

**AGREEMENT
BETWEEN THE
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
AND
INX, LLC**

THIS AGREEMENT is made and entered into on the date of the last signature entered below by and between the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, P.O. Box 568, Albuquerque, New Mexico 87103-0568 (hereinafter referred to as the "Water Authority") and INX, LLC, a wholly-owned subsidiary of Presidio Networked Solutions, Inc., a Maryland Corporation, 1720 Louisiana Blvd. NE #301, Albuquerque, NM 87110 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the Water Authority requires network and hardware support services; and

WHEREAS, the Contractor has in-depth knowledge of the Water Authority's network infrastructure and industry best practices; and

WHEREAS, the Contractor was competitively selected and awarded a contract through the State of New Mexico's General Services Department procurement process after notice and publication and in accordance with the requirements of the procurement laws and regulations applicable to that public agency; and

WHEREAS, the Water Authority desires to engage the services of the Contractor based upon their selection and award by the State of New Mexico under Statewide Price Agreement No. 90-000-00-01008BF, Title: Data Wide/Local Area Network Systems Equipment & Services, which is attached hereto and incorporated herein as part of this Agreement; and

WHEREAS, the Contractor is able to provide such services at a cost and in a timeframe in accordance with Water Authority goals and objectives.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services:** The Contractor shall perform the following services (hereinafter referred to as the "Services") in a satisfactory and proper manner, as determined by the Water Authority:

Provide hardware and support services as described in the attached Statewide Price Agreement No. 90-000-00-01008BF, Title: Data Wide/Local Area Network, which is attached hereto and incorporated herein as part of this Agreement.

2. **Time of Performance:** Services of the Contractor shall commence upon the date of the last signature entered below, and shall be undertaken and completed in such sequence as

to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by December 31, 2013. This Agreement may be extended upon written agreement of the parties in accordance with and conditioned upon extension of the Statewide Price Agreement No. 90-000-00-01008BF.

3. **Compensation and Method of Payment:**

A. **Compensation.** For performing the Services specified in Section 1 hereof, the Water Authority agrees to pay the Contractor up to the amount of **Five Hundred Thousand and 00/100 Dollars (\$500,000.00)**, which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such Services.

B. **Method of Payment for Services.** Payment for Services shall be made at the rates set forth in the rate schedules attached as Attachment A of the Statewide Price Agreement No. 90-000-00-01008BF and incorporated herein. Payments shall be made to the Contractor upon completion and acceptance of agreed upon milestones. Payments shall be made upon receipt by the Water Authority of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the Water Authority and on the condition that the Contractor has accomplished the Services to the satisfaction of the Water Authority.

C. **Appropriations.** Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Board making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Water Authority Board, this Agreement may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to the Contractor. Such event shall not constitute an event of default. All payment obligations of the Water Authority and all of its interest in this Agreement will cease upon the date of termination. The Water Authority's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

4. **Independent Contractor:** Neither the Contractor nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the Water Authority under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Water Authority under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. **Personnel:**

- A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Water Authority.
- B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.
- C. None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of the Water Authority. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of the Agreement.

6. **Indemnity:** The Contractor agrees to defend, indemnify and hold harmless the Water Authority and its officials, agents and employees from and against any and all claims, actions, suits or proceeding of any kind brought against said parties for or on account of any matter arising out of or resulting from the Services performed by the Contractor under this Agreement. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Insurance:** The Contractor shall procure and maintain at its expense until final payment by the Water Authority for services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish the Water Authority a certificate or certificates in form satisfactory to the Water Authority showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the Water Authority shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

- A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations

\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire - Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the Authority by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

- B. **Automobile Liability Insurance.** An automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work.
 - C. **Workers' Compensation Insurance.** Workers' compensation insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.
 - D. **Increased Limits.** If, during the term of this Agreement, the Water Authority requires the Contractor to increase maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.
8. **Discrimination Prohibited:** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.
 9. **ADA Compliance:** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the Water Authority as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the Water Authority, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.
 10. **Reports and Information:** At such times and in such forms as the Water Authority may require, there shall be furnished to the Water Authority such statements, records, reports, data and information, as the Water Authority may request pertaining to matters covered by this Agreement. Unless authorized by the Water Authority, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the Water Authority.

11. **Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by this Agreement. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.
12. **Audits and Inspections:** At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the Water Authority to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
13. **Conflict of Interest; Governmental Conduct Act:** The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a current or former "public officer or employee" have been followed.
14. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The Water Authority shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
15. **Compliance with Laws:** In performing the Services required herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.
16. **Changes:** The Water Authority may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Water Authority and the Contractor, shall be incorporated in written amendments to this Agreement.
17. **Assignability:** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the Water Authority therein.
18. **Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Water Authority shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at

least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs, and reports prepared by the Contractor under this Agreement shall, at the option of the Water Authority, become its property. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the Water Authority for damages sustained by the Water Authority by virtue of any breach of this Agreement by the Contractor, and the Water Authority may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the Water Authority from the Contractor is determined.

19. **Termination for Convenience of Water Authority:** The Water Authority may terminate this Agreement at any time without cause and for the convenience of the Water Authority by giving at least ten (10) days' notice in writing to the Contractor. If the Contractor is terminated by the Water Authority as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.
20. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
21. **Enforcement:** The Contractor agrees to pay to the Water Authority all costs and expenses including reasonable attorney's fees incurred by the Water Authority in exercising any of its rights or remedies in connection with the enforcement of this Agreement.
22. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
23. **Applicable Law:** This Agreement shall be governed by the construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the Albuquerque Bernalillo County Water Utility Authority.
24. **Notice:** All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person, or on receipt, if mailed by certified or registered mail, postage pre-paid, and addressed to the Water Authority or to the Contractor at the following addresses, unless either party changes the address by giving written notice of the change to the other. The addresses for notices are:

Notice to Contractor: INX, LLC
1720 Louisiana Blvd. NE #301
Albuquerque, NM 87110

Notice to the Water Authority: Mark S. Sanchez, Executive Director
Albuquerque Bernalillo County Water Utility Authority
One Civic Plaza NW, Room 5012
Albuquerque, NM 87102

25. **Approval Required:** This Agreement shall not become effective or binding until approved by the Water Authority's Executive Director.

IN WITNESS WHEREOF, the Water Authority and the Contractor have executed this Agreement on the date of the last signature entered below.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

**CONTRACTOR: INX, LLC, a wholly-
owned subsidiary of Presidio Networked
Solutions, Inc.**

Approved By:

Mark S. Sanchez, Executive Director

Date: _____

Reviewed by:

Charles W. Kolberg, General Counsel

Date: _____

By: _____

Print: _____

Title: _____

Date: _____

State Taxation and Revenue Department
Taxpayer Identification No.:
03-045509-00-0

Federal Taxpayer Identification No.
76-0515249



State of New Mexico
General Services Department
Purchasing Division

GSD/PD (Rev. 01/11)

Statewide Price Agreement Amendment


Awarded Vendor
0000044764
INX, Inc.
1720 Louisiana Blvd. NE #301
Albuquerque, NM 87110
Telephone No. 505-256-9047

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Five

Term: December 28, 2008 - December 10, 2012

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Gerrie Becker 

Telephone No.: (505) 476-3121

Invoice:

As Requested

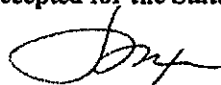
Title: **Data Wide/Local Area Network**

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 11, 2011 to December 10, 2012 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico



New Mexico State Purchasing Agent

Date: 11/9/11

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472





State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
0000044764
INX Inc.
1720 Louisiana Blvd. NE, #301
Albuquerque, New Mexico 87110
Telephone No. (505) 256-9047

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Four

Term: December 28, 2008 – December 10, 2011

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Rick Muniz

Telephone No.: (505) 827-0521

Invoice:
As Requested

Title: Data Wide/Local Area Network

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof. This amendment is issued to reflect the following effective immediately:

This amendment shall hereby incorporate Article 27A as required to meet BTOP Federal Grant Reporting requirements (see attached).

The above vendor has accepted the additional Terms and Conditions and is authorized to accept Purchase Orders utilizing BTOP funds.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 10/07/11

Handwritten signature in blue ink.

ARTICLE 27A – ADDITIONAL PROVISIONS PART 1

1. Reporting Requirements.

A. If any part of this Agreement is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"), Contractor agrees to abide by the reporting requirements of that Act, as amended. Receipt of funds pursuant to ARRA is expressly contingent upon Contractor's agreement that it will fully comply with the reporting requirements specified by the Act. These reporting requirements shall include, but not necessarily be limited to, the following, as applicable:

- a) Contractor shall report information required by the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), as that law may be amended or renumbered.
 - a. The name of the entity receiving the award.
 - b. The amount of the award.
 - c. Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source, and an award title descriptive of the purpose of each funding action.
 - d. The location of the entity receiving the award and the primary location of the performance under the award, including the city, State, congressional district, and country.
 - e. A unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity.
 - f. Any other relevant information specified by the Office of Management and Budget.
- b) Contractor will acquire or update their DUNS number and register with the Central Contractor Registration, if applicable.
- c) Contractor shall report information responsive to ARRA Section 1512 as identified in that Section, and as that Section may be amended or renumbered, and in Federal Office of Management and Budget ("OMB") memoranda and supplements addressing Section 1512 reporting, as amended or renumbered. Reported information will include:
 - a) Data elements specific to vendor reporting.
 - i. Award Number – Prime Recipient Vendor
 - ii. Subaward Number – Sub-recipient Vendor
 - iii. Vendor DUNS Number
 - iv. Vendor HQ Zip Code + 4
 - v. Vendor Name
 - vi. Product and Service Description
 - vii. Payment Amount
 - b) Data elements for which the prime recipient or sub-recipient is responsible, but which are

generated by the vendor, including, but not limited to: project status, jobs creation, and number of jobs.

- c) Data on number of jobs will comply with OMB Memorandum M-09-21 description of a mathematical formula to calculate Full Time Equivalence (FTE) for jobs created and retained, at page 35, and as that memorandum may be amended, supplemented, or replaced by OMB.
- d) If applicable, pursuant to ARRA Division B, Title VII, or pursuant to OMB Guidelines, memoranda or other directives, Contractor will report the names and compensation of the five most highly compensated officers of the Contractor.
 - d) Contractor shall report any other information specified by the funding federal agency for ARRA-funded projects in addition to the reporting requirements specified in Section 1512 and OMB Memoranda.
 - e) At the direction of the Agency, Contractor will use any automated data system identified by Agency to report ARRA funds, jobs created or retained, or any other ARRA-mandated reporting requirements.
 - f) Contractor will meet all reporting deadlines established by the Agency to ensure compliance with ARRA-mandated reporting deadlines as well as any deadlines specified by the Agency for the reporting of data that the Agency requires in order to comply with Agency's ARRA reporting requirements.
 - g) In the event that additional data reporting is imposed on the Agency by federal law or by an appropriate federal agency subsequent to the execution of this Agreement, Contractor agrees to fully comply with any and all additional reporting requirements as directed by the Agency.

B. Contractor shall also be fully responsible for complying with any reporting requirements which apply to any subcontracts awarded pursuant to this Agreement and in accordance with Section 8 of this Agreement regarding subcontracting, such reporting to comply with ARRA and/or the Federal Funding Accountability and Transparency Act (P.L. 109-282), as those laws may be amended or renumbered. Contractor shall be responsible for ensuring that all required subcontractor reporting is completed in a timely and accurate manner.

- 1) The data elements required for compliance shall include, but not necessarily be limited to, the following, as applicable:
 - a. Specific data elements identified by OMB for vendor reporting.
 - b. Any other information specified by OMB or the funding federal agency, if applicable.
 - c. The number of jobs created and retained by the project or activity, with a narrative description of the types of jobs. Data on number of jobs will comply with OMB M-09-21 description of a mathematical formula to calculate Full Time Equivalence (FTE), as that memorandum may be amended or supplemented by OMB.
- 2) At the direction of the Agency, subcontractor will use any automated data system identified by the Agency to track ARRA funds, jobs created or retained, or any other ARRA mandated reporting requirements.
- 3) ARRA Funds may be used in conjunction with other funds to perform the Scope of Work under this Agreement, but tracking and reporting must be done separately to meet the reporting requirements of ARRA and the OMB Guidance.
- 4) Contractor agrees that it will include in any subcontract agreement subject to these

requirements, an affirmative obligation upon any subcontractor to collect, maintain and timely provide any and all information subject to the reporting requirements specified herein and a specific authorization for the release of this information directly to the Agency upon the Agency's request.

2. Additional Audit Requirements.

A. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:

- 1) Allow access by any appropriate Federal entity, including an inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) to examine any records of the Contractor and any subcontractor pursuant to this original Agreement that pertain to, and involve transactions relating to, this Agreement or any subcontract pursuant to this Agreement; and
- 2) To allow any appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 to interview any officer or employee of the Contractor or any subcontractor pursuant to this original Agreement regarding such transactions.
- 3) Nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

B. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:

- 1) Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the Contractor or any of Contractor's subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- 2) Allow the Comptroller General and his representatives to interview any officer or employee of the Contractor or any of Contractor's subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
- 3) Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

C. If any part of this Agreement is funded pursuant to ARRA, Contractor agrees to maintain documentation and records that support all information submitted to the Agency for Federal Reporting purposes.

D. Contractor agrees that it will include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with and submit to all of the additional audit requirements specified herein.

3. Additional ARRA Requirements.

A. The Agency and Contractor hereby acknowledge that any funding provided pursuant to ARRA is one-time funding which shall be limited to the specific purposes and

deliverables specified herein.

B. Whistleblower Protections of Employees Under ARRA

- 1) Contractor will comply with Section 1553 of the ARRA regarding Whistleblower protections, as that section may be amended or renumbered.
- 2) Any employer, including Contractor, receiving funds pursuant to ARRA shall post notice of the rights and remedies provided under this section. The notice of rights shall be the same as or equivalent to the example notice set forth in Attachment 2.
- 3) Contractor agrees that it will include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with the whistleblower protection provisions specified herein.

C. Buy American Provisions

- 1) If applicable, Contractor will comply with Division A, Section 1605 of ARRA regarding Buy American Provisions, regarding use of American iron, steel, and manufactured goods, as that section may be amended or renumbered.
- 2) If applicable, Contractor is responsible for advising any subcontractor of this requirement.
- 3) In accordance with Section 1605 of the Recovery Act, the Secretary of Commerce has granted a limited waiver of the Recovery Act's Buy American requirements with respect to certain broadband equipment that will be used in projects funded under the BTOP to include the following:
 - Broadband Switching Equipment – equipment necessary to establish a broadband communications path between two points.
 - Broadband Routing Equipment – equipment that routes data packets throughout a broadband network
 - Broadband Transport Equipment – equipment for providing interconnection within the broadband provider's network
 - Broadband Access Equipment – equipment facilitating the last mile connection to a broadband subscriber.
 - Broadband Customer Premises Equipment and End-User Devices – end-user equipment that connects to a broadband network.
 - Billing/Operations Systems – equipment that is used to manage and operate a broadband network or offer a broadband service.

This waiver does not include fiber optic cables, coaxial cables, cell towers, and other facilities that are produced in the United States in sufficient quantities to be reasonably available as end products. The Contractor will be responsible for ensuring that the goods proposed are in conformance with the above referenced law. The responsibility extends to informing all affected subcontractors and material suppliers of these specific requirements and to ensure that the goods being proposed and/or supplied are in conformance with the standard specification.

D. Wage Rate Requirements

- 1) If applicable, Contractor will comply with Division A, Section 1606 of ARRA regarding wage rate requirements, as that section may be amended or renumbered.
- 2) If applicable, Contractor will comply with Division B, Section 1601 of ARRA regarding application of certain labor standards to projects financed with certain tax-favored bonds.
- 3) If applicable, Contractor is responsible for advising any subcontractor of this requirement.

4. Mandatory Waste, Fraud or Abuse Reporting.

If any part of this Agreement is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"), Contractor shall:

A. Promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving such ARRA funds.

B. Promptly report to the Agency and NMORR any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has committed fraud, waste, or abuse of ARRA funds.

C. Contractor agrees that it will include in any subcontract agreement an affirmative obligation upon any subcontractor to comply with the mandatory waste, fraud or abuse reporting requirements specified herein.

5. Non-Compliance With ARRA Reporting Requirements.

Failure of Contractor or any subcontractor to Contractor to comply with the reporting requirements, through material omission, knowingly reporting false data, or failure to comply with reporting deadlines, may result in withholding of payment and/or termination of this Agreement.

6. Cited Documents.

Cited documents may be viewed in their entirety at United States Government websites, and it is Contractor's responsibility to fully understand Contractor's duties and responsibilities for reporting and disclosure requirements when receiving ARRA funds pursuant to this or any other agreement under which ARRA funds are disbursed.

American Recovery and Reinvestment Act of 2009	http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf
Federal Funding Accountability and Transparency Act	http://frwebgate.access.gpo.gov/cgi-

of 2006 (P.L. 109-282)	bin/getdoc.cgi?dbname=109_cong_bill s&docid=f:s2590enr.txt.pdf
OMB Guidance and Circulars	http://www.whitehouse.gov/omb/
Federal Regulations	http://www.gpoaccess.gov/cfr/index.html
United States Code	http://uscode.house.gov/

7. Debarment And Suspension And Other Responsibility Matters.

- A. Contractor certifies by signing this Agreement, that Contractor and Contractor's principals, if applicable, to the best of Contractor's knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses enumerated above in this Paragraph; and, (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public Agreements or transactions (Federal, State or local) terminated for cause or default. If applicable, Contractor certifies that it and its principals have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a.
- B. Contractor's certification in Paragraph A is a material representation of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency, the Agency may terminate the Agreement.
- C. Contractor shall require each proposed first-tier sub-Contractor whose subcontract will equal or exceed \$25,000, to disclose to the Agency whether as of the time of award of the subcontract, the sub-Contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. Contractor shall make such disclosures available to the Agency. If the sub-

Contractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal department or agency, the Agency may refuse to approve the use of the sub-Contractor.

All other articles of the original contract remain the same.



GSD/PD (Rev. 01/11)

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor

0000044764

INX Inc.

1720 Louisiana Blvd. NE #301

Albuquerque, NM 87110

Telephone No. (505) 256-9047

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Three

Term: December 28, 2008 – December 10, 2011

Ship To:

All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

Invoice:

As Requested

Title: Data Wide/Local Area Network

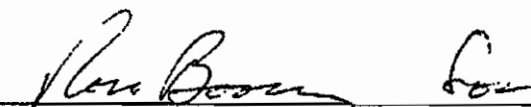
This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately.

Please see updated ESS schedule.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 03/18/11

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

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STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

GSD/PD 003-D2 (Rev. 01/09)

Awarded Vendor
0000044764
INX Inc.
1720 Louisiana Blvd, NE #301
Albuquerque, NM 87110

Telephone No. (505) 256-9047

**Price Agreement
Amendment**

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Two

Term: December 28, 2008-December 10, 2010

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Invoice:

As requested

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

Commodity: Data Wide/Local Area Network

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 11, 2010 to December 10, 2011 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 11/22/2010

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

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STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

GSD/PD 003-D2 (Rev. 01/09)

Awarded Vendor
(0000044764)
INX Inc.
1720 Louisiana Blvd NE #301
Albuquerque, NM 87110
Telephone No. (505) 256-9047

Price Agreement
Amendment

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: One

Term: December 28, 2008 - December 10, 2009

Ship To:
All State of New Mexico Agencies, Commissions,
Institutions, Political Sub-Divisions and Local Public
Bodies allowed by Law.

Invoice:
As requested

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

Commodity: Data Wide/Local Area Network

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Contract provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 11, 2009 to December 10, 2010 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 11/25/09

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

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RECEIVED
STATE PURCHASING AGENCY

2008 DEC 16 PM 4:18

STATE OF NEW MEXICO
STATEWIDE PRICE AGREEMENT

DATA WIDE/LOCAL AREA NETWORK SYSTEMS
EQUIPMENT & SERVICES
Manufacturer: Cisco

PRICE AGREEMENT NUMBER: 90-000-00-01008BF

THIS PRICE AGREEMENT is made and entered into by and between the State of New Mexico, State Purchasing Division, and Department of Information Technology, hereinafter referred to as the "Procuring Agency" and INX Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of this Agreement, the Contractor's proposal including any best and final offers, and the RFP are hereby incorporated by reference in this contract. In case of any conflict with the reference documents, the order of precedence shall be this Agreement, the Contractor's proposal including any best and final offers, then the RFP.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 - DEFINITIONS

- A. **"Acceptance"** shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.
- B. **"Change Request"** shall mean the document utilized to request changes or revisions in the Scope of Work.
- C. **"Chief Information Officer ("CIO")"** shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.
- D. **"Deliverable"** shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- E. **"DoIT"** shall mean the Department of Information Technology.
- E. **"DFA"** shall mean the Department of Finance and Administration; **"DFA/CRB"** shall mean the Department of Finance and Administration, Contracts Review Bureau.
- F. **"Escrow"** shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- G. **"Enhancement"** means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction; After conferring with Procuring Agency, an Enhancement may be identified as minor or major
- H. **"Executive Level Representative"** shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.
- I. **"Know How"** shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals,

records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

J. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

K. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a project and the project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.

L. "Payment Invoice" shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.

M. "Performance Bond" shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.

N. "Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT.

O. "Project Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the Project or the administration of this Agreement.

P. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

Q. "State Purchasing Agent (SPA)" - shall mean the State Purchasing Agent for the State of New Mexico or designated representative.

R. "State Purchasing Division (SPD)" - shall mean the State Purchasing Division of the General Services Department for the State of New Mexico

ARTICLE 2 – SCOPE OF WORK

A. The scope of work shall be for Data Wide/Local Area Network Systems Equipment & Services to interface with current and future telecommunications systems for the Department of Information Technology. The scope also includes cost effective telecommunication systems that would be advantageous to the State of New Mexico in meeting the future challenges. This includes products and services that must be compatible with current Data Wide/Local Area Network Systems Equipment, user training, and installation.

The Price Agreement(s) resulting from this procurement for Data Wide/Local Area Network Systems Equipment & Services may be used statewide by the executive, judicial and legislative branches of government as well as local governments and public educational entities.

B. **Performance Measures.** Contractor shall substantially perform the Performance Measures set forth in Attachment A. In the event the Contractor fails to obtain the results described in Attachment A, the Procuring Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6.

D. License. Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, perpetual license to use, modify, and copy the software as defined in Article 2 and Attachment A.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the Procuring Agency as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the Procuring Agency to load, compile and maintain the software in the event of a breach.

2) If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the licensed software it provided the Agency; or, if this Agreement is terminated, or if the Contractor breaches this Agreement, the Contractor shall make available to the Procuring Agency: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the source code and documentation.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for the Deliverables, per the schedule outlined in Attachment A.

B. Payment. Contractor hereby agrees to perform work at or below the published maximum rates of the price agreement as indicated in Attachment A.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID.**

C. Taxes. The Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the

Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. The Procuring Agency may retain twenty percent (20%) of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. Not Applicable

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Attachment A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager.

B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

- 1.) Complies with the Deliverable requirements as defined in Article 2 and Attachment A
- 2.) Complies with the terms and conditions of the RFP;
- 3.) Meet the performance measures for the Deliverable(s) and this Agreement;
- 4.) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 5.) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within thirty (30) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the thirty (30) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (30) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt

of comments, the Contractor will have fifteen (15) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within thirty (30) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND SPD. This Agreement shall terminate on December 10, 2009 unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed five years, except as set forth in Section 13-1-150 NMSA 1978.

The initial term of the Price Agreement(s) shall be for one calendar year. After the first year, the DoIT in cooperation with the SPA reserves the option of renewing any of the initial price agreement(s) on an annual basis for up to four (4) additional one-year terms. In no case will the price agreement(s), including all renewals thereof, exceed a total of five (5) years in duration. The proposed prices shall not increase for the first year and will only be adjusted by mutual agreement thereafter.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

A. **General.** By the either Party upon written notice to be delivered to the other party not less than ten (10) business days prior to the intended date of termination.

B. **Appropriations.** By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. **Obligations and Waiver.** By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. **THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO**

CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1.) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency.
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work,, except as the Procuring Agency may direct, for orderly completion and transition;
- 4.) Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5.) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
- 6.) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency programs;
- 7.) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction.
- 8.) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred.
- 9.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Project Manager, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall 1) Retain ownership of all work products and documentation created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 –INDEMNIFICATION

A. **General.** The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT .

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

ARTICLE 9 - INTELLECTUAL PROPERTY

A. **Ownership.** Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Know How. The Procuring Agency shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency. Contractor shall notify the Procuring Agency, within fifteen (15) business days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the Procuring Agency and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Procuring Agency. If, by judgment of a court of competent jurisdiction, Intellectual Property, Know How, or Know How Rights are not deemed to be created or owned by the Procuring Agency, Contractor hereby acknowledges and agrees to grant to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. **Intellectual Property Indemnification.** The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorneys fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

- 1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2.) Allow the Contractor to control the defense and settlement of the claim; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. **Procuring Agency Rights.** If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

- 1.) Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
- 2.) Replace or modify the product or service so that it becomes non-infringing; or
- 3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

A. **General.** The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. **Software.** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for the warranty

period as indicated in the Equipment Services Schedule (BSS) after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement.

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. **Independent Contractor.** The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. **Subject of Proceedings.** Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

Not Applicable.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

Not Applicable

ARTICLE 16 – DEFAULT/BREACH

In case of default and/or breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the Procuring Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Procuring Agency or for losses occasioned by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the

Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

ARTICLE 21 - RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 22 - CONFIDENTIALITY

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 23 - CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 26 – New Mexico Employees Health Coverage

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Contractor must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Contractor must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenwmexico.state.nm.us/>.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 27 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such

invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 28 – NOTICES

Any party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To SPA: State Purchasing Agent
 Purchasing Division
 Joseph M. Montoya State Building,
 Room 2016
 1100 St. Francis Drive
 Santa Fe, New Mexico 87505

To Contractor: INX Inc.
 1720 Louisiana Blvd. NE
 Albuquerque, NM 87110

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

ARTICLE 29– GENERAL PROVISIONS

A. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

B. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

C. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor

fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

E. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

F. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 30 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 31 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.


ARTICLE 32 - FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party who performance is affected.


ARTICLE 33 - NOTICE OF PENALTIES

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

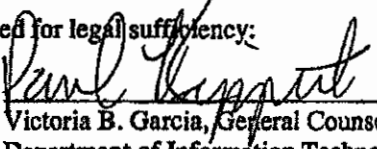
By: 
Marlin Mackey, Secretary/CIO
Department of Information Technology

Date: 12-11-08

By: 
Ted Bonnell
Vice President of Southwest Region
INX Inc.

Date: 12/8/08

Approved for legal sufficiency:

By: 
Victoria B. Garcia, General Counsel
Department of Information Technology

Date: 12/11/08


The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 03-045509-000

By: 
Taxation & Revenue Department

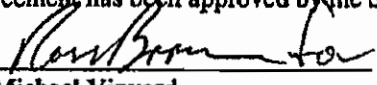
Date: 12/15/08

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: 
Marlin Mackey, Secretary
Department of Information Technology

Date: 12-11-08

This Agreement has been approved by the SPA:

By: 
Michael Vinyard
Purchasing Agent for the State of New Mexico

Date: 12-23-08

ATTACHMENT A
DATA WIDE/LOCAL AREA NETWORK SYSTEMS EQUIPMENT &
SERVICES
Manufacturer: Cisco

DATA WIDE/LOCAL AREA NETWORK SYSTEMS EQUIPMENT AND SERVICES

Best and Final Offer

COST WAN/LAN NETWORK DATA EQUIPMENT SERVICES

Costs for Wide Area/Local Network Data Equipment & Services Form

Offeror Name: INX, Inc.

Changes to Original RFP Response:

C.1.a Hardware Costs:

37.25% off then current Manufacturers Published List Price for hardware. If other than percentage off Published List Price, please describe. Identify the Manufacturers published price list referenced.

13.25% off then current Manufacturers Published List Price for maintenance (Smartnet)

C.1.b Software Costs:

37.25% off then current Manufacturers published list price for software if applicable. If other than percentage off published list price, please describe. Identify the Manufacturers published price list referenced.

APPENDIX I

OFFEROR RESPONSE ADDITIONAL TECHNICAL SERVICE FORM FOR

Data Wide/Local Area Network Equipment & Services

Offeror Name: INX, Inc.

Changes to Original RFP Response:

Additional Job Classification Description	*Experience Level	Maximum Hourly Rate
Network Management Services	6 years	Cost To Be Determined Based on Project Scope of Work
Network Support Services	7 years	Cost To Be Determined Based on Project Scope of Work

*Experience Level =

Junior level is (between) 1 – 4 years

Mid level is (more than) 4 years (less than) 7 years

State of New Mexico Data Wide/Local Area Network Equipment and Services ESS Contract

INX Professional Services

Contract Price

INX Technician I	Onsite Technical and Implementation Support	\$95.00
INX Engineer I	Design and Support Engineer	\$125.00
INX Engineer II	Design and Support Engineer	\$150.00
INX Engineer III	Design and Support Engineer	\$175.00
INX Engineer IV	Design and Support Engineer	\$200.00
INX Project Manager	Project Management	\$150.00
INX Training	INX Training Network	\$95.00
INX-NMS	Network Management Services	TBD based on Project Scope of Work
INX-NSS	Network Support Services	TBD based on Project Scope of Work
Manufacturer 90 Day Warranty on Product		



PRESIDIO

December 30, 2011

Announcing the Acquisition of INX INC.

Dear Valued Business Partner:

As of today, Presidio, Inc. acquired all the shares of INX Inc. As a result of the acquisition, INX Inc. has been converted into a limited liability company, now known as INX LLC ("INX"), a wholly-owned subsidiary of Presidio Networked Solutions, Inc.

From a practical standpoint, nothing has changed with respect to our business relationship with you other than the name change. INX will continue to operate as a separate legal entity, and any agreement that INX Inc. has with you remains with INX LLC. INX will continue to provide products and services under these agreements starting January 1, 2012 under the same tax identification number, 76-0515249. Please note that we have included an updated W-9 with Presidio Networked Solutions, Inc.'s tax identification number, which will be used for federal income tax purposes only. You should use INX LLC's tax identification for all other purposes.

If you currently have an account with INX Inc., please use the established account. For timely processing of payments, please include "INX LLC" as the "Payee". Otherwise, neither our payment process nor our payment address has changed. The payment address remains as follows:

INX LLC, a Presidio Company
ATTN: Accounts Receivable
P.O. Box 4346 (Dept.523)
Houston, TX 77210-4346

OR

pnswestcredit@presidio.com

If you have any accounts receivable questions, please contact Joe Hedgecock at INX LLC by email at JHedgecock@presidio.com. If you have any questions about your agreement or the acquisition by Presidio, please contact Andrew Rosenbaum at INX LLC at 469-549-3927 or at ARosenbaum@presidio.com.

Please note that we have also attached our updated insurance certificate.

We greatly appreciate your cooperation during this transition and look forward to continuing our valued business partnership.

Best regards,

INX LLC, a Presidio Company

enclosures