

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

**MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907**

**DISCOUNTCELL, INC  
(hereinafter "Contractor")**

And

**State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")**

Page 1 of 11

**1. SCOPE**

This Participating Addendum ("Participating Addendum" or "PA") to the STATEWIDE MASTER SERVICES AGREEMENT by and between the State of Nevada ("Lead State") and Contractor, Nevada Contract # 1907 (the "Contract"), is entered into by and on behalf of the Participating State acting through the Department of Enterprise Services ("DES") and Contractor.

This PA is an optional use contract that neither financially binds the Participating State or any Participating Entity (defined below), nor otherwise obligates the Participating State or any Participating Entity to purchase any Product or Service hereunder. Nor does this PA prevent the Participating State or any Participating Entity from purchasing similar Products or Services from other sources. This agreement is not for personal use.

**2. PARTICIPATION**

For purposes of this agreement, the jurisdiction of Participating State includes as authorized Participating Entities any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of the Contract, or any political subdivision (including public schools, colleges or universities) of the state of Washington or non-profit organization with the authority to purchase such Products and Services.

Except to the extent modified by this Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Contract; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Contract. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

**3. DEFINITIONS**

As used in this Participating Addendum, the following terms shall have the meanings listed below. All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Contract.

**"Buyer"** or **"Participating Entity"** shall mean DES and Washington State agencies, institutions, school districts and political subdivisions (e.g., counties, cities, public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW and public benefit nonprofit corporations.

**"Confidential Information"** shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes, including, but not



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 2 of 11

limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information.

"**Exhibit A**" shall mean the Request for Proposal dated February 3, 2011 conducted by the State of Nevada Division of Purchasing on behalf of the WSCA for Wireless Voice Service, Wireless Broadband Service, Accessories and Equipment, including all attachments made a part thereof.

"**Exhibit B**" shall mean the Contractor's response to Exhibit A.

"**Price**" shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

"**Products**" shall mean any goods provided by Contractor under the terms of this PA. Products shall include any embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Product that is necessary for the proper operation of the Product.

"**Proprietary Information**" shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"**Services**" shall mean those services provided under this PA and related to the Products being acquired, which are appropriate to the scope of this PA.

**4. INCORPORATED DOCUMENTS**

This Participating Addendum constitutes the entire agreement between the parties. Each of the documents listed below is, by this reference, incorporated into this PA as though fully set forth herein.

- a) the Contract;
- b) Exhibit A;
- c) Exhibit B; and
- d) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Buyer and used to affect the sale of Services to Buyer.



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 3 of 11

**5. ORDER OF PRECEDENCE**

In the event of any inconsistency between this Participating Addendum and the incorporated documents the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Participating Addendum;
- c) The Contract;
- d) Exhibit A;
- e) Exhibit B;
- f) The terms and conditions contained on Buyer's order documents, if used; and
- g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Buyer and used to affect the sale of Services to Buyer.

**6. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO THE CONTRACT**

These modifications or additions apply only to actions and relationships within Participating Entities within the Participating State.

- 6.1. Delete Section 5, *Incorporated Documents*; Section 8, *Acceptance or Rejection of Bids, and Award*; and Section 9, *Bid Samples*; in their entirety.
- 6.2. In Section 11, *Payment*, the following sentence is deleted: "Payments will be remitted by mail."
- 6.3. The following paragraph is added to the end of Section 13, *Financial Obligations of Participating State*:

If funds are not allocated to a Participating Entity to continue this Contract in any future period, such Participating Entity may terminate its participation by seven (7) calendar days written notice to Contractor. Participating Entity will not be obligated to pay any further charges beyond the effective date of such termination. No penalty shall accrue to Participating Entity in the event this section shall be exercised. This paragraph shall not be construed to permit a Participating Entity to terminate its participation in order to acquire similar products or services from a third party.

- 6.4. Contractor will provide Participating State the inspection and audit rights described in Section 19 for such books and records related to the payments of, and participation in, the Contract by the Participating State and Buyers within the Participating State.



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 4 of 11

- 6.5. All periods of retention set forth in Section 19 are amended to six (6) years.
- 6.6. The following paragraph is added to the end of Section 29, *Assignment/Delegation*:
- DES may assign this PA to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Participating State of any of its duties and obligations hereunder.
- 6.7. The following is added to the end of Section 31, *Patents, Copyrights, Etc.*:
- Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DES provided that DES:
- a. Promptly notifies Contractor in writing of the claim, but DES' failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in materially increased expense or loss to Contractor; and
  - b. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- 6.8. Section 33, *Confidentiality*, is hereby deleted in its entirety and replaced with the following:
- a. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without the Participating Entity's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 5 of 11

- b. Immediately upon expiration or termination of this PA, Contractor shall, at DES' option: (i) certify that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to the appropriate Participating Entity; or (iii) take whatever other steps DES requires of Contractor to protect Confidential Information.
- c. Each Participating Entity reserves the right to monitor, audit, or investigate the use of its Confidential Information collected, used, or acquired by Contractor through this PA. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- d. Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.

**6.9. DES Administration Fee & Collection**

All purchases made under this Participating Addendum are subject to a DES Administration Fee.

The DES Administration Fee is one percent (1.0%) of the purchase price. The purchase price is defined as total purchase price prior to adding taxes.

Contractor shall hold the DES Administration Fee in trust for DES until such fees are remitted to the DES Contract Administrator, along with the DES Contract Activity Report.

**6.10. DES Contract Activity Report**

Contractor shall submit to DES a quarterly Contract Activity Report of all Products and Services purchased under this PA. The report shall identify:

- a. This Participating Addendum number;
- b. The month in which the purchase occurred;
- c. Each Participating Entity, identified by state, local or educational entity, making purchases during the reporting quarter;
- d. The total purchase price (excluding tax) for each Participating Entity;
- e. The DES Administration Fee for each Participating Entity;
- f. The sum of all purchase prices (excluding tax) for all Participating Entities; and
- g. The total amount of the DES Administration Fee

The reports and DES Administration Fee shall be due on a quarterly basis in accordance with the following schedule:



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

**MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907**

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 6 of 11

<b>For activity in the months:</b>	<b>Report &amp; Fee Due:</b>
January, February, March	April 15th
April, May, June	July 15th
July, August, September	October 15th
October, November, December	January 15th

Reports are required to be submitted electronically, in either Microsoft Word or Excel format. Quarterly reports are required even if no activity occurred. Reports are to be sent electronically via email to: [mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov).

This report may be corrected or modified by DES with subsequent written notice to Contractor.

Upon request by DES, Contractor shall provide, in the format requested, the contact information for all Participating Entities during the term of the Participating Addendum.

DES shall have the right to examine Contractor's records associated with purchases under this PA in order to ensure compliance with all requirements of this PA.

**6.11. Failure to Report or Remit Fees**

Failure of Contractor to remit the Contract Activity Report together with the DES Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DES terminating this Participating Addendum with Contractor.

If the performance issues are resolved, DES, at its option, may reinstate a Contractor's participation.

**6.12. Invoice Information**

Contractor will submit properly itemized invoices to the person identified by Participating Entity at the address provided by the Participating Entity. Invoices shall provide and itemize, as applicable:

- a. Participating Addendum number;
- b. Participating Entity's name, address and Order Number;
- c. Contractor name, address, phone number, and Federal Tax Identification Number;
- d. Description of Products, including quantity ordered, model and serial numbers or other unique product identifier;
- e. Date(s) of delivery;
- f. Price for each item;
- g. Total purchase Price;



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 7 of 11

- h. Discount for E-rate, if applicable;
- i. Applicable taxes;
- j. Other applicable charges;
- k. Total invoice amount; and
- l. Payment terms including any available prompt payment discounts.

**6.13. Rebates**

Under no circumstances may refund or rebate incentives be given to individual Corporate Responsibility Users. Any refunds or rebates and related forms must be issued to the Participating Entity at the address specified on the Purchase Order or Field Order.

**6.14. Publicity**

The award of this PA to Contractor is not in any way an endorsement of Contractor or Contractor's products by DES or any Participating Entity and shall not be so construed by Contractor in any advertising or other publicity materials. Contractor agrees to submit to a Participating Entity, all advertising, sales promotion, and other publicity materials relating to this PA or any Products or Services furnished by Contractor wherein the name of such Participating Entity is mentioned, language is used, or Internet links are provided from which the connection of Participating Entity's name therewith may, in Participating Entity's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Participating Entity prior to such use.

Either party may use the other party's name and logo (except for the State seal) in advertising, sales promotion, and other publicity materials relating to this PA, without royalty, provided that this PA and the relationship between the parties is not misrepresented.

**6.15. Marketing**

Contact information for individual purchasers, including without limitation, names, addresses, email addresses and telephone numbers, shall not be used for the purposes of marketing non-contracted products or services, either by Contractor or third parties, without the explicit consent of such end users.



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 8 of 11

**6.16. Disputes**

In the event a dispute concerning a question of fact arises between Contractor and Participating Entity and it cannot be resolved between the parties or by the DES Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have five (5) business days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) business days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after five (5) business days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next five (5) business days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

**7. LEASE AGREEMENTS**

Leasing is NOT authorized under the category awarded for this contract.

**8. PRIMARY CONTACTS**

The primary contact individual for this participating addendum are as follows (or their named successors):

Lead State

Name	Teri Smith, Purchasing Officer
Address	515 E. Musser St, Suite 300, Carson City, NV 89701



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 9 of 11

Telephone	775-684-0178
Fax	775-684-0188
E-mail	tlsmith@admin.nv.gov

Contractor - Administrative

Name	Jennifer King, President
Address	350 West 500 South, Provo, UT 84604
Telephone	801-235-9809
Fax	801-705-0324
E-mail	jking@discountcell.com

Contractor - Ordering/Purchasing Contact

Name	Janiel Jones, Manager
Address	350 West 500 South, Provo, UT 84604
Telephone	801-235-9809
Fax	801-705-0324
E-mail	corp@discountcell.com

DES Contract Administrator

Name	Sylvia Sammons
Address	1500 Jefferson Street SE, Olympia, WA 98504
Telephone	(360) 407-8226
Fax	(360) 586-2426
E-mail	sylvia.sammons@des.wa.gov

9. **SUBCONTRACTORS**

No dealers or resellers are authorized under this Master Price Agreement for this category of award.

10. **PURCHASE ORDER INSTRUCTIONS**

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract # 1907" (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, itemized list of accessories. Please channel your PO through DiscountCell.

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number, DES Contract No. T12-MST-689, and the Lead State price



**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WSCA WIRELESS SERVICES 2012-2017  
Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
Nevada Contract Number: 1907

DISCOUNTCELL, INC  
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
(hereinafter "Participating State")

Page 10 of 11

agreement number, Nevada Contract No. 1907.

11. **MISCELLANEOUS**

This Participating Addendum and the Master Price Agreement number 1907 (administered by the State of Nevada ) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

12. **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA")**

If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

[The remainder of this page purposely left blank.]



**PARTICIPATING ADDENDUM  
 WESTERN STATES CONTRACTING ALLIANCE  
 WSCA WIRELESS SERVICES 2012-2017  
 Administered by the State of Nevada**

MASTER PRICE AGREEMENT  
 Nevada Contract Number: 1907

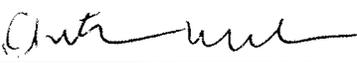
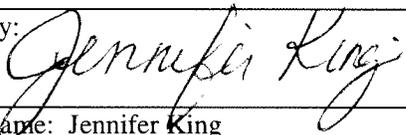
DISCOUNTCELL, INC  
 (hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services  
 (hereinafter "Participating State")

Page 11 of 11

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

<b>State of Washington, Department of Enterprise Services</b>	<b>DiscountCell, Inc.</b>
By: 	By: 
Name: <u>Christine Warnock</u>	Name: Jennifer King
Title: <u>Chief Procurement Officer</u>	Title: President
Date: <u>11/5/12</u>	Date: <u>9/24/2012</u>

  
 10-3-12

RECEIVED  
 SEP 28 2012



**STATEWIDE MASTER SERVICE AGREEMENT FOR SERVICES OF INDEPENDENT  
CONTRACTOR**

A Contract between the Western States Contracting Alliance  
Acting by and through the State of Nevada  
Department of Administration, Purchasing Division  
Contact Name: Teri Smith  
515 East Musser Street Suite 300  
Carson City, NV 89701  
Phone (775) 684-0178 Fax (775) 684-0188  
Email: [tlsmith@admin.nv.gov](mailto:tlsmith@admin.nv.gov)

And

DiscountCell, Inc.  
350 West 500 South  
Provo, UT 84601  
Contact Name: Jennifer King  
Phone (801) 235-9809 Fax (801) 705-0324  
Email: [corp@discountcell.com](mailto:corp@discountcell.com)

Pursuant to Nevada Revised Statute (NRS) 277.100, NRS 277.110, NRS 333.162(1)(d), and NRS 333.480 the Chief of the Purchasing Division of Nevada is authorized to enter into cooperative group-contracting consortium.

The Western States Contracting Alliance is a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

In consideration of the above premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This contract shall not become effective until and unless approved by the Western States Contracting Alliance Board of Directors.
2. DEFINITIONS. "WSCA" means the Western States Contracting Alliance. "State" and/or "Lead State" means the State of Nevada and its state agencies, officers, employees and immune contractors as defined in NRS 41.0307. "Participating State(s)" means state(s) that have signed (and not revoked) an Intent to Contract at the time of the award of this contract, or who have executed a Participating Addendum. "Buyer" means any WSCA agency or political subdivision participating under this contract. "Contractor" and/or "Contracting Agency" means a person or entity that performs services and/or provides goods for WSCA under the terms and conditions set forth in this contract. "Solicitation" means RFP #1907

incorporated herein as Attachment AA. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This contract shall be effective upon WSCA Board of Directors' approval to October 31, 2016, unless sooner terminated by either party as specified in paragraph (20).

4. CANCELLATION OF CONTRACT; NOTICE. Unless otherwise stated in the special terms and conditions, any contract entered into as a result of the Solicitation may be canceled by either party upon written notice sixty (60) days prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the special terms and conditions of the Solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Participating State to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: SOLICITATION #1907 (Scope of Work) and ATTACHMENTS A, B1, B2, C, D, E, F, G, H, I, J, K, L and Amendments 1 and 2;

ATTACHMENT BB: CONTRACTOR'S RESPONSE

A Contractor's attachment shall not contradict or supersede any WSCA specifications, terms or conditions without written evidence of mutual assent to such change appearing in this contract.

6. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this contract are also specifically a part of this contract and are limited only by their respective order of precedence and any limitations specified.

7. BID SPECIFICATIONS. Contractor certifies that any deviation from the specifications in the scope of work, incorporated herein as part of Attachment AA, have been clearly indicated by Contractor in its response, incorporated herein as Attachment BB; otherwise, it will be considered that the bid is in strict compliance. Any BRAND NAMES or manufacturers' numbers are stated in the specifications are intended to establish a standard only and are not restrictive unless the Solicitation states "no substitute," and unless so stated, bids have been considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate bids offering lower quality or inferior performance have not been considered.

8. ACCEPTANCE OR REJECTION OF BIDS, AND AWARD. WSCA has the right to accept or reject any or all bids or parts of bids, and to waive informalities therein. This contract is based the lowest responsive and responsible bid and meets the specifications of the Solicitation and terms and conditions thereof. Unless stated otherwise in the Solicitation, WSCA has the right to award items separately or by grouping items in a total lot.

9. BID SAMPLES. Any required samples have been specifically requested in the Solicitation. Samples, when required, have been furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at a bidder's request, transportation collect.

10. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost of \$ Variable per order (see Attachment BB) with the total Contract or installments payable; as invoiced by the vendor and approved by the Participating Entity. Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with the Solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Contracted prices represent ceiling prices for the supplies and services offered. The Contractor shall report to the Lead State any price reduction or discount, or other more favorable terms offered to any Purchasing Entity and the Contractor agrees to negotiate in good faith to re-establish ceiling prices or other more favorable terms and conditions applicable to future orders. Bid prices must remain firm for the full term of the contract. In the case of error in the extension of prices in the bid, the unit prices will govern. WSCA does not guarantee to purchase any amount under this contract. Estimated quantities in the Solicitation are for bidding purposes only and are not to be construed as a guarantee to purchase any amount. Unless otherwise stated in the special terms and conditions offers made in accordance with the Solicitation must be good and firm for a period of ninety (90) days from the date of bid opening. Bid prices must remain firm for the full term of the contract. In the case of error in the extension of prices in the bid, the unit prices will govern. If Contractor has quoted a cash discount based upon early payment; discounts offered for less than thirty (30) days have not been considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise. WSCA is not liable for any costs incurred by the bidder in proposal preparation.

11. PAYMENT. Payment for completion of a contract is normally made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Participating State's "Purchasing Card."

12. TAXES. Prices shall be exclusive of state sales and federal excise taxes. Where a Participating State is not exempt from sales taxes on sales within its state, the Contractor shall add the sales taxes on the billing invoice as a separate entry. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. The Lead State's real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this contract. Nevada may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

13. FINANCIAL OBLIGATIONS OF PARTICIPATING STATES. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the Solicitation, the resulting award(s) will be permissive.

14. ORDER NUMBERS. Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

15. REPORTS. The Contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each Participating State.

16. DELIVERY. The prices bid shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back-ordered shall be shipped without charge.

17. HAZARDOUS CHEMICAL INFORMATION. The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to any Buyer. All safety data sheets and labels will be in accordance with each Participating State's requirements.

18. INSPECTIONS. Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in non-compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

19. INSPECTION & AUDIT.

a. Books and Records. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to WSCA, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by WSCA; the United States Government; the State Auditor or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this contract must be retained a minimum four (4) years after the contract terminates or until all audits initiated within

the four (4) years have been completed, whichever is later, and for five (5) years if any federal funds are used in the contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

20. CONTRACT TERMINATION. Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: (1) nonperformance of contractual requirements; and/or (2) a material breach of any term or condition of this contract. WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate this contract and any related contracts or portions thereof; (3) impose liquidated damages; and/or (4) suspend Contractor from receiving future bid solicitations.

Winding Up Affairs Upon Termination. In the event of termination of this contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by WSCA;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this contract if so requested by WSCA;

iv. Contractor shall preserve, protect and promptly deliver into WSCA's possession all proprietary information in accordance with paragraph (30).

21. REMEDIES. Except as otherwise provided for by law or this contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for attorneys employed by the Lead State. Nevada may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

22. LIMITED LIABILITY. Nevada will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any breach by the Lead State shall never exceed the amount of funds appropriated for payment under this contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

23. FORCE MAJEURE. Neither party to this contract shall be deemed to be in violation of this contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause

must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the contract after the intervening cause ceases. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **INDEMNIFICATION**. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, Nevada from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. The Contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

25. **INSURANCE SCHEDULE**. Unless expressly waived in writing by the Lead State or Participating States, Contractor, as an independent contractor and not an employee of the Lead State or Participating States, must carry policies of insurance in amounts specified in this Insurance Schedule and/or any Insurance Schedule agreed by Contractor and a Participating State via a participating addendum, and pay all taxes and fees incident hereunto. The Lead State and Participating States shall have no liability except as specifically provided in the contract. The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Lead State.

The Lead State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this contract. Any failure of the Lead State to timely approve shall not constitute a waiver of the condition.

**Insurance Coverage**: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the contract the following insurance conforming to the minimum requirements specified below. Unless specifically stated herein or otherwise agreed to by the Lead State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the Lead State of the completion of this contract; or

2. Such time as the insurance is no longer required by the Lead State under the terms of this contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the Lead State, Contractor shall provide the Lead State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

**Workers' Compensation and Employer's Liability Insurance**

1) Contractor shall provide proof of worker's compensation insurance.

2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

**Commercial General Liability Insurance**

1) Minimum Limits required:

**\$2,000,000.00** General Aggregate

**\$1,000,000.00** Products & Completed Operations Aggregate

**\$1,000,000.00** Personal and Advertising Injury

**\$1,000,000.00** Each Occurrence

2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Business Automobile Liability Insurance**

1) Minimum Limit required: **\$Waived** Each Occurrence for bodily injury and property damage.

2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).

The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**Professional Liability Insurance**

1) Minimum Limit required: \$ **Waived** Each Claim

2) Retroactive date: Prior to commencement of the performance of the contract

3) Discovery period: Three (3) years after termination date of contract.

4) A certified copy of this policy may be required.

**Umbrella or Excess Liability Insurance**

1) May be used to achieve the above minimum liability limits.

2) Shall be endorsed to state it is "As Broad as Primary Policy"

**Commercial Crime Insurance**

Minimum Limit required: **\$Waived** Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

**General Requirements:**

b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Lead State or Participating States. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed five thousand dollars (\$5,000.00) per occurrence, unless otherwise approved.

e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the Lead State, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially

altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address identified on page 1 of the contract.

f. Approved Insurer: Each insurance policy shall be:

- 1) Issued by insurance companies authorized to do business in the Lead State and Participating States or eligible surplus lines insurers acceptable to the Lead State and Participating States and having agents upon whom service of process may be made, and
- 2) Currently rated by A.M. Best as "A- VII" or better.

#### **Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the Lead State:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the Lead State prior to the commencement of work by Contractor. Neither approval by the Lead State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this contract. Compliance with the insurance requirements of this contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the Lead State or others, and shall be in addition to and not in lieu of any other remedy available to the Lead State or Participating States under this contract or otherwise. The Lead State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

#### **Mail all required insurance documents to the Lead State identified on page one of the contract**

26. COMPLIANCE WITH LEGAL OBLIGATIONS. Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations. Contractor shall procure and maintain for the duration of this contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this contract. The Lead State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

27. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

28. SEVERABILITY. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

29. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this contract, attempts to operate as a novation, or includes a waiver or abrogation of any

defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this contract. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

30. OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this contract shall be the exclusive property of WSCA and all such materials shall be delivered into WSCA possession by Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this contract without the prior written consent of WSCA. Notwithstanding the foregoing, WSCA shall have no proprietary interest in any materials licensed for use that are subject to patent, trademark or copyright protection.

31. PATENTS, COPYRIGHTS, ETC. The Contractor shall release, indemnify and hold WSCA, the State, and Participating States and their officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

32. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

33. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this contract.

34. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Contractor further agrees to furnish information and reports to requesting Participating Entities, upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual Participating State's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. Contractor must include this provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

35. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this contract:

a. Contractor certifies, by signing this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

36. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

37. NON-COLLUSION. Contractor certifies that this contract and the underlying bid, have been arrived at independently and have been without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

38. WARRANTIES.

a. Uniform Commercial Code. The Contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any special purposes that the Buyer has relied on the Contractor's skill or judgment to consider.

b. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

c. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century

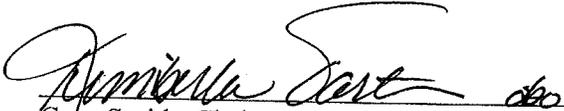
recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century.

39. CONFLICT OF INTEREST. Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.
40. INDEPENDENT CONTRACTOR. Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.
41. POLITICAL SUBDIVISION PARTICIPATION. Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA Participating States shall be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.
42. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this contract on behalf of each party has full power and authority to enter into this contract. Contractor acknowledges that as required by statute or regulation this contract is effective only after approval by the WSCA Board of Directors and only for the period of time specified in the contract. Any services performed by Contractor before this contract is effective or after it ceases to be effective are performed at the sole risk of Contractor. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.
43. GOVERNING LAW; JURISDICTION. This contract and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the state of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this contract. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum or shall be in the Purchasing State.
44. SIGNATURES IN COUNTERPART. Contract may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.
45. ENTIRE CONTRACT AND MODIFICATION. This contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this contract specifically displays a mutual intent to amend a particular part of this contract, general conflicts in language between any such attachment and this contract shall be construed consistent with the terms of this contract. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

  
Independent Contractor's Signature

11/15/2011 Executive VP  
Date Independent's Contractor's Title

  
Greg Smith, Chair, WSCA Board of Directors

APPROVED BY WSCA BOARD OF DIRECTORS

On 11/21/11  
(Date)

Approved as to form by:

  
Deputy Attorney General for Attorney General

On 18 Nov 11  
(Date)

State of Washington <b>DEPARTMENT OF ENTERPRISE SERVICES</b> <b>Master Contracts and Consulting</b> 1500 Jefferson St SE • Olympia, Washington 98501 • (360) 902-7400 <a href="http://www.des.wa.gov">http://www.des.wa.gov</a>	<b>CONTRACT AMENDMENT</b>	
	<b>Contract Number:</b> 06012	<b>Date Issued:</b> 02/26/2014
	<b>Amendment Number:</b> 1	<b>Date Effective:</b> Upon DES Signature
This Contract Amendment is issued under the provisions of the State Contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.		

### Purpose of Amendment

This amendment is entered into between the parties as of the effective date identified by on the approving official signature block. It amends Washington Participating Addendum 06012 (T12-MST-689) under WSCA Master Agreement 1907 as stated below.

Effective immediately upon signature of approving official, remove in its entirety on the Washington Participating Addendum, Addendums, Forms, Exhibits, and Schedules any reference to the Department of Information Services (DIS) Technology Brokering Services 605 E 11<sup>th</sup> Ave, PO Box 42445 Olympia, WA 98504-2445 and replace with Department of Enterprise Services (DES) 1500 Jefferson St. SE, Olympia WA 98501.

DES may, at its sole discretion, increase, decrease, or eliminate the management fee upon thirty (30) days written notice to contractor. Any decrease to or elimination of the management fee, shall be reflected in the contract pricing commensurate with the adjustment. DES reserves the right to negotiate contract pricing with the contractor in the case of an upward adjustment of the management fee.

Effective immediately, Contractor will provide DES with a sales report detailing total net sales for the preceding quarter ("Sales Report"), in accordance with the Sales & Subcontractors Report of this amendment using the requirements and schedules set forth below. DES will send an invoice within 30 days after each quarter, based on the sales report. Payment of the management fee is due within (30) days of the date of the DES invoice.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report the total net sales to submit a timely sales report, or remit timely payment of the management fee, may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

Management fee payment must reference the contract number, Work Request Number (if applicable), the year and quarter of which the management fee is being remitted, and the contractor's name as it is known to DES, if not already included on the face of the check. All payments must be sent to:

Name:	State of Washington, Dept of Enterprise Services Finance Dept
Address:	1500 Jefferson Street Mail Stop 41460 Olympia WA 98501
Additional:	Contract #: Quarter/Year: Contractor's Name as it is known to DES (if not already included on face of the check)

### **Contract Sales and Reporting System**

Contract Sales and Reporting System is the on-line usage reporting system which will be available as a tool to report quarterly contract sales by customer. Prior to the due date for your report, an account will be established, and a log-in provided. The location of the tool is <https://fortress.wa.gov/ga/apps/CSR/login.aspx>.

Reports will be submitted in the month following the quarter-end and before the "Report Due" dates as shown below:

Quarter	Quarter Ends	Report Due
1 <sup>st</sup>	March 31 <sup>st</sup>	April 30 <sup>th</sup>
2 <sup>nd</sup>	June 30 <sup>th</sup>	July 31 <sup>st</sup>
3 <sup>rd</sup>	September 30 <sup>th</sup>	October 31 <sup>st</sup>
4 <sup>th</sup>	December 31 <sup>st</sup>	January 31 <sup>st</sup>

Except for changes made by this Amendment, the Washington Contract 06012 remains unchanged and in full force and effective until is either cancel or expires whichever occurs first.

### Authorizing Signatures

This contract amendment, consisting of one (3) pages and zero attachments is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

**For Contractor:**

  
 \_\_\_\_\_  
 (Contractor Authority Signature) (Date)

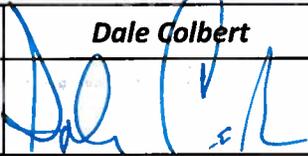
**Printed Name:** Jennifer King  
**Contractor:** DiscountCell  
**Address:** 350 W 500 South  
 Provo, UT 84604  
**Telephone No.:** (801) 235-9809  
**Email:** [corp@discountcell.com](mailto:corp@discountcell.com)

**For State:**

 2/26/2014  
 \_\_\_\_\_  
 (Procurement Coordinator Signature) (Date)

**Name:** Neva Peckham  
**Agency:** Department of Enterprise Services  
 1500 Jefferson St SE  
 Olympia WA 98501  
**Telephone No.:** 360 407-9411  
**Email:** [neva.peckham@des.wa.gov](mailto:neva.peckham@des.wa.gov)

### DES Approval

**DES Authorizing Manager:**  Dale Colbert  
**Signature:** \_\_\_\_\_  
**Date:** 3-31-14  
**Email:** [dale.colbert@des.wa.gov](mailto:dale.colbert@des.wa.gov)  
**Phone:** (360) 407-9425



**06012 (T12-MST-689) Wireless Communication & Equipment (Mobile Phone)**  
**Contract Amendment**

**Date Issued:** 1/14/2016  
**Effective Date:** Upon DES Signature  
**Amendment Number:** 02  
**Contractor Name:** DiscountCell, Inc.

This Contract Amendment is issued under the provisions of the Washington State Participating Addendum 06012 (T12-MST-689) NASPO ValuePoint Master Service Agreement 1907 formally known as WSCA Master Service Agreement 1907 for Wireless Communication & Equipment. The changes authorized are within the scope of the original Master Service Agreement. All rights and obligations of the parties are governed by the terms of the original contract, including any subsequent amendments, which are hereby incorporated by reference.

**Purpose of Amendment**

Pursuant to Master Services Agreement 1907, the parties agree to extend of the term of participating addendum for an additional two (2) years and eight (8) months through June 30, 2019, which coincides with filing requirements by Federal E-Rate customers.

**Authorizing Signatures**

**For Contractor: DiscountCell, Inc.**

**Jennifer King, DiscountCell, Inc.**  
(801)235-8909  
350 West 500 South  
Provo, UT 84601  
[Corp@discountcell.com](mailto:Corp@discountcell.com)

Signature Jennifer King  
Date 01/14/2016

**For State of Washington:**

**Marci Disken, DES Contracts, Procurement & Risk Management**  
(360) 407-9405  
PO Box 41408  
Olympia WA 98504-1408  
[marci.disken@des.wa.gov](mailto:marci.disken@des.wa.gov)

Signature Marci Disken  
Date 2-17-16

**CPRM Authorizing Manager:**

Signature Cory Tolbert  
Date 2.16.16