

Contract #: 199177

Entry Date: 1/9/2020 11:18:12 AM

Department: Wyoming Department of Administration and
Information, General Services, Procurement

Agency Contact: Gershmel, Mandy

Phone: 3077776718

Other Agency Contact:

WYOMING ATTORNEY
GENERAL'S OFFICE

FEB 20 2020

Tyler M. Renner
APPROVED AS TO FORM

Client Comments: New NASPO Contract with T-Mobile.

Contractor/Vendor Name: T-Mobile USA, Inc.

Contract Title: T-Mobile USA, Inc.

Contract Type: IT Contract (routes to
OCIO first)

Contract Amount: 0.0000

Contract Effective Date:

Contract Expiration Date: 6/30/2024 12:00:00 AM

Status: AG Approved as to Form

RETURN VIA: Ink Signature - Inter-agency Mail

Assigned Attorney: Tyler Renner

NASPO ValuePoint



PARTICIPATING ADDENDUM

WIRELESS, DATA, VOICE AND ACCESSORIES

Led by the State of Utah

Master Agreement #: MA176-1

Contractor: **T-MOBILE USA, INC.**

Participating Entity: **(STATE) OF WYOMING**

1. Scope: This Participating Addendum ("PA") covers the NASPO ValuePoint Wireless, Data, Voice and Accessories Master Agreement led by the State of Utah (Master Agreement No: MA176-1, the "Master Agreement") for use by state agencies and other entities, as provided in the Master Agreement, and as more specifically detailed in Paragraph 2, "Participation," below. There were four (4) categories included in the solicitation:

Category 1: Cellular Wireless Services

Category 2: Equipment and Accessories

Category 3: Turnkey Wireless and IoT Solutions offered as a Product

Category 4: Alternative Wireless Transport Options

Contractor was awarded Categories 1, 2, 3A, and 3C.

Participating Entity has elected to participate in Categories: 1, 2, 3A and 3C

2. Participation: This PA may be used by all state agencies, institutions of higher education, political subdivisions and other entities who are authorized by the State Chief Procurement Official or otherwise eligible to place orders against this PA (collectively "Purchasing Entities"). It will be the responsibility of the Purchasing Entity to comply with any legal or regulatory provisions applicable to the Purchasing Entity. A Purchasing Entity may issue individual releases (Purchase Orders) against this PA on an as-needed basis.
3. Participating Entity Modifications to the Master Agreement: This Participating Addendum, consisting of three (3) pages, and Attachment A, Wyoming General Conditions, consisting of six (6) pages, are added to the Master Agreement. In the event of any conflict or inconsistency between this Participating Addendum, Attachment A, Wyoming General Conditions, and the Master Agreement, the following order of precedence will govern as between the Participating State and the Contractor: (1) Attachment A, Wyoming General Conditions, (2) this Participating Addendum, and (3) the Master Agreement, and then any other document incorporated by reference.
4. Administrative Fee and Reporting: The State of Wyoming is electing not to collect administrative fees at this time. The Master Agreement requires that Contractor provide Participating Entities with specific equipment sales summaries at no additional cost; as well as custom reports (usage reports which include full itemization of call details, such as the information on the Contractor's standard bill for Participating Entities' accounts, to enable verification of usage including: (1) call date, call number, call length, call time, and

NASPO ValuePoint

**PARTICIPATING ADDENDUM****WIRELESS, DATA, VOICE AND ACCESSORIES**

Led by the State of Utah

(2) plan cost, per minute charges, overage cost, additional features charges and other fees, etc.

5. Individual Customer: Each Purchasing Entity placing an order under this PA will be treated as if it was an Individual Customer. Except to the extent modified in this PA, each Purchasing Entity will be responsible for compliance with the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Purchasing Entity will be responsible for its own charges, fees and liabilities. Each Purchasing Entity will have the same rights to any indemnity or to recover any costs allowed in the contract for its purchases; and Contractor will apply the charges to each Participating Entity individually. The Individual Customer agrees to the terms of the PA, including the disclosure of limited account information as part of the contractual reporting requirements to NASPO ValuePoint and/or the Participating Entity for purposes of monitoring the contract and calculating the administrative fee.
6. Primary Contacts: The primary contact individuals for this PA are as follows (or their named successors):

Contractor: T-Mobile USA, Inc.

Name:	David Bezzant
Address:	c/o T-Mobile USA, Inc., 12920 SE 38 th Street, Bellevue, WA 98006
Telephone:	(480) 638-2608
Email:	David.Bezzant@T-Mobile.com

Participating Entity: State of Wyoming

Name:	Mandy Gershmel, Senior Buyer, A&I Procurement
Address:	2800 Central Avenue, Cheyenne, WY 82002
Telephone:	(307) 777-6718
Email:	Mandy.gershmel1@wyo.gov

7. Software Terms and Conditions: Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software; however, in the event of a conflict in language between an end user license agreement (EULA) and the Participating Addendum, as modified by Attachment A, Wyoming General Conditions, the language in this Participating Addendum, as modified by Attachment A, Wyoming General Conditions, will supersede and control. In addition, any language in a EULA which violates a Purchasing Entity's constitution, statute or other applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.

NASPO ValuePoint

**PARTICIPATING ADDENDUM****WIRELESS, DATA, VOICE AND ACCESSORIES**

Led by the State of Utah

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

The parties have executed this Participating Addendum as of the date of final execution below.

Participating Entity: State of Wyoming	Contractor: T-Mobile USA, Inc.
Signature: DocuSigned by: <i>Mandy Gershmel</i> 88EEC7641EBB4C3	Signature: DocuSigned by: <i>James Kirby</i> 54BE389356F9400
Printed Name: Mandy Gershmel	Printed Name: James Kirby
Title: Senior Buyer, A&I Procurement	Title: vice President, Sales
Date: 2/25/2020	Date: 3/9/2020

ATTORNEY GENERAL APPROVAL AS TO FORM ONLY WITH ATTACHMENT A:

Tyler M. Renner, Assistant Attorney General

Feb. 20, 2020

Date

WYOMING DEPARTMENT OF ADMINISTRATION & INFORMATION:
DocuSigned by:

6F4BEF2B8DF5404

Patricia L. Bach, Director

3/19/2020

Date

For questions on the Participating Addendum or NASPO ValuePoint cooperative contracting process, please contact the NASPO ValuePoint Cooperative Contract Coordinator assigned to this Portfolio, as provided on this Portfolio's webpage at www.naspovaluepoint.org or the NASPO ValuePoint team at ccc@naspovaluepoint.org.

Attachment A Wyoming General Conditions

This Attachment A, Wyoming General Conditions, supplements and replaces terms and conditions contained in Utah NASPO ValuePoint Master Agreement – Number MA176-1, dated August 16, 2019, and Participating Addendum for NASPO Valuepoint Cooperative Purchasing Program for Wireless Data, Voice and Accessories (collectively referred to as "Participating Addendum") entered into between T-Mobile USA, Inc. ("Contractor") and the State of Wyoming (referred to in this Attachment A as "State"). In the event of any inconsistencies between the terms and conditions contained in the Participating Addendum and this Attachment A, the terms and conditions in this Attachment A shall control and shall supersede and replace the terms contained in the Participating Addendum.

The following General Conditions are incorporated into the Participating Addendum:

1. **Acceptance.** Contractor shall notify State if State's purchase order is not accepted by Contractor. Any items received by State and not rejected within thirty (30) days of the date of the invoice shall be deemed accepted by State.
2. **Partial Shipments.** Contractor shall not make partial shipments of any product on a single vendor order, unless authorized by State.
3. **General Provisions.**

A. Amendments. Any changes, modifications, revisions or amendments to this Participating Addendum which are mutually agreed upon by the parties to this Participating Addendum shall be incorporated by written instrument, executed by all parties to this Participating Addendum.

B. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Participating Addendum as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

C. Assignment Prohibited and Participating Addendum Shall Not Be Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Participating Addendum without the prior written consent of the other party. The Contractor shall not use this Participating Addendum, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the State.

D. Assumption of Risk. The Contractor shall be responsible for any loss of state or federal funding, either administrative or program dollars, due to

Contractor's failure to comply with state or federal requirements. The State shall notify the Contractor of any state or federal determination of noncompliance.

E. Audit and Access to Records. The State and any of its representatives shall at a mutually agreeable time and location, once annually, have access to any financial books, documents, papers, and records of the Contractor which are pertinent to this Participating Addendum. The Contractor shall, upon receiving thirty (30) days' written instruction from the State, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor which are pertinent to this Participating Addendum. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any reasonable audit authorized by the State. In the event the audit is to be performed by a third party, that party must first execute Contractor's Standard Non-Disclosure Agreement. Any information generated by an Audit shall be considered the Confidential Information of Contractor.

F. Availability of Funds. Each payment obligation of the State is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for the continuance of the services performed by the Contractor, the Participating Addendum may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

G. Award of Related Contracts. The State may award supplemental or successor contracts for work related to this Participating Addendum or may award contracts to other contractors for work related to this Participating Addendum. The Contractor shall cooperate fully with other contractors and the State in all such cases.

H. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Participating Addendum.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Participating Addendum shall be kept confidential by the Contractor unless written permission is granted by the State for its release. If and when Contractor receives a request for information subject to this Participating Addendum, the Contractor shall notify the State within ten (10) days of such request and shall not release such information to a third party unless directed to do so by the State. Notwithstanding the foregoing, Contractor is not obligated to return Confidential Information that it is required by law or regulation

to retain; and (ii) that the receiving party remains fully subject to the obligations of confidentiality in this Participating Addendum until the later of the eventual destruction or the termination or expiration of the confidentiality obligations set out in this Participating Addendum.

J. Extensions. Nothing in this Participating Addendum shall be interpreted or deemed to create an expectation that this Addendum will be extended beyond the term described herein. Any extension of this Participating Addendum shall be initiated by the State, and shall be effective only after it is reduced to writing and executed by all parties to the Participating Addendum.

K. Force Majeure. Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform notifies the other party of the extent and nature of the problem as soon as is practical, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. Notwithstanding anything to the contrary in this Participating Addendum, if the delay or interruption of performance resulting from a force majeure event exceeds thirty (30) days, then the party receiving the delayed performance may terminate this Participating Addendum upon ten (10) business days' notice to the other party.

L. Indemnification. The Contractor shall release, indemnify, and hold harmless the State of Wyoming and their officers, agents and employees, from any and all third party claims, suits, liabilities, court awards, damages, attorneys' fees and expenses to the extent arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, attorneys' fees and expenses arising out of Contractor's negligence or other tortious conduct.

M. Independent Contractor. The Contractor shall function as an independent contractor for the purposes of this Participating Addendum, and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Participating Addendum, the Contractor shall be free from control or direction over the details of the performance of services under this Participating Addendum. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Participating Addendum, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Participating Addendum. Nothing in this Participating Addendum shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the State, or to

incur any obligation of any kind on behalf of the State of Wyoming or the State. The Participating Addendum agrees that no health or hospitalization benefits, workers' compensation or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Participating Addendum.

N. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Participating Addendum, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Participating Addendum. If the Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Participating Addendum without liability to the State, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

O. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), and the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of sex, color, race, religion, national origin or disability in connection with the performance of this Participating Addendum.

P. Notices. All notices arising out of, or from, the provisions of this Participating Addendum shall be in writing and given to the parties at the address provided under this Participating Addendum, either by regular mail, email (mandy.gershmel1@wyo.gov and jess.granius1@t-mobile.com) or delivery in person.

Q. Notice of Sale or Transfer. The Contractor shall provide the State with notice of any proposed sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Participating Addendum and, when possible and lawful, in advance of the transaction. If the State determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Participating Addendum, then the State may, at its discretion, terminate or renegotiate the Participating Addendum.

R. Patent or Copyright Protection. The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the State for any infringement or alleged infringement of such patent, trademark, copyright, license or other restrictions for items the Contractor develops for the State under this Participating Addendum.

S. Prior Approval. This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. § 9-2-1016(b)(iv).

T. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the State as the sponsoring State and shall not be released without prior written approval from the State.

U. Severability. Should any portion of this Participating Addendum be judicially determined to be illegal or unenforceable, the remainder of the Participating Addendum shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

V. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming expressly reserves sovereign immunity by entering into this Participating Addendum and specifically retains all immunities and defenses available to it as a sovereign. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Participating Addendum, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Participating Addendum shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

W. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

X. Termination of Addendum. This Participating Addendum may be terminated, without cause, by either party upon thirty (30) days written notice. This Participating Addendum may be terminated immediately for cause if the Contractor

fails to perform in accordance with the terms of this Participating Addendum except for those beneficiary rights allowable under this Participating Addendum.

Y. Third-Party Beneficiary Rights. Except for those third-party beneficiary rights allowable under this Participating Addendum, the parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum, and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.

Z. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Participating Addendum.

AA. Waiver. The waiver of any breach of any term or condition in this Participating Addendum shall not be deemed a waiver of any prior or subsequent breach.

BB. Counterparts. This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum. Delivery by the Participating Addendum of an originally signed counterpart of this Participating Addendum by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the State.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.