 Richmond Highway
Alexandria, VA 22306

Phone: 512-632-1180
Fax: 866-432-8513
E-mail: michelle.wolfe@usamobility.com

To Purchaser at:

Attn: Master Contract Administrator
If by US Postal Service:

PO Box 42445
Olympia, WA 98504

Phone: 360-725-4200
Fax: 360-664-1414
E-mail: mcadmin@dis.wa.gov
Attn: Master Contract Administrator

- 24.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 24.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Contractor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

25. Section Headings, Incorporated Documents and Order of Precedence

- 25.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 25.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) Schedules A and B;
 - b) DIS' RFQ (Exhibit A);
 - c) Contractor's Response to DIS' RFQ (Exhibit B);
 - d) The terms and conditions contained on Purchaser's Order Documents, if used; and

- e) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Services and Equipment to Purchaser.

25.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Contract;
- c) Schedules A and B;
- d) DIS' RFQ (Exhibit A);
- e) Contractor's Response to DIS' RFQ (Exhibit B);
- f) The terms and conditions contained on Purchaser's Order Documents, if used; and
- g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Services and Equipment to Purchaser.

26. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

27. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by Purchaser and Contractor Contracting Officers. Only Purchaser Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of Purchaser.

28. Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

29. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

30. Subcontractors

Contractor may, with prior written permission from Purchaser Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

31. Assignment

- 31.1. With the prior written consent of Purchaser Contracting Officer, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 31.2. Purchaser may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

32. Publicity

- 32.1. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by Purchaser and shall not be so construed by Contractor in any advertising or other publicity materials.
- 32.2. Contractor agrees to submit to Purchaser, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Contractor wherein Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser *prior* to such use.

33. Review of Contractor's Records

- 33.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 33.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 33.3. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.
- 33.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

34. Right of Inspection

Contractor shall provide right of access to its facilities to Purchaser, or any of Purchaser's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

General Provisions

35. Indemnification

- 35.1. **Bodily Injury, Death or Damage to Tangible Personal Property.** Contractor will defend at its own expense any action against Purchaser brought by a third party claiming damages for bodily injury, death or damage to tangible personal property to the extent arising directly from Contractor's gross negligence or willful misconduct in its performance of this Agreement, and Contractor will pay those costs and damages finally awarded against Purchaser in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Notwithstanding the foregoing, Contractor will not be obligated to defend such actions or pay such costs or damages for any claims arising out of the failure to deliver any message or any error in any message it being expressly understood and agreed that the sole and exclusive remedy for any such failure shall be the service credits provided for in this Agreement.

- 35.2. **Intellectual Property.** Contractor will defend at its own expense any action against Purchaser brought by a third party to the extent that the action is based upon a claim that the Service directly infringes any U.S. copyright or mask work, any U.S. patent, or misappropriates any trade secret recognized as such under the Uniform Trade Secret law, and Contractor will pay those costs and damages finally awarded against Purchaser in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.
- 35.2.1 **Contractor's Options.** If the Service becomes, or in Contractor's opinion is likely to become, the subject of an infringement or misappropriation claim, Contractor may, at its option and expense, either (a) procure for Purchaser the right to continue using the Service, (b) replace or modify the Service so that it becomes non-infringing, or (c) terminate Purchaser's right to use the Service and give Purchaser a refund or credit for the fees actually paid by Purchaser to Contractor for the Service for periods after the date the Service is terminated.
- 35.2.2 **Limitations.** Notwithstanding the foregoing, Contractor will not be obligated to indemnify Purchaser to the extent that an infringement or misappropriation claim is based upon (i) any modification of the Service by or on behalf of Purchaser (including modification made by Contractor to meet functional or other specifications provided or requested by or on behalf of Purchaser, (ii) use of the Service in combination with other products or services not supplied by Contractor if such infringement or misappropriation would not have occurred but for such combined use, (iii) use of any portion of the Service that is updateable software or firmware unless such software or firmware is the most current release made available to Purchaser, if the most current release was furnished to Purchaser specifically to avoid such infringement or misappropriation and if such infringement or misappropriation would have been avoided by use of the most current release, and (iv) use of the Service after Contractor gives Purchaser reasonable notice of the infringement and the opportunity to discontinue use of the Service without payment of any applicable early termination fees and a Pro Rata Refund with respect to any software or hardware purchased by Purchaser from Contractor that is no longer useful as a result of such discontinuance.
- 35.2.3 **Exclusive Remedy.** This Section 35.2 above states the entire liability and obligations of Contractor as well as the exclusive remedy of Purchaser with respect to any actual or alleged infringement in whole or in part of any intellectual property right by the Service.
- 35.3. **Purchaser's Obligations.** Contractor's obligations under Sections 35.1 and 35.2 above with respect to an action are conditioned on (a) Purchaser notifying Contractor promptly in writing of such action, (b) Purchaser using its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations (c) Purchaser cooperating with Contractor in such defense (including, without limitation, by making available to Contractor all documents and information in Purchaser's possession or control that are relevant to the claims, and by making Purchaser's personnel available to testify or consult with Contractor or its attorneys in connection with such defense), and (d) except as required by law, Purchaser not by any act, including but not limited to any admission or acknowledgement, materially prejudicing Contractor's ability to satisfactorily defend or settle the claim. If Purchaser performs its obligations under this Section 35.3 in all material respects and Contractor fails to perform its obligations under Sections 35.1 and 35.2, then Purchaser may take commercially reasonable steps to defend and settle the action and Contractor shall be obligated to reimburse Purchaser for all expenses so incurred (including attorneys fees and costs).

36. Insurance

- 36.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to DIS within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Contract's termination.
- 36.2. The minimum acceptable limits shall be as indicated below, with no deductibles, unless otherwise indicated, for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and
 - e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.
- 36.3. Contractor shall pay premiums on all insurance policies. DIS shall be named as an additional insured on all general liability, automobile liability, and umbrella policies, and Contractor shall provide a copy of the policy endorsement(s) designating DIS as an additional named insured. Such policies shall also reference this Master Contract number T08-MST-911 and, if revocable by the insurer, shall have a condition that they not be revoked until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 36.4. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 36.5. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 36.6. Contractor shall furnish to DIS copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates and endorsements of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every

insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS sole option, result in this Contract's termination.

- 36.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DIS in this Contract..

37. Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

38. Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

39. OSHA/WISHA

Contractor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor agrees to indemnify and hold Purchaser harmless from all damages assessed against Purchaser as a result of the failure of the Products furnished under this Contract to so comply.

40. Antitrust Violations

Contractor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Contractor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

41. Compliance with Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with Purchaser.

42. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

43. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

44. Treatment of Assets

- 44.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 44.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 44.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 44.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 44.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 44.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

45. Contractor's Proprietary Information

Contractor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

Disputes and Remedies

46. Disputes

- 46.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 46.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 46.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 46.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible
- 46.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 46.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

47. Attorneys' Fees and Costs

- 47.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 47.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In

addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

48. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

49. Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, Purchaser shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then Purchaser may withhold all monies due and payable to Contractor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

50. LIMITATION OF LIABILITY

- 50.1. **EXCEPT AS DESCRIBED ELSEWHERE IN THIS CONTRACT, NEITHER CONTRACTOR NOR ANY THIRD PARTY PROVIDER THAT CONTRACTOR HAS EMPLOYED TO PROVIDE SERVICES OR EQUIPMENT HEREUNDER SHALL BE LIABLE FOR ANY LOSS OR DAMAGE WHATSOEVER RESULTING FROM USE OF THE SERVICES AND EQUIPMENT BY PURCHASER AND ITS SUBSCRIBERS, INCLUDING WITHOUT LIMITATION, ANY LOSS OR DAMAGE ARISING FROM ANY DELAY, LOSS OR INTERRUPTION OF THE SERVICE, OR FROM ANY MISSED OR INCOMPLETE PAGE.**
- 50.2. The parties agree that neither Contractor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 50.3. Neither Contractor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, Purchaser, or their respective Subcontractors.
- 50.4. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

- 50.5. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

51. Termination for Default

- 51.1. If either Purchaser or Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. Purchaser reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of any alleged Contractor compliance breach and pending corrective action by Contractor or a decision by Purchaser to terminate the Contract.
- 51.2. In the event of termination of this Contract by Purchaser, Purchaser shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Contractor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to Purchaser resulting from Contractor's breach. Purchaser shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe Purchaser for Contractor's default.
- 51.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 51.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

52. Termination for Convenience

When, at the sole discretion of Purchaser, it is in the best interest of the State, Purchaser Contracting Officer may terminate this Contract, including all Statement(s) of Work, in whole or in part, by fourteen (14) calendar days written notice to Contractor. If this Contract is so terminated, Purchaser is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by Purchaser prior to the effective date of termination.

53. Termination for Withdrawal of Authority

In the event that Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, Purchaser may terminate this Contract by seven (7) calendar days written notice to Contractor. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall

not be construed to permit Purchaser to terminate this Contract in order to acquire similar Services from a third party.

54. Termination for Conflict of Interest

Purchaser may terminate this Contract by written notice to Contractor if Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract.

55. Termination Procedure

- 55.1. In addition to the procedures set forth below, if Purchaser terminates this Contract, Contractor shall follow any procedures Purchaser specifies in Purchaser's Notice of Termination.
- 55.2. Upon termination of this Contract, Purchaser, in addition to any other rights provided in this Contract, may require Contractor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 55.3. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 55.4. Contractor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

56. Covenant Against Contingent Fees

- 56.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.
- 56.2. In the event Contractor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser or, in Purchaser's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting and Administration Fee

57. DIS Master Contract Administration Fee and Collection

- 57.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Contractor and remitted to DIS.

- 57.2. The Administration Fee will be ten cents (\$0.10) per active line (Subscriber) per month.
- 57.3. The Master Contract Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 57.4. Contractor shall hold the Master Contract Administration Fee in trust for DIS until the Fees are remitted to the DIS Contract Administrator, along with the Master Contract Activity Report.

58. Activity Reporting

- 58.1. Contractor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Products and Services purchased under this Master Contract. The report shall identify:
 - a) This Master Contract number;
 - b) The month in which the purchase occurred;
 - c) Each Purchaser making purchases during each month of the reporting period (identified and grouped by state, local or educational entity);
 - d) The total purchases by each Purchaser;
 - e) The total invoice price (excluding sales tax) for each Purchaser;
 - f) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
 - g) The total amount of the DIS Master Contract Administration Fee.
- 58.2. The Activity Report and the DIS Master Contract Administration Fee shall be submitted on a quarterly basis in accordance with the following schedule:

<u>For activity in the months:</u>	<u>Report & Fee Due:</u>
January, February, March	April 15 th
April, May, June	July 15 th
July, August, September	October 15 th
October, November, December	January 15 th

- 58.3. Reports are required to be submitted electronically, in either Microsoft Word or Excel format. Reports are to be sent electronically via E-mail to: mcadmin@dis.wa.gov.
- 58.4. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Contractor.
- 58.5. Activity Reports are required even if no activity occurred.
- 58.6. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

59. Electronic Funds Transfer

When agreed by DIS and Contractor, the DIS Master Contract Administration Fee shall be paid through Electronic Funds Transfer (EFT) to an Automated Clearing House (ACH). Contractor shall utilize the ACH Debit option, which is an arrangement between the Contractor and DIS' bank. Contractor initiates the action, specifying the amount of funds and the effective date of payment. On the effective date, the funds are withdrawn from Contractor's account and

transferred to the DIS account. Contractor will be provided by separate instrument the DIS account information and a toll-free number to initiate the quarterly transaction. There is no cost to Contractor.

60. Failure to Remit Reports/Fees

- 60.1. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Master Contract with Contractor.
- 60.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Contractor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 60.3. The DIS Contract Administrator will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.
- 60.4. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

Contract Execution

61. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

62. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 1st day of January, 2008.

Approved
State of Washington
Department of Information Services



Signature
For Roland Ruvra 1/10/08
Print or Type Name Date

Assistant Director, TSD
Title

Approved
USA Mobility Wireless, Inc.



Signature
Steve McGaill 1/2/08
Print or Type Name Date

Regional Vice President
Title

Approved as to Form
State of Washington
Office of the Attorney General

Signature
Print or Type Name
Assistant Attorney General
Title Date

Contractor Information
Contractor's UBI Number: 602-234-722
Minority or Woman Owned Business Enterprise Yes _____ No <input checked="" type="checkbox"/> (Certification Number)

Schedule A
Authorized Services and Price List

as of January 1, 2008

for
Contract Number T08-MST-911
With

USA Mobility Wireless, Inc.

USA Mobility Wireless, Inc. is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

Item/Service Description	Part#	State FOB Price
Numeric Display Service	N/A	\$2.20
Alphanumeric Service	N/A	\$4.75
Numeric Airtime Only	N/A	\$2.20
Alphanumeric Airtime Only	N/A	\$4.35
Nationwide Numeric Service	N/A	\$12.95
Nationwide Alphanumeric Service	N/A	\$27.95
2 way 500 messages	N/A	\$11.95
2 way unlimited messaging	N/A	\$18.90
Toll Free Number	N/A	\$4.00
Numeric Pager Protection	N/A	\$0.50
Alphanumeric Pager Protection	N/A	\$2.00
2way Pager Protection	N/A	\$2.00
Pager Voicemail	N/A	\$1.00
Digital spare pagers over limit	N/A	\$2.00
Alphanumeric spare pagers over limit	N/A	\$4.00
2 way spares	N/A	\$10.00
Numeric Pager Equipment	Bravo 502	\$39.00
Alphanumeric Pager Equipment	Unication Elite	\$69.00
2way Pager Equipment	M90	\$99.00
AAA Battery	BAT3A	\$0.44
AA Battery	BAT2A	\$0.37
AAA Battery Case (500/case)	BATC3	\$125.00
AA Battery Case (500/case)	BATC2	\$125.00
Shipping on a case of Batteries	N/A	\$15.00
Bravo 502 Battery Door	BDRB2	\$1.49
Bravo 502 User Guide	UGBV2	\$0.99
Bravo 502 Quick Guide	QGBV2	\$0.99
Unication Elite Battery Door	BDREU	\$0.99

Item/Service Description	Part#	State FOB Price
Unication Elite Cradle Kit	JIGEU	\$99.00
Unication User Guide	UGEU	\$0.99
Unication Quick Guide	QGEU	\$0.99
Unication Elite Holster	HOLEU	\$3.99
M90 Charger	CHGM9	\$9.99
M90 Holster	HOLM9	\$5.95
M90 Back up cable	CBLM9	\$9.99
M90 USB cable	USBM9	\$14.95
M90 extra battery	BATM9	\$19.99
Overnight Shipping	N/A	\$20.00

Schedule B
Escalation Procedures

for
Contract Number T08-MST-911
with
USA Mobility Wireless, Inc

The first point of notification for any type of pager failure or outage is the Government/Major Account Support Team.

First Level: *See below for contact information for the Support Team*

The second point of escalation for any type of pager failure or outages is the District Sales Manager or the Regional Operations Manager. One of these individuals should be contacted if the problem is not resolved or service is not restored after eight (8) Business Hours.

Second Level: Kolene Hammer
 District Sales Manager
 503 209 7686

 Margene Reynolds
 Regional Operations manager
 425 985 8810

The third level of escalation is the Regional Vice President, located in Orange, California. This level of escalation should be used if the problem is not resolved or service is not restored after twenty-four (24) hours.

Third Level: Steve McGrail
 Regional General Manager
 714 280 1645

*Offering you immediate access to the information you request on small and easy to use devices!
Wireless e-mail and important information you can access from virtually anywhere*

USA Mobility™ Service

USA Mobility is committed to being the most personalized paging company in the industry. By recognizing that different types of accounts need specialized services, we have developed a call center group specifically for our Major Accounts. This dedicated team will provide you with the detailed attention necessary to manage your paging needs. Following is an outline of our commitments:

Major/Government Account Support and Operation

Functions • Our Major Account service and support center is located in Pensacola, FL. Our functions include full-service programming, troubleshooting, order processing, billing, and all other account support requirements. Our representatives are knowledgeable and experienced in handling the unique requirements of our Major Account customers. These areas include complex departmental billing and multiple group call systems. This team truly understands the critical role your paging service plays in the services you provide and will handle all requests with a sense of urgency.

Majors Hours

- **6:30am – 7:30pm CST Monday-Friday**

Contact Us

- **Phone- 888-957-7243**
- **Email- majorsupport@usamobility.com**
- **Fax- 877-351-0118**

Management Team

Kimberly McGee	Supervisor
Latisha Savage	Supervisor
Rina Rathbun	Supervisor
Todd Vilardi	Manager

Amendment Number 11-01
to
Master Contract Number T08-MST-911
for
Wireless Paging Equipment and Services

In accordance with Provision 27 *Authority for Modifications and Amendments* of Master Contract T08-MST-911, this Amendment is entered into by and between the State of Washington, Department of Information Services (DIS) and USA Mobility Wireless, Inc.

The parties hereby agree to amend the Contract as follows:

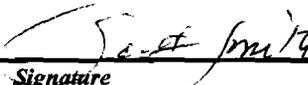
1. Section 2 of the contract is hereby modified by extending the term of the contract by one (1) additional one (1) year term through December 31, 2011.

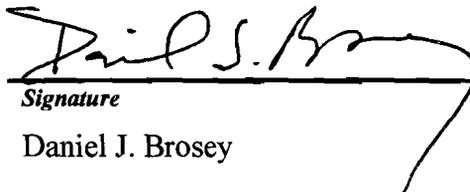
All other provisions of Master Contract T08-MST-911, as previously amended, shall remain in full force and effect.

This Amendment 11-01 shall be effective as of January 1, 2011, regardless of the date signed by DIS.

Approved
State of Washington,
Department of Information Services

Approved
USA Mobility Wireless, Inc.


Signature


Signature

SCOTT SMITH
Print or Type Name

Daniel J. Brosey
Print or Type Name

TAS PROGRAM MGR 10/6/10
Title Date

Vice President, Marketing 5 October 2010
Title Date

Amendment Number 12-02
to
Master Contract Number T08-MST-911
for
Wireless Paging Equipment and Services

In accordance with Provision 27 *Authority for Modifications and Amendments* of Master Contract T08-MST-911, this Amendment is entered into by and between the State of Washington, Department of Enterprise Services (DES) and USA Mobility Wireless, Inc.

The parties hereby agree to amend the Contract as follows:

1. Section 2 of the contract is hereby modified by extending the term of the contract by one (1) additional one (1) year term through December 31, 2012.

All other provisions of Master Contract T08-MST-911, as previously amended, shall remain in full force and effect.

This Amendment 12-02 shall be effective as of January 1, 2012, regardless of the date of signatures below.

Approved
State of Washington,
Department of Enterprise Services

Approved
USA Mobility Wireless, Inc.



Signature



Signature

JOYCE TURNER

Print or Type Name

Michelle Wolfe

Print or Type Name

DIRECTOR **12/12/11**

Title Date

Sr. Director-Contract Administration

Title Date **11/17/11**



Washington State Department of
Enterprise Services

1500 Jefferson Street, Mail Stop 41017
Olympia, Washington 98504-1017
www.des.wa.gov

CONTRACT AMENDMENT

Contract Number:
T08-MST-911

Date Issued:
11/7/12

Amendment Number:
13-03

Date Effective:
1/1/13

This Contract Amendment is issued under the provisions of the State Contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

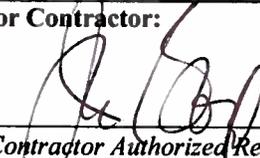
Purpose: To extend the term of the Master Contract.

Pursuant to Section 2 (Term), the parties agree to extend the term of this Master Contract for an additional one (1) year term from January 1, 2013 through December 31, 2013.

All other provisions of this Master Contract, as previously amended, shall remain in full force and effect.

Authorizing Signatures

This contract amendment, consisting of one (1) pages and zero attachment is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

For Contractor:		For State:	
			
11/12/12 (Contractor Authorized Representative Signature) (Date)		12/5/12 (Procurement Coordinator Signature) (Date)	
PRINT:	Jim Boso, President		
Contractor:	USA Mobility, Inc.	Agency:	Department of Enterprise Services
Address:	3000 Technology Dr., Ste. 400		1500 Jefferson St SE
	Plano, TX 75074		Olympia, WA 98501
Telephone No.	512-243-6147	Telephone No.	360-407-8772
Email:	salesadministration@usamobility.com	Email:	Gay.Thomas@des.wa.gov

GA Approval

OSP Authorizing Manager:	MICHAEL MAVERICK Dale Colbert	Date:	12/5/12
Signature:		Email:	Dale.colbert@des.wa.gov
		Phone:	(360) 407-9425

for Dale Colbert