

**PARTICIPATING ADDENDUM  
FOR THE STATE OF OREGON**



**WIRELESS EQUIPMENT  
AND ACCESSORIES, CATEGORY 2**

**LED BY THE STATE OF UTAH**

**Master Agreement # PD180-1, Oregon Participating Addendum # PA 9478**

Contractor: **DISCOUNT CELL, INC. ("Contractor")**

Participating Entity: **STATE OF OREGON BY AND THROUGH ITS DEPARTMENT OF  
ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES  
("Participating Entity" or "DAS PS")**

This State of Oregon Participating Addendum ("**Participating Addendum**") establishes a price agreement between Contractor and Participating Entity pursuant to ORS 279B.140, including the provisions of that certain Master Agreement # PD180-1 (including all attachments), executed between the Contractor and the State of Utah, effective July 1, 2019 ("**Master Agreement**") and as further defined in Section 1 of Exhibit No. 1 to the Participating Addendum, the terms and conditions of which are incorporated herein by reference.

The term of this Participating Addendum is co-terminus with the NASPO ValuePoint Master Agreement # PD180-1. Notwithstanding the foregoing, any amendments to Master Agreement agreed upon between the State of Utah and Contractor shall not automatically become a part of this Participating Addendum, instead, Participating Entity shall have an opportunity to review any and all such amendments and if acceptable to Participating Entity then Contractor and Participating Entity will negotiate a substantially similar amendment to this Participating Addendum. All capitalized terms in this Participating Addendum shall have the meaning set forth in the Master Agreement (including all attachments) unless otherwise defined in this Participating Addendum.

The goods and services offered under the Master Agreement that may be procured under this Participating Addendum are set forth in Exhibit No. 4. This Participating Addendum contains the additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the conflict will be resolved as set forth below.

**Participating Addendum Terms and Conditions:**

**1. Scope:**

1.1 This Participating Addendum covers the Master Agreement # PD180-1 for Category 2 Wireless Equipment and Accessories ("**Goods**" or "**Products**") and customer services ("**Services**") led by the State of Utah for use by Purchasing Entities as authorized by the Participating Entity's State's statutes to utilize price agreements solicited and entered into by other states with the prior approval of the Participating State's Chief Procurement Official.

This Participating Addendum consists of the following documents, which are incorporated herein as part of this Participating Addendum:

- 1) Exhibit No. 1 - State Specific Terms and Conditions
- 2) Exhibit No. 2 - Insurance
- 3) Exhibit No. 3 - Contractor Tax Certification
- 4) Exhibit No. 4 - Product Categories and Services
- 5) Exhibit No. 5 - Price List
- 6) Exhibit No. 6 - Report form for Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR)

This Participating Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities. In the event of a conflict between the terms and conditions of this Participating Addendum, the Master Agreement and Purchase Orders, the following descending order of precedence applies:

- 1) This Participating Addendum, less its exhibits;
- 2) Exhibit No. 1 of this Participating Addendum (Oregon Terms);
- 3) Exhibit No. 4 of this Participating Addendum (Product Categories and Services);
- 4) Exhibit No. 5 of this Participating Addendum (Price List);
- 5) Exhibit No. 2 of this Participating Addendum (Insurance);
- 6) the Master Agreement and its exhibits in the order set forth therein;
- 7) Exhibit No. 3 of this Participating Addendum (Contractor Tax Certification);
- and
- 8) Exhibit No. 6 (Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR) form).

1.2 Goods, Products and Services Available: The Goods, Products and Services available under this Participating Addendum are set forth in Exhibit No. 4

## **2. Participation:**

2.1 This Participating Addendum may be used by all agencies, boards, and commissions of the State of Oregon, as defined in Section 1 of the Oregon Terms (collectively, "**State Agencies**" and individually, a "**State Agency**"), and by State of Oregon institutions of higher institution, political subdivisions, and other entities authorized to use statewide contracts in the State of Oregon including without limitation, members of the Oregon Cooperative Procurement Program ("**ORCPP**").

Each of the aforementioned is a "Purchasing Entity" . Issues of interpretation and eligibility for participation as a Purchasing Entity are solely within the authority of the Participating Entity's Chief Procurement Official.

Pursuant to this Participating Addendum, Contractor shall provide to Purchasing Entities, as requested by Purchasing Entities from time to time, the Goods and Services specifically identified in Section I.2 of this Participating Addendum.

2.2 No Exclusivity. This Participating Addendum is not exclusive. There may be one or more contractors who may provide similar goods and services to Purchasing Entities. If the Participating Entity has awarded more than one master agreement for Goods and Services, Purchasing Entities shall select a contractor from among those master agreements in accordance with the selection process set forth in the buyer's guide provided to Purchasing Entities by the Contract Administrator.

**3. Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

|            |                                                                  |
|------------|------------------------------------------------------------------|
| Name:      | Jennifer King                                                    |
| Address:   | 350 West 500 South, Provo, UT 84601                              |
| Telephone: | 801.235.9809                                                     |
| Email:     | <a href="mailto:corp@discountcell.com">corp@discountcell.com</a> |

Participating Entity

|            |                                                                    |
|------------|--------------------------------------------------------------------|
| Name:      | Pam Johnson                                                        |
| Address:   | 1225 Ferry St. SE, Salem, OR 97301                                 |
| Telephone: | 503 378 4731                                                       |
| Email:     | <a href="mailto:Pam.johnson@oregon.gov">Pam.johnson@oregon.gov</a> |

**4. Participating Entity Modifications Or Additions To The Master Agreement:**

The modifications or additions set forth in this Participating Addendum apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The changes in this Participating Addendum, in addition to the changes set forth in Exhibits No. 1 through No. 6, are modifying or supplementing the Master Agreement terms and conditions.

5. **Subcontractors:** All contractors, dealers, and resellers authorized in the State of Oregon, as shown on Oregon's dedicated contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation must be in accordance with the terms and conditions set forth in the Master Agreement.
6. **Orders:** Any order placed by Participating Entity or Purchasing Entity for a Product or Service, or both, available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Participating Addendum unless the parties to the order agree in writing that another contract or agreement applies to such order.
7. **Non-Discrimination in Employment:** Contractor certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the MPA, to maintain the policy and practice in force during the entire MPA term
8. **Tax Compliance:** Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Participating Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to Goods, Products, Services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any violation of this Section 8 constitutes a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Any violation shall entitle Participating Entity or Purchasing Entity to terminate this Participating Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Participating Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Participating Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Participating Addendum or the applicable Contract, in whole or in part;

- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Purchasing Entity's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Participating Entity or Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Participating Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, Products or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and Participating Entity or Purchasing Entity may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

This Participating Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Participating Addendum or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Participating Addendum or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

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

|                                                                                                                                           |                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Participating Entity: the State of Oregon,<br>acting by and through the Department of<br>Administrative Services, Procurement<br>Services | Contractor: Discount Cell, Inc.                                                                  |
| Signature:<br>                                           | Signature:<br> |
| Name:<br><i>Pamela S. Johnson</i>                                                                                                         | Name: Jennifer King                                                                              |
| Title:<br><i>SPA</i>                                                                                                                      | Title: President                                                                                 |
| Date:<br><i>11/25/19</i>                                                                                                                  | Date: 11/21/2019                                                                                 |

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

|                                         |  |
|-----------------------------------------|--|
| Cooperative Development<br>Coordinator: |  |
| Telephone:                              |  |
| Email:                                  |  |

**[Please email fully executed PDF copy of this  
document to**

**[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)**

**to support documentation of participation and  
posting in appropriate data bases.]**

**EXHIBIT NO. 1**  
**State of Oregon Participating Addendum # PA 9478**  
**to NASPO Master Agreement No. PD180-1**

**State of Oregon-Specific Terms and Conditions ("Oregon Terms")**

1. **Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Exhibit No. 1, State of Oregon-Specific Terms (these "**Oregon Terms**"), have the meanings ascribed to them in the Master Agreement and its exhibits.

**"Acceptance"** has the meaning assigned to it in Section 7.1 of these Oregon Terms.

**"Business Day"** means Monday through Friday from 8:00 am – 5:00 pm pacific time, excluding State of Oregon holidays and other business closure days resulting from natural disasters, inclement weather, or other similar events.

**"Calendar Day"** means contiguous days.

**"Contract"** means the agreement that is formed between a Purchasing Entity and Contractor when (a) a Purchasing Entity issues a Purchase Order that incorporates by reference the terms and conditions of the Participating Addendum and (b) Contractor accepts such Purchasing Entity's Purchase Order.

**"Contract Administrator"** means the person who is identified as the Primary Contact for the Participating Entity in Section 3 of the Participating Addendum.

**"Contractor"** means Discount Cell Inc.

**"Contractor Records"** means all fiscal records and all other books, documents, papers, plans and writings (regardless of whether such records are in hard copy, electronic, or other form) of Contractor which relate to this Participating Addendum, any and all Contracts entered into between Contractor and Purchasing Entities pursuant to this Participating Addendum, and Contractor's performance under this Participating Addendum and any and all Contracts.

**"Corporate Responsible Account Definition"** Corporate Responsible Accounts ("CRU") are accounts for end users of the Master Agreement.

**"DAS PS"** means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services and is the State agency with the statutory, pursuant to ORS 279B.140, to negotiate and administer this Participating Addendum .

**"Goods" or "Products"** means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that a Purchasing Entity is authorized to procure under the Participating Addendum as set forth in Section 1.2 of the Participating Addendum.

**"Master Agreement"** means the NASPO Master Agreement No. PD180-1 between Contractor and the State of Utah, on behalf of the member states of the National Association of State Procurement Officials, NASPO ValuePoint, and its attachments, and which serves as the

underlying agreement and basis for Contractor and Participating Entity to execute the Participating Addendum.

**"Oregon Cooperative Purchasing Program" or "ORCPP"** means the cooperative purchasing program that authorizes agencies and organizations within the State of Oregon to purchase goods, products, or services available under the statewide price agreements, including this Participating Addendum.

**"Participating Addendum"** means the agreement between the Participating Entity and Contractor to which these Oregon Terms are attached as Exhibit No. 1 and includes: the Master Agreement and the Participating Addendum together with all applicable exhibits to both (including, without limitation, these Oregon Terms), Attachments, Schedules, and, as applicable, any amendments made in accordance with Section 34 of these Oregon Terms and which sets forth the terms, conditions, and requirements pursuant to which Purchasing Entities may buy, and Contractor shall provide, the Goods or Products and Services set forth in Exhibit No. 4 to the Participating Addendum.

**"Participating Entity"** means the State of Oregon acting by and through the DAS PS and in accordance with Attachment A, Section 2 of the Master Agreement is properly authorized to enter into the Participating Addendum with Contractor.

**"Participating State"** means, in accordance with Attachment A, Section 2 of the Master Agreement, the State of Oregon having been listed in the Lead State's Request for Proposal as a state intending to participate in the procurement.

**"Purchase Order"** means any written purchase order, sales order, or other document and any attachments submitted to Contractor by a Purchasing Entity that incorporates the terms and conditions of the Participating Addendum by reference and specifies the quantity and type of Goods or Products or Services, or both, that Contractor will provide to the Purchasing Entity under the terms of the Participating Addendum.

**"Purchasing Entity"** means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor. Without limiting the foregoing, and for purposes of clarification, DAS PS is a Purchasing Entity when it issues a Purchase Order or enters into a Contract on behalf of and for the benefit of itself.

**"Rejection"** has the meaning assigned to it in Section 5.2 of these Oregon Terms.

**"Revocation"** has the meaning assigned to it in Section 5.3 of these Oregon Terms.

**"State"** means the State of Oregon.

**"State Agency"** means the State of Oregon acting by and through its state agencies, boards, and commissions as defined in ORS 174.111. Some State Agencies are members of ORCPP.

**"Term"** has the same meaning ascribed to it in Attachment A, Section 3 of the Master Agreement.

**2. Offer to Provide; Purchase Orders.**

**2.1. Offer to Provide.** During the Term of the Participating Addendum, Contractor agrees to offer and provide, as requested by a Purchasing Entity from time to time, the Goods or Products and Services identified in Exhibit No. 4 of the Participating Addendum.

**2.2. Purchase Orders.** Purchasing Entities may use their own Purchase Order forms for the purchase of Goods, Products and Services. State Agencies may also use the general State-approved Purchase Order referencing NASPO Master Agreement Number PD180-1. To the extent that the terms or conditions of any Purchase Order differ from or conflict with the terms of the Participating Addendum, the difference or conflict will be resolved in accordance with Section 1.1 of the Participating Addendum. Each Purchase Order must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF OREGON MASTER AGREEMENT NO. PD180-1. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, PARTICIPATING ADDENDUM NO. PA 9478 , APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

**2.3. Effect of Purchase Orders.** Upon Contractor's acceptance of a Purchase Order issued by a Purchasing Entity, a Contract is formed between the parties for the Goods, Products, or Services, identified in such Purchase Order. In no event will the State be liable for Purchase Orders, Contracts, or any other type of purchases made by a Purchasing Entity that is not a State Agency. Purchasing Entities that are not State Agencies are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by Purchasing Entities that are not State Agencies or any other third parties.

**2.4. Verification of Purchasing Entities.** Contractor is responsible for verifying that it provides Goods, Products and Services under the Participating Addendum only to Purchasing Entities. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**2.5. State of Oregon Agencies: Funds Available/Appropriations.** The payment obligations of State Agency ordering Goods, Products, or Services, or both, under this Participating Addendum are conditioned upon the applicable State Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the applicable State Agency, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Purchase Order issued under this Participating Addendum. Contractor is not entitled to receive payment under this Participating Addendum or any Contract from any part of Oregon state government other than the State Agency that issued the applicable Purchase Order. Nothing in this Participating Addendum or any

Contract entered into by a State Agency is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Upon issuance of a Purchase Order by a State Agency, such Agency represents that it has sufficient appropriations for the current biennium to make payments for the Goods, Products, or Services, purchased under any Contract formed pursuant to this Participating Addendum.

**3. Goods, Products and Services: Specifications.** Contractor shall deliver all Goods, Products, and Services in accordance with the specifications set forth in this Section 3 and in Exhibit No. 4 attached to the Participating Addendum (collectively, "Specifications").

**3.1. Standard and Necessary Components; Warranties, Specifications.** Along with the Goods, Products or Services, Contractor shall deliver all components that are standard and necessary for the proper assembly, installation, and operation of the Goods or Products. Contractor shall deliver copies of all user manuals, manufacturer warranties, product specifications, or other product documentation ("Specifications") to Purchasing Entity.

**3.2. New, Used, and Remanufactured Goods or Products.** Unless specified otherwise in a Purchase Order, Contractor shall deliver only those Goods or Products that are new and unused. In the event a Purchasing Entity agrees, in a Purchase Order, to procure used, remanufactured, or refurbished Goods or Products, Contractor's offer, warranties, and Services related to such Goods or Products must comply with the Goods, Products or Services must meet or exceed the standards set forth in the Master Agreement and these Oregon Terms.

**3.3. Equipment Matrix Updates.** Exhibit No. 4 sets forth a generic list of Goods, Products and Services available under this Participating Addendum. Contractor maintains an Equipment Matrix on its website found at: [www.discountcell.com/naspo](http://www.discountcell.com/naspo) (select state and type of purchase, the discounted pricing for the State of Oregon will be reflected) that lists specifically the Goods, Products and Services available under this Participating Addendum. The Equipment Matrix is incorporated herein by this reference. Contractor generally updates its Equipment Matrix at least once each quarter. DAS PS acknowledges that the Goods, Products and Services listed on the Contractor's Equipment Matrix are subject to availability and change, including the removal and addition of devices. Contractor shall give DAS PS notice of any change to the Equipment Matrix. All such changes will be deemed accepted unless within 30 Calendar Days of notice of any such change, DAS PS sends Contractor a written rejection of the change.

**3.4. Addition of Products and Services.** DAS PS will develop and maintain a list of approved Goods, Products and Services available under this Participating Addendum as set forth in Exhibit No. 4. DAS PS will post and maintain the list of approved Goods, Products and Services on the Oregon Procurement Information Network (ORPIN) website.

During the Term of this Participating Addendum, Contractor may offer additional Goods, Products or Services. DAS PS shall review all such additional Goods, Products and Services and any additional related terms and conditions. If DAS PS approves the additional Goods, Products or Services, DAS PS will send Contractor written notice of such approval. Upon DAS PS' written approval of the additional Goods, Products or Services, Exhibit No. 4 will be

deemed amended, and DAS PS will update the list posted to ORPIN to include additional approved Goods, Products or Services.

**3.5. Non-Conformance.** If any Goods, Products, or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify the Purchasing Entity of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. In such instances the Purchasing Entity may elect to (a) reject the Goods or Products in whole or in part, or (b) revoke its acceptance of Goods or Products in whole or in part. If the Purchasing Entity Rejects or Revokes its acceptance of Goods or Products, Contractor shall remove the particular Goods from the Purchasing Entity's possession at no cost to the Purchasing Entity and shall reimburse the Purchasing Entity for all payments made for those Goods.

#### **4. Delivery of Goods or Products.**

**4.1. Location.** Contractor shall deliver Goods or Products to a Purchasing Entity at the location identified in the applicable Purchase Order.

**4.2. Freight Fees.** Contractor shall deliver Goods or Products F.O.B., place of destination, freight prepaid, with all transportation and handling charges paid by the Contractor.

**4.3. Risk of Loss.** Contractor shall retain the risk of loss for the Goods or Products until the Purchasing Entity has Accepted the Goods or Products in accordance with Section 5 of these Oregon Terms. Responsibility and liability for loss and damage shall remain the Contractor's until final inspection and acceptance of the Goods or Products, at which time responsibility and liability for loss and damage shall pass to the Purchasing Entity, except as to latent defects, fraud and Contractor's warranty obligations.

**4.4. Time for Delivery.** Contractor shall deliver all Goods or Products no later than 30 Calendar Days from the date the Purchasing Entity issues a Purchase Order, or any other date Contractor and purchasing agree to in the Purchase Order. If the 30<sup>th</sup> Calendar Day falls on a weekend or other State of Oregon holiday, delivery shall be made the next Business Day. Unless otherwise specified in the applicable Purchase Order, the time of delivery may occur any time between 9am and 5pm pacific time.

**4.5 Pricing.** All pricing includes delivery, freight fees, transportation and handling charges, and risk of loss as set forth in this Section.

#### **5. Acceptance, Rejection and Revocation of Acceptance of Goods or Products.**

**5.1. Acceptance.** Purchasing Entities shall have 30 Business Days after either (a) the date of delivery, or (b) if required, the date of installation, to conduct an inspection of the Goods or Products. If a Purchasing Entity does not provide written notice of Acceptance or Rejection of the Goods or Products to Contractor within the 30 Business Days after, as

applicable, the date of delivery or date of installation, of the Goods or Products, the Purchasing Entity will be deemed to have "Accepted" the Goods or Products.

**5.1.1.** In the event that a Purchasing Entity is responsible for installing any Goods or Products procured under the Participating Addendum, such Purchasing Entity shall have five Business Days after delivery to install of such Goods or Products. Effective as of the sixth Business Day after Delivery of such Goods or Products, the 10 Business Day acceptance period set forth in this Section 5.1 shall commence.

**5.2. Rejection.** If a Purchasing Entity rejects Goods or Products, it shall provide written notice of rejection within 30 Business Days after delivery of such Goods or Products. All notices of rejection shall, at a minimum, itemize the apparent defects and include:

**5.2.1.** A description of the nonconformance between the Goods or Products delivered and the required Specifications and warranties;

**5.2.2.** A description of any other nonconformance of the Goods or Products (including, but not limited to, late delivery); and

**5.2.3.** A statement indicating whether Contractor may cure the nonconformance and if so, the method by which and time period within which Contractor may cure

**5.3. Revocation of Acceptance.** Notwithstanding a Purchasing Entity's Acceptance of Goods or Products, a Purchasing Entity may revoke its Acceptance of Goods or Products for nonconformance with the Specifications if such nonconformance could not have been reasonably been discovered within the time period for Acceptance as set forth in Section 5.1 of these Oregon Terms when subject to normal use and operation during such period. Any and all notices of Revocation shall include the same information required of a notice of Rejection as set forth in Section 5.2 of these Oregon Terms.

**5.4. Effect of Rejection or Revocation of Acceptance.** If a Purchasing Entity Rejects or Revokes its Acceptance of Goods or Products, Contractor shall refund all payments the Purchasing Entity has made to Contractor for those Goods or Products and shall, at no cost to the Purchasing Entity, remove the Goods or Products from the Purchasing Entity's possession within 15 Business Days following the later of (a) the date of the Purchasing Entity's notice of Rejection or notice of Revocation of Acceptance, (b) or the date of Contractor's failure to cure if cure is permitted. In the event Contractor does not remove the Rejected or Revoked Goods or Products within 15 Business Days of receipt of the Purchasing Entity's notice of Rejection or Revocation of Acceptance, the Purchasing Entity shall have the right, without any liability to Contractor, to dispose of such Goods or Products as determined in its sole discretion. Notwithstanding a Purchasing Entity's right of disposal, Contractor shall reimburse the Purchasing Entity for all payments made by the Purchasing Entity for such disposed Goods or Products. Nothing contained in this Section or the Participating Addendum precludes a Purchasing Entity from pursuing any remedies to which either may be entitled upon Rejection or Revocation of Acceptance of Goods or Products or otherwise under the Participating Addendum.

**6. Warranties; Performance of Services; Reperformance of Services.** Contractor shall pass through to Purchasing Entities all manufacturer warranties. Contractor shall perform maintenance, as requested by a Purchasing Entity, in accordance with the Participating Addendum. Without limiting the representations and warranties set forth in these Oregon Terms, Contractor and Contractor's technicians and other staff (collectively, "Contractor Personnel") shall perform all Services, including maintenance Services, with the skill and knowledge possessed by well-informed members of their trade or profession and Contractor and Contractor's Personnel will apply that skill and knowledge with care and diligence so Contractor and Contractor's Personnel perform the Services described in this Participating Addendum in accordance with the standards prevalent in Contractor's profession or trade, or both.

**6.1.** In the event Contractor or Contractor's Personnel fail to perform any Services in accordance with the warranty set forth in this Sections 6 and Section 12, below of these Oregon Terms, Purchasing Entity shall promptly notify Contractor of such failure and Contractor shall reperform the Services without any additional charge to the affected Purchasing Entity.

**6.2.** In the event the Services require Contractor to provide replacement or substitute Goods, Products, or components, any substitutions or replacements thereof shall conform to the specifications, capabilities, characteristics, functions and performance standards of new, unused Goods, Products, or components, and all such replacement or substitute Goods, Products, or components shall be free from error or defect that materially impairs their use, and shall be free from defects in materials, and workmanship.

**7. Invoices and Payment Provisions.**

**7.1. Invoices.** Contractor may invoice Purchasing Entities upon delivery of Goods, Products, or Service Acceptance. Invoices must be delivered to the physical address identified in the applicable Purchase Order. All invoices must include all of the following information:

1. Applicable Purchase Order Number
2. Description of Goods or Products Delivered
3. Quantity of Goods or Products ordered
4. Quantity of Goods or Products delivered
5. Price per unit
6. Services Ordered and Delivered
7. Price/rate charged for Services
8. Total Price invoiced
9. Address to which payment must be remitted

**7.2. Payment of Invoices.** Invoices must be paid, subject to Acceptance made in accordance with Section 7.1 of these Oregon Terms, by Purchasing Entities within 30 days of delivery of the applicable Goods or Products or Acceptance of the Services. Any interest for overdue payment is subject to ORS 293.462.

**7.2.1. Purchasing Entities shall have the right to pay invoices as follows:**

**1. Credit Card:**

VISA: X  
Master Card: X  
Other Credit Cards: (Discover, American Express)

**2. Direct Deposit (e.g., ACH), Electronic Funds Transfer (EFT) or**

**3. Check**

**4. If paid by Credit card, transaction fees will be as follows:**

- Credit card transactions less than or equal to \$5,000.00 carry no additional fee
- Credit card transactions greater than \$5,000.00 will carry a 3% transaction fee

**7.3. Availability of Invoices/Statements.** Contractor shall provide all Purchasing Entities with online access to each Purchasing Entity's account information through the Discount Cell Inc. website, as such website is required to be developed and maintained for Participating Entity in accordance with Attachment A, Section 8 of the Master Agreement. Such website shall include the following functions and features: (Discount Cell Inc. will provide a website as described in Attachment A, Section 8 of the Master Agreement)

**7.4. Availability of Invoices/Statements.** Contractor shall provide all Purchasing Entities with online access to each Purchasing Entity's account information through the Discount Cell Inc. website, as such website is required to be developed and maintained for Participating Entity in accordance with Attachment A, Section 8 of the Master Agreement.

7.4.1. Allow each Purchasing Entity to view, download, and print its individual invoicing and payment history;

7.4.2. Allow each and all Purchasing Entities to:

7.4.3. Pay one invoice online in one single transaction using a credit card;

7.4.4. Receive, upon payment of one or more invoice: (a) a unique confirmation number upon completion of payment, and (b) email confirmation that payment made has posted;

7.4.5. Conduct searches of invoices issued by Contractor including the ability to search by invoice date, due date, purchase order number, ship to location, or transaction type;

7.4.6. Review invoice and payment activity, including credits, adjustments, and amounts due and past-due;

7.4.7. View, print, and export invoices using a variety of common formats such as xlsx., pdf., or csv.

7.4.8. Dispute invoices and upon submission of a dispute have a tracking or confirmation number automatically generated.

**8. Contractor to Provide Customer Service.** In addition to the developing and maintaining the Website for Participating Entity, Contractor shall provide a dedicated account representative and dedicated customer service team to assist all Purchasing Entities with: (a) use of the Discount Cell Inc. website, (b) obtaining information regarding the Goods, Products, and Services offered by Contractor, (c) return of non-conforming Goods or Products, (d) assistance with the use and troubleshooting the use of Goods or Products. Such customer service help shall be provided by means of an online and telephone helpdesk.

**9. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)**

**9.1. Volume Sales Reports (VSRs).** Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) Calendar Days from the end of each calendar quarter

**9.1.1. Content of VSRs.** Each and every VSR must include all of the following information:

- (a) Complete and accurate details of all receipts (sales and refunds) for the reported period;
- (b) The information as identified in the Volume Sales Report Template - Data Requirement, Format and Layout, attached to the Participating Addendum as Exhibit No. 6 and incorporated by reference in this Section ; and
- (c) Such other information as DAS PS may reasonably request from time to time

**9.1.2 Format of VSRs.** Contractor shall provide all VSRs in MS Excel (.xls) format.

**9.1.3 VSRs Required Regardless of Sales Volume.** Contractor shall deliver a VSR to the Participating Entity each quarter, regardless of whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

**9.1.4 Approval and Review of First VSR.** The VSR submitted by the Contractor for the first calendar quarter must be submitted to the Participating Entity's Contract Administrator for review and approval.

**9.1.5 Method of Delivery of VSRs.** All VSRs must be submitted by e-mail to [VCAF.REPORTING@oregon.gov](mailto:VCAF.REPORTING@oregon.gov). Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Participating Entity's Contract Administrator must be obtained for deviations from the requirements set forth in this Section 9.6.

**9.1.6 Right to Review After Receipt or Acceptance.** The Participating Entity's Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Participating Addendum shall not preclude the Participating Entity from requesting, in accordance with Section 9.1.6 of these Oregon Terms, an audit or otherwise requesting documentation to validate the accuracy of a VSR.

**9.1.7 Failure to Submit VSRs.** The Participating Entity reserves the right to terminate this Participating Addendum if volume sales reports are not submitted in accordance with this Section 9.1.7

## **9.2. Vendor Collected Administrative Fee (VCAF).**

**9.2.1. VCAF Amount.** The Vendor Collected Administrative Fee (VCAF), is a charge equal to Two Percent (2.0 %) of Contractor's Gross total sales, less any credits, made to Purchasing Entities during the calendar quarter.

**9.2.2. Payment Due Date.** During the Term of this Participating Addendum and for the sales during the last calendar quarter of the Term of this Participating Addendum, the Contractor shall remit VCAF payment to the Participating State within forty-five (45) Calendar Days after the end of each calendar quarter.

**9.2.3. No Additional Line Item Fees.** Contractor may not reflect the VCAF fee as a separate line item charge to Purchasing Entities. Contractor's prices set forth in Exhibit No. 5 to the Participating Addendum reflects all Contractor's charges to Purchasing Entities. For the purposes of this Participating Addendum, quarters end March 31, June 30, September 30, and December 31. The Participating Entity will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of the entity that actually reports or makes VCAF payment to the Participating Entity.

**9.2.4. Remittance and Payment Format** The fee shall be in the form of a check remitted to:

State of Oregon  
Department of Administrative Services  
Attn: Shared Financial Services/PS  
155 Cottage Street NE  
Salem, Oregon 97301

Any other form of payment must be specifically pre-approved in writing (email shall suffice) by the Contract Administrator.

### **Volume Sales Report (VSR)**

a) Contractor shall submit a VSR to DAS PS no later than thirty (30) calendar days after the end of each calendar quarter. For the purposes of this Agreement, calendar quarters end March 31, June 30, September 30, and December 31.

b) The VSR must contain:

- i) Complete and accurate details of all receipts (for both sales and refunds) for the reported period;

- ii) The information identified in DAS PS document titled Volume Sales Report Template. This document should be supplied by the DAS PS Contract Administrator at time of execution.
  - iii) Such other information as DAS PS may reasonably request. Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter." This report may be sent by e-mail without any attachment provided the subject title clearly identifies Contractor's company name, the relevant Price Agreement Number, and the reporting period for the VSR.
- c) Contractor shall provide the VSR in MS Excel (.xls, .xlsx) format and in spreadsheet form. The VSR must be submitted by e-mail unless the size of the file precludes transmission by email. VSR may be submitted by CD if the file precludes transmission by email. Delivered print outs of VSRs or faxed VSRs are not acceptable. Approval from the Contract Administrator must be obtained for deviations from these requirements.
  - d) Contractor shall submit the first VSR to the DAS PS Contract Administrator for review and approval. The approved first VSR and subsequent VSRs must be submitted to VCAF.REPORTING@OREGON.GOV. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement shall not preclude DAS PS from challenging the validity thereof at any time.
  - e) Procurement Services reserves the right to terminate this Price Agreement if VSRs are not received as scheduled or in the prescribed format.
- 2) Vendor Collected Administrative Fee (VCAF)**
- a) Contractor shall remit to DAS PS a VCAF based on invoices received from Procurement Services within 45 days from date of invoice receipt. Procurement Services generates invoices from data provided by Contractor in quarterly Volume Sales Report.
  - b) Contractor shall not reflect the VCAF as a separate Quote, PO or Invoice line item charge to Authorized Purchasers.
  - c) Contractor shall keep records showing the sales of Goods pursuant to this Agreement in sufficient detail to enable the DAS PS to determine the VCAF payable by Contractor and further agrees to permit its books and records to be examined from time to time to the extent necessary to verify the Volume Sales Reports. Such examination is to be made at the expense of DAS PS by any auditor appointed by DAS PS who is reasonably acceptable to Contractor, or, at the option and expense of Contractor, by a certified public accountant appointed by Contractor.
  - d) In the event that such examination reveals underpayment of the VCAF, Contractor shall immediately pay to DAS PS the amount of deficiency, together with any interest

owed. If the examination reveals an underpayment of 5% or more, Contractor shall reimburse DAS PS for the cost of the audit.

- e) The VCAF is a charge equal to 2%[Two Percent] of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter. For purposes of this Agreement, "credits" includes refunds.
- f) Starting 45 days after receipt of invoice, any Contractor late payments of the VCAF will accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount has been paid in full. DAS PS' right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.
- g) Contractor shall make VCAF payments by Automated Clearing House (ACH) transactions.

ACH Credit transactions will be initiated by Contractor to initiate transfer of funds from a bank account of Contractor's choosing to the bank for DAS PS after Contractor receives from DAS PS a completed authorization agreement for ACH Credits. These payment transactions will be processed upon receipt of invoice from Procurement Services. Contractor shall comply with DAS PSs reasonable instructions to facilitate this method of payment.

- h) In the event ACH is not available as a means of invoice payment, Contractor may remit in the form of a check. The check MUST reference the DAS PS invoice number. Payments must be mailed to:

DAS-SFS-Cashier  
155 Cottage ST NE  
Salem, OR 97301

**9.2.5. Interest.** Any payments Contractor makes or causes to be made to the Participating Entity after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount has been paid in full. The Participating Entity's right to interest on late payments shall not preclude the Participating Entity from exercising any of its other rights or remedies pursuant to this Participating Addendum or otherwise with regards to Contractor's failure to make timely remittances.

**9.3. Audit Rights.** The Participating Entity at its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as such term is defined in Section 1 above, and other pertinent data, to determine and verify the figures reported in any and all VSRs furnished by Contractor. In the event that any such audit reveals underpayment of any Vendor Collected Administrative Fee, Contractor shall pay the amount of deficiency, together with interest thereon at the rate provided in Section 9.2.5, within five Calendar Days of date of Participating Entity's written request. In the event

an audit reveals underpayment of the VCAFs owing, Contractor shall also pay, as set forth in the Participating Entity's written request, the reasonable cost of any and all audits revealing underpayment..

**10. Confidential Information.** Contractor acknowledges that it and its employees, agents, or subcontractors may, in the course of providing and performing the Services under this Participating Addendum, be exposed to or acquire information that is confidential to a Purchasing Entity or a Purchasing Entity's clients. Any and all information of any form obtained by Contractor or its employees, subcontractors, or agents in the performance of this Participating Addendum, including Purchasing Entity Data, is deemed to be confidential information of the Purchasing Entity as are any reports or other documents or items (including data aggregations) that result from the use of Purchasing Entity Data (collectively, "**Confidential Information**").

**10.1.Excluded from Confidential Information.** Confidential Information does not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by the Purchasing Entity to others without restrictions similar to those imposed by this Participating Addendum; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Participating Addendum; (iv) is obtained from a source other than the Purchasing Entity without the obligation of confidentiality, (v) is disclosed with the prior written consent of the Purchasing Entity; or (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**10.2.Non-Disclosure.** Contractor, its employees, agents, and subcontractors shall hold Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to the Purchasing Entity hereunder, and shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Participating Addendum, and Contractor will at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Contractor shall not at any time during or after the term of this Participating Addendum and any Contract, except as directed by Purchasing Entity disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this this Participating Addendum, and that upon termination of this Participating Addendum or at Purchasing Entity's request, Contractor shall deliver to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Participating Addendum, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

**10.3 Identity Theft.** In the performance of this Participating Addendum and any Contract, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11). Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

10.3.1 In addition to and without limiting the generality of Sections 10 and 10.3 above of these Oregon Terms, Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Participating Addendum. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly authorized in writing by Purchasing Entity, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

10.3.2 Contractor shall promptly report to Purchasing Entity any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Participating Addendum and any Contract.

10.3.3 Contractor shall require the compliance of its employees, agents, and subcontractors with this Section 10.3.3.

**10.4 Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Purchasing Entity Data stored or transmitted by the Goods or Products, or otherwise use any data-mining technology, for any non-authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, "non-authorized activity" means the data mining or processing of data, stored or transmitted, or both, by the Goods or Products, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Participating Addendum.

**11. Contractor's Proprietary Information; Oregon Public Records Laws.** A Purchasing Entity will use reasonable efforts to maintain the confidentiality of any proprietary information received from Contractor and will not use such proprietary information except to fulfill its obligations under this Participating Addendum and any Contract and applicable state and federal law. Contractor acknowledges and agrees any disclosures of its proprietary information that Contractor makes under this Participating Addendum and any Contract that are not otherwise protected by applicable law are subject to the Oregon Public Records Laws, including ORS 192.311-192.478, and the provisions for the custody and maintenance of public records, ORS 192.005 – 192.170.

**11.1 Identification of Proprietary Information.** Contractor proprietary information is any information marked or designated in writing by Contractor as "confidential" prior to initial disclosure, or information disclosed orally that is confirmed in writing as "confidential" within ten (10) Calendar Days of disclosure.

**11.2 Disclosure Under Oregon Public Records Law.** A Purchasing Entity may disclose and provide copies of Contractor proprietary information to the extent disclosure is required by the Oregon Public Records Law (ORS 192.311 to 192.478). If a Purchasing Entity receives from a third party any request under the Oregon Public Records Law for the disclosure of Contractor proprietary information, the Purchasing Entity will notify Contractor within a reasonable period of time of the request. Contractor is exclusively responsible for defending Contractor's position concerning the confidentiality of the requested information. Notwithstanding the foregoing, while the Purchasing Entity is not required to actively assist Contractor in opposing disclosure of proprietary information, the Purchasing Entity will cooperate in good faith to the extent reasonably practicable with Contractor's efforts to protect its proprietary information.

**11.3 Excluded from Proprietary Information.** The confidentiality obligations imposed by this Section 11 do not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information known to the recipient prior to the effective date of this Participating Addendum and any Contract without obligation of confidentiality; (iv) information independently developed by recipient and documented in writing without use of, or reference to, any Contractor proprietary information; or (v) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if Purchasing Entity is required to disclose Contractor proprietary information under clause (v), Purchasing Entity will first give Contractor notice and provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.

**11.4 Injunctive Relief.** Purchasing Entity acknowledges that Purchasing Entity's use and disclosure of Contractor's proprietary information not in accordance with this Section 11.4 will cause irreparable injury to Contractor that is inadequately compensable in damages. Accordingly, Contractor may seek and obtain injunctive relief against the breach or threatened breach of this Section 11. Purchasing Entity acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Contractor and are reasonable in scope and content.

**12. Representations and Warranties.** Effective upon acceptance of a Purchase Order by Contractor, a Contract is formed between Contractor and the Purchasing Entity that issued the applicable Purchase Order and as a result, such Purchasing Entity is entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under this Participating Addendum. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to each Purchasing Entity upon formation of a Contract that:

**12.1 Enforceability of Participating Addendum.** Contractor has the power and authority to enter into and perform this Participating Addendum and any resulting Contract between a Purchasing Entity and Contractor and that this Participating Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

**12.2 Participating Addendum.** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance, regulation, or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of Services or Goods or Products, and Contractor's provision of the Services or Goods or Products shall not violate any such law, ordinance, regulation, or order;

**12.3 New Goods or Products; Specifications.** Goods or Products will be, where applicable, new, unused, current production models. All Goods or Products will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the Master Agreement, the Participating Addendum or otherwise set forth in Exhibit No. 4 to the Participating Addendum, Contractor further warrants that all Goods or Products conform to such specifications and meet or exceed all quality and safety standards set forth therein;

**12.4 No Liens.** All Goods or Products are free and clear of any liens or encumbrances, and Contractor has full legal title to such Goods or Products, and no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to a Purchasing Entity hereunder;

**12.5 Authorized Use.** When used as authorized by this Participating Addendum, a Purchasing Entity's use of the Goods or Products shall not infringe any copyright, patent, trade secret or other proprietary right of any third party;

**12.6 Manufacturer Warranties.** Contractor shall transfer to Purchasing Entity all manufacturer warranties covering the Goods or Products at time of delivery at no charge;

**12.7 Performance.** All Services to be performed under this Participating Addendum and any Contract will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Participating Addendum and any Contract; and

**12.8 Taxes.** To the best of Contractor's knowledge, after due inquiry, for a period of no fewer than six (6) calendar years preceding the Effective Date, faithfully has complied with:

12.8.1 All tax laws of the State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

12.8.2 Any tax provisions imposed by a political subdivision of the State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; and

12.8.3 Any tax provisions imposed by a political subdivision of the State that applied or apply to Contractor, or to Goods or Products, Services, or property, whether tangible or intangible, provided by Contractor.

12.8.4 Warranties Cumulative. The warranties set forth in this Section 12 are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Participating Addendum are cumulative and will be interpreted expansively so as to afford Purchasing Entity the broadest warranty protection available.

**13. Compliance with Applicable Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Goods or Products provided and Services performed under this Participating Addendum, and a Purchasing Entity's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270. In addition, Contractor warrants the Goods and Services provided under this Participating Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**14. Compliance with Tax Laws.** Without limiting Section 12.9 above, Contractor shall, throughout the Term of this Oregon Contract, comply with all tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon. Any violation of this Section or of Contractor's warranty in Section 12 constitutes a material breach of this Contract. Any violation of this Section or Section 12 entitles Purchasing Entity to terminate a Contract made pursuant to any and all Purchase Orders and further entitles the Participating Entity to terminate this Participating Addendum and for each of them to pursue and recover damages that arise from the breach and the termination of this Participating Addendum or, as applicable, a Contract made pursuant to a Purchase Order, and to pursue all other remedies available under this Participating Addendum, at law, or in equity.

**14.1 Oregon Department of Revenue.** This Participating Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the Participating Entity or a political subdivision, including (i) garnishing the Contractor's compensation under any Contract entered into pursuant to a Purchase Order with a State Agency, or other Purchasing Entity as applicable, or (ii) exercising a right of setoff against Contractor's compensation under any Contract entered into pursuant to a Purchase Order with a State Agency, or other Purchasing Entity as applicable, for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

**15. Publicity.** Contractor agrees that it will not disclose the form, content, or existence of this Participating Addendum or any Contract in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association

with a Purchasing Entity, the Participating Entity, or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement of Contractor's services by the Purchasing Entity, the Participating Entity, or the State of Oregon, without the prior written consent of the foregoing.

## **16. Indemnities.**

**16.1 General Indemnity.** Contractor will defend, save, hold harmless and indemnify a Purchasing Entity and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, settlements, costs and expenses, including attorneys' fees, of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under this Participating Addendum.

**16.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Purchasing Entities and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, settlements, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the Goods or Products or Services furnished under a Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally intellectual property right of any third party ("**Intellectual Property Rights**")

16.2.1 If Contractor believes at any time that the Goods, Products, or Services infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Purchasing Entity's prior written consent, which Purchasing Entity will not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Purchasing Entity the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Goods or Products continue to function in material conformance with the specifications set forth in this Participating Addendum. Contractor's failure or inability to accomplish any of the foregoing will be deemed a material breach of this Participating Addendum, and Purchasing Entity may pursue any rights and remedies available to it under this Participating Addendum, including termination.

16.2.2 Contractor will not be liable under this Section for any claim for infringement based solely on (a) Purchasing Entity's modification of the Goods or Products, or (b) Use of the Goods or Products not authorized by Contractor, or both.

**17. Control of Defense and Settlement.** Contractor's obligation to indemnify Purchasing Entity as set forth in Section 17 of these Oregon Terms, is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 17; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Purchasing Entity, nor purport to act as legal representative of the State

of Oregon or any of its agencies, without the prior written approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the prior written approval of the Attorney General. The State of Oregon may, at its election assume its own defense and settlement in the event that the State of Oregon determines that (a) Contractor is prohibited from defending the State of Oregon, (b) is not adequately defending the State of Oregon's interests, or (c) that an important governmental principle is at issue and the State of Oregon desires to assume its own defense. The State of Oregon will assume the costs and expenses of its own defense under subsection (c) of the foregoing sentence.

## **18. Events of Default.**

**18.1 Default by Contractor under Participating Addendum.** Contractor will be in default under this Participating Addendum if:

18.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within sixty (60) Calendar Days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

18.1.2 Contractor commits any material breach of any covenant, warranty, obligation or certification under this Participating Addendum, fails to provide the Goods or Products or to perform the Services in conformance with the specifications and warranties provided in this Participating Addendum, or clearly manifests an intent not to perform future obligations under this Participating Addendum, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) Business Days after delivery of Participating Entity's notice or such longer period as the Participating Entity may specify in such notice.

**18.2 Default by Contractor under a Contract.** Contractor will be in default under a Contract if:

18.2.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within sixty (60) Calendar Days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular; or

18.2.2 Contractor commits any material breach of any covenant, warranty, obligation or certification under the applicable Contract, fails to provide the Goods or Products or to perform the Services in conformance with the specifications and warranties provided pursuant to the applicable Contract, or clearly manifests an intent not to perform future obligations under the applicable Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within 30 Business Days after the effective date of delivery of Purchasing Entity's notice or such longer period as Purchasing Entity may specify.

**18.3 Default by Purchasing Entity.** Purchasing Entity will be in default under this Participating Addendum if:

18.3.1 Purchasing Entity fails to pay Contractor any amount pursuant to the terms of this Participating Addendum, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery (of Contractor's notice or such longer period as Contractor may specify in such notice; or

18.3.2 Purchasing Entity commits any material breach or default of any covenant, warranty, or obligation under this Participating Addendum, fails to perform its commitments under this Participating Addendum within the time specified or any extension thereof, and Purchasing Entity fails to cure such failure within 30 Business Days after the effective date of delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

## **19. Remedies for Default**

**19.1 Participating Entity's Remedies.** In the event Contractor is in default under Section of these Oregon Terms, Participating Entity may at its option, pursue any or all of the remedies available to it under this Participating Addendum and at law or in equity, including, without limitation:

19.1.1 Terminate the Participating Addendum in accordance with Section 20.2 of these Oregon Terms

19.1.2 With respect to a breach of Section 19.8.4, (a) exercise the right of set-off, and withholding amounts due and owing to Contractor, in an amount equal to the Purchasing Entity's setoff right, without penalty and (b) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Participating Addendum, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services or Goods or Products, or both; and

19.1.3 Exercise any or all of the tax compliance remedies set forth in Section 14 above of these Oregon Terms.

**19.2 Purchasing Entity Remedies.** In the event Contractor is in default of a Contract under Section 18 of these Oregon Terms, the Purchasing Entity to the applicable Contract may at its option, pursue any or all of the remedies available to it under the Participating Addendum and at law or in equity, including, without limitation:

19.2.1 Termination of the applicable Contract;

19.2.2 Withholding or offsetting payment for erroneous invoices for the Services that Contractor is obligated but has failed to perform in accordance with this Participating Addendum, including warranties in Section 12;

19.2.3 Exercise of its right of setoff against the compensation invoiced and due to Contractor under the applicable Contract;

19.2.4 With respect to a breach of Section 182, (a) exercise the right of set-off, and withholding amounts due and owing to Contractor, in an amount equal to the Purchasing Entity's setoff right, without penalty and (b) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services, Goods or Products; and

19.2.5 Exercise any or all of the tax compliance remedies set forth in Section 12 above of these Oregon Terms.

**19.3 Remedies Not Exclusive.** The remedies afforded to the Participating Entity and Participating Entities as set forth in the Sections 19, as applicable, above of these Oregon Terms are cumulative to the extent the remedies are not inconsistent and each of them, or both of them, may pursue any of their respective remedies singly, collectively, successively or in any order whatsoever.

19.3.1 If it is determined for any reason that Contractor was not in default under Section 19.4 above of these Oregon Terms, the rights and obligations of the Contractor and Participating Entity will be the same as if the Participating Addendum was terminated pursuant to Section 20 below of these Oregon Terms.

19.3.2 If it is determined for any reason that Contractor was not in default of a Contract under Section 19 above of these Oregon Terms, the rights and obligations of the Contractor and Purchasing Entity will be the same as if the Contract was terminated pursuant to Section 20 below of these Oregon Terms.

**19.4 Contractor Remedies.** In the event a Purchasing Entity (a) terminates a Contract pursuant to Section 20 below of these Oregon Terms, or (b) is in default under Section 0 of these Oregon Terms and regardless of whether Contractor elects to exercise its right to terminate a Contract under Section 20 below of these Oregon Terms, Contractor's sole monetary remedy will be a claim for any unpaid invoices for the Goods or Products or Services completed, delivered and Accepted. If previous amounts paid to Contractor exceed the amount due to Contractor under this section, Contractor shall promptly pay any excess to Purchasing Entity after receipt of written demand. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any individual entity from its obligations to any product leases or postage meter rental agreements that were entered prior to the date of any such termination.

## **20. Term and Termination of Participating Addendum.**

**20.1 Term of Participating Addendum.** The term of this Participating Addendum shall be co-terminus with the NASPO ValuePoint Master Agreement PD180-1. This Participating Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Participating Addendum in accordance with its terms.

## **20.2 Termination of Participating Addendum.**

20.2.1 Participating Entity and Contractor may agree to terminate this Participating Addendum upon at least 30 days prior written agreement. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any individual entity from its obligations to any product leases or postage meter rental agreements that were entered prior to the date of any such termination.

20.2.2 Participating Entity may terminate this Participating Addendum, in whole or in part, at any time upon thirty (30) days prior written notice to Contractor. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any individual entity from its obligations to any product leases or postage meter rental agreements that were entered prior to the date of any such termination.

20.2.3 Participating Entity may also terminate this Participating Addendum, in whole or in part, immediately upon written notice to Contractor, or at such later date as Participating Entity may establish in such notice, for any reason, or upon the occurrence of any of the following events:

1. Participating Entity fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods or Products or Services to be purchased under the Participating Addendum ; or
2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods or Products or Services, or both under this Participating Addendum are prohibited or the Participating Entity is prohibited from paying for such Goods or Products or Services from the planned funding source; or
3. Contractor is in breach of this Participating Addendum under Section 20 above of these Oregon Terms

**20.3 Stop Performance Upon Termination.** Upon receipt of written notice of termination, Contractor will stop performance under all Contracts as directed by Participating Entity.

**20.4 Remedies Not Exclusive.** Termination under any provision of this Participating Addendum does not extinguish or prejudice the Participating Entity's right to enforce this Participating Addendum, a Contract, or a Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the Participating Entity's to indemnification by Contractor. If this Participating Addendum, is so terminated, the Participating Entity will pay Contractor in accordance with the terms of this Participating Addendum.

## **21. Term and Termination of Individual Contracts.**

**21.1 Term of Individual Contracts.** An Individual Contract will remain in effect until the expiration or termination of the Contract in accordance with its terms. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve

any individual entity from its obligations to any product leases or postage meter rental agreements that were entered prior to the date of any such termination.

## **21.2 Termination of a Contract.**

21.2.1 Any Contract may be terminated at any time by mutual written consent of Purchasing Entity and Contractor.

21.2.2 Any Purchasing Entity may, at its sole discretion, terminate, in whole or in part, any Contract such Purchasing Entity has entered into with Contractor upon 30 days prior written notice to Contractor. The termination or expiration of the Master Agreement or Oregon Participating Addendum shall in no way relieve any individual entity from its obligations to any product

21.2.3 Any Purchasing Entity may terminate in whole or in part, any Contract such Purchasing Entity has entered into with Contractor immediately upon written notice to Contractor, or at such later date as Purchasing Entity may establish in such notice, upon the occurrence of any of the following events:

21.2.4 Purchasing Entity fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for the Goods or Products or Services, or both, to be purchased under a Contract;

21.2.5 Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods or Products or Services, or both, under a Contract is prohibited or Purchasing Entity is prohibited from paying for such Goods or Products or Services, or both, from the planned funding source; or

21.2.6 Contractor commits any material breach of the Contract.

21.2.7 Contractor may terminate a Contract if a Purchasing Entity is in default under Section 19.4 of these Oregon Terms.

**21.3 Effect of Termination of a Contract.** Upon receipt of written notice of termination of a Contract, Contractor will stop performance under such Contract as directed by the Purchasing Entity.

**21.4 Remedies Not Exclusive** Termination of a Contract does not extinguish or prejudice a Purchasing Entity's right to enforce the applicable Contract with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the Purchasing Entity to indemnification by Contractor. In addition, termination of a Contract does not extinguish or prejudice Purchasing Entity's right to enforce any other rights or remedies it has under the applicable Contract. If Contract is so terminated, the Purchasing Entity will pay Contractor in accordance with the terms of the Contract for Goods or Products delivered or Services performed and Accepted by Purchasing Entity, or both, up to the time of any breach by Contractor.

## **22. Limitation of Liability.**

### **22.1 To Participating Entity (DAS PS).**

22.1.1 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1 , GENERAL INDEMNITY, (ii) SECTION 16.2 IP INDEMNITY, (iii) SECTION 10, CONFIDENTIAL INFORMATION OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS MISCONDUCT, OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY TO PARTICIPATING ENTITY FOR DAMAGES FOR ANY OTHER CAUSE WHATSOEVER IS LIMITED TO \$50,000.

22.1.2 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1 GENERAL INDEMNITY, (ii) SECTION 16.2, IP INDEMNITY (iii) SECTION 10, CONFIDENTIAL INFORMATION (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER CONTRACTOR NOR PARTICIPATING ENTITY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

### **22.2 To Purchasing Entity**

22.2.1 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1 , GENERAL INDEMNITY, (ii) SECTION 16.2 IP INDEMNITY, (iii) SECTION 10, CONFIDENTIAL INFORMATION, OR (vi) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS MISCONDUCT, OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, CONTRACTOR'S LIABILITY TO PURCHASING ENTITY FOR DAMAGES FOR ANY OTHER CAUSE WHATSOEVER IS LIMITED TO TWO AND ONE-HALF TIMES THE TOTAL FEES PAYABLE BY THE PURCHASING ENTITY UNDER THE APPLICABLE CONTRACT.

22.2.2 EXCEPT FOR CONTRACTOR'S LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 16.1 GENERAL INDEMNITY, (ii) SECTION 16.2, IP INDEMNITY (iii) SECTION 10, CONFIDENTIAL INFORMATION OR (v) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE OR INTANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS NEITHER CONTRACTOR NOR PURCHASING ENTITY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

### **22.3 To Contractor.**

22.3.1 ANY CONTRACT ENTERED INTO BY CONTRACTOR AND A STATE AGENCY FOR A CAPITAL LEASE SHALL BE VOID AND THE STATE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY SUCH LEASE.

22.3.2 Nothing in this Participating Addendum or in any Contract may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**23. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

### **24. Notices.**

**24.1 To Purchasing Entity.** Any formal communications between Contractor and a Purchasing Entity or notices to be made under a Contract shall be given in writing to the person and address indicated in the Purchase Order pursuant to which the applicable Contract was formed.

**24.2 To Participating Entity.** Any formal communications between Contractor and Participating Entity or notices to be made under the Participating Addendum shall be given to the Contract Administrator identified in Section 24.3 of the Participating Addendum:

**24.3 To Contractor.** All formal communications or notices required to be given between Contractor and Purchasing Entity under a Contract, or between Contractor and Participating Entity under the Participating Addendum, shall be given to the following person and address:

**Name: Jennifer King**  
**Title: Contracts Manager**  
**Address: 350 West 500 South**  
**Provo, UT 84601**

**Phone: (801) 235-9809**

**24.4 Means and Effective Date of Delivery.** All such communications and notices shall be delivered and made effective as follows:

24.4.1 via U.S. Postal Services, postage pre-paid, shall be effective 5 Business Days after mailing;

24.4.2 via personal delivery shall be effective upon actual delivery;

24.4.3 via express parcel or other express commercial carrier, fees pre-paid, shall be effective within two Business Days after placing with such carrier.

25. **Governing Law.** This Participating Addendum and any and all Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

26. **Jurisdiction and Venue.**

**26.1 Participating Entity and State Agency Purchasing Entities.** Any claim, action, suit or proceeding (individually and collectively, "**Claims**") between Contractor and the Participating Entity, or between Contractor and any Purchasing Entity that is a State Agency, that arises from or relates, as applicable, to this Participating Addendum or a Contract, or both, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity based on the eleventh amendment to the Constitution of the United States or otherwise, with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

**26.2 ORCPP Members.** Any Claims between Contractor and a Purchasing Entity that is an ORCPP Member ("**ORCPP Purchasing Entity**") that arise from or are related to individual a Contracts will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such ORCPP Purchasing Entity resides or has its principal office, or at such ORCPP Purchasing Entity's option, within such other county as the ORCPP Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claims must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

27. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Participating Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Participating Addendum. A Purchasing Entity may withhold final payment under a Contract until Contractor has provided the Oregon Department of Revenue with the required information.

28. **Merger Clause; Waiver.**

**28.1 Participating Entity.** As to Contractor and Participating Entity, the Participating Addendum, including the Master Agreement and all applicable Exhibits, Attachments, and Schedules thereto, constitutes the entire agreement between Contractor and Participating

Entity on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Participating Addendum. No waiver, consent, modification or change of terms of this Participating Addendum binds either party unless in writing and signed by both Contractor and the Participating Entity and all necessary State approvals have been obtained in writing. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of the Participating Entity to enforce any provision of this Participating Addendum does not constitute a waiver by the Participating Entity of that or any other provision.

**28.2 Purchasing Entity.** As to Contractor and a Purchasing Entity, the Contract, including the Participating Addendum, the applicable Purchase Order, the Master Agreement and all applicable Exhibits, Attachments, and Schedules thereto, constitute the entire agreement between Contractor and Purchasing Entity on the subject matter thereof, and supersedes all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between Contractor and Purchasing Entity that are not specified in the applicable Contract. Except as expressly permitted in these Oregon Terms, , no Purchasing Entity has any authority or right to waive, consent, modify or change of terms of the Participating Addendum and no such waiver, consent or modification or change binds either party. The failure of the Purchasing Entity to enforce any provision of the Contract does not constitute a waiver by the Purchasing Entity of that or any other provision.

**29. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of a Purchasing Entity or the Participating Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity or the Participating Entity in any way. Contractor is not an "officer", "employee", or "agent" of any Purchasing Entity or the Participating Entity (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Contractor, Purchasing Entity, or the Participating Entity shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

**30. Access to Records.** Contractor will maintain all fiscal records relating to any and all Purchase Orders, Contracts, and the Participating Addendum, in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders, Contracts, and the Participating Addendum in such a manner as to clearly document Contractor's performance thereunder. The Participating Entity, on behalf of itself and any and all Purchasing Entities, and its respective agents, the Oregon Secretary of State Audits Division, and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to any Purchase Order, Contract, or the Participating Addendum and have the right to perform examinations and audits and make excerpts and transcripts reasonably necessary to perform such examinations and audits. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law following final payment and termination of this Participating

Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to the Participating Addendum, whichever date is later.

**31. Severability.** If any term or provision of the Participating Addendum or any Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if, and as applicable, the Participating Addendum or the Contract did not contain the particular term or provision held to be invalid.

**32. Survival.** Any terms, as applicable, of the Participating Addendum or a Contract, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, lease payment obligations, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of, as applicable, the Participating Addendum or applicable Contract.

**33. Insurance.** Within ten (10) days of the Effective Date of the Participating Addendum, Contractor must provide insurance as set forth on Exhibit No. 2 to the Participating Addendum. No Purchase Order may be placed or accepted and no Contract shall be formed until proof is provided that these requirements have been met.

**34. Anticipated Amendments.** Contractor and Participating Entity may need to amend the Participating Addendum to modify selected terms, conditions, and price(s). The Participating Addendum Agreement may be modified by written document only. No amendment shall be effective until signed by Contractor and Participating Entity and all approvals required by law have been obtained in writing.

**35. Subcontracts and Assignment.** Contractor must not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without the Participating Entity's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of the Participating Entity prior to or at the time of Contractor's request for consent. In addition to any other provisions Participating Entity may require, Contractor must include in any permitted subcontract a requirement that the subcontractor be bound by the relevant provisions of the Participating Addendum, including but not limited to requirements of performance, indemnification, and liability, as if subcontractor were Contractor. Participating Entity's consent to any subcontract will not relieve Contractor of any of its duties or obligations under the Participating Addendum or any Contract.

**36. Successors and Assigns.** The provisions of, as applicable, the Participating Addendum or any and all Contracts, will be binding upon and will inure to the benefit of the parties thereto and their respective successors and permitted assigns, if any.

**37. Intended Beneficiaries.** Contractor and Participating Entity are the only parties to the Participating Addendum and are the only parties entitled to enforce its terms. Nothing in the Participating Addendum gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name therein and expressly described as intended

beneficiaries of the terms of this Participating Addendum. Purchasing Entities are intended beneficiaries of this Participating Addendum.

**38. Headings.** The headings in these Oregon Terms are included only for convenience and do not control or affect the meaning or construction of this Participating Addendum.

## EXHIBIT No. 2

### INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Participating Addendum and any Contract and shall maintain it in full force and at its own expense throughout the duration of this Participating Addendum and all warranty periods Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS.

**1. Workers' compensation insurance.** All employers, including Contractor, that employ subject workers in the State of Oregon must comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must also ensure that each of its approved subcontractors complies with these requirements.

**2. General liability insurance.** Contractor must obtain and maintain, at its own expense, for the duration of this Participating Addendum and any Contract, general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000, for each occurrence for bodily injury and property damage. It must include contractual liability coverage for the indemnity provided under this Participating Addendum and any Contract.

**3. Automobile liability insurance.** Contractor must obtain, at Contractor's expense, and keep in effect during the term of this Participating Addendum and any Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence must not be less than \$1,000,000.

**4. Additional Insureds.** Each of the insurance policies that Contractor obtains under this Exhibit No. 2 must provide that the State of Oregon, DAS PS and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Goods, Products or Services that Contractor will provide under this Participating Addendum and any Contract.

**5. Notice of cancellation or change.** Contractor must not cancel, cause a material change in, reduce its limits for or omit or intend not to renew the insurance coverage required under this Participating Addendum without thirty (30) Calendar Days' prior written notice from Contractor or its insurers to DAS PS.

**6. Certificates of insurance.** As evidence of the insurance coverage required under this Participating Addendum, Contractor must furnish acceptable insurance certificates to DAS PS before providing the Goods or Products or commencing the Services and annually thereafter. The certificates must specify all of the parties who are additional insureds Insuring companies must be authorized to sell insurance in the State of Oregon. Contractor must be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.

**EXHIBIT No. 3**  
**CONTRACTOR TAX CERTIFICATION**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number 42-1657844

Oregon Tax Number 83767294

2. Contractor is not subject to backup withholding because:

- (i) Contractor is exempt from backup withholding,
- (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Participating Addendum and any Contract, Contractor faithfully has complied with:

- (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to Goods or Products, Services, or property, whether tangible or intangible, provided by Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor: Jennifer King, DiscountCell

Signature *Jennifer King* Date 11/21/2019

## **EXHIBIT No. 4**

### **PRODUCT CATEGORIES & SERVICES**

**The following Goods, Products and Services are available under this Participating Addendum:**

- ☐ Basic Cellular Devices
- ☐ Smartphones - iOS, Android, Other
- ☐ Stand Alone, Integrated or USB Dongle Cellular Modems
- ☐ Wi-Fi/Cellular Routers
- ☐ Tablets that are cellular-network connected
- ☐ Other equipment with a primary purpose for communicating over the cellular carrier network, currently including:
  - Sensors
  - Cellular-enabled Video cameras
- ☐ Accessories:
  - Replacement Batteries
  - Cases & related accessories
  - Screen Protectors
  - Chargers
  - Cords / cables
  - Signal Boosters / antennae
  - Headsets and speakers for use with wireless devices

The eligible equipment and accessories are specifically described in Contractor's Equipment Matrix, found at: [www.discountcell.com/naspo](http://www.discountcell.com/naspo). Subject to the provisions set forth in Exhibit No. 1, Section 3.3, Contractor may update Contractor's Equipment Matrix from time to time to address changes in technology.

#### **Additional Service Requirements**

##### **Condition of Equipment and Accessories**

All equipment and accessories provided under this Participating Addendum must be new, unused and properly functioning when received by Purchasing Entity, if priced as a new product.

Superseded, used, returned, or reconditioned items will be accepted if labelled as such in the sales order.

##### **Trial Period**

Contractor may allow for a designated trial period for testing/evaluating equipment and accessories without additional charges or fees, if applicable. Contractor will describe the timeframe for the 'trial period' and procedures for implementing this policy in the sales invoice or purchase order.

### **Return of Equipment and Accessories**

Any equipment or accessories that are not properly functioning when received by the Purchasing Entity must be replaced by the Contractor with new and properly functioning equipment or accessories within 5 Business Days of the defective equipment or accessories being reported to the contractor.

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Purchasing Entities will not be responsible for any costs related to the return and/ or replacement of any equipment or accessories that are returned due to quality problems, duplicate shipments or other shipping errors, outdated products or other issues related to non-compliance with terms of this agreement. Contractors must confirm in writing to the end user when returns are received.

Purchasing Entities shall not be assessed restocking fees or any other fees for items trialed and then returned as unacceptable for any reason.

Contractor will allow for equipment and accessory purchases at all retail stores open to the public. Sales personnel at retail stores will be aware of pricing under this Participating Addendum.

### **New Products added under Award Category 2**

Contractor may add new products at any time as long as they fall within the scope of that award category. The Lead State, in its sole discretion, shall determine whether a product falls within Award Category 2.

**EXHIBIT No. 5**  
**PRICE LIST**

**Pricing**

[www.discountcell.com/naspo](http://www.discountcell.com/naspo) (select state and type of purchase, the discounted pricing for the State of Oregon will be reflected)

**Financing**

Financing is not allowed under this Participating Addendum for State Agencies.

**Shipping**

Contractor, if a Carrier, must activate service on new equipment within 72 hours of request or shipping.

## **EXHIBIT No. 6**

### **VENDOR COLLECTED ADMINISTRATIVE FEE AND VOLUME SALES REPORT TEMPLATE**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                            |                                                                    |
|--------------------------------------------|--------------------------------------------------------------------|
| PRODUCER                                   | CONTACT NAME: Brenda Nuttall, CSR                                  |
| NUTTALL & ASSOCIATES INSURANCE AGENCY INC. | PHONE (A/C, No. Ext): (801) 785-1777 FAX (A/C, No): (801) 785-8411 |
| 280 S Main St, Suite 200                   | E-MAIL ADDRESS: brendanuttall@nuttallassoc.com                     |
| PO Box 428                                 |                                                                    |
| Pleasant Grove UT 84062                    | INSURER(S) AFFORDING COVERAGE NAIC #                               |
|                                            | INSURER A: General Casualty Co of Wisc 24414                       |
| INSURED                                    | INSURER B: WCF Mutual Insurance Company 10033                      |
| DISCOUNTCELL INC                           | INSURER C:                                                         |
| 350 WEST 500 SOUTH                         | INSURER D:                                                         |
|                                            | INSURER E:                                                         |
| PROVO UT 84601                             | INSURER F:                                                         |

COVERAGES CERTIFICATE NUMBER: 5-29-2019 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                               | ADDL INSD                           | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----------|---------------|-------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: |                                     |          | BBP0006860    | 6/21/2019               | 6/21/2020               | EACH OCCURRENCE \$ 2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 2,000,000<br>GENERAL AGGREGATE \$ 4,000,000<br>PRODUCTS - COMP/OP AGG \$<br>Blanket Additional Insured \$<br>COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$ |
|          | AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS                                                                           |                                     |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                          |
|          | UMBRELLA LIAB<br>EXCESS LIAB<br>DED RETENTION \$                                                                                                                                                                                                                                                                |                                     |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$                                                                                                                                                                                                                                                                                                                                                                                 |
| B        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                          | Y/N<br><input type="checkbox"/> N/A |          | 2258685       | 6/22/2019               | 6/22/2020               | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                                                                                                                                                                                                 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of Oregon is shown as additional insured and is primary per form AHBP8084 (10-17)

|                                                                                   |                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CERTIFICATE HOLDER                                                                | CANCELLATION                                                                                                                                                                                                      |
| Pam.Johnson@oregon.gov<br>State of Oregon<br>1225 Ferry St. SE<br>Salem, OR 97301 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br>AUTHORIZED REPRESENTATIVE<br>Brenda Nuttall/BMN |

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED — WHEN REQUIRED BY WRITTEN AGREEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

#### **Paragraph C. Who is an insured in Section II — Liability**

- A.** Is amended to include as an additional insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
  2. In connection with your premises owned or rented to you.

- B.** The limits of insurance applicable to the additional Insured are those specified in the Declarations of this Policy or in the written contract, whichever is lower. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- C.** Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether that insurance is primary, excess, contingent or on any other basis, unless you and the additional insured have specifically agreed in a written contract or written agreement that this insurance be primary.

When coverage is provided on a primary basis we will not seek contribution from any other insurance available to the additional insured if a written contract or written agreement requires that this insurance be noncontributory.

- D.** All other terms and conditions of this policy remain unchanged.