



Solicitation Number: RFP #080119 CONTRACT

This Master Contract ("Contract") is between **Sourcewell**, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 ("Sourcewell") and **AT&T Mobility National Accounts, LLC**, 1024 Lennox Park NE, Atlanta, GA 30319 ("Vendor" or "AT&T").

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to its members. Participation is open to all levels of governmental entity, higher education, K-12 education, nonprofit, tribal government, and other public entities.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and its members (each, a "Member").

1. TERM OF CONTRACT

A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.

B. **EXPIRATION DATE AND EXTENSION.** This Contract expires December 31, 2023, unless it is terminated sooner pursuant to Section 24 (Cancellation). This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.

C. **SURVIVAL OF TERMS.** The respective obligations of Sourcewell and AT&T that by their nature would continue beyond the termination or expiration of this Contract, including the obligations set forth in Section 11 (Liability and Third Party Claims), Section 12 (Government Data Practices), Section 14 (Third Party Claims Concerning Infringement), Section 15 (Publicity, Marketing, and Endorsement), Section 16 (Governing Law, Jurisdiction, and Venue), and Section 23 (Confidential Information), will survive such termination or expiration.

D. **PARTS OF THIS CONTRACT.** This Contract incorporates the following documents:

1. *Participation Agreement and/or PA* (defined below).

2. *Tariffs and Guidebooks.* "Tariffs" are documents containing the descriptions, pricing and other terms and conditions for a Service that Vendor or its Affiliates file with regulatory authorities. "Guidebooks" are documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a Service that were but no longer are filed with regulatory authorities. Tariffs and Guidebooks can be found at att.com/servicepublications or other locations Vendor may designate.

3. *Acceptable Use Policy*. Vendor's Acceptable Use Policy ("AUP") applies to (i) Services provided over or accessing the Internet and (ii) wireless (i.e., cellular) data and messaging Services. The AUP can be found at att.com/aup or other locations Vendor may designate.

4. *Service Guides*. The descriptions, pricing and other terms and conditions for a Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which can be found at att.com/service publications or other locations Vendor may designate.

E. ORDER OF PRIORITY. The order of priority of the documents that form this Contract is: any applicable Participation Agreement, this Contract; the AUP; and Tariffs, Guidebooks and Service Guides; provided that Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

F. REVISIONS TO DOCUMENTS. Vendor may revise Service Publications at any time.

G. EXECUTION BY AFFILIATES. A Vendor affiliate or Sourcewell or Member affiliate may sign a Participation Agreement in its own name, and such affiliate contract will be a separate but associated contract incorporating the terms of this Contract. Sourcewell and Sourcewell Members will cause their respective affiliates to comply with any such separate and associated contract, as shall Vendor with respect to its affiliates.

2. DEFINITIONS

Within this Contract, these terms have the following meanings:

- **"Affiliate"** of a party means any entity that controls, is controlled by or is under common control with such party.
- **"API"** means an application program interface used to make a resource request from a remote implementer program. An API may include coding, specifications for routines, data structures, object classes, and protocols used to communicate between programs.
- **"AT&T Software"** means software, including APIs, and all associated written and electronic documentation and data owned by AT&T and licensed by AT&T to Sourcewell or any Member pursuant to the Contract. AT&T Software does not include software that is not furnished to Sourcewell or such Member, as applicable.
- **"Cutover"** means the date a Member's obligation to pay for Services begins.
- **"Equipment"** means the wireless receiving and transmitting equipment or SIM (Subscriber Identity Module) Card that AT&T has authorized to be programmed with a Number or Identifier, and any accessories.
- **"Hazardous Materials"** mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water

or soil or to health and safety. Vendor shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

- **“Participation Agreement” or “PA”** means an agreement between Vendor and a Member, in form and substance substantially similar to Exhibit A to this Contract and otherwise in conformance with Section 3(D) (Participation Agreements) of this Contract, through which such Member participates in the Contract.
- **“Personal Data”** means information that identifies an individual, that Sourcewell or a Member directly or indirectly makes accessible to AT&T and that AT&T collects, holds or uses in the course of providing the Services.
- **“Purchased Equipment”** means equipment or other tangible products Sourcewell or a Member purchases under a Participation Agreement or otherwise from Vendor, including any replacements of Purchased Equipment provided to Sourcewell or a Member. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Sourcewell or Member on which Software is stored.
- **“Service Component”** means an individual component of a Service provided under this Contract.
- **“Service Publications”** means Tariffs, Guidebooks, Service Guides and the Vendor’s Acceptable Use Policy.
- **“Software”** means AT&T Software and Third-Party Vendor Software.
- **“Third-Party Service”** means a service provided directly to Sourcewell or a Member by a third-party under a separate agreement between Sourcewell or a Member and the third party.
- **“Third-Party Vendor Software”** means software, including APIs, and all associated written and electronic documentation and data AT&T furnishes to Sourcewell or a Member, other than AT&T Software.
- **“Total Wireless Spend”** means the total amount of Corporate Responsible Users (“CRU”) charges set forth on invoices paid to AT&T by the CRUs under this Contract during the applicable calendar quarter, less any charges for taxes, surcharges and equipment.

3. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor’s Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

Subject to the terms and conditions of any applicable Participation Agreement with a Member, all Equipment and Products provided under this Contract must be new/current model. Vendor

may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Member in advance, Equipment or Products must be delivered as operational to the Member's site.

Without prejudice to any applicable early termination charges, this Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. AT&T DELIVERABLES.

1. *Services.* AT&T will either provide or arrange to have an AT&T Affiliate provide Services to Sourcewell and its Members, subject to the availability and operational limitations of systems, facilities and equipment. Where required, a AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

2. *License and Other Terms.* Software and Third-Party Services may be provided subject to the terms of a separate license or other agreement between Sourcewell or Members and either the licensor, the third-party service provider or the manufacturer. Sourcewell's execution of the Contract is Sourcewell's agreement to comply with such separate agreement, as is a Member's agreement to any applicable Participation Agreement. Unless a Service Publication specifies otherwise, AT&T's sole responsibility with respect to Third-Party Services is to place Sourcewell's or Member's orders for Third-Party Services, except that AT&T may invoice and collect payment from Sourcewell or Member, as applicable, for the Third-Party Services.

C. SOURCEWELL'S COOPERATION.

1. *Access Right.* Sourcewell or Member will in a timely manner allow AT&T access as reasonably required for the Services to property and equipment that Sourcewell or Member controls and will obtain at Sourcewell's or Member's expense timely access for AT&T as reasonably required for the Services to property controlled by third parties such as Sourcewell's or Member's landlord. AT&T will coordinate with and, except in an emergency, obtain Sourcewell's or Member's consent to enter upon Sourcewell's or Member's property and premises, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Sourcewell's or Member's connection to AT&T's network. Sourcewell or Member must provide AT&T timely information and access to Sourcewell's or Member's facilities and equipment as AT&T reasonably requires for the Services, subject to Sourcewell's or Member's reasonable security policies. Sourcewell or Member will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as AT&T reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Sourcewell or Member will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

2. *Safe Working Environment.* Sourcewell or Member will ensure that the location at which AT&T installs, maintains or provides Services is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services.

3. *Users.* "User" means anyone who uses or accesses any Service provided to Sourcewell or Member. Sourcewell and its Members ordering or receiving Services will cause Users to comply with this Contract and is responsible for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

4. *Resale of Services.* Neither Sourcewell nor any Member may resell the Services or rebrand the Services for resale to third parties without AT&T's prior written consent.

D. PARTICIPATION AGREEMENT. AT&T may enter into a Participation Agreement with any Sourcewell Member, the form of which is attached hereto as Exhibit A ("Participation Agreement Template") which shall include the Participation Agreement Cover Page and the Participation Agreement Standard Terms, which shall incorporate by reference the terms and conditions of this Contract and identify the Service or Services from the AT&T Sourcewell Program Website which are eligible for purchase under the Participation Agreement. The form of Exhibit A may not be revised without amendment; provided that AT&T and a Member may modify the terms of the Participation Agreement between them as both may agree. Individual Participation Agreements may be terminated prior to the expiration of this Contract without any effect on this Contract's continued operation, but this Contract's termination or expiration shall also terminate any outstanding Participation Agreements.

1. Each Participation Agreement shall be assigned an AT&T Contract Number.
2. By requesting Service under a Participation Agreement, the Member is agreeing to be bound by the terms and conditions of this Contract (including all Attachments and incorporated documents), including the obligation to pay AT&T for all Services, Equipment, and related products within thirty (30) days from invoice date.
3. The Member must order Service under a Participation Agreement through (i) the AT&T Premier website utilizing approved customer log-in credentials, or (ii) by submitting an email or fax to AT&T with the correct authenticating information (accepted at AT&T's sole discretion).

E. WARRANTY. Vendor shall pass through to Members any warranties for Equipment and Third-Party Vendor Software available from the manufacturer or licensor. The manufacturer or licensor, and not Vendor, is responsible for any such warranty terms and commitments. ALL SOFTWARE AND EQUIPMENT IS OTHERWISE PROVIDED TO Members ON AN "AS IS" BASIS.

4. PRICING, BILLING, SHIPPING, TAX, AND PAYMENTS

A. PRICING. All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal. The rates set forth in this Contract are exclusive of taxes, surcharges, regulatory fees, and other similar charges relating to the provision of the Services. Sourcewell and

all Members purchasing Services under this Contract shall be responsible for paying all applicable surcharges, regulatory fees and other similar charges relating to the provision of the Services.

Regardless of the payment method chosen by the Member, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Member at the time of purchase.

When providing pricing quotes to Members, all pricing quoted must reflect a Member's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Member's requested delivery location.

The prices are stabilized until the end of the Term and will apply in lieu of the corresponding prices set forth in the applicable Service Publication. No promotion, credit, discount or waiver set forth in a Service Publication will apply.

B. BILLING. Unless a Service Publication specifies otherwise, Sourcewell's or a or Member's obligation to pay for a Service Component begins upon availability of the Service Component to Sourcewell or the Member. Sourcewell or the Member, as applicable, will pay AT&T without deduction, setoff or delay for any reason (except for withholding taxes).

C. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged and perform in substantially accordance with the written specifications. If the Equipment or Products do not substantially comply with the written specifications at the time of delivery, then within fourteen (14) days the Member shall notify AT&T in writing and provide AT&T an opportunity to cause the Equipment or Products to substantially comply with the Specifications. AT&T shall notify the Member upon completion of its corrective action, and the Member shall perform such tests as may be necessary to ensure that the Equipment or Products substantially comply with the written specifications. If the Member fails to notify AT&T in writing that the Equipment or Products are not in substantial compliance with the Specifications, then AT&T's Acceptance shall be deemed to occur fifteen (15) days following the later to occur of delivery or AT&T's corrective action. If AT&T fails to take corrective action after having received notice that Equipment or Products do not substantially comply with the written specifications, then the Member may reject delivery of such Equipment or Products without liability, and AT&T shall be responsible for any return shipment costs reasonably incurred by the Member.

D. SALES TAX. Rates and charges are exclusive of applicable taxes. Member must pay all taxes, which include any applicable sales, public utilities, gross receipts, or other taxes, surcharges, fees and assessments imposed by governments (regardless of whether they are imposed on a Member, corporate responsible user (CRU), or Vendor) including, without limitation, assessments to defray costs for government programs such as universal connectivity, enhanced 911 service, local number portability, and number pooling relating to Service, Equipment, goods or services purchased, and/or the wireless network.

AT&T acknowledges that in certain instances Members may be tax-exempt. AT&T will accord the proper tax-exempt status to each Entity that properly establishes such status. Notwithstanding this tax-exempt status, each Entity must pay any Taxes not covered by its tax-exempt status.

E. PAYMENTS.

1. *Payment.* Payment for service is due within 30-days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. AT&T does not receive payment by the payment due date, AT&T may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum), (b) for Services contained in a Tariff or Guidebook at the rate specified therein, or (c) the maximum rate allowed by law for overdue payments.
2. *Dispute.* Member will not be required to pay charges for Services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If Member disputes a charge, Member will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or Member waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute. Following AT&T's notice of the results of its investigation to Member, payment of all properly due charges and properly accrued late payment fees must be made within fifteen (15) business days. AT&T will reverse any late payment fees that were invoiced in error.

5. MEMBERSHIP, CONTRACT ACCESS, AND MEMBER REQUIREMENTS

A. MEMBERSHIP. Membership in Sourcewell is open to public and nonprofit entities; such as municipal, state/province, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Members that can legally access the Equipment, Products, or Services under this Contract, provided that Vendor shall be under no obligation to accept orders or other solicitations for Equipment, Products or Services to be delivered outside the United States or from Members situated or organized outside the United States or its territories. A Member's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Member's use of this Contract is at the Member's sole convenience and Members reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell membership requirements and documentation.

Sourcewell reserves the right to add and remove Members to its roster during the term of this Contract, provided that such removal shall not affect the validity or enforceability of any open contracts or orders between such Members and Vendor. In the event a Member is removed from Sourcewell's Membership roster, AT&T will no longer process the Administrative Fee for that Member's CRU usage as defined in Section 8.B (Administrative Fee).

B. PUBLIC FACILITIES. Vendor's employees may agree to perform work at government- owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with all applicable laws.

6. MEMBER ORDERING AND PARTICIPATION AGREEMENT

A. PARTICIPATING AGREEMENT AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, Member must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Member will execute a Participation Agreement with Vendor. Members will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Member.

B. ADDITIONAL TERMS AND CONDITIONS. Additional terms and conditions to a Participation Agreement may be negotiated between a Member and Vendor, such as job or industry-specific requirements, legal requirements (such as affirmative action or immigration status requirements), or specific local policy requirements.

C. PERFORMANCE BOND. If requested by a Member, and agreed by AT&T, Vendor will provide a performance bond that meets the requirements set forth in the Member's Participation Agreement.

D. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Member requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Member and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

E. TERMINATION BETWEEN VENDOR AND MEMBERS.

1. *Termination of Participation Agreement.* Any Participation Agreement with a Member may be terminated immediately upon notice by either party thereto if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.

2. *Termination or Suspension.* The following additional termination provisions apply:

(a) Material Breach. If either party to a Participation Agreement fails to perform or observe any material warranty, representation, term or condition of this Contract or such Participation Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate (and Vendor may suspend and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Participation Agreement, terminate (and AT&T may suspend and later terminate) the entire Participation Agreement.

(b) Materially Adverse Impact. If AT&T revises a Service Publication, the revision has a materially adverse impact on a Member and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after receipt of notice from such Member, then such Member may, as Member's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Member first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.

(c) Internet Services. If a Member fails to rectify a violation of the AUP within 5 days after receiving notice from Vendor, Vendor may suspend the affected Service Components. Vendor reserves the right, however, to suspend or terminate immediately when: (i) Vendor's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) Vendor is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) Vendor reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if Vendor were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of Vendor's network or networks with which Vendor is interconnected or may interfere with another customer's use of Vendor services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to Vendor, Vendor's customers or its or their respective employees.

(d) Fraud or Abuse. Vendor may terminate or suspend an affected Service or Service Component and, if the activity materially and adversely affects the entire Participation Agreement, terminate or suspend the entire Participation Agreement, immediately by providing Member with as much advance notice as is reasonably practicable under the circumstances if Member, in the course of breaching the Contract, Participation Agreement: (i) commits a fraud upon Vendor; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses Vendor's network or Service; or (v) interferes with another customer's use of Vendor's network or services.

(e) Infringing Services. If the options described in Section 14.C. (Infringing Services) are not reasonably available, Vendor may at its option terminate the affected Services or Service Components without liability other than as stated in Section 14.A. (AT&T's Obligations).

(f) Hazardous Materials. If Vendor encounters any Hazardous Materials at the Site, Vendor may terminate the affected Services or Service Components or may suspend performance until Member removes and remediates the Hazardous Materials at Member's expense in accordance with applicable law.

(g) Non-Appropriations. By entering into any Participation Agreement, Member warrants that Member has funds appropriated and available to pay all amounts due thereunder through the end of Member's current fiscal period. Member further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the applicable term of the Participation Agreement. In the event Member is unable to obtain the necessary appropriations or funding for the Services provided by Vendor, Member may terminate the Services without liability for the termination charges upon the following conditions: (i) Member has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Member's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Member has negotiated in good faith with Vendor to develop revised terms, and an alternative payment schedule or a new agreement to accommodate Member's budget. Member must provide Vendor thirty (30) days' prior written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Member terminates the Services pursuant to this subsection, Member agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original term of the applicable Participation Agreement.

(h) Termination for Convenience. A member may terminate a PA for its convenience upon 60 days' written notice, and upon full payment of services provided, including any applicable termination charges.

3. *Effect of Termination.*

(a) No Waiver. Termination or suspension by either party of a Service or Service Component does not waive any other rights or remedies a party may have under this Contract or the Participation Agreement and will not affect the rights and obligations of the parties regarding any other Service or Service Component.

(b) Payment of Amounts Due. If a Service or Service Component is terminated, Member will pay all amounts incurred prior to the effective date of termination.

4. *Termination Charges.*

(a) No Termination Charge for Termination for Cause. If Member terminates a Participation Agreement or an affected Service or Service Component for cause in accordance with the Contract or if Vendor terminates a Service or Service Component other than for cause, then except as may be expressly set forth in an applicable Participation Agreement or Service Publication, Member will not be liable for termination charges.

(b) Impact of Cutover on Termination Charges. If Member or Vendor terminates a Service or Service Component prior to Cutover other than as set forth in Section 6.E.4(a) (No Termination Charge for Termination for Cause), Member (i) will pay any pre-Cutover termination or cancellation charges set out in a Participation Agreement or Service Publication, or (ii) in the absence of such specified charges, will reimburse Vendor for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

7. **CUSTOMER SERVICE**

A. PRIMARY ACCOUNT REPRESENTATIVE. Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Member inquiries; and
- Business reviews to Sourcewell and Members, if applicable.

B. BUSINESS REVIEWS. Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to members, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. **REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT**

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report), at the Foundation Account Number ("FAN") that AT&T uses to track individual customer accounts, to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made). The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State;
- Customer Zip Code;

- Sourcewell Assigned Entity/Member Number;
- Total Mobility Sales
- Total Equipment Sales;
- Total Sales less taxes and Sourcewell Administrative Fee Applied; and
- Bill Cycle Month.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee (1%) to Sourcewell on all Total Wireless Spend provided to Members. The report format and content will be mutually agreed upon by the parties and must be received no later than forty-five (45) calendar days after the end of each calendar quarter. The Vendor will submit a check payable to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Total Wireless Spend purchased by Members under this Contract during each calendar quarter. Payments should note the Sourcewell-assigned contract number in the memo and must be mailed to the address above "Attn: Accounts Receivable." Payments must be received no later than sixty (60) calendar days after the end of each calendar quarter.

No more than one time in any twelve (12) month period, Vendor agrees to reasonably cooperate with Sourcewell at no out-of-pocket cost or expense, in auditing transaction under this Contract to ensure that the administrative fee is paid on the Total Wireless Spend under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, following written notice to AT&T of such delinquency, Sourcewell may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum) or (b) the maximum rate allowed by law for overdue payments. In the event this Contract is terminated by either party prior to the Contract's expiration date, the administrative fee payment will be due as defined above.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. ASSIGNMENT AND SUBCONTRACTING, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. ASSIGNMENT AND SUBCONTRACTING.

1. *Generally.* Except as set forth below, neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the other party. Such consent will not be unreasonably withheld or conditioned. In the case of any assignment, the assigning party shall remain financially responsible for the

performance of the assigned obligations.

2. *Exception and Condition.* Vendor may subcontract to an affiliate or a third party work to be performed under this Contract but will remain financially responsible for the performance of such obligations.
3. *Abroad.* In countries where AT&T does not have an affiliate to provide a Service, AT&T may assign its rights and obligations related to such Service to a local service provider, but AT&T will remain responsible for such obligations. In certain countries, a Member may be required to contract directly with the local service provider.

B. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

C. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

D. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor as to the subject matter of this Contract. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

E. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, master- servant, principal-agent, or any other relationship.

11. LIABILITY AND THIRD-PARTY CLAIMS

A. **GENERAL INDEMNITY.** Vendor must indemnify, save, and hold Sourcewell and its Members, including their agents and employees, harmless from any third-party claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications.

B. **NOTICE AND COOPERATION.** The party seeking defense or settlement of a third-party claim under this Section 11 (Third Party Claims) will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is

limited to monetary damages that are paid by the defending party under this Section 11 (Third Party Claims).

C. LIMITATION OF LIABILITY.

1. EACH PARTY'S ENTIRE LIABILITY (INCLUDING EACH APPLICABLE MEMBER'S ENTIRE LIABILITY) AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR DAMAGES ON ACCOUNT OF ANY CLAIM ARISING OUT OF AND NOT DISCLAIMED UNDER THIS CONTRACT SHALL BE:
 - (a) FOR BODILY INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY A PARTY'S NEGLIGENCE, PROVEN DIRECT DAMAGES;
 - (b) FOR BREACH OF SECTION 23 (CONFIDENTIAL INFORMATION) , SECTION 15 (PUBLICITY, MARKETING, AND ENDORSEMENT, PROVEN DIRECT DAMAGES;
 - (c) FOR ANY THIRD-PARTY CLAIMS, THE REMEDIES AVAILABLE UNDER SECTION 14 (THIRD PARTY CLAIMS CONCERNING INFRINGEMENT);
 - (d) FOR CLAIMS ARISING FROM THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVEN DAMAGES; OR
 - (e) FOR CLAIMS OTHER THAN THOSE SET FORTH IN SECTION 11.C.1(a)-(d), PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT NOT TO EXCEED \$50,000.
2. EXCEPT AS SET FORTH IN SECTION 14 (THIRD PARTY CLAIMS CONCERNING INFRINGEMENT) OR IN THE CASE OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS.
3. THE LIMITATIONS IN THIS SECTION 11 (LIABILITY AND THIRD-PARTY CLAIMS) SHALL NOT LIMIT A MEMBER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS CONTRACT.

D. DISCLAIMER OF LIABILITY. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY A MEMBER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR CREDITS EXPLICITLY SET FORTH IN THIS CONTRACT); LOST OR ALTERED MESSAGES OR

TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF ANY MEMBER'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

E. PURCHASED EQUIPMENT AND THIRD-PARTY VENDOR SOFTWARE WARRANTY. AT&T shall pass through to any applicable Member any warranties for Purchased Equipment and Third-Party Vendor Software available from the manufacturer or licensor. The manufacturer or licensor, and not AT&T, is responsible for any such warranty terms and commitments. ALL SOFTWARE AND PURCHASED EQUIPMENT IS OTHERWISE PROVIDED TO MEMBERS ON AN "AS IS" BASIS.

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

G. APPLICATION AND SURVIVAL. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages and will apply so as to limit the liability of each party and its affiliates and their respective employees, directors, subcontractors and suppliers. The limitations of liability and disclaimers set out in this Section 11 (Liability and Third-Party Claims) will survive failure of any exclusive remedies provided in this Contract.

H. LEGAL ACTION. Except where prohibited by law, any legal action arising in connection with this Contract must be filed within two (2) years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

12. AUDITS

A. AUDIT TO VERIFY INVOICES. Subject to AT&T's reasonable security requirements and not more than once every twelve (12) months, Sourcewell or a relevant Member may, at its own expense, review AT&T's relevant billing records for a period not to exceed the preceding 12 months, for the purpose of assessing the accuracy of AT&T's invoices. Sourcewell or such Member may employ such assistance, as it deems desirable to conduct such reviews, but may not employ the assistance of any entity that derives a substantial portion of its revenues from the provision of services that are substantially similar to the Services provided hereunder or any person who has previously

made prohibited use of AT&T's Confidential Information. Sourcewell or such Member, as applicable, shall cause any person retained for this purpose to execute a non-disclosure agreement. Such reviews shall take place at a time and place agreed upon by the parties. Sourcewell's or as applicable, a Member's, normal internal invoice reconciliation procedures shall not be considered a review of AT&T's relevant billing records.

B. **PROMPT CORRECTION OF BILLING ERRORS.** AT&T shall promptly correct any billing error that is revealed in a billing review, including refunding any overpayment by Sourcewell or a Member in the form of a credit or billing any underpayment as soon as reasonably practicable under the circumstances.

C. **COOPERATION.** AT&T shall cooperate in any Sourcewell or Member billing review, providing AT&T billing records as reasonably necessary to verify the accuracy of AT&T's invoices. AT&T may redact from the billing records provided to Sourcewell or such Member any information that reveals the identity or confidential information of other AT&T customers or other AT&T information that is not relevant to the purposes of the review.

13. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

14. THIRD PARTY CLAIMS CONCERNING INFRINGEMENT

A. **AT&T'S OBLIGATIONS.** AT&T agrees at its expense to defend and either to settle any third-party claim against Sourcewell or a Member, its affiliates and its and their respective employees and directors or to pay all damages that a court finally awards against such parties for a claim alleging that a Service provided to a Member under this Contract infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from: (a) Sourcewell's, the Member's, the affiliate's or a user's content; (b) modifications to the Service by Sourcewell, the Member, the affiliate or a third party, or combinations of the Service with any non-AT&T services or products by Sourcewell, the Member or others; (c) AT&T's adherence to Sourcewell's, the Member's or the affiliate's written requirements; or (d) use of a Service in violation of this Contract.

B. **SOURCEWELL/MEMBER OBLIGATIONS.** Sourcewell or the Member, as applicable, shall at its expense to defend and either to settle any third-party claim against AT&T, its affiliates and its and their respective employees, directors, subcontractors and suppliers or to pay all damages that a court finally awards against such parties for a claim that: (a) arises out of Sourcewell's, the Member's, the affiliate's, or a user's access to or use of the Services and the claim is not the

responsibility of AT&T under Section 14.A (AT&T's Obligations); (b) alleges that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions in Section 14.A (AT&T's Obligations); or (c) alleges a breach by Sourcewell, the Member, the Affiliate or a user of a Software license agreement.

C. **INFRINGING SERVICES.** Whenever AT&T is liable under Section 14.A (AT&T's Obligations), AT&T may at its option either procure the right for the Member to continue using, or may replace or modify, the Service so that it is non-infringing.

D. **NOTICE AND COOPERATION.** The party seeking defense or settlement of a third-party claim under this Section 14 (Third Party Claims Concerning Infringement) will provide notice to the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced by the delay. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense. The defending party will use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the party being defended is limited to monetary damages that are paid by the defending party under this Section 14 (Third Party Claims Concerning Infringement).

E. **LIMITATION.** AT&T's obligations under Section 14.A (AT&T's Obligations) shall not extend to actual or alleged infringement or misappropriation of intellectual property based on Purchased Equipment, Software, or Third-Party Services.

15. PUBLICITY, MARKETING, AND ENDORSEMENT

A. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the other party. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared individually or jointly with others with respect to the program, publications, or services provided resulting from this Contract.

B. **MARKETING.** Any direct advertising, marketing, or offers with Members for Services under this Contract must be approved by Sourcewell, which approval will not be unreasonably withheld. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

C. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

D. **TRADEMARKS.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

16. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract between AT&T and Sourcewell, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota. The United Nations Convention on Contracts for International Sale of Goods will not apply.

17. FORCE MAJEURE

Neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.

18. SEVERABILITY

If any portion of this Contract is found to be invalid or unenforceable or if, notwithstanding Section 16 (Governing Law, Jurisdiction, and Venue), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

19. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance as follows:

1. Workers' Compensation and Employer's Liability.

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts listed below: limits:

US\$500,000 each accident for bodily injury by accident

US\$500,000 policy limit for bodily injury by disease

US\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition) or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations, contractual liability, contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Limits:

US\$1,000,000 each occurrence Bodily Injury and Property Damage

US\$1,000,000 Personal and Advertising Injury

US\$2,000,000 aggregate for Products-Completed operations

US\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 or newer) or equivalent.

Limits:

US\$1,000,000 each accident, combined single limit

4. *Umbrella/Excess Insurance.* During the term of this Contract, Vendor will maintain umbrella/excess coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile. Vendor may use any combination of primary and excess insurance to meet the total limits required.

Limits:

US\$2,000,000 per occurrence and in the aggregate

5. *Professional/Technical, Errors and Omissions Liability.* During the term of this Contract, Vendor will maintain coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under this Contract.

Limits:

US\$2,000,000 per claim or event

US\$2,000,000 – annual aggregate

6. *Network Security and Privacy Liability coverage (under Vendor's Professional/Technical, Errors and Omissions Liability).* During the term of this Contract, Vendor will maintain coverage for network security and privacy coverage under its Professional Liability/Technical Errors and Omissions insurance. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Limits:

US\$2,000,000 per occurrence

US\$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish

to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf on an ACORD form certificate of insurance. Vendor will provide at least thirty (30) days' prior written notice to Sourcewell of cancelation or nonrenewal of any required coverage that is not replaced.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. **ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE.** Vendor agrees to include Sourcewell and its Members, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability caused, in whole or in part, by activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** To the extent allowed by law Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

F. **SELF-INSURANCE.** Notwithstanding the forgoing, Vendor may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Contract. In the event Vendor elects to self-insure its obligation under this Contract to include Sourcewell as an additional insured, the following conditions apply: (i) Sourcewell shall promptly and no later than thirty (30) days after notice thereof provide Vendor with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Vendor with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Sourcewell shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Vendor; and (iii) Sourcewell shall fully cooperate with Vendor in the defense of the claim, demand, lawsuit, or the like.

20. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Vendor must maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Members.

21. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member.

Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further agrees that it will provide written notice to Sourcewell within a reasonable time period if this certification changes at any time.

22. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

A. **FEDERAL GRANTS AND FEMA FUNDS.** Members that use United States federal grant or Federal Emergency Management Agency (FEMA) funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Members may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Member accesses Vendor’s Equipment, Products, or Services with United States federal funds and the AT&T agrees in a Participation Agreement with a Member.

B. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. § 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. §

60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989

Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of three (3) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion.

23. CONFIDENTIAL INFORMATION

A. CONFIDENTIAL INFORMATION. Confidential Information means: information that the disclosing party would reasonably expect to remain non-public or protected based on applicable state and federal laws related to data disclosure. This Section 23 (Confidential Information) also applies to Members accessing this Contract. The parties acknowledge that all data received and maintained by Sourcewell are governed by the Minnesota Government Data Practices Act (Minnesota Statutes Chapter 13). For clarity the following data provided to Sourcewell are not considered Confidential Information: this Contract and any reports provided to Sourcewell under Section 8 (Report on Contract Sales Activity and Administrative Fee Payment).

B. OBLIGATIONS. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and AT&Ts having a need-to-know (but only if such agents and AT&Ts are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 23 (Confidential Information)) or to the extent authorized to be revealed by law, governmental authority or legal process, provided where legal and reasonable the disclosing party gives advance notice to the other party; (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating proposals for new services or performing this Contract (including in the case of AT&T to detect fraud, to check quality and to operate, maintain and enhance the network and Services).

C. EXCEPTIONS. The restrictions in this Section 23 (Confidential Information) will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Contract.

D. PRIVACY. Each party is responsible for complying with the privacy laws applicable to its business. AT&T shall require its personnel, agents and AT&Ts around the world who process Sourcewell or Member Personal Data to protect Sourcewell or Member Personal Data in accordance with the data protection laws and regulations applicable to AT&T's business. If Sourcewell or Member does not want AT&T to comprehend Sourcewell or Member data to which it may have access in performing Services, it must encrypt such data so that it will be unintelligible. Sourcewell and its Members are responsible for obtaining consent from and giving notice to its Users, employees and agents regarding Sourcewell's, any Member's and AT&T's collection and use of the User, employee or agent information in connection with a Service. Sourcewell and Members will only make accessible or provide Sourcewell or Member Personal Data to AT&T when it has the legal authority to do so. Unless otherwise directed by Sourcewell (or an applicable Member) in writing, if AT&T designates a dedicated account representative as Sourcewell's or a Member's primary contact with AT&T, Sourcewell and the applicable Member authorize that representative to discuss and disclose the proprietary network information of Sourcewell or such Member, as applicable, to any employee or agent of Sourcewell or such Member, as applicable, without a need for further authentication or authorization.

24. CANCELLATION

Sourcewell or Vendor may terminate this Contract at any time, with or without cause, upon ninety (90) days' written notice to the other party. However, Sourcewell may terminate this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Termination of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to termination.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz

Title: Director of Operations & Procurement/CPO

Date: 12/18/2019 | 11:23 AM CST

Approved:

DocuSigned by:
By: Chad Coauette
7E42B8F817A64CC...
Chad Coauette

Title: Executive Director/CEO
Date: 12/18/2019 | 11:24 AM CST

AT&T Mobility National Accounts, LLC

DocuSigned by:
By: Linda Cottingham
5D873DE555F2487...
Linda Cottingham

Title: Senior Contract Manager, State, Local and Education Mobility Contracts

Date: 12/18/2019 | 11:09 AM CST

EXHIBIT A – PARTICIPATION AGREEMENT TEMPLATE**PARTICIPATION AGREEMENT COVER PAGE**

SELLER: AT&T Mobility National Accounts LLC
 CONTRACT NUMBER: ####
 Sourcewell Contract Number: _____
 Member ID Number: [Insert Member ID Number]

Member Legal Name ("Member")	D/B/A	Main Telephone Number
Street Address	City	State
Primary Contact Name and Email Address	Primary Contact Telephone Number	
If applicable, Governmental entity of _____		

Agreement: This Participation Agreement between Member, on behalf of itself, and AT&T Mobility National Accounts LLC. ("AT&T"), on behalf of itself and its service providing Affiliates, consists of (a) this Participation Agreement Cover Page, (b) the attached Participation Agreement Standard Terms, (c) applicable terms and conditions posted or incorporated by reference on the AT&T Sourcewell Program Website and the relevant Sales Information and (e) all AT&T materials incorporated by reference in the foregoing, including, without limitation those documents referenced in §3 (collectively, the "Participation Agreement").

By signing below, the parties agree to be bound by the terms and conditions of the Participation Agreement, effective as of the last date written below (the "Participation Agreement Effective Date").

[Insert Member Name]:

By (Authorized Signature): _____

Print Name and Title of Person Signing: _____

Date: _____

AT&T Mobility National Accounts LLC, on behalf of itself and its service providing Affiliates:

By (Authorized Signature): _____

Print Name and Title of Person Signing: _____

Date: _____

PARTICIPATION AGREEMENT STANDARD TERMS

SELLER: AT&T Mobility National Accounts LLC
CONTRACT NUMBER: #####
Sourcewell Contract Number: _____
Sourcewell Member ID Number: **[Insert Member ID Number]**

1. **Address for Notices.** All notices, requests, demands and other communications to Member required or permitted under this Participation Agreement shall be provided to the address set forth below:

Name: _____
Address: _____
Phone: _____
Fax: _____
Attention: _____
Federal Tax ID: _____

2. **Background.**

2.1 AT&T and Sourcewell entered into that certain Master Contract with Sourcewell dated _____, (as now or hereafter amended, restated or otherwise modified, the "Contract") (at times, the Contract and the Participation Agreement referred to collectively as the "Agreement").

2.2 Member is a governmental agency and/or a "Member" as defined under the Agreement that wants to obtain Service from AT&T in connection with the Contract.

3. **Agreement.** AT&T and Member hereby agree to the terms and conditions of (i) the Contract; (ii) applicable terms and conditions posted or incorporated by reference on the AT&T Sourcewell Program Website and the relevant Service Publications for the Services that Member has selected. Access to the Contract is available at www.Sourcewell.com. Unless otherwise defined, capitalized terms in this Participation Agreement have the meanings ascribed to them in the Agreement or an attachment thereto, as applicable.

4. **Adoption of Agreement.** Member acknowledges and agrees that it is participating pursuant to the Agreement.

5. **Service.** AT&T agrees to provide Service to Member pursuant to the terms and conditions of the Agreement. By signing this Participation Agreement, Member acknowledges and agrees that it is liable for all charges incurred hereunder by Member.

6. **Representations and Warranties.** Member hereby represents and warrants that (i) it is a member in good standing of Sourcewell and will provide AT&T with verification of such membership upon reasonable request, and/or (ii) it is a governmental agency and will provide AT&T with verification of such status upon reasonable request. Member also hereby represents and warrants that it is not a non-profit entity as that term is defined by United States Tax Code; provided, however, that Volunteer Fire Departments organized and established pursuant to all applicable state and local laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction are eligible to receive Products and Services under this Participation Agreement and shall be treated as Members for all purposes herein.

7. **Term.** The term of this Participation Agreement will run concurrently with the term of the Contract. In the event the Contract is terminated prior to the expiration of the Contract, the term of each Participation Agreement shall continue through the term identified in that Participation Agreement. Any Services identified on the AT&T Sourcewell Program Website which, by their terms, are to exist for a specific period of time, will survive any termination or expiration of this Participation Agreement.

8. **Default and Termination of Participation Agreement.** Member agrees that it will be an event of default hereunder if Member is no longer a Member under the Agreement or otherwise fails to perform or comply with any term or condition of the

Agreement. See the Contract for applicable Participation Agreement termination provisions.

9. Financial Responsibility. Member must pay for all charges incurred under the Participation Agreement, provided that individual responsibility users (IRUs) and individuals receiving service under "subscriber paid" plans shall be individually responsible for all such charges incurred.

10. Termination/Cancellation Fee. See the Contract.

11. Good Faith Cooperation. With respect to all marketing responsibilities set forth herein, Member and AT&T agree to cooperate in good faith to assist AT&T in achieving its Service marketing goals, including but not limited to making Member's employees aware of the available discounts offered under this Participation Agreement.

12. Resale and Other Prohibited Uses. Member is not permitted to resell, reproduce, retransmit, or disseminate Service or any other program components to third parties whether directly or indirectly including, without limitation, through machine to machine transmissions.

13. Consent to Disclosure. Member consents to the disclosure by AT&T to Sourcewell of information regarding Member's involvement and Equipment and Services under this Participation Agreement, the amount of revenue received by AT&T as a result of Member's participation under the Agreement, and such similar information arising in connection with the Agreement.

14. Equipment Payment Options. AT&T offers installment payment options for certain Equipment that require its customers to execute a corresponding installment payment agreement. In the event Member opts to use one of these installment payment options then: (a) Member will be required to execute such an installment payment agreement; and (b) Member represents, acknowledges and agrees that its participation in the installment payment option: (i) does not violate any applicable procurement rules in effect as of the Participation Agreement Effective Date; (ii) will not disqualify AT&T from any future procurements with Member; and (iii) it has fully appropriated funds to pay the total amount charged over the complete term of the installment payment agreement.

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