

Amendment Number 3
to
Contract Number TEXAN 2000-TWT-LS
between
State of Texas, acting by and through the Department of Information Resources
and
Time Warner Telecom

This Amendment Number 3 to Contract Number TEXAN 2000-TWT-LS (Contract) is between the Department of Information Resources (DIR) and Time Warner Telecom (Vendor). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. In accordance with **Section 2, Term of Contract**, the term of the Contract is extended through August 31, 2008, or until terminated pursuant to the termination clauses contained in the Contract. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement for up to one (1) additional one-year period.
2. **Appendix A, Section 6, Technology Access Clause, As Required By §2157.005, Texas Government Code (Applicable to State Agency Purchases Only)** is hereby deleted.
3. **Exhibit C, Pricing**, is hereby restated in its entirety and is attached to this third amendment.
4. **Appendix A is hereby amended to add new Section 33, General Provisions, Choice of Law** as follows:

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

5. **Appendix A is hereby amended to add new Section 34, Contract Fulfillment and Promotion, Performance Review Meetings** as follows:

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

6. **Appendix A is hereby amended to add new Section 35, Vendor Responsibilities, Responsibility for Actions** as follows:

Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

7. **Appendix A is hereby amended to add new Section 36, Vendor Responsibilities, Limitation of Liability** as follows:

For any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during

the twelve months immediately preceding the accrual of the claim or cause of action.

8. **Appendix A is hereby amended to add new Section 37, Vendor Responsibilities, Purchase of Commodity Items (Applicable to State Agency Purchases Only)** as follows:

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 37.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from Section 37.

9. **Appendix A is hereby amended to add new Section 38, Vendor Responsibilities, Overcharges** as follows:

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

10. **Appendix A is hereby amended to add new Section 39, Vendor Responsibilities, Prohibited Conduct** as follows:

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

11. All other terms and conditions of the Contract, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 3, then Amendment Number 2, then Amendment 1, and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of August 31, 2007.

Time Warner Telecom

**The State of Texas, acting by and through the
Department of Information Resources**

By: Signature on File

By: Signature on File

Name: Jenny Rogers

Name: Cindy Reed

Title: General Manager

**Deputy Executive Director
Title: Operations & Statewide Technology Sourcing**

Date: 8/20/2007

Date: 8/29/2007

Legal: CK 8/29/2007