

Amendment Number 6
To
Contract Number TEXAN 2000 - TWT - LS
Between
State of Texas, acting by and through the Department of Information
resources
And
tw telecom holdings inc.
Formerly
Time Warner Telecom

This Amendment Number 6 to Contract Number TEXAN 2000 - TWT - LS (Contract) is between the Department of Information Resources (DIR) and **tw telecom holdings inc.**, formerly Time Warner Telecom (Vendor).

WHEREAS, the parties executed TEXAN 2000 - TWT - LS on September 29, 1999 with an original expiration date of August 31, 2009; and

WHEREAS, a procurement for TEX-AN Next Generation telecommunications services, including Local Services, is underway but will not be complete by August 31, 2009; and

WHEREAS, DIR finds that it is in the best interest of the State of Texas and the DIR TEX-AN Customers to ensure continuity of telecommunications services, including Local Services, which are essential to the health, safety and welfare of the citizens of the State; and

WHEREAS, on June 5, 2009, DIR posted to the Electronic State Business Daily a notice of its intent to extend TEXAN 2000 - TWT - LS until, at least August 31, 2010, under certain terms and conditions; and

NOW THEREFORE, the parties desire to execute documentation to confirm their intent to provide for a continuation of TEXAN 2000 - TWT -LS, and for their convenience, choose to build on the current TEXAN 2000 - TWT - LS contract as the basis of the documentation, and, for good and sufficient consideration, hereby agree to amend TEXAN 2000 - TWT - LS as set forth herein:

1. Term. Contract Section 2, Term of Contract, is hereby amended to read in its entirety as follows:

DIR and Vendor hereby agree to extend the term of the Contract through August 31, 2010. DIR, at its sole discretion, retains the right to further extend TEXAN 2000 - TWT - LS for up to one additional year, or August 31, 2011, to be exercised in any number of monthly increments as DIR requires by issuing written notice(s) to Vendor no less than thirty (30) calendar days prior to the then-effective expiration date, not to exceed a total of twelve month, to ensure the proper transition of Customers to the TEX-AN Next Generation set of Vendors. Transition orders will not be processed by TWT until September 1, 2010. Further, new TEX-AN Next Generation telecommunications services orders issued by TEX-AN Next Generation contracted Vendors may not be "cut over" or otherwise commenced for purposes of billing until September 1, 2010. For purposes of this paragraph, a "Transition Order" means an order to disconnect services from the TWT TEX-AN 2000 contracted services in order to transition that Customer to a new TEX-AN NG Vendor's services.

2. Notification. Contract Section 15, Notification, is hereby amended to read as follows:

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, TX 78701
Phone: 512.475-4700
Fax: 512.475.4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Jenny Rogers, General Manager/VP, Austin
tw telecom holdings inc.
9229 Waterford Centre Blvd., Suite 100
Austin, TX 78758
Phone: 512.485.6396
Cell: 512.415.6402
Email: jenny.rogers@twtelecom.com

3. Vendor Certifications. Appendix A, Section 4, Vendor Certifications, is hereby restated in its entirety as follows:

Vendor certifies that it: (i) has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent

taxes and child support that is owed to the State of Texas; (x) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xi) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xii) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

4. Limitation of Liability. Appendix A, Section 36, Vendor Responsibilities, Limitation of Liability, is hereby amended as follows:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, 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; 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; and iii) Vendor's liability for direct damages for breach of contract may not exceed one month's calculation of the applicable monthly recurring charges regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

5. Insurance. Appendix A, Section 42, Insurance, is hereby added as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage except for (2) Workers' Compensation. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including

products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

6. Use of State Property. Appendix A, Section 43, Use of State Property, is hereby added as follows:

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

7. Immigration. Appendix A, Section 44, Immigration, is hereby added as follows:

Vendor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C.11 01, et seq.) regarding employment verification and retention of verification forms for any

individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Contract.

8. Limitation of Authority. Appendix A, Section 45, Limitation of Authority, is hereby added as follows:

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

9. Exhibit C, Pricing is hereby replaced in its entirety as attached to this Amendment Number 6.

10. Termination Liability. Except for a non-appropriation of funds, in the event a Customer ordering Vendor's services pursuant to the Contract terminates a service for any reason other than Vendor's material breach that remains after written notice and a reasonable cure period, all monthly recurring charges associated with the terminated service(s) for the balance of the applicable service term shall become immediately due and payable.

11. Indemnification. Amendment Number 5, Section 7A2 is hereby replaced in its entirety with the following new Section 7A2:

Vendor agrees to indemnify, defend and hold harmless the State of Texas and its agents, officers and employees from all claims and suits including court costs, attorney fees, and other expenses, relating to bodily injury (including death) or damage to tangible personal property, to the extent caused by any negligent act of TWTC and/or its subcontractors. Vendor may look to the Texas Tort Claims Act, Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq., for any allowable claims against the State of Texas. The defense of all such claims against the State of Texas or an agency thereof shall be coordinated by the Office of the Attorney General.

Amendment Number 5, Section 7B is deleted in its entirety.

12. Certain services provided by Vendor are governed by tariffs on file with the Public Utility Commission of Texas. Any DIR TEX-AN Customer ordering such services are agreeing to the terms and conditions in the applicable tariff(s). Further, DIR TEX-AN Customers ordering Vendor's voice services agree to the additional terms and conditions found in the "Amendment Number 6 Voice Services Attachment."

13. Remedies. Appendix A, Section 46, Remedies, is hereby added as follows:

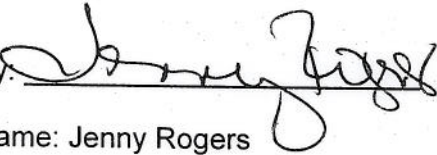
Credits for Service Outages and Customer's ability to terminate, without incurring liability, for Chronic Trouble Service, as described in any applicable tariff, or in tw telecom's Standard Terms and Conditions posted at www.twtelecom.com for services not governed by tariff, shall constitute the Customer's sole and exclusive remedy for Service Outages.

14. All other terms and conditions of the Contract not specifically amended hereby, shall remain in full force and effect. In the event of a conflict among the tariffs and various agreement provisions, the order of precedence shall be the applicable tariff, this Amendment Number 6, Amendment Number 5, Amendment Number 4, Amendment Number 3, Amendment Number 2, Amendment Number 1 and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective for all services as of September 1, 2009 at 12:00:01 A.M.

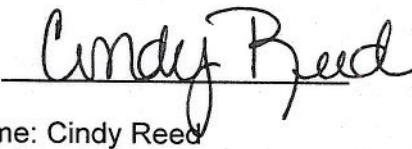
tw telecom holdings inc.

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

By: 
Name: Jenny Rogers


Title: Vice President, General Manager

Date: 9/23/09

By: 
Name: Cindy Reed

Title: Deputy Executive Director

Date: 9/24/09


9/24/09

Amendment Number 6 Voice Services Attachment

1. Customer may not use the services to provide voice content related services including, without limitation, chat lines. If Customer breaches this provision, **tw telecom** ("TWTC") may immediately terminate or suspend the services ordered hereunder and collect any applicable termination charges. Customer agrees to notify TWTC immediately if it breaches this provision. Customer shall be solely responsible for the consequences of its breach of this provision.
2. Customer may not use the voice services as a substitute for carrier interconnection or switched access services and must immediately notify TWTC if it does so. If Customer is using service to support prepaid calling card calls, Customer acknowledges that any use of service for the transport of originating or terminating prepaid calling card traffic is subject to the requirements outlined in the order contained in FCC 06-79 (June 30, 2006). Customer agrees to remit any intrastate or interstate access charges directly to the appropriate carrier. TWTC may disconnect services if the violation is not cured within 10 days following written notice. Customer shall be solely responsible for the consequences of its breach of this provision.
3. Access to Emergency Services: Customer acknowledges and understands that in the event 911 is dialed all voice services are configured to provide only the Customer's Billing Telephone Number ("BTN") and the physical service address for the BTN to emergency response organizations (911/E911 or Public Safety Answering Point "PSAP"). Calls to 911 that originate on Intercity Switched Service ("ISS") and Local Reach Service will be completely blocked. Calls to 911 that originate on Expanded Exchange Service ("EES"), or from locations other than the Customer's physical service address associated with the BTN, will not be directed to a PSAP capable of responding to the emergency condition. Additionally, TWTC cannot identify, control or track the location of individual end-user stations, or the method of connecting end-user stations configured by Customer. Neither TWTC nor its affiliates are responsible for providing end user location information to the E911 system. If Customer uses any form of private switch/automatic location identification ("PS/ALI") capability to identify individual stations from which E911 calls originate, Customer must first arrange in writing with TWTC to obtain a special E911 feature or else emergency authorities will not be able to identify individual station locations. TWTC has no liability or responsibility whatsoever for inaccuracies in the 911 database associated with Customer-provided information, and in no event will TWTC be liable for Customer's inability to access emergency services, unless such inability was caused by the gross negligence or willful misconduct of TWTC.