

## PROCUREMENT STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS:

**1.1** "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party. Control means direct or indirect ownership of greater than 50% of: (a) the shares entitled to vote for the election of the board of directors or other governing body of a corporation, and (b) the equity interest of any other entity.

**1.2** "Documentation" means information necessary for the use of Purchases.

**1.3** "Non-Waivable Terms" means the Sections titled "Representations and Warranties"; "Confidential Information"; "Indemnification and Insurance"; "Work Product Licensing"; "Limitation of Liability", and "Dispute Resolution."

**1.4** "Order" means the purchase or task order issued by Qwest and accepted by Supplier.

**1.5** "Purchases" means, collectively or individually, the products or services purchased, or software licensed, pursuant to an Order.

**1.6** "Qwest" means Qwest Corporation, Qwest Communications Company, LLC or another Qwest Affiliate named in the Order.

**1.7** "Specifications" means the Terms, the Order, any Documentation, written materials of Supplier for the Purchases, and industry standards.

**1.8** "Supplier" means the person or entity to which an Order is issued.

**1.9** "Terms" means these Procurement Standard Terms and Conditions.

### 2. APPLICATION; CONFLICTS:

#### 2.1 Application:

These Terms apply if: (a) Supplier accepts an Order from Qwest, or ships or provides Purchases; and (b) no executed master purchase agreement is in effect between Qwest and Supplier. If a master purchase agreement is in effect between the parties, the master purchase agreement applies to the Order in lieu of these Terms.

#### 2.2 Conflicts:

If a conflict exists between the Order, these Terms, and any other documents related to the Purchases, the order of precedence is: (1) Non-Waivable Terms; (2) the Order; (3) if applicable, Specific Terms and Conditions incorporated into the Order; (4) these Terms; and (5) other documents incorporated or referenced in or attached to the Order. Any other forms or terms related to the Order, including any terms on Supplier's website, product schedule, "shrink-wrap" or "click wrap" agreement or other pre-printed or boilerplate terms will have no force or effect.

### 3. ORDERS; INVOICING:

#### 3.1 Prices; Acceptance:

Except as otherwise provided in the Order, the prices stated in the Order must include (a) all applicable charges and taxes, and (b) all charges for shipment and transportation. Supplier will accept or reject all Orders within 24 hours of receipt from Qwest.

#### 3.2 Shipment:

Supplier will pack, mark, label, document and timely ship all products or software in accordance with Qwest's instructions, the Qwest procurement shipping manual found at (<http://www.qwest.com/about/company/business/terms.html>) and industry standards.

#### 3.3 Modifications:

Qwest may modify or cancel any Order prior to acceptance without penalty. After Supplier's acceptance, Qwest may, without penalty: (a) delay any or all Purchases prior to delivery, or (b) with at least 5 days written notice, modify or cancel any or all Purchases.

#### 3.4 Qwest Order and Invoicing Systems:

Supplier will comply with all applicable Qwest Order and invoice procedures, including, requirements to submit notices and invoices, for the Qwest purchasing system that Supplier accepts an Order for Purchases.

#### 3.5 Issuance of Invoices:

Except as provided in these Terms or unless specified otherwise in an Order, Supplier will invoice Qwest upon Qwest's acceptance of Purchases.

#### 3.6 Invoice Content, Taxes:

Supplier will invoice Qwest by an agreed method. Each invoice must contain an itemized description of the Purchases and all applicable charges and taxes. Qwest will pay only undisputed taxes. Supplier will charge the correct taxes. Supplier will not charge taxes if Qwest provides Supplier evidence of exemption. If any tax claim arises based on a Supplier invoice, Supplier will pay any penalties and interest associated with any additional tax assessment.

#### 3.7 Payment Due Date:

Qwest will pay undisputed invoices in U.S. dollars within 45 days of receipt of a proper invoice. Payment by or on behalf of Qwest prior to the due date will be subject to an early payment discount and processing fees, as determined by Qwest and accepted by Supplier. Qwest will pay disputed amounts, if owed, within 45 days of resolution of a dispute.

### 4. ACCEPTANCE:

Unless otherwise specified in an Order, Qwest will give notice of rejection or be deemed to accept: (a) services within 30 days after Supplier's notice of completion, (b) products and software within 60 days after Supplier's notice of (i) installation, if Supplier performs the installation, or (ii) delivery, if Supplier does not perform the installation. Supplier will, at its expense, repair, re-perform or replace the Purchases, as applicable until Qwest accepts or finally rejects the Purchases. If Qwest accepts any Purchases that contain a defect or nonconformity not apparent on examination, Qwest may revoke acceptance. If Qwest finally rejects or revokes acceptance, Supplier will refund all amounts paid by Qwest for the Purchases.

### 5. REPRESENTATIONS AND WARRANTIES:

Supplier represents and warrants that:

(a) Supplier has all requisite ownership, rights and licenses to perform fully its obligations arising in connection with the Order and to grant to Qwest all rights to the Purchases, including good and marketable title for tangible products, free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;

(b) Purchases will: (i) conform with all Specifications; and (ii) be free from deficiencies and defects in materials, workmanship, design and performance;

(c) Purchases that involve services will be performed in a professional and workmanlike manner;

(d) Purchases, and use of the Purchases, as permitted under the Order, will not infringe, violate, or misappropriate any intellectual property or proprietary right of any third party;

(e) Supplier will, at its expense, promptly correct replace or refund all amounts paid by Qwest for non-conforming Purchases; and

(f) The software or data included in the Purchases will not contain any software viruses or other malicious computer instructions designed to damage, disable or shut down a computer system or any component of a computer system, including security features or data.

(g) Supplier will not incorporate, contribute, or combine any "open-source" software with any Purchases. "Open-source" software means any software that requires as a condition of use, modification or distribution that other software incorporated into, derived from or distributed with such software be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge.

### 6. CONFIDENTIAL INFORMATION:

**6.1 Definition of Confidential Information:** "Confidential Information" means all information shared by either party or its Affiliates ("Disclosing Party") with the other party or its Affiliates (the "Receiving Party") during the term of the Order, except information that either party can clearly establish (a) has become known to the Receiving Party from a source, other than the Disclosing Party, without an obligation to maintain its confidentiality; (b) has become generally known to the public through no act or omission of the Receiving Party; or (c) was independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party.

#### 6.2 Restrictions on Use and Disclosure:

(a) **Use and Copying:** Receiving Party will use or copy Confidential Information only to exercise its rights and perform its obligations under the Order. Copies the Receiving Party makes of Confidential Information must contain the same confidential or proprietary notices or legends as the original.

(b) **Protection:** Receiving Party will protect Confidential Information with the same degree of care as it uses to protect its own Confidential Information of like importance, but not less than reasonable care in accordance with Receiving Party's industry standards.

(c) **Disclosure:** Receiving Party may disclose Confidential Information only to employees, Affiliates, agents, or contractors on a "need to know" basis, for the purposes set forth in the Order. Supplier will not disclose any Qwest Confidential Information related to a request for proposal, request for quote, or other similar request for information issued by Qwest to any of its agents or contractors without Qwest's prior written consent. Receiving Party is responsible for compliance with the Order by all persons or entities to which it grants access to Confidential Information, and will advise them of their obligations under the Order.

(d) **Third Party Information:** Supplier will not bring onto Qwest premises any proprietary or confidential information of any third party without Qwest's prior

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written consent.

**(e) Required Disclosure:** If the Receiving Party is required or permitted by law to disclose Confidential Information of the Disclosing Party, the Receiving Party will promptly notify the Disclosing Party (prior to the disclosure, if possible). The Receiving Party will cooperate with the Disclosing Party to seek or take appropriate protective measures; and will make such disclosure in a manner to best protect the Confidential Information from further disclosure.

**(f) Return or Destruction:** Upon the Disclosing Party's request or upon the expiration or termination of the Order, the Receiving Party will return or destroy the Confidential Information. The Receiving Party may retain only such copies as are reasonably required to comply with applicable law and document retention requirements. Such Confidential Information must be maintained subject to the terms of the Order. Any destruction will be by shredding or secure erasure using current, commercially-reasonable methods. The Receiving Party will provide a destruction certificate to the Disclosing Party upon request.

**6.3 Privacy Requirements:** Supplier will comply with Qwest's Supplier Privacy Requirements located at (<http://www.qwest.com/about/company/business/terms.html>), which are incorporated herein by this reference.

### 7. QWEST PROPERTY:

Any items furnished by Qwest to Supplier under the Order are and remain the property of Qwest. While in Supplier's possession or control, Supplier will use these items only for performance of the Order, maintain them in good condition (ordinary wear and tear excepted), and bear the risk of loss.

### 8. INDEPENDENT CONTRACTORS; SUBCONTRACTING:

#### 8.1 Independent Contractor:

Supplier is an independent contractor and not an agent or employee of Qwest. Supplier is solely responsible for paying wages, taxes, salaries, benefits and any other compensation to or claims by employees. The Order does not create a partnership, joint venture or similar relationship.

#### 8.2 Subcontracting:

Supplier will not subcontract any of its obligations arising in connection with the Order without Qwest's prior written consent.

#### 8.3 Safety and Health:

Supplier is solely responsible for the safety and health of Supplier personnel. Supplier will (a) immediately report to Qwest any accidents, injuries or property damage, and (b) provide Qwest with copies of any safety, health or accident reports that it files with any third party.

### 9. INDEMNIFICATION AND INSURANCE:

#### 9.1 IP Indemnification:

Supplier will indemnify and defend Qwest, and its respective customers, officers, directors, employees, and agents against any demand, suit, cause of action, liability, loss or expense (including reasonable legal fees) incurred by Qwest or any indemnities related to any claim that Purchases, or the use of Purchases, infringe, violate or misappropriate, either directly or indirectly, any intellectual property or proprietary right of any third party.

#### 9.2 Enjoined Use:

If an injunction affecting the Purchases or Qwest's use of any Purchases is issued or if Supplier determines that an injunction affecting the Purchases or Qwest's use of any Purchases is likely to issue, Supplier will promptly, at its expense, either (a) obtain the right for Qwest to use the Purchases, (b) replace or modify them with non-infringing Purchases of equivalent functionality, or (c) refund the amounts paid for the Purchases (where applicable, pro-rated based on the expected life of the Purchases) and reimburse Qwest for all reasonable expenses for removal and replacement of the Purchases.

#### 9.3 Negligence Indemnification:

Each party will indemnify and defend the other party, its officers, directors, employees, agents, and, if applicable, Qwest's customers, against any demand, suit, cause of action, liability, loss or expense (including reasonable legal fees) incurred by the other party or indemnities related to any third party claim arising from any negligence or willful misconduct of a party.

#### 9.4 Insurance:

Supplier will comply with Qwest's Supplier Insurance Requirements found at (<http://www.qwest.com/about/company/business/InsuranceRequirements.pdf>), which are incorporated herein by this reference.

### 10. WORK PRODUCT; LICENSING:

#### 10.1 Ownership:

Any Purchases, works of authorship, ideas, designs, creations, and deliverables purchased by Qwest under an Order that are specifically made for Qwest, will be considered a work made for hire for Qwest. Supplier will promptly disclose and hereby assigns to Qwest any and all intellectual property generated, conceived or developed under an Order including but not limited to all patent rights, copyright rights, mask work rights, trade secret rights and other intellectual property and proprietary rights in the Purchases, works of authorship and deliverables developed by Supplier under an Order. At no additional charge to Qwest, Supplier will provide reasonable assistance to Qwest to secure intellectual property protection, including but not limited to, assistance in the preparation and filing of any patent applications, copyright registrations, and the execution of all applications, assignments or other instruments for perfection or protection of title. Supplier will pay its employees any compensation due in connection with the assignment of any intellectual property or invention. Supplier warrants to Qwest that Supplier's employees are subject to agreements that will secure Qwest's rights under this Section.

#### 10.2 Software Licensing; Previously Developed IP; Enhancements:

For software, Documentation and intellectual property provided under an Order but not specifically made or owned by Qwest as work made for hire, Supplier hereby grants to Qwest a fully paid-up, worldwide, perpetual license to install, execute, use, copy, test, display, sell, offer to sell, make, have made, make derivatives of, and perform such intellectual property for Qwest's business purposes, including the provision of services for Qwest customers. This license grant will apply to Qwest's third party contractors and agents in a worldwide networked environment. Qwest may allow third parties, including customers, contractors, or the public, to use the software in connection with data generated, tracked, collected, purchased, queried, input or otherwise acquired by Qwest in connection with its business. Supplier will promptly deliver any enhancements, including modifications, revisions, corrections, updates to any software that Supplier generally makes available to its customers, including all related Documentation.

#### 10.3 Open-Source Software:

If Supplier incorporates, contributes, or combines any "open source" software with any Purchases, with or without Qwest's knowledge, Supplier will, at its expense, comply, and ensure Qwest's compliance, with the licensing requirements of the associated "open-source" software.

### 11. LIMITATION OF LIABILITY:

Except for each party's indemnification obligations and each party's breach of any confidentiality requirements, neither party is liable to the other for consequential, incidental, indirect, punitive or special damages, including commercial loss or lost profits, directly or indirectly arising from the Order.

### 12. TERMINATION; CANCELLATION:

#### 12.1 Notice:

Qwest may cancel Purchases under an Order with 5 days prior written notice. Supplier will be entitled to payment for Purchases accepted and received by Qwest as of the date of termination.

#### 12.2 Breach:

Qwest may terminate the Order by written notice to Supplier if Supplier breaches the Order and fails to cure such breach to Qwest's satisfaction within 10 days of written notice specifying the breach.

#### 12.3 Transition:

Upon termination of the Order, Supplier will promptly (a) document in detail the status of any Purchases in progress, (b) provide all assistance reasonably requested by Qwest in connection with the transition of services to Qwest and/or its agents, and (c) promptly refund or credit any pre-paid amounts.

#### 12.4 Pre-Termination Obligations:

Expiration or termination of the Order will not relieve either party from its obligations prior to expiration or termination.

### 13. DISPUTE RESOLUTION:

#### 13.1 Forum and Governing Law:

Any legal proceeding arising out of, or related to the Order will be brought in a United States District Court, or absent federal court jurisdiction, in a state court of competent jurisdiction, in the Denver, Colorado metropolitan area. Any claim, controversy or dispute arising out of, or related to, the Order will be governed by the laws of the State of Colorado without reference to its choice of law rules.

#### 13.2 Waiver of Jury Trial and Class Action:

Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to the Order on a class or consolidated basis or in a representative capacity.

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### 14. INTERNATIONAL:

#### 14.1 FCPA:

A supplier obligation under Section 16.2, titled "Compliance with Laws and Policies", includes the Foreign Corrupt Practices Act ("FCPA") to the extent applicable to Supplier, Supplier personnel or its or their performance of an Order. The FCPA prohibits Qwest from paying or offering anything of value to a government official or political party or candidate for the purpose of corrupting the exercise of an individual's duties and attempting to influence that individual to provide business to or retain Qwest's business. Supplier will not make or cause to be made any payment or offer of anything of value to any government official or political party or candidate without prior written approval from Qwest's Law Department. Supplier will provide all information requested by Qwest about the offer or payment. If requested by Qwest, Supplier will sign a certification that Supplier has, and will continue to; comply with all applicable laws, including the FCPA, and Qwest policies.

#### 14.2 Export:

Supplier obligations under Section 16.2, titled "Compliance with Laws and Policies", includes all U.S. and international import, export and anti-boycott laws and regulations, to the extent applicable to Supplier, Supplier personnel or its or their performance of an Order. Supplier will determine, obtain, record, file and maintain, at its expense, all export and import documentation, franchises, authorizations, licenses, permits, reports and statistics and pay all associated fees required for all exports or imports under an Order. All Purchases of exports or imports by Qwest under an Order are expressly conditioned upon Supplier promptly obtaining and providing to Qwest all required franchises, permits, licenses or authorizations.

### 15. MISCELLANEOUS:

#### 15.1 Access:

Qwest may permit Supplier access to Qwest's facilities and facilities of Qwest's customers and vendors, as reasonably required for Supplier's performance of the Order. Upon request, Supplier will furnish the names, addresses, telephone numbers, job duties, key assignments and any other information regarding Supplier personnel that Qwest deems necessary to safeguard its property and operations. Supplier will comply with Qwest's access policies and procedures.

#### 15.2 Compliance with Laws and Policies:

Supplier will, at its expense, obtain all permits and licenses, pay all fees, and comply with all federal, international, state and local laws, ordinances, rules, regulations and orders applicable to Supplier personnel and Supplier's performance of this Order. Supplier agrees to adhere to the Qwest Ethical Business Practices, or with Supplier's code of conduct or similar standards. The Qwest Ethical Business Practices may be found at:

<http://www.qwest.com/about/company/ethics/files/EthicsBrochure2007FINAL.pdf>.

#### 15.3 Resale:

- (a) This section applies unless the Order expressly states that Qwest is not permitted to resell the Purchases to end customers.
- (b) Supplier grants to Qwest, during the term of the Order, a worldwide, irrevocable, transferable, non-exclusive right and license to: (i) advertise, promote, market, resell, sublicense and distribute the Purchases and to provide related services to Qwest customers; and (iii) to use, reproduce and distribute the Documentation in connection with Qwest's exercise of the rights granted in this Section.
- (c) Qwest may affix a label on the Purchases or Documentation depicting Qwest's logo, trademarks, name and address and identifying Qwest as the service agent for the Purchases, if applicable, provided that Qwest does not obscure Supplier's trademarks.
- (d) The representations and warranties in these Terms and any additional manufacturer's warranties apply to Qwest and Qwest's customers.

#### 15.4 Remedies:

No remedy specified in these Terms will limit Qwest's other rights and remedies arising in connection with the Order, at law or in equity.

#### 15.5 Supplier Personnel; Background Screening:

Supplier will comply with Qwest's Background Check Requirements, found at [www.qwest.com/about/company/business/terms.html](http://www.qwest.com/about/company/business/terms.html), which are incorporated herein by this reference. Supplier will select Supplier personnel in accordance with appropriate immigration laws and upon request will provide compliance certificates to Qwest within 10 days upon request.

#### 15.6 Environmental:

Supplier will use commercially reasonable efforts, as applicable, to provide, or use when providing Purchases: (a) environmentally-preferable, energy-efficient services and products (based on best in class guidelines); (b) services that eliminate or reduce the generation of hazardous waste/materials and the need for special material processing; (c) services and products that promote the use of non-hazardous, recovered and recycled materials. Supplier will use commercially reasonable efforts to incorporate this Section into its subcontracts that support Purchases provided to Qwest.

#### 15.7 Drug Testing:

If requested by Qwest, Supplier will at its expense conduct drug testing of any Supplier personnel who: (a) operate a vehicle on behalf of Qwest, or (b) perform work on Qwest premises or Qwest customer premises. Supplier will conduct the drug testing in accordance with recognized drug and alcohol testing standards and applicable laws. Supplier will report the results of any such drug testing to Qwest within 10 days of Qwest's request.

#### 15.8 Records and Audits:

Supplier will maintain complete and accurate records of all charges associated with the Order, in accordance with generally accepted accounting principles, for 72 months from the date of its termination or expiration. Qwest may inspect and retain copies of such records on reasonable notice.

#### 15.9 Assignment and Delegation:

Supplier must not assign or delegate its rights or obligations under the Order, in whole or in part, without the prior written consent of Qwest. Qwest may assign its rights under the Order, in whole or in part, without the consent of Supplier: (a) to any Affiliates of Qwest, (b) in connection with any merger, consolidation, reorganization or sale of all or any part of its business or assets; or (c) as Qwest deems appropriate in connection with any regulatory requirements.

#### 15.10 Notices:

Any notices required or permitted under the Order will be sent to the addresses of the parties stated on the Order. Notice will be deemed given: (a) on the 1st day after deposit with an overnight courier, charges prepaid; (b) as of the day of receipt, if sent via first class U.S. Mail, charges prepaid, return receipt requested; and (c) as of the day of receipt, if hand delivered.

#### 15.11 Advertising; Publicity:

Except as provided in these Terms, neither party will use the other party's names, marks, codes, drawings or specifications in any advertising, press release, promotional effort or publicity of any kind without the other's prior written permission.

#### 15.12 Waiver:

Any waiver by either party of any rights hereunder or of a breach of any provision of the Order will not constitute a waiver of any other breach of that or any other provision of the Order. Any waiver must be in writing.

#### 15.13 Interpretation:

The term "including" in these Terms means by way of example, not limitation. Headings and subheadings used in these Terms are for convenience only, and have no substantive meaning. These Terms will not be construed against the drafting party.

#### 15.14 Non-exclusive:

The Order is non-exclusive, and Qwest does not make any commitment for or guarantee any minimum or maximum amount of Purchases by Qwest.

#### 15.15 Severability:

The determination that any provision of these Terms is invalid or unenforceable will not invalidate these Terms, and these Terms will be construed and performed as if such invalid or unenforceable provision was omitted insofar as the primary purpose of the Order is not frustrated.

#### 15.16 Time of Essence:

Time is of the essence with respect to Supplier's obligations hereunder.

#### 15.17 No Supplier Dependence:

Qwest is not responsible for Supplier's dependence on revenues from sales to Qwest. Supplier will release, hold harmless and indemnify Qwest from any and all claims and liabilities relating to Supplier's dependence on Qwest or Qwest's termination of the Order.

#### 15.18 Survival:

Non-Waivable Terms and all others that by their sense and context are intended to survive the expiration of the Order will survive.