



**PARTICIPATING ADDENDUM
NASPO ValuePoint**

WIRELESS DATA, VOICE, AND ACCESSORIES

Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: PD180-01

DiscountCell Inc.

(hereinafter "Contractor")

and

State of Washington

(hereinafter "Participating State")

Washington Master Contract No.: 04718

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and DiscountCell Inc., a Utah corporation ("Contractor") and is dated and effective as of July 01, 2019.

RECITALS

- A. Pursuant to a competitive solicitation process, the State of Utah entered into the above-referenced cooperative Master Agreement with Contractor for a term of five (5) years commencing July 1, 2019 and ending June 30, 2024; *provided*, however, that the term may be extended pursuant to the terms and conditions of the cooperative Master Agreement for an additional five (5) years.
- B. The cooperative Master Agreement is available for use by Participating States pursuant to a Participating Addendum with the Contractor.
- C. Pursuant to RCW 39.26.150, the competitive solicitation for the cooperative Master Agreement was timely posted to Washington's enterprise bid notification system.
- D. Pursuant to RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements awarded through a competitive solicitation process.

AGREEMENT

NOW THEREFORE, both parties agree to enter into this Participating Addendum on the terms and conditions set forth herein.

1. **SCOPE:** This Participating Addendum covers the following Wireless Data, Voice and Accessories contract categories led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official:
 - Category 2 – Equipment and Accessories: This category includes any equipment or accessories operating over cellular carrier provided network services or intended for use with cellular connected devices as set forth in the Master Agreement.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
 - (a) WASHINGTON STATE AGENCIES. Washington state agencies, departments, offices, divisions, boards, and commissions;
 - (b) Washington State Institutions of Higher Education (public colleges). Any of the following specific institutions of higher education in Washington:
 - State universities i.e., University of Washington & Washington State University;
 - Regional universities– i.e., Central Washington University, Eastern Washington University, & Western Washington University;
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - (c) MCUA PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) located in the State of Washington;
 - Federal government agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.
3. **PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:**
 - 3.1. WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM: Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State

Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#). Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

- 3.2. WASHINGTON'S STATEWIDE PAYEE DESK: To be paid for contract sales, Contractors must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Statewide Vendor/Payee Services](#).
- 3.3. PARTICIPATING ADDENDUM SALES REPORTING: Contractor shall report total Participating Addendum sales for Corporate/Government Responsible (CRU) accounts quarterly to Enterprise Services, as set forth below:
 - (a) REPORTING. Contractor shall report quarterly Participating Addendum sales in Enterprise Services' [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
 - (b) DATA. Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
 - (c) DUE DATES FOR SALES REPORTING. Quarterly Participating Addendum Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- 3.4. VENDOR MANAGEMENT FEE: Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all Corporate/Government Responsible (CRU) accounts Participating Addendum sales (the purchase price is the total invoice price less applicable sales tax).
 - (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

The amount owed to Enterprise Services = Total CRU Participating Addendum sales invoiced (not including sales tax) x .0150.
 - (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

- (c) Enterprise Services will invoice Contractor quarterly based on Participating Addendum sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
 - This Washington Master Contract No.: **04718**
 - The NASPO Master Agreement No.: **PD180-01**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
 - (d) Contractor's failure to accurately and timely report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
 - (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
 - (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.
- 3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES: Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to this Participating Addendum. If at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- (a) QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
 - (b) SALES TAX. Contractor represents and warrants that for all sales to Purchasing Entities in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.
 - (c) OCIO POLICY & SECURITY COMPLIANCE: Contractor represents and warrants that it shall comply with the Washington Office of the Chief Information Officer (OCIO) statewide information technology policies *141.10 – Securing Information Technology Assets Standards* and *188 - Accessibility*, as applicable, for Purchasing Entity and for Contractor's Product(s) procured by Purchasing Entity. Such policies are located on the OCIO website at <https://ocio.wa.gov/policies>. Prior to final execution of a Washington State Agency's Order with a Contractor, the Contractor's Product(s), as implemented by the Washington State Agency, may be subject to a security design review performed by Washington Consolidated Technology Services to ensure compliance with *OCIO Policy 141.10 - Securing Information Technology Assets Standards*.

- (d) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- (e) **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential, and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential, and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participating Addendum and Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Participating Addendum.
- (f) **EXECUTIVE ORDER 18-03 WORKERS' RIGHTS (Mandatory Individual Arbitration).** Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participating Addendum, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

3.6. **COMPLIANCE WITH LAW:** Contractor shall comply with all applicable law.

3.7. **DIVERSE BUSINESS INCLUSION:** Enterprise Services is committed to providing the maximum practicable opportunity for small and diverse businesses to participate in state contracting opportunities. Diverse businesses are defined in WEBS as follows: small business, micro business, mini business, Washington State Office of Minority and Women's Business Enterprises (OMWBE) certified minority owned (MBE) or women-owned business (WBE), or Washington Department of Veterans Affairs (DVA) certificated veteran-owned business. Upon request, Contractor shall report to Enterprise Services its spend with certified diverse businesses. Such reports shall include the period covered, the authorized dealer, and sales amount by Purchasing Entity to such authorized dealer.

3.8. CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES

- (a) CONTRACTOR'S SALES AUTHORITY. Pursuant to this Participating Addendum, Contractor is authorized to provide only those supplies set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchasing Entity hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) PURCHASE ORDER NUMBER REQUIREMENT. All purchase orders issued by Purchasing Entities pursuant to this Participating Addendum shall include Washington Master Contract number 04718, and the Lead State Master Agreement Number PD180-1.
- (c) INVOICES. Contractor must provide a properly completed invoice to Purchasing Entity. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
 - Washington Master Contract number 04718;
 - Lead State Master Agreement Number PD180-1;
 - Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
 - Applicable Purchasing Entity's order number;

and must be in U.S. dollars. Invoices must be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s). Payment will not be considered late if a check or warrant is mailed within the time specified. If Contractor fails to make timely payment(s) or issuance of credit memos, the Purchasing Entity may impose one percent (1%) per month on the amount overdue 30 days after notice to the Contractor.

3.9. PCB-FREE PRODUCTS NOTICE: Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with PCBs and to incentive its vendors to sell products and products - in - packaging without them.

4. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

DiscountCell, Inc.
350 West 500 South
Provo, UT 84601

Attn: Jennifer King
Tel: 801 235-9809
Email: jking@discountcell.com

Participating State

State of Washington
Department of Enterprise Services
Contracts & Procurement Division
P.O. Box 41411
Olympia, WA 98504-1411

Attn: Marci Disken
Tel: (360) 407-9405
Email: marci.disken@des.wa.gov

5. **LEASE AGREEMENTS:** Leasing or renting of equipment is not allowed throughout the term of the Master Agreement.

6. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any order placed by a Participating Entity or Purchasing Entity for a Product available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

7. **GENERAL:**

- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: Howard D. Cox
Howard Cox

Its: IT Procurement Manager

DISCOUNTCELL, INC.
A UTAH CORPORATION

By: Jennifer King
Jennifer King

Its: President