

Department or Agency Number ACA Contract Routing Number 03-00153

STATE OF COLORADO WSCA PARTICIPATING ADDENDUM

THIS Participating Addendum ("Participating Addendum") is made this 30th Day of April 2003, between the STATE OF COLORADO, acting by and through the Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office, with offices at 225 East 16th Avenue, Suite 802, Denver, CO 80203, for the use and benefit of the state agencies and institutions and political subdivisions, each of whom are referred to herein as "State", or "Customer" or "Ordering Entity" as defined herein, and Qwest Interprise America, Inc., a Corporation with offices at 250 Bell Plaza, Suite 409, Salt Lake City, Utah 84111-2002, hereinafter referred to as "Contractor" or "Vendor."

RECITALS

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Contractor has been selected as a successful vendor of the Western States Contracting Alliance (WSCA) Data Communications Equipment, associated OEM Maintenance and Training, Bid Number: RFP LW1907, for the purpose of providing data communications equipment, maintenance and training. As part of this selection, Qwest and the Utah Purchasing Agent, on behalf of the State of Utah and the participating members of WSCA as well as other authorized purchasers entered into the State of Utah Statewide Contract AR637 (the "WSCA Master Agreement"); and

WHEREAS, the procurement of the Services and equipment (as defined in the WSCA Master Agreement) is authorized by the Colorado Revised Statutes to be conducted by the Department of Personnel & Administration;

WHEREAS, the WSCA Master Agreement (State of Utah #AR637) is with this reference, hereby incorporated into this Participating Addendum; and

WHEREAS, the State of Colorado is authorized as a Participating Entity of WSCA, to contract with the Contractor through this Participating Addendum.

NOW THEREFORE, it is hereby agreed that in consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the State and Contractor agree the following terms and conditions shall apply to the Contractor's provision of Services under this Participating Addendum.

1. **SCOPE.** The requirements provided herein are in addition to those in the WSCA Agreement [see WSCA Master Agreement].

1.1 **General.** This Participating Addendum supplements the WSCA Master Agreement and applies to transactions between the State of Colorado and all its Ordering Entities and the contractor with respect to qualified and accepted Orders.

1.2 **Definitions.** Capitalized terms not otherwise defined shall have the meanings ascribed to them in the WSCA Master Agreement. Definitions provided herein are in addition to those in the WSCA Master Agreement.

"Order" shall refer to any Purchase Order, contract, or other authorized agreement used to order Equipment or Service under the WSCA Master Agreement and this Participation Addendum. An Order

amended consistent with the requirements of any Ordering Entity shall also be governed by the same terms and conditions to the extent the same is accepted by the Contractor.

“**Ordering Entity**” and “**Customer**” shall both mean a Purchasing Entity (as defined in the WSCA Master Agreement), and any State agency, department, institution, or political subdivision that places an Order.

“**This contract**” or “**the contract**” shall refer to the integrated agreement consisting of this Participating Addendum, the WSCA Master Agreement, and any Orders issued in connection therewith.

“**Products**” refers to any hardware, software, or other products shown on the Participating Addendum. Products has the same meaning as “commodities,” “supplies,” or “equipment.”

“**Services**” shall refer to the services other than products, supplies, and equipment priced in the Contractor’s proposal which can be ordered by State agencies and political subdivisions.

“**State agency**” shall mean any department, agency, or institution of higher education of the State of Colorado, not including political subdivisions of the State of Colorado.

“**State Purchasing Office**” shall mean the Colorado State Purchasing Office.

“**Unless otherwise agreed**” or “**unless otherwise specified**” shall mean those terms specified in the Order.

1.3 Purchase Order Requirements. In accordance with the WSCA Master Agreement, whenever any Order by an eligible Ordering Entity refers to this Participating Addendum, the contract between the parties shall consist of the terms of such Order as modified by the WSCA Master Agreement and this Participating Addendum. The State of Colorado shall insure that Orders for Service and Equipment pursuant to this contract at a minimum specify:

- The product(s)/service(s) being ordered;
- The place and requested time of delivery;
- A billing address;
- The name, phone number, and address of the Ordering Entity’s representative;
- The price, or in the case of Services ordered on an hourly basis the cost per hour and the ceiling amount of the Order for Services being ordered; and
- The signatures of authorized representatives of the Ordering Entity.

1.4 Delivery. [see WSCA Master Agreement]

1.5 Order of Precedence. Except as otherwise specified in this Participating Addendum, the terms of this Participating Addendum may not be modified or contradicted in any Order by an Ordering Entity without approval by the State Purchasing Office and an authorized representative of Qwest. Any conflict or inconsistency between the terms of this Participating Addendum, the WSCA Master Agreement and an Order shall be resolved by giving effect first to the terms of the Participating Addendum, then to the WSCA Master Agreement, then to the terms of any Order.

2. PERFORMANCE PERIOD. The requirements provided herein are in addition to those in the WSCA Agreement [see WSCA Master Agreement].

2.1 Total Period. [See WSCA Master Agreement]

2.2 Placing Orders. Orders may be placed consistent with the terms of this Participating Addendum during the period specified above. Orders must be placed pursuant to this Participating Addendum prior to the expiration date (as amended through option exercise) but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Participating

Addendum. The Contractor is reminded that financial obligations of the State of Colorado and political subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

2.3 Order Terms. Notwithstanding the expiration or termination of this Participating Addendum, the Contractor agrees to perform in accordance with the terms of any orders then outstanding at such expiration or termination. The Contractor shall not honor any Orders placed after the expiration or notice of termination of this Participating Addendum, or otherwise inconsistent with its terms. Orders from any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Participating Addendum may not be placed after the expiration or notice of termination of this Participating Addendum, notwithstanding the term of any such indefinite delivery order agreement.

3. PAYMENT. Payment requirements provided herein are in addition to those in the WSCA Agreement [see WSCA Master Agreement]. All Ordering Entities issuing valid Orders will be bound by the terms and conditions of the WSCA Master Agreement, this Participating Addendum, and the corresponding Order including, without limitation, the obligation to pay Contractor for Service and Equipment.

3.1 Delinquent Payments. Under this Participating Addendum vendors will be paid by Ordering Entities within thirty (30) days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by special conditions specified in the Order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Ordering Entity shall pay all undisputed amounts when due. Vendors shall invoice Ordering Entities for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended).

4. INSPECTIONS AND ACCEPTANCE. [See WSCA Master Agreement]

5. WARRANTIES. [See WSCA Master Agreement]

6. TAX EXEMPT STATUS.

6.1 State Entity. State agencies generally are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The State's FEIN # is 84-730123K. The State's tax exemption number is 98-02565. The State is also not liable for any franchise taxes or taxes related to the income of the Contractor. Ordering Entities shall provide Contractor with a copy of their certificate(s) of tax exemption. The State will provide 1 copy of the certification form that is the same for all State agencies/institutions).

6.2 Political Subdivision. Contractor will accord the same tax-free treatment to any Colorado political subdivision to the extent that they establish like exemption from taxes. Contractor will not bill Ordering Entities for taxes for which Contractor has received valid certificate(s) of tax exemption.

7. REPORTING. The Qwest account team will provide quarterly reports to the State for Colorado WSCA purchases in the timeframe of per the WSCA Master Agreement, with the Ordering Entity and dollars amount purchased by month.

8. COMMUNICATIONS. With respect to Orders placed by State Ordering Entities, all communications, including reports, notices, and advice of any nature, concerning administration of Orders placed under this Participating Addendum, must be furnished solely to the purchasing agent within the Ordering Entity's purchasing office, or to such other individual identified in writing in the Order.

9. CONFIDENTIALITY. In the event that either party or its employees shall obtain access to any

confidential information, records or files of the other in connection with the performance of its obligations under this agreement or any Order placed pursuant to this Agreement, a party shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the party. "Confidential information, records or files" shall not mean information which the party has denominated as not confidential; or information which at the time of disclosure is in the public domain by having been printed and published and widely available to the public, e.g. information in public libraries or repositories. Neither party shall, without the prior written consent of the other party, disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Participating Addendum) the Confidential Information of the other party, during the Term of this Participating Addendum.

10. **[RESERVED]**.

11. **TITLE; INTELLECTUAL PROPERTY RIGHTS OF ORDERING ENTITY**. Title and risk of loss for equipment purchased shall pass to the Ordering Entity upon delivery. Software shall be licensed to the Ordering Entity in accordance with the provisions of Section 11D of the WSCA Master Agreement.

12. **DATA AND DOCUMENT DELIVERABLES**. [See WSCA Master Agreement]

12.1 Unless otherwise specified, the Contractor shall deliver by the dates specified in the Order the data or documents required by the solicitation, as well as any proposed by the Contractor.

12.2 Contractor will provide the Ordering Entity with copies of the manufacturer's documentation regarding equipment and software purchased under an Order, as permitted by the manufacturer. The Contractor warrants that the delivered documentation will be sufficiently descriptive to enable maintenance and modification of the product consistent with their intended uses.

13. **REMEDIES**. [See WSCA Master Agreement]

14. **TERMINATION FOR CONVENIENCE**. [See WSCA Master Agreement]

15. **TERMINATION FOR DEFAULT**. [See WSCA Master Agreement]

16. **INSURANCE**.

16.1 Type of Insurance. The Contractor shall obtain, and maintain at all times during the term of this Participating Addendum and Orders under this Participating Addendum insurance in the following kinds and amounts:

- (i) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.
- (ii) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverages:
 - (1) Combined single limit of \$600,000 written on an occurrence basis.
 - (2) Any aggregate limit will not be less than \$1,000,000.
 - (3) Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends three years beyond the performance period of this Participating Addendum.
 - (4) If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

16.2 Additional Insured. The State of Colorado shall be named as additional insured on each liability policy. The State is not requesting "additional named insured" status. Additional insured

endorsements are not required on professional, workers' compensation, or employer liability policies.

16.3 Cancellation Notice. The insurance shall include provisions preventing cancellation without 60 days prior notice by certified mail to the State.

16.4 Insurance Documentation. The Contractor shall provide the following documentation to the State within 7 working days of a request therefor:

- a) **Certificate/s** of adequate insurance coverage, each with a reference to the State being named as an additional insured, or
- b) **Certificate/s** of adequate insurance coverage and an **endorsement/s** of additional insured coverage.

17. LICENSES, PERMITS, AND RESPONSIBILITIES. [See WSCA Master Agreement]

18. GOVERNMENTAL IMMUNITY. Notwithstanding any other provision of the Participating Addendum to the contrary, no term or condition of the contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended.

19. ASSIGNMENT AND SUCCESSORS. [See WSCA Master Agreement]

20. SOFTWARE PIRACY PROHIBITION. No State or other public funds payable under the Participating Addendum shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor shall, for the term of the Participating Addendum and any extensions, have in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the Participating Addendum, including, without limitation, immediate termination of the Participating Addendum and any remedy consistent with United States copyright laws or applicable licensing restrictions.

21. AUDIT AND RECORDKEEPING. The Vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records relating specifically to this Participating Addendum or Orders issued hereunder during the term of this Participating Addendum and for a period of one (1) years following termination of this Participating Addendum or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The Vendor shall retain records concerning Orders and pricing hereunder for a sufficient period of time in accordance with applicable law or regulation to permit the State to exercise its audit right under this paragraph. Audits shall be permitted upon reasonable prior notice, during normal business hours, and at Vendor's offices. Audits shall be performed at the State's expense.

22. SEVERABILITY. To the extent that the contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. Any Order placed by any Ordering Entity pursuant to this Participating Addendum shall be severable, and the State Purchasing Office shall not be a party to any such purchase Order or contract.

23. WAIVER. The waiver of any breach of a term, provision, or requirement of the Participating Addendum shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

24. ENTIRE UNDERSTANDING. This Participating Addendum and Orders placed hereunder are intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment thereto shall have any force or effect whatsoever, unless embodied herein in writing.

25. **SURVIVAL OF CERTAIN CONTRACT TERMS.** Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the Participating Addendum which may require continued performance, compliance, or effect beyond the termination date of the Participating Addendum and Order, and such terms and conditions shall survive such expiration or termination of the Orders and this Participating Addendum and shall be enforceable by an Ordering Entity or Contractor in the event of failure to perform or comply by the other party.

26. **GOVERNING LAW AND VENUE.** The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Participating Addendum and Orders under it. Unless otherwise agreed, venue for any action related to performance of this contract where the Ordering Entity is a State agency shall be the City and County of Denver.

27. **COLORADO SPECIAL PROVISIONS.** The following Colorado Special Provisions, required by Fiscal Rule 3-1, 1 CCR 101-1, shall be applicable to any Order placed by an agency, department, or institution of the State of Colorado and shall govern in the event of any conflict or inconsistency between the terms of any Order and this Participating Addendum. With respect to paragraph 1 and 3 of the Special Provisions, State Controller or designee approval is not required for State purchase Orders issued against this Participating Addendum by State purchasing agents and 27.1 takes precedence over section 3 of the Special Provisions.

27.1 Indemnification. The language contained in the Colorado Special Provisions is hereby rewritten as follows: To the extent authorized by law, Qwest shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Qwest, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

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COLORADO SPECIAL PROVISIONS
(Not for Use with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be

established.

7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:
Qwest Interprise America, Inc.
Legal Name of Contracting Entity

046141729
Social Security Number or FEIN

S. Brinkmann
Signature of Authorized Officer

Stephen Brinkmann, Director of Offer Management
Print Name & Title of Authorized Officer

CORPORATIONS:
A corporate seal or attestation is required.

Attest (Seal) By *JME*

STATE OF COLORADO:
BILLOWENS, GOVERNOR
By *[Signature]*
Executive Director Department of Personnel & Administration
Division of Finance and Procurement
State Purchasing Office
Department of _____

LEGAL REVIEW:
Ken Salazar, Attorney General
By *[Signature]*
Stephen G. Smith
AAG II

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER: Arthur L. Barnhart
By *[Signature]*
Date 5/28/03