

## PARTICIPATING ADDENDUM

### COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

#### MASTER PRICE AGREEMENT

XIOtech Corporation

Number A63316

(State of Colorado)

**1. Scope**

All governmental entities within the State of Colorado including all state agencies and local public bodies including the cities, courts, counties, public schools and institutions of higher education are authorized to purchase products and services under the terms and conditions of this price agreement. This Participating 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 Price Agreement

**2. Changes:**

See Attached Terms and Conditions for the State of Colorado WSCA Participating Addendum (Exhibit A)

**3. Primary Contact:**

The primary participating entity contact for this participating addendum is as follows:

**Name:** Mr. Peter Van Ronk

**Participating Entity Name:** State of Colorado, Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office

**Address:** 225 East 16<sup>th</sup> Avenue, Suite 802, Denver, CO 80203-1616

**Telephone:** 303-866-6162

**Fax:** 303-894-7440

**E-mail:** <mailto:peter.vanronk@state.co.us>

The primary Contractor contact for this participating addendum is as follows:

**Name:** Mary Reuss

**Contractor:** XIOtech Corporation

**Address:** 6455 Flying Cloud Drive, Eden Prairie, MN 55344-3305

**Telephone:** 952.983.2433

**Fax:** 952.983.2527

**E-mail:** [mary\\_reuss@xiotech.com](mailto:mary_reuss@xiotech.com)

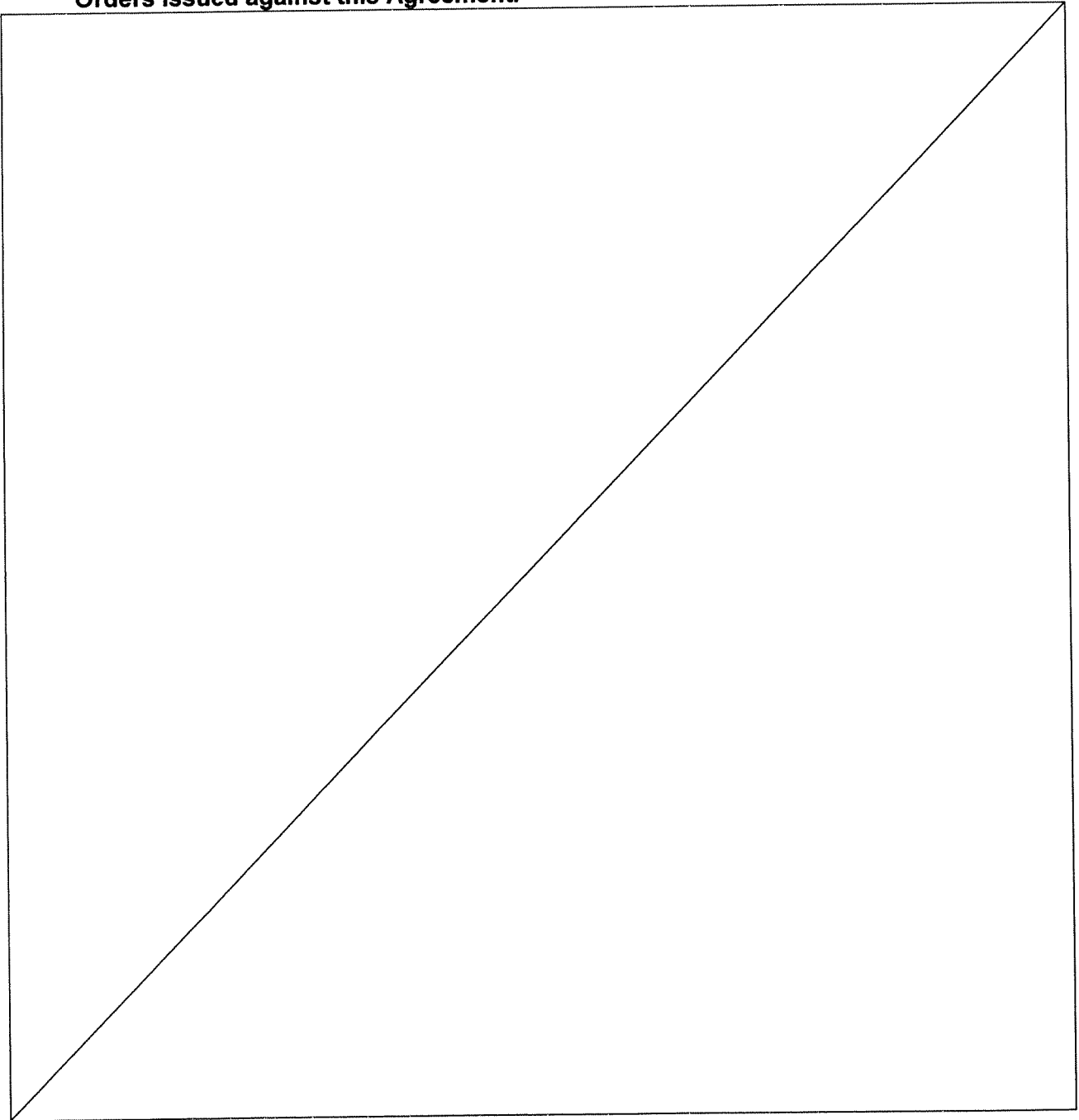
**4. Servicing Subcontractors:**

All purchase orders shall be sent and payments made directly to the Contractor. Service Subcontractors are not authorized to receive or accept purchase orders or payments.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition

to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

**The Master Price Agreement Number A63316 MUST be shown on all Purchase Orders issued against this Agreement.**



**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

CONTRACTOR:

STATE OF COLORADO:

BILL OWENS GOVERNOR

By Xtotech Corporation  
Legal Name of Contracting Entity

41-1821093  
Social Security Number or FEIN

[Signature]  
Signature of Authorized Office

Steven E. Snyder CFO  
Print Name & Title of Authorized Officer

CORPORATIONS:  
(A corporate attestation is required.)

Attest (Seal) By N/A  
(Corporate Secretary or Equivalent, or Town/City/County Clerk)  
(Place corporate seal here, if available)

By Executive Director Jeffrey M. Wells  
Jeffrey M. Wells

Department of Personnel & Administration

LEGAL REVIEW: John Suthers  
Attorney General,

By Margaret J. Whitelaw

**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:

Leslie M. Shenefelt

By [Signature]  
Date 9/20/05

|   |
|---|
| Department or Agency Number<br>ACA                      |
| Contract Routing Number<br><del>06-00065</del> 06 00337 |

EXHIBIT A  
STATE OF COLORADO WSCA PARTICIPATING ADDENDUM

THIS Participating Addendum is made this 8<sup>th</sup> day of November, in the year Two Thousand Four, 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 E. 16<sup>th</sup> 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 Xiotech Corporation with offices at 6455 Flying Cloud Drive, Eden Praire, MN 55344-3305, hereinafter referred to as "Contractor" or "Vendor."

**RECITALS**

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

WHEREAS, Xiotech Corporation has been selected as a successful vendor of the Request For Proposal Manufactures of Storage Area Network product, software and Related Devices ("Equipment") for The State of Minnesota, the Western State's Contracting Alliance and the National Association of State Procurement Officials, for the purpose of providing manufacturer supplied Equipment with peripherals, software, Equipment maintenance and support services; 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 WSCA Master Price Agreement (A63316) 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 Permissive Price Agreement, Number 20540YYY01P, as a result of the WSCA Price Agreement award.

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 to abide by the following terms and conditions..

**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 Bid (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 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 subject to the terms and conditions of this Addendum

"This contract" or "the contract" shall refer to the integrated agreement consisting of the "order" and the terms of this participating addendum to and including the WSCA Master Price Agreement (A63316), referenced and incorporated herein.

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

*Handwritten mark resembling the number 2.*

- a. The software, services, or user equipment being delivered;
- b. The place and time of delivery;
- c. A billing address: and
- 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 Master Price Agreement Number: A63316.
- g. The State of Colorado Price Agreement Number 20540YYY01P.

**1.4** Unless otherwise agreed, any software, user equipment or services ordered pursuant to the terms of this addendum shall be performed at or delivered F.O.B. destination to its designation location, price of shipping included. The Ordering Entity shall not be deemed to have accepted any component, or piece of hardware and/or software until such time as said Hardware and/or Software has been installed, is operating in accordance with the specifications and is accepted by the ordering entity no later than thirty (30) days from delivery. Title to equipment shall pass to the Ordering Entity upon acceptance.

**1.5** 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. Any conflict or inconsistency between the terms of an order and this addendum shall be resolved by giving effect first to the terms of this addendum, and next to the terms of the WSCA Master Price Agreement.

## **2. PERFORMANCE PERIOD.**

**2.1** The term of this addendum is set forth in Section 7 of the Master Price Agreement Number A63316. Colorado will be governed by this Addendum as of the date the Participating Addendum is signed by 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. Where funds are not appropriated, budgeted and otherwise made unavailable for equipment delivered by Contractor, the State will promptly return such equipment within sixty (60) days upon becoming aware of any such funding shortfall.

**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. Orders from any indefinite quantity, task 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. In the event of an incorrect payment by the Ordering Entity, Ordering Entity shall provide Contractor notice of such incorrect payment prior to withholding partial payment on subsequent outstanding balances due.

**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 of project services, the Contractor will invoice monthly during progress of the work at the prices or rates 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 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. 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)

Colorado and Xitech Corporation hereby agree that Colorado will use best efforts to pay Xitech Corporation within 30 days of the date of Xitech Corporation's invoice. Colorado 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. INSPECTION AND ACCEPTANCE.** The Ordering Entity reserves the right to inspect services performed or user equipment delivered under this contract at all reasonable times and places during the term of the contract. If any of the services or supplies do not conform with contract requirements, the Ordering Entity may reject nonconforming supplies or require the Contractor to perform the services again in conformity with contract requirements, with no additional payment. If the Ordering Entity elects to accept nonconforming tender, or when defects in quality or quantity of service cannot be corrected by re-performance, the Ordering Entity may (1) require the Contractor to take necessary action to insure that the future performance conforms with the contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed or supply delivered. These remedies in no way limit the remedies otherwise available to the Ordering Entity in this contract or remedies otherwise available at law or equity. Notwithstanding anything to the contrary, if Contractor cannot resolve any performance issue, either with product or service, Contractor may, at its option, remove product and refund the purchase price of such product and such unsuccessful service.

**5. WARRANTIES.** Contractor warrants that all supplies or services furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer's recommendations or other industry standards, and will function in a failure-free manner for a period of one year from the date of acceptance of installation. Upon a warranty failure, Contractor's sole liability shall be, at its option, repair or replace any supplies or reperform any services that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the Ordering Entity all written manufacturer's warranties, to the extent contractually permissible, relating to the supplies and to deliver such written warranties to the customer. The existence of this or any other express warranty in this contract shall not impair or limit any other remedies otherwise granted under this contract to the Ordering Entity at law or equity.

**6. TAX EXEMPT STATUS.**

**6.1** It is hereby recognized and acknowledged by Xitech Corporation 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 Xitech Corporation for franchise or related to the income of the Xitech Corporation. 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.

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

**7. 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.

**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 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 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

#### **10. FACILITIES AND/OR PROPERTY FURNISHED BY THE ORDERING ENTITY**

**10.1** The Ordering Entity shall deliver to the Contractor, for use in connection with and under the terms of the contract, the facilities or property described in the order together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "governmental-furnished property")

**10.2** The Ordering Entity and its designees shall have access at all reasonable times to the premises in which any government-furnished property is located for the purpose of inspecting the property. The Contractor shall maintain an inventory and accountability system acceptable to the Ordering Entity, and mark or tag the property in accordance with reasonable procedures of the Ordering Entity.

**10.3** Risk of loss. Unless otherwise provided in the order, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery to or use by the Contractor, to the extent that such loss, destruction or damage is the result of Contractor's acts or omissions. However, the Contractor is not responsible for reasonable wear and tear to property of the Ordering Entity or for government-furnished property properly consumed in performing the order.

**10.4** Upon completing the order, or at such earlier dates as may be fixed by the Ordering Entity, the Contractor shall submit, in a form acceptable to the Ordering Entity, inventory schedules covering all items of government-furnished property not consumed in performing the contract or delivered to the Ordering Entity. The Contractor shall prepare for shipment, deliver F.O.B. origin, or dispose of the government-furnished property as may be directed or authorized by the Ordering Entity. The net proceeds of any such disposal shall be credited to payment due under the order or shall be paid to the Ordering Entity as it may direct.

**11. INTELLECTUAL PROPERTY RIGHTS OF ORDERING ENTITY.** Any supplies or user equipment delivered under this contract will be owned by the Ordering Entity upon payment in full for said equipment. Any software, reports, data, manuals, or other documents, drawings or materials ("works") delivered or prepared by Contractor in the performance of its obligations under this contract shall be subject to an irrevocable (except for breach of Contractor's intellectual property rights), nonexclusive, perpetual, paid-up, transferable license to use, and permit others to use for Ordering Entity purposes, the software, reports, data, or other documents, drawings, or materials. The use rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works for internal purposes only and in no event shall be for distribution outside of the Ordering Entity.

#### **12. DATA AND DOCUMENT DELIVERABLES [SEE WSCA AGREEMENT]**

#### **13. REMEDIES AND LIMITATION OF LIABILITY**

In addition to any other remedies provided for in this addendum or the order, and without limiting its remedies otherwise available at law, the Ordering Entity may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in the contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

1. Suspend Contractor's performance pending necessary corrective action as specified by the Ordering Entity without Contractor's entitlement to adjustment in price/cost or schedule; and/or
2. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed. If Ordering Entity withholds payment for longer than thirty (30) days Ordering Entity shall make product available for return if it is agreed that no further services or corrections will remedy the performance problems, and/or
3. Request the removal from work on the contract of employees or agents of Contractor whom the Ordering Entity justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or
4. Deny payment for those services or obligation which have not been performed and which due to circumstances caused by Contractor cannot be performed or if performed would be of no value to the Ordering Entity. Denial of the amount of payment must be reasonably related to the amount of work or performance lost to the Ordering Entity.
5. Terminate the contract for default.

The above remedies are cumulative and the Ordering Entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

#### **14-15. TERMINATION FOR CONVENIENCE AND DEFAULT (SEE WSCA AGREEMENT)**

## 16. INSURANCE

a. The Contractor shall obtain, and maintain at all times during the term of this addendum and orders under this 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 price agreement.
  - (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.

b. The Contractor shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise agreed.

## 17. LICENSES, PERMITS, AND RESPONSIBILITIES

Contractor certifies that, at the time of entering into this agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this agreement. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this agreement and orders under this agreement, without reimbursement by the Ordering Entity or other adjustment in contract price. Additionally, all employees of Contractor performing services shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor further certifies that, if a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or nonrenewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for Contractor to properly perform this agreement or orders under this agreement, shall be grounds for termination of the contract for default.

## 18. 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.

## 19. 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.

## 20. 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.

## 21. 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.

## 22. ENTIRE UNDERSTANDING

This agreement 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.

## 23. 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.

**24. 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.

**25. 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.

A handwritten signature or set of initials, possibly 'B', located in the bottom right corner of the page.

**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. **SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00**  
No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without



limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. 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:

STATE OF COLORADO:

BILL OWENS GOVERNOR

By Mitech Corporation  
Legal Name of Contracting Entity

By Executive Director Jeffrey M. Wells

41-1821093  
Social Security Number or FEIN

Department of Personnel & Administration

[Signature]  
Signature of Authorized Office

LEGAL REVIEW:  
Attorney General, John Suthers

Steven E. Snyder CFO  
Print Name & Title of Authorized Officer

BY Margaret J. Whitelaw

CORPORATIONS:  
(A corporate attestation is required.)

Attest (Seal) By N/A  
(Corporate Secretary or Equivalent, or Town/City/County Clerk)  
(Place corporate seal here, if available)

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:

Leslie M. Shenefelt

By Todd E. La  
Date 9/20/08

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