

CONTRACT NO. 473-16-001503
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS
AND
GRYPHON NETWORKS CORPORATION

This contract for providing services related to the Texas No-Call List is between the Public Utility Commission of Texas, a duly organized agency of the state of Texas, with its office located at 1701 N. Congress Ave., Austin, Texas 78701, and Gryphon Networks Corporation, a Delaware Corporation with offices at 100 Summer Street, Suite 800, Boston, MA 02110 .

Article 1. DEFINITIONS

When used in this Contract, the following terms shall have the following meanings:

1.1 “Public Utility Commission,” “PUC,” “Commission,” or “Agency” means the Public Utility Commission of Texas acting through its Executive Director and the agency’s designated Contract Administrator.

1.2 “Contractor” includes **Gryphon Networks Corporation (“Gryphon”)**, and any successors, heirs, and assigns.

1.3 “Services” means any and all services performed and any and all goods and products delivered by Contractor as specified in Attachment A, Statement of Work (SOW).

1.5 “Parties” means PUC and Contractor. **“Any Party”** means PUC or Contractor.

1.6 “No-Call List” means the Texas No-Call list, as defined in Texas Business and Commerce Code § 304.051. **“Electric List”** means the Electric No-Call list, as defined in PUC Substantive Rule §25.484(c)(3). **“Texas Lists”** means both the No-Call List and the Electric List.

Article 2. COMPENSATION

2.1 Source of Compensation. Contractor acknowledges that the Texas legislature has not appropriated any funds to the PUC for payment for the services provided under this contract. Contractor further acknowledges that all compensation it receives will come from the approved fees paid by applicants for inclusion on the Texas Lists and from registered entities that seek access to the Texas Lists. The parties expressly agree that nothing in this Contract is intended to constitute an obligation against or payable from funds appropriated to the PUC, general revenue funds, or any other funds of the State of Texas, except Section 2.3.F, which provides for travel reimbursement under certain circumstances.

2.2 Consideration. In consideration for the services provided under this Contract, the PUC grants Contractor the right to charge fees related to the Texas Lists as described in Section 2.3.

2.3 Compensation. Contractor agrees to provide all services (including labor, expenses, and any other services) described in Attachment A, SOW, as follows:

- A. Contractor shall not charge a fee to process a request for a number to be placed on the No-Call List or to renew an entry on the No-Call List if the request for placement or renewal is made via the Internet.

- B. Contractor may charge \$3.00 to process a request for a number to be placed on the No-Call List or to renew an entry on the No-Call List if the request is made by mail or by telephone.
- C. Contractor shall not charge a fee to process a request for a number to be placed on the Electric List or to renew an entry on the Electric List if the request is made via the Internet.
- D. Contractor may charge \$3.00 to process a request for a number to be placed on the Electric List or to renew an entry on the Electric List if the request is made by mail or by telephone.
- E. Contractor may charge no more than \$75 per quarter for each distribution of the Texas Lists to persons making telemarketing calls.
- F. If the PUCT requires a Contractor representative to travel to Austin, Texas, the agency will reimburse Contractor for reasonable and necessary travel, lodging, and expenses in accordance with Texas state travel guidelines.
- G. Contractor will not be compensated for administrative costs or overhead.
- H. If Contractor believes that changes in the scope of services to be performed will require Contractor to increase its fee, it must request the PUCT's written authorization to increase its fee. The Contractor must document the changes in the scope of services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this Contract before the Contractor performs any services or may invoice the increased fee.

2.4 Records. Contractor and its subcontractors, if any, shall maintain records and books of account relating to services provided under this Contract. Unless contractor is required to keep records longer under another provision of this Contract, Contractor shall, for a period of seven (7) years following the expiration or termination of this Contract, maintain its records (electronic and paper) of the work performed under this Contract. Records include, but are not limited to correspondence concerning the subject of this Contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor shall make all records that support the performance of services and payment available to PUCT and/or its designees or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT Contract Administrator.

2.5 Sole Compensation. Payments under this Article are Contractor's sole compensation under this Contract. Contractor shall not incur expenses with the expectation that the PUCT or any other agency of the state of Texas will directly pay the expense to a third-party vendor irrespective of the reason for incurring those expenses.

Article 3. CONTRACT ADMINISTRATION

3.1 PUCT Contract Administration. The PUCT designates **Chris Burch** to serve as its primary point of contact and Contract Administrator throughout the term of this Contract. Contractor acknowledges that the PUCT Contract Administrator does not have any authority to amend this Contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission or its authorized designee, Executive Director Brian H. Lloyd.

3.2 Contractor Contract Administration. Contractor designates its Contract Administrator as follows: Melissa Fitzgerald, General Counsel.

3.3 Reporting. Contractor shall report directly to the PUCT Contract Administrator and shall perform all activities in accordance with reasonable instructions, directions, requests, rules, and regulations issued during the term of this Contract as conveyed to Contractor by the PUCT Contract Administrator.

3.4 Cooperation. The Parties' respective Contract Administrators shall handle all communications between them in a timely and cooperative manner. The Parties shall timely notify each other by email or other written communication of any change in designee or contact information.

3.5 Inquiries and Prompt Referral. Contractor will promptly notify PUCT of all inquiries regarding this Contract received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

Article 4. REPORTS AND RECORDS

Contractor will provide written reports to the PUCT in the form and with the frequency specified in Attachment A, SOW, or as otherwise agreed to in writing between the Parties.

Article 5. SUBCONTRACTING PARTIES

5.1 Use of Subcontractors. The Parties acknowledge and agree that at the time of execution of this Contract, Contractor intends to perform the Services required under this Contract using its own employees. Contractor will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7.

5.2 Sole Responsibility. Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all such work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this Contract.

5.3 Prime Vendor Contract. The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

Article 6. TERM, SUSPENSION, AND TERMINATION

6.1 Term. This contract is effective as of the date signed by the last signatory and shall continue in effect until July 1, 2020 unless sooner terminated under Sections 6.3 or 6.4 of this Contract.

6.2 Options for Renewal. This Contract does not provide for any renewal options.

6.3 Termination for Cause by the PUCT. If Contractor is in default of any material term of this Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the

default have been made by Contractor, the PUCT may terminate this Contract for default and shall have all rights and remedies provided by law and under this Contract. If PUCT terminates Contractor under Section 18.12, PUCT is not required to provide any notice or opportunity for curing the default.

6.4 Termination for Convenience. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this Contract whenever the interests of the PUCT so require. Contractor may, upon three (3) months written notice to PUCT, terminate this Contract whenever the interests of the Contractor so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided. The PUCT shall not be liable for any damages and/or loss to Contractor as a result of termination for convenience.

6.5. Transfer of Duties. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption to the provision of outreach services.

6.6 Remedies for Breach. All remedies available to PUCT for breach or anticipatory breach of this Contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunction relief, and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.7 Survival. In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it shall end; provided that the provisions of Sections 2.4, 3.5, 6.5, 6.6, 7.3, 9.2, 9.4 through 9.7, 11.4 17.2 and 19.1 through 19.5, 19.7, 19.8 and Articles 1, 10, 12, 14, 15, 16, 20, 21, 23, and 28 shall survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 Material Change Requests. PUCT may propose changes to Attachment A, SOW. Upon receipt of a written request from the PUCT for a change to Attachment A, SOW, Contractor shall, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this Contract. No changes to Attachment A, SOW, will occur without the Parties' written consent as provided in accordance with the terms stated in this Contract.

7.2 Changes in Law, Rules, or Rulings. Subsequent changes in federal or state legislation, rules and regulations or rulings by the PUCT may require modification of the terms of this Contract, including an increase or decrease in Contractor's duties or compensation. In the event of such subsequent changes to statutes, rules, and/or regulations, the PUCT and Contractor shall negotiate the terms of a contract modification in good faith and incorporate such modification into this Contract by written amendment.

7.3 No Assignment of Duties. This Contract shall be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided however that Contractor shall not otherwise, without the prior written consent of the PUCT, assign or transfer this Contract or any obligation incurred under this Contract. Any attempt by Contractor to assign or transfer this Contract or any obligation incurred under this Contract, in contravention of this paragraph, shall be void and of no force and effect.

7.4 Amendments and Modifications. This Contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this Contract.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

Contractor represents, warrants, and covenants that it will perform the services outlined in Attachment A, SOW, in a professional and workmanlike manner, consistent with professional standards of practice in the industry.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

9.1 Risk of Loss. The risk of loss for all items to be furnished hereunder shall remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss shall pass to the PUCT.

9.2 Ownership.

- A. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights shall remain the property of the third party, all finished materials, conceptions, or products created, purchased, and/or prepared for or on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of services hereunder, shall be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the Contract.
- B. Other than the materials identified in Section 9.2.A, all finished or unfinished work product, documents, data, databases, or reports Contractor creates or prepared in the performance of this contract, or has created or prepared in maintaining and managing the Texas lists on behalf of the PUCT since 2001, are the property of the PUCT.
- C. Contractor will give all finished work product, documents, data, databases, or reports belonging to the PUCT to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the Contract.
- D. Upon the expiration of the contract or its termination, Contractor will provide the PUCT with all complete or incomplete documents, data, or records created or prepared in the performance of this contract or any of its predecessors since 2001.
- E. Notwithstanding any other provisions in Article 9, materials created, purchased and/or prepared exclusively by or for the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this Contract.
- F. The PUCT acknowledges that Contractor's use of the Texas Lists databases may require the use of PUCT's intellectual property embodied in those databases. The PUCT grants Contractor a non-exclusive license to use the intellectual property embodied in those databases for the limited purpose of performing its duties under this Contract. This license expires upon termination or expiration of the Contract.

9.3 Licensed Software. With PUCT's advanced written consent, contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing services under this Contract. Contractor shall provide the PUCT with a

copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing services under this Contract.

9.4 Prior Works. Except as provided herein, all previously owned materials, conceptions, or products belonging to Contractor that were in existence before 2001 shall remain the property of Contractor and nothing contained in this Contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.5 Trademarks. The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this Contract, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Contractor under this Contract does not give the PUCT any rights of ownership in the trademark or the software.

9.6 Program Information. Program information, data, and details relating to Contractor's services under this Contract shall be maintained separately from Contractor's other activities. Contractor shall undertake all reasonable care and precaution in the handling and storing of this information.

9.7 Addresses and Phone Numbers Obtained to Provide Services. Upon the expiration or termination of this contract, Contractor shall transfer control of any mailing addresses, toll free telephone numbers, or Internet addresses used to provide services under this agreement to the PUCT. Contractor will inform the PUCT if the Internet address or telephone number provider charges a fee to transfer the address or number. Contractor may not charge the PUCT a fee for requesting or processing a telephone number or address transfer.

9.8 Provision to be Inserted in Subcontracts. Contractor shall insert an article containing sections 9.2.A, 9.2.E., and 9.6 of this Contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Contract.

Article 10. PUBLIC INFORMATION

10.1 Texas Public Information Act. (Texas Government Code Chapter 552). The Parties acknowledge that notwithstanding any other provisions of this Contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the Commission. The Commission will notify Contractor of requests for Contractor's information as provided under the PIA.

10.2 Contract Not Confidential. The Parties acknowledge that not all terms of this Contract may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Additionally, the parties acknowledge that this Contract will be posted on the PUCT's public website, pursuant to Texas Government Code Section 2261.253. The Parties further acknowledge that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 Contractor's Duty to Provide Public Information. Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public and agreed to by the PUCT any information created or exchanged with the state pursuant to this contract. Acceptable formats may include, but are not limited to: paper copies, Microsoft Word, Microsoft Excel, or Adobe PDF files. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the Texas Public Information Act,

Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor's information or data; it shall be Contractor's sole responsibility to do so.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 No Conflicting Relationships. Contractor certifies to the Commission that no existing or contemplated relationship exists between Contractor and the Commission that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the Commission.

11.2 Prohibition on Transactions with Parties Adverse to Commission. Contractor agrees that during the term of this Contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the Commission or that has interests that are directly or indirectly adverse to those of the Commission, with the exception of providing the Texas Lists to persons making telemarketing calls and providing the services contemplated by this contract to register persons on the Texas Lists. The Commission may waive this provision in writing if, in the Commission's sole judgment, such activities of the Contractor will not be adverse to the interests of the Commission.

11.3 Notice of Conflict. Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. Contractor's failure to do so shall be grounds for termination of this contract for cause, pursuant to Section 6.3.

11.4 Revolving Door. Contractor agrees that it will not hire any current or former PUCT employees whose employment with contractor would violate any of the revolving door provisions in the Texas Government Code or the Public Utility Regulatory Act (Title II, Texas Utilities Code.).

Article 12. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the PUCT, the State of Texas and their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with the negligence or willful misconduct of Contractor, its agents, employees and subcontractors, committed in the conduct of this Contract. Contractor shall have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that PUCT may participate in the defense with counsel of their own choosing. Any defense shall be coordinated by contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Contractor and the PUCT

agrees to furnish timely written notice to each other of any such claim.

If all or any part of the deliverables of this Contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any Intellectual Property Right, Contractor may, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor shall, at its expense do one of the following things: (i) procure for PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; or (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

Article 13. INSURANCE

13.1 Legal Compliance. Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas shall be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee.

13.2 Minimum Insurance. Contractor shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

Workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.

Insurance coverage shall be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

13.3 Certificates of Insurance. Contractor shall furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the Effective Date of this Contract, and upon request thereafter. Contractor shall provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, shall constitute a material breach of this Contract. Contractor shall provide thirty (30) days written notice of any notice for renewal and/or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this Contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this Contract, this Contract shall be deemed entered into in the State of Texas and shall be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Contract.

Article 17. COMPLIANCE WITH LAW

17.1 General. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 Taxes. Contractor agrees to comply with any and all applicable state tax laws that may require any filing with and/or payment to the State of Texas as a result of any action taken as a result of this Contract.

17.3 Workers' Compensation. Contractor agrees that it shall be in compliance with applicable state workers' compensation laws throughout the term of this Contract and any renewals or extensions thereof.

17.4 Conflicts. Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the Commission. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this Contract as necessary.

17.5 Compliance with Deceptive Trade Practices Act. Contractor shall comply with Texas Business and Commerce Code Chapter 17.

17.6 Compliance with Americans with Disabilities Act. Contractor shall comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

17.7 Prohibited Use of Appropriated/Other Funds. Contractor shall comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

17.8 Certificate of Interested Parties Form. At the time Contractor submits a signed contract to the PUCT, Contractor shall submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form

can be found at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>. Contractor shall not perform any work under the contract, nor receive any compensation prior to filing the form with the Texas Ethics Commission.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this Contract for cause.

18.1 Prohibitions on Gifts. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

18.2 Delinquent Obligations. Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 Terrorist Financing. The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov/>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/>

18.4 Antitrust. Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this State, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 Family Code. Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

18.6 Prohibited Compensation. Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this Contract.

18.7 Government Code. Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

18.8 Outstanding Obligations. Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 Contracting with Executive Head of State Agency. Contractor certifies this Contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 Buy Texas. Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

18.11 Hurricane Recovery. Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 E-Verify. Contractor certifies and ensures that it will utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired during the term of the contract to perform duties within Texas; and
2. All persons (including subcontractors) hired by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

18.13 Debarred Vendors List. Contractor certifies that it is not on the Debarred Vendors List located at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

Article 19. GENERAL PROVISIONS

19.1 Relationship of Parties. Contractor is and shall remain at all times an independent contractor, and nothing in this Contract shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this Contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Contractor's personnel.

Contractor shall be solely responsible for achieving the results contemplated by this Contract, whether performed by Contractor, its agents, employees or subcontractors.

19.2 Non-Exclusivity. Nothing in this contract is intended nor shall be construed as creating any exclusive arrangement between Contractor and PUCT. This contract shall not restrict PUCT from acquiring similar, equal, or like goods and/or services from other entities or sources.

19.3 Taxes and Statutory Withholdings. Contractor acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this Contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this Contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

19.4 Notice. Except as otherwise stated in this Contract, all notices provided for in this Contract shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Contract), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice with FedEx.

IF TO THE PUCT:

ATTENTION: Brian H. Lloyd, Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT Contract Administrator, and Jay Stone, CTPM, CTCM, at the same address.

IF TO CONTRACTOR:

ATTENTION: Melissa Fitzgerald, General Counsel
Gryphon Networks, Corp.
100 Summer Street
Suite 800
Boston, MA, 02110

19.5 Headings. Titles and headings of paragraphs and sections within this Contract are provided merely for convenience and shall not be used or relied upon in construing this Contract or the Parties' intentions with respect thereto.

19.6 Export Laws. Contractor represents, warrants, agrees and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this Contract in violation of any such laws, rules or regulations.

19.7 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

19.8 Publicity. Contractor understands and agrees that the PUCT does not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without the prior written approval of the PUCT: which pertains to this Contract or any services or project to which this Contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this Contract; or which mentions the PUCT.

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and its attachment(s), the following are given preference in the order listed below:

- 1) The terms and conditions of this contract;
- 2) Attachment A, SOW, including any exhibits.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve any party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other parties as soon as possible after the occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, any party

thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other parties.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, such provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if such provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. *See* Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2015-2016 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT.

Article 27. RIGHT TO AUDIT

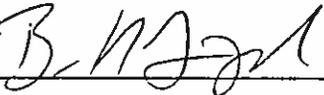
The State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

Article 28. ENTIRE AGREEMENT

This contract, including Attachment A, SOW, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this Contract by specific reference.

In WITNESS WHEREOF all parties by their duly authorized representatives have executed this contract effective as of the date last signed.

The Public Utility Commission of Texas

By:  _____

Brian H. Lloyd
Executive Director

Date Signed: 7/21/16

Gryphon Networks Corporation

By:

Melissa Fitzgerald
General Counsel

Date Signed: 7/26/2016

**ATTACHMENT A
STATEMENT OF WORK**

Gryphon Networks Corporation will provide the following services as required by Texas Business and Commerce Code, Chapter 304, Subchapter B.

1. Services

- A. Gryphon shall maintain two databases. One database will consist of the names, zip codes, and telephone numbers (both landline and wireless) of Texas residents who have registered to prevent calls from telemarketers or who have registered business and residential telephone numbers to prevent calls specifically from retail electric service telemarketers. The second database will consist of telemarketers that request access to the Texas Lists.
- B. Gryphon shall maintain the established mailing address, toll-free telephone number, and website (www.texasnocall.com) that have been established for the No Call List program, all of which shall be transferrable to and accessible by the PUCT and accessible by the public.
- C. Gryphon will receive registrations from Texas residents for the Texas Lists by mail (at Texas No-Call, P.O. Box 313, E. Walpole, MA 02032); by telephone (1-866-869-6225); or by Internet. Gryphon shall mail applications to people wishing to register by mail. At least one method of registration must be available 24 hours a day, seven days a week.
- D. Gryphon shall accept payment for fees by personal check, money order, credit card, or by other means acceptable to Gryphon and permissible by law.
- E. Upon receiving a completed application with the proper fee, Gryphon will place the information relating to the subscriber's telephone number(s) on the requested list or lists within two business days.
- F. Gryphon shall promptly notify an applicant if the submitted card has been rejected or check has been dishonored. Gryphon shall return such check to the applicant if requested by applicant. Gryphon shall not assess an additional fee for any dishonored check or rejected credit card transaction. Gryphon may, however, delete the applicant's data from the database.
- G. Gryphon shall work with the PUCT Contract Administrator to maintain and update, as necessary, the application and the website.
- H. Gryphon shall publish the Texas Lists in an electronic format for any telemarketer who agrees to use the information only to update the telemarketer's no-call list to include the names of people with whom the telemarketer does not have an established business relationship.
- I. Gryphon shall provide applications to telemarketers wishing to receive either or both of the Texas Lists. Once Gryphon has approved the application, these telemarketers will be known as "registered entities."

- J. Upon receipt of a completed application with proper fee(s), Gryphon will register an entity requesting access and allow access to one or both of the lists within two business days.
- K. Gryphon shall make the Texas Lists available to registered entities for download over the Internet with security measures in place designed to prevent access by unauthorized parties. The Texas Lists provided to Registered Entities will include only the registered subscriber's telephone number.
- L. Gryphon shall provide a mechanism for registered entities to download or to receive only specific portions of the list requested by that entity, such as geographically specific portions determined by a single area code, multiple area codes, or zip codes. Gryphon shall provide each registered entity with the option of receiving the Texas Lists or alternative forms of the Texas Lists on a commonly used removable storage device, including, but not limited to a CD, DVD, or flash drive. Gryphon shall publish the Texas portion of its national no-call list in an electronic format for access by any registered entity.
- M. Gryphon shall update and publish the Texas Lists on January 1, April 1, July 1, and October 1 of each year.
- N. To the extent Gryphon is directed by the PUCT to do so, and the data is accepted by the administrator of the National Do-Not-Call Registry, Gryphon shall provide information on the Texas Lists to the administrator of the National Do-Not-Call Registry and allow the names and numbers on the Texas Lists to be placed on the National Do-Not-Call Registry.
- O. Gryphon shall travel to Austin to meet with PUCT staff and others as requested no more than three times per Texas State Fiscal Year (September 1-August 31).
- P. Gryphon shall neither transfer nor destroy the records related to this contract, including, but not limited to the database Gryphon maintains for the PUCT, online registrations, or hard copy registrations, without prior written permission from the PUCT.
- Q. Gryphon shall cooperate with the PUCT or any other Texas state agency to provide information needed to enforce the provisions of the Texas Business and Commerce Code, Chapter 304, Subchapter B, Texas No-Call List.
- R. Gryphon shall provide access to the Texas Lists database and the Registered Entities Database to the PUCT and to other state agencies at the PUCT's direction.
- S. For up to two years after termination or expiration of this contract, Gryphon shall make appropriate and knowledgeable employees available to provide testimony, documentary evidence, and any other assistance deemed necessary by the PUCT at any administrative, legal, or legislative proceeding regarding the enforcement of the Texas Lists at no additional cost to the PUCT, except for reasonable travel and lodging expenses determined by the Texas State Travel Reimbursement Rates found at: <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>. These rates are updated periodically and PUCT will provide reimbursement based upon the most current rates set by the Texas Comptroller of Public Accounts.

2. Database Requirements

- A. The following information, at a minimum, must be included in the application for inclusion in the Texas Lists Database:
1. Name and mailing address of applicant and service address of the applicant to whom local telephone service or commercial mobile service is provided;
 2. Method of initial payment (check or money order, bank/credit card number);
 3. Telephone number to be included on the list (including area code);
 4. Category of telephone solicitation being prohibited by applicant (electric only or all);
 5. Date initial application received;
 6. Date names and telephone numbers added to the list;
 7. All renewal dates and methods of payment for renewals; and
 8. The manner in which the application was received (i.e. mail, telephone, or www.texasnocall.com website).
- B. Gryphon must include the following information, at a minimum, in the Registered Entities Database:
1. Legal name (and d/b/a, if applicable) of registering entity, group or individual (as maintained by Texas Secretary of State, local county clerk, or other state certification entity);
 2. Federal Tax Identification number;
 3. Name registered entity will use when contacting the public;
 4. Telephone number of registering entity, group or individual (for complaint or compliance issues);
 5. Address of registering entity's principal place of business (for complaint or compliance issues);
 6. Date application received;
 7. Nature of registering entity's business; and
 8. Certification number for registering entity, if applicable (as issued by any Texas state regulatory agency or administrative board).
- C. Database Requirements
1. Gryphon must retain the ability to upgrade the databases to future versions of Microsoft Access or Microsoft SQL Server as may be required by the PUCT;
 2. Gryphon shall at a minimum update the Electric List databases by the first day of January, April, July, and October in each calendar year and shall update and publish the No-Call List databases by the same date each year (Tex. Bus. & Comm. Code 304.051(d).)
 3. Gryphon shall take all reasonable and necessary steps and measures that are consistent with normal business practices of prudent companies similarly situated to: (i) ensure the integrity and security of the databases, and (ii) secure both the database hardware and software to prevent unauthorized access to database information, including but not limited to: web server/data store server security, virus/anti-virus protection, and firewall security with the main secured database;

4. Gryphon shall maintain a disaster recovery plan, which will include, but is not limited to, the daily backup of databases, which will be stored offsite in a secure and fireproof environment, and storage of the physical server housing the databases in a physically secure area to prevent any misuse or tampering;
5. Gryphon's personnel will use commercially reasonable efforts to answer questions regarding the use of the databases and the Texas Lists from all subscribers, registered entities, and applicants in a professionally acceptable and appropriate manner between the hours of 7 A.M. and 9 P.M. Central Time; and
6. Gryphon will refer all questions and complaints regarding compliance and enforcement to the PUCT.

3. Expiring, Renewing, and Deleting Entries

- A. An entry on either of the Texas Lists expires on the third anniversary of the date the entry was first published on the list. Gryphon shall accept entry renewals for additional three-year periods.
- B. Gryphon shall request and maintain email addresses from all registrants in order to provide them with program information, including notice at least 60 days in advance that their registration will expire. Registrants must have at least 30 days to renew their applications without interruption of their placement on the Texas Lists.
- C. Gryphon may delete a telephone number from the Texas Lists if the consumer requests in writing that it be deleted or the consumer's telephone number changes.

4. Reporting

- A. Gryphon will provide the PUCT with quarterly reports containing the following information:
 1. The total number of subscribers who registered for the database during the previous quarter;
 2. The total number of telephone numbers on the Texas Lists to date;
 3. The total amount of fees paid by new subscribers during the previous quarter;
 4. The total amount of fees paid by all subscribers to date;
 5. The total number of Registered Entities who have requested and been sent copies of the Electric List during the previous quarter;
 6. The total number of all Registered Entities who have requested and been sent copies of the No-Call List during the previous quarter;
 7. The total amount of fees paid by Registered Entities for the Electric List during the previous quarter;
 8. The total amount of fees paid by Registered Entities for the No-Call List to date;
 9. Gryphon shall report the number of calls received at the toll free customer service number and any correspondence received regarding the program;
- B. Gryphon will provide periodic oral reports to the PUCT as reasonably requested.

- C. Gryphon will provide additional reports, within reason, that may be required by the PUCT's operation of the Texas databases, including those prepared for the Texas Legislature.

5. Purpose and Prohibitions

Gryphon is authorized by state law to collect the database information in accordance with this contract for the sole purpose of providing registered entities with the information needed to comply with Texas law regarding unsolicited telephone calls to people who have registered both their residential and business telephone numbers on either the No-Call List or the Electric List or both.

- A. Gryphon shall not use the information obtained to create the Texas Lists for any purpose other than the purpose contemplated by this Contract.
- B. Gryphon may not use registrants' information, including e-mail addresses, for any purpose other than correspondence about the program.
- C. The Texas Lists, information obtained through applications and/or renewals of subscribers, and information in the databases are not transferrable to any party other than a registered entity as required by this contract or the PUCT, except as set forth within Section 1.N. of this Attachment. Gryphon shall not sell this information except to registered entities, for the purposes of its performance under this Contract and only as specified in this Contract.
- D. Gryphon may not release registrants' information, including e-mail addresses to any third party other than a registered entity or the PUCT, except as directed by the PUCT. If Gryphon receives a request for registrants' information, it must notify the PUCT within two business days of receiving the request.
- E. Gryphon must require an entity, group, or individual registering to receive the Texas Lists to affirm that: (i) it understands that the information on the Texas Lists may be used solely to update the registered entity's no-call list; (ii) it will not use information on the Texas Lists for any other purpose; and (iii) it will not transfer or exchange the information on the Texas Lists regardless of whether the registered entity receives any compensation.

6. Quality of Service

Gryphon will provide the following quality of service:

- A. The databases will neither be "down" for a period exceeding twenty-four (24) consecutive hours, nor will they be down for more than one percent of the time during any quarterly period, excluding time for scheduled maintenance. For the purpose of this subsection 6.A., "down" means the database is not capable of allowing one or more of the following functions: input, collection, processing, storage, reporting, or retrieval of data.
- B. No more than one call in twenty (20) received in any twenty-four (24) hour period will receive a busy signal when calling the toll-free telephone number.
- C. Gryphon will randomly audit the databases and database information by comparing the entered data with the information on the applications to ensure proper entry. On a

quarterly basis, Gryphon will perform a random audit of at least ten (10) percent of all data entries for the applicable month. Gryphon will make a reasonable effort to ensure that no more than one (1) percent of subscriber applications are incorrectly entered into the database. Once an error has been identified and confirmed, Gryphon will promptly commence correction of the data entry error. Gryphon will complete the necessary correction within three (3) business days.

- D. Gryphon will report any service problem that causes a system outage or impairs collecting or distributing information for either of the Texas Lists to the PUCT within four hours of the onset of such problems if they occur before 5 P.M. Central Time or by 8 A.M. the next business day if the service problems arise after 5. P.M. Central Time.

7. PUCT Responsibilities

- A. The PUCT will provide Gryphon with the use of its toll free 1-866-896-6225 telephone number and website address at www.texasnocall.com.
- B. The PUCT will inform telemarketers of their obligations to purchase the Texas Lists and will inform Telemarketers that the PUCT will pursue violations of the law.
- C. The PUCT Contract Administrator will provide Gryphon with copies of materials related to the Texas Lists that are released publicly, such as press releases, fact sheets, and PUCT-controlled web page materials, before their release. The parties will cooperate and act in good faith in determining the timing and the content of any public announcements and promotional materials relating to the transactions contemplated by the agreement. In the event of a conflict regarding the content, presentation, or timing of the release of any public announcements or promotional materials between Gryphon and the PUCT, the PUCT will make the final determination.