

Department or Agency Number ACA
Contract Routing Number 117

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
for Data Communications Products and Services
Between
The State of Colorado and 3Com**

This Participating Addendum will add the State of Colorado as a Participating State to purchase from the WSCA Price Agreement, Number AR-1464 , with 3Com .

1. **Scope:** This addendum covers Data Communications Products and Services within the scope of the WSCA Master Agreement for State Agencies and Political Subdivisions.

2. **Order of Precedence**

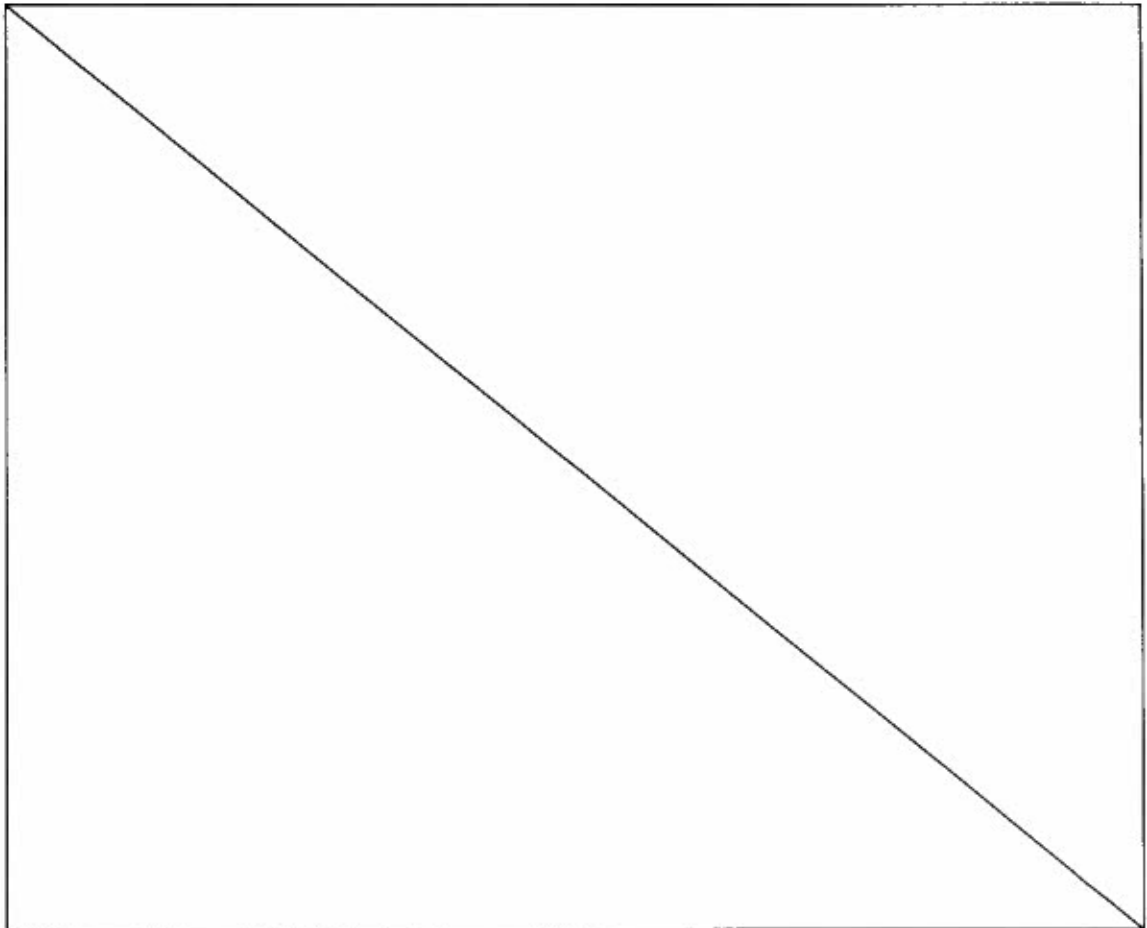
Except as otherwise specified in this Addendum, the terms of this Addendum may not be modified by any Ordering Entity without the prior written approval of the State Purchasing Office. In the event of conflicts or inconsistencies between this Addendum and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a) Colorado Special Provisions, pages 7 to 8 .
 - b) Participating Addendum Cover Sheet
 - c) Exhibit A, State of Colorado WSCA Participating Addendum
 - d) Exhibit B, State of Utah—State Cooperative Contract AR-1464
 - e) Exhibit C, WSCA Contract for Data Communications Equipment and Associated OEM Maintenance & Training RFP #DG 7500
 - f) Exhibit D, Vendor's Response to RFP #DG 7500
 - g) Exhibit E, Order Sheet
 - h) List other exhibits, if any, in order of priority
3. **Primary Contact:** The primary state government contact for this participating addendum is as follows:
Contact: Peter Van Ronk
State/Political Entity: State of Colorado
Address: 633 17th Street
City, State, Zip: Denver, CO 80202
Phone: 303-866-6162
Fax: 303-866-6016
Email: peter.vanronk@state.co.us

4. **Contract Number:** The contract number for the Participating State is 20516YYY37M/WSCA.

This participating addendum and the WSCA Master Price Agreement, Number AR-1464 , (administered by the State of Utah) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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



THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>CONTRACTOR: 3Com <i>AK</i> Legal Name of Contractor <i>8/5/09</i></p> <p>By: Jacob J.S. Feenstra Title: Regional Finance Director</p> <p><i>[Signature]</i></p> <p>*Signature</p> <p>Date: <i>6/26/2009</i></p>	<p>STATE OF COLORADO</p> <p>Bill Ritter, Jr. GOVERNOR</p> <p>Department of Personnel & Administration</p> <p><i>[Signature]</i></p> <p>By: RICH GONZALES Executive Director</p> <p>Date: <i>7/8/09</i></p>
<p>OFFICE OF INFORMATION TECHNOLOGY Michael Locatis, CIO</p> <p>By: <i>[Signature]</i></p> <p>Signature - Authorized OIT Representative</p> <p>Date: <i>7-10-09</i></p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: <i>N/N</i></p> <p>Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

David J. McDermott, CPA

By: *Yvonne Anderson*

Date: *8/5/09*

STATE OF COLORADO WSCA PARTICIPATING ADDENDUM

THIS Participating Addendum is made this 1st day of July, in the year Two Thousand Nine, 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 633 17th Street, Suite 1520, Denver, CO 80202, 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 3Com, with offices at 350 Campus Drive, Marlborough, Massachusetts, 01752-3046. hereinafter referred to "contractor" or "vendor." Notwithstanding anything to the contrary herein, this Addendum shall not be effective or enforceable until it is approved and signed by the State Controller or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay for any performance by Grantee hereunder or be bound by any provision hereof prior to the Effective Date.

RECITALS

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

WHEREAS, vendor has been selected as a successful vendor of the Request For Proposal RFP #DG7500, Data Communications Equipment Associated OEM Maintenance and Training, for The State of Utah and the Western State's Contracting Alliance for the purpose of providing manufacturer supplied data communications equipment associated OEM maintenance and training; and

WHEREAS, the procurement of these services is authorized by the Colorado Revised Statutes to be conducted by the Department of Personnel & Administration; and

WHEREAS, the State of Utah – State Cooperative Contract AR1464 is with this reference, hereby incorporated into this Participating Addendum and is attached as Exhibit B; and

WHEREAS, the State of Colorado is establishing a Mandatory Price Agreement, Number 20516YYY37M/WSCA, as a result of the WSCA Price Agreement award;

WHEREAS, this Participating Addendum serves to address state specific changes to State of Utah – State Cooperative Contract AR1464;

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 vendor's provision of services under this Addendum.

1. SCOPE

1.1 General

This Addendum defines the unit prices or rates for services or user equipment compliant with the requirements in the Request for Proposal (Exhibit C) and the contractor's bid response (Exhibit D) and ordered pursuant to the terms of this Participating Addendum. Except with respect to orders place by it under this Addendum, the Department of Personnel & Administration shall not be liable to contractor as a signatory to this Participating Addendum for any breach by a State agency or other ordering entity of any payment or other obligation herein or under a purchase order or contract that orders services from this State Award.

1.2 Definitions

"Order" shall refer to any purchase order, contract, or other authorized agreement used to order the services or user equipment priced in this Participating Addendum. An order amended consistent with the requirements of any state agency, department, institution, or political subdivision shall also be governed by the same terms and conditions.

"Ordering Entity" means the State agency, department, institution, or political subdivision that places an order.

“This contract” or “the contract” shall refer to the integrated agreement consisting of the “order” and the terms of this Participating Addendum.

“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.

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

“User equipment” shall be synonymous with “supplies” and shall refer to any hardware or software shown on the price agreement.

1.3 Orders

The Contractor shall insure that orders for services or user equipment placed directly with Contractor pursuant to this Participating Addendum at a minimum specify:

- A. The software, services, or user equipment being delivered;
- B. The place and time of delivery;
- C. A billing address;
- D. The name, phone number, and address of the ordering entity’s representative;
- E. 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;
- F. The State of Utah – State Cooperative Contract AR1464; and
- G. The State of Colorado Price Agreement Number 20516YYY37M/WSCA.

1.4 Order of Precedence

Except as otherwise specified in this Addendum, the terms of this Addendum may not be modified or contradicted in any order by a State agency, department or institution without approval by the State Purchasing Office and an authorized representative of 3Com. Any conflict or inconsistency between the terms of an order and this Addendum shall be resolved by giving effect to the terms in Section 2 Order of Precedence in the Western States Contracting Alliance Participating Addendum for Data Communication Products and Services.

2. PERFORMANCE PERIOD

2.1 The term of this Addendum is set forth in Section 3 of the State of Utah – State Cooperative Contract (AR-1464). Colorado will be governed by this Addendum as of the date the Participating Addendum is signed by the Colorado State Controller or their designee. The extension and/or renewal of this contract will be controlled by WSCA and the WSCA lead state. If this contract is extended and/or renewed by the WSCA lead state, the State of Colorado will decide whether or not this action is in the best interest of the State of Colorado. If this extension and/or renewal is determined to be in the best interest of the State of Colorado, Colorado will send the vendor a letter expressing the State of Colorado’s desire to extend and/or renew the Price Agreement for an additional specific period of time. The period of time will match the State of Utah – State Cooperative Contract (AR-1464) term as expressed or amended. If the vendor desires to extend and/or renew the price agreement period, the vendor will acknowledge their agreement by signing and returning the letter of renewal to the State of Colorado

2.2 Orders may be placed consistent with the terms of this Addendum during the period specified above.

2.3 Orders must be placed pursuant to the price agreement prior to the expiration date but may have a delivery date or performance period up to 120 days past the then-current expiration date of this 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.

2.4 Notwithstanding the expiration or termination of this 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 termination of this Addendum, or otherwise inconsistent with its terms. Orders from any indefinite quantity, task

Exhibit A

order, or other form of indefinite delivery order arrangement priced against this price agreement may not be placed after the expiration or termination of this Addendum, notwithstanding the term of any such indefinite delivery order agreement.

3. PAYMENT

3.1 The ordering entity shall pay the contractor the contract price (for projects negotiated as fixed price orders or guaranteed not-to-exceed prices using rates specified herein) or at the contract rate for services performed and accepted or supplies delivered and accepted (for orders priced otherwise). Unless otherwise specified in the order, payments will be made based on the monthly submission of statements detailing the dates, quantity, and description of services performed or supplies delivered. Incorrect payments to the contractor due to omission, error, fraud, or defalcation may be recovered from the contractor by deduction from subsequent payments under orders or other contracts between the ordering entity and the contractor.

3.2 In the event of renewal of the Addendum, or any amendment of its terms (including prices), unless otherwise specified in the order, the contractor shall perform in accordance with the terms of the Addendum current at the time of the order, and invoice at the rates in the Addendum in effect at the time services are performed under the order. Unless otherwise specified in the order, if the parties have agreed to delivery of supplies/ user equipment or to a form, fixed price or guaranteed "not to exceed" ceiling price for completion o project services, the contractor will invoice monthly during progress of the work at the prices or tares in the Addendum current at the time of the order.

3.3 [Travel/lodging expenses: Not used]

3.4 Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable supplies/user equipment or services at the specified destination by an authorized agency representative, whichever is later.

3.5 State law and regulations provide that vendors will be paid by State agencies within forty-five 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 not exceeding 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. Vendors shall invoice State 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)

Ordering Entity and vendor hereby agree that Ordering Entity will use best efforts to pay vendor within 30 days of the date of vendor's invoice. Ordering Entity will pay interest as allowed by Colorado law for invoices not paid after 45 days of receipt of products or services and a correct notice of amount due.

4. WARRANTIES

The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties and warranties as defined in the State of Utah – State Cooperative Contract Number AR1464.

5. TAX EXEMPT STATUS

5.1 It is hereby recognized and acknowledged by vendor that State agencies are tax-exempt and is not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The State's tax exemption number is 98-02565. The State is also not liable for any taxes of the vendor for franchise or related to the income of the vendor. No taxes of any kind shall be charged to the State. Contractor is hereby notified that when materials are purchased for the benefit of State ordering entities, some political subdivisions require the vendor to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the ordering entity, nor will any prices or rates in this Addendum be adjusted on account of such taxes.

5.2 Contractor will accord the same tax free treatment to political subdivision to the extent that they establish like exemption from taxes.

6. REPORTING

Contractor will submit quarterly volume reports to the State Purchasing Office showing total number and amount of orders, per ordering entity, in accordance with instructions provided by the State Purchasing Office. The first report will be due on or before the 15th day following the end of each quarter. Failure to submit these reports in a timely manner may be cause for termination of the price agreement. The State Purchasing Office reserves the right to inspect and audit contractor's records pertaining to the

price of products delivered under this agreement, not to exceed two audits a year; additionally, each ordering entity has the right to inspect and audit the contractor's records regarding any order placed by the ordering entity.

7. 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 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.

8. CONFIDENTIALITY

In the event the contractor or its employees shall obtain access to any confidential information, records or files of the ordering entity in connection with the performance of its obligations under this Addendum or any order placed pursuant to this Addendum, the contractor 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 ordering entity. "Confidential information, records or files" shall not mean information which the Ordering Entity has denominated in writing 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. The contractor shall notify its employees in writing that they are subject to the confidentiality requirement set forth above

9. DATA AND DOCUMENT DELIVERABLES [SEE STATE OF UTAH – STATE COOPERATIVE CONTRACT NUMBER AR1464]

10. TERMINATION FOR CONVENIENCE

10.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders which have not yet been shipped and subcontracts as they relate to the terminated work.

10.2 If this contract is terminated by the State as provided herein, Contractor shall be paid for all products shipped prior to the effective date of termination.

11. TERMINATION FOR DEFAULT/CAUSE

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within thirty (30) days of receipt of such written notice or such other time specified by the parties by mutual written agreement, the State, may at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall only reimburse Contractor for work or deliverables shipped up to the date of termination. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any. Notwithstanding any remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach by Contractor. Upon termination by the State, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. Any action taken by the State hereunder or pursuant to paragraph 4 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

12. INSURANCE

12.1. The contractor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:

12.1.1 Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.

Exhibit A

12.1.2 Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

12.1.3 Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

12.2. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

12.3. The Insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the State by certified mail.

12.4 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

12.5 Notwithstanding subsection A of this section, if the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

13. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision of the Contract 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. The parties understand and agree that the liability of the State for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et seq., CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, et seq., CRS, as now or hereafter amended. Any liability of the State for tort damages due to negligence of the State created under any other provision of this contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with, the above cited laws.

14. ASSIGNMENT OF PAYMENT

Written notice of assignment of payment adequate to identify the rights assigned must be received by the controller for the ordering entity placing the order. In the case of ordering entities who are State agencies or institutions, such assignment shall not be deemed valid until receipt by the agency or institution controller -- as distinguished from the State Controller. The contractor assumes the risk that such written notice of assignment is received by the controller for the State agency, department, institution, or political subdivision involved.

15. 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 enrolled entity pursuant to this price agreement shall be severable, and the State of Purchasing Office shall not be a party to any such purchase order or contract.

16. WAIVER

The waiver of any breach of a term, provision, or requirement of the contract 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.

17. ENTIRE UNDERSTANDING

This agreement and orders placed hereunder are intended as the complete integration of all terms of the WSCA Master Price Agreement. No prior or contemporaneous addition, deletion, or other amendment thereto shall have any force or effect whatsoever, unless embodied herein in writing.

18. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the contract which may require continued performance, compliance, or effect beyond the termination date of this Agreement, and such terms and conditions shall survive such expiration or termination of this Agreement and shall be enforceable by the ordering entity in the event of such failure to perform or comply by the contractor.

19. GOVERNING LAW AND VENUE

The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Agreement 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.

20. STATE OF COLORADO ADMINISTRATIVE FEE

The State of Colorado is authorized, by the Colorado General Assembly, to collect a fee for the administration of this Agreement, the administrative fee will be 1 % of the total purchases made by all Colorado ordering entities; i.e., State Agency, Institution of Higher Education and political subdivision, commencing as of the date this amendment is approved by the State Controller.

These Colorado administrative fees shall be calculated based on total purchase volumes reported to the State in accordance with Section 24 Reports of the Request for Proposal awarded pursuant to the original solicitation published June 17, 2003. Fees shall be made payable to the Colorado State Treasurer by a check submitted to the State Purchasing Agent responsible for this agreement. Administrative fees shall be calculated on a quarterly basis and shall be due 15 calendar days after the end of each quarter, i.e., July 15, October 15, April 15, and January 15. Should the deadlines specified in the WSCA Master Contract for quarterly payments differ from this Schedule, the WSCA deadlines shall govern; provided however, that the WSCA deadlines shall not govern the deadline for payment of the Initial Period.

- a. Modification of resulting price agreement from permissive to mandatory. The new price agreement number is 20516YYY37M/WSCA.
 - i. By designating the State price agreement as "mandatory," the State agencies and institutions by regulation must satisfy requirements through the price agreement. Exceptions may be granted by the State Purchasing Director on application by the agency or institution involved.
 - ii. While political subdivisions may order from State price agreements, their use is discretionary with the political subdivision whether the agreement is designated as "mandatory" or "permissive".

21. 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 price agreement. With respect to paragraph 1 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.

The Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions. Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or

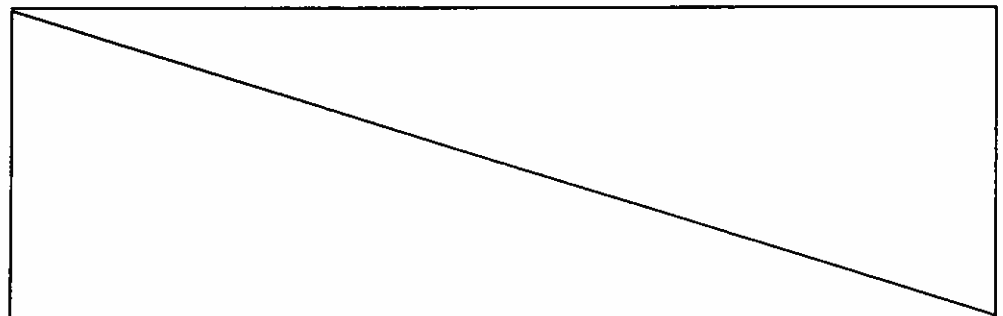
beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09




THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

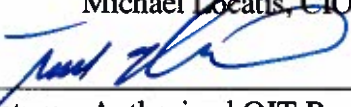
*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:
~~Legal Name of Contractor~~ 3Com *pdr*
By: Jacob J.S. Feenstra 8/5/09
Title: Regional Finance Director


*Signature
Date: 6/26/2009

STATE OF COLORADO
Bill Ritter, Jr. GOVERNOR
Department of Personnel & Administration

By: RICH GONZALES Executive Director

Date: 7/8/09

OFFICE OF INFORMATION TECHNOLOGY
Michael Locatis, CIO
By: 

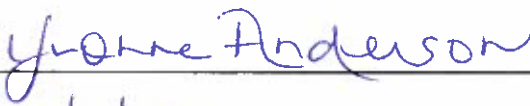
Signature - Authorized OIT Representative
Date: 7-10-09

LEGAL REVIEW
John W. Suthers, Attorney General
By: N/N

Signature - Assistant Attorney General
Date: _____

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA
By: 

Date: 8/5/09