

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
SYMANTEC CORPORATION

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Symantec Corporation (hereinafter "Vendor"), with its principal place of business at 20330 Stevens Creek Boulevard, Cupertino, California 95014.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a posting on the Texas Building and Procurement Commission's Electronic State Business Daily, posting number DIR-SDD-TMP-055, on March 10, 2005, for Symantec Software Pricing Agreement.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts and Appendix B, Government Alliance Program Terms and Conditions are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, and finally Appendix B.

2. Product and Service Offerings

A. Products

Products available under this Contract are limited to all software published by Symantec Corporation. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract are limited to software maintenance. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

3. Price Discount

The Symantec Value Program pricing to offered to DIR's designated authorized reseller is set forth as follows:

- A. Value Government and Academic Virus Protection, Anti-Spam, and Content Filtering software at the then current Band F pricing, for those products available at Band F.

- B. Other Value Government and Academic Non-Enterprise software at the then current Band E pricing, for those products available at Band E.
- C. For products sold at a Band S, DIR’s Authorized Reseller shall receive a ten (10%) percent discount off the price on the then current Value Government and Value Academic pricelists.
- D. DIR shall be responsible for independently negotiating its final price with its authorized reseller.

4. DIR Administrative Fee

The administrative fee for all sales of Symantec Corporation software and services is to be determined by the Reseller Contract. No administrative fees shall be paid by Vendor under this Contract. The Reseller as designated by DIR shall be solely responsible for payment to DIR of the administrative fee.

5. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:
 Sherri Parks, Service Delivery Division
 Department of Information Resources
 300 W. 15th St., Suite 1300
 Austin, Texas 78701
 Phone: (512) 475-4700
 Facsimile: (512) 475-4759
 Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:
 Kippy Arcara, State Contracts Manager
 Symantec Corporation
 1 Symantec Way, Suite 200
 Newport News, Virginia 23606
 Phone: (757) 249-5772
 Email: kippy_arcara@symantec.com

6. Authorized Exceptions to Terms and Conditions.

- A. As it applies to this Contract and any Appendix, Attachment or Amendment to this Contract, the term Order Fulfiller shall mean Reseller. Reseller shall be defined as an independent entity that can resell Vendor’s products referenced in this Contract to Customers. The final price for which Reseller resells Vendor’s products to Customers shall be as negotiated between DIR and Reseller.
- B. The following paragraph is hereby added to Section 6, Product Terms and Conditions, Subsection A. Technology Access Clause, As Required by §2157.005, Texas Government Code (Applicable to State Agency Purchases Only):
 “If, during such warranty, the product fails to comply with this warranty and such failure is reported by the State Agency to Vendor within the warranty period, Vendor’s sole obligation and liability for breach of this warranty is, at Vendor’s sole option, either: (i) to correct such failure; (ii) to replace the defective part of the Software; or (iii) to refund the license fees paid by the State Agency for the Software licenses solely for such visually impaired users.”
- C. The following section hereby replaces Section 6, Product Terms and Conditions, Subsection B. Commodity Software (Applicable to State Agency Purchases Only):
 “DIR represents and warrants that is the procuring entity for all state government agencies in the State of Texas for commodity software as defined in Section 2157.068, Texas Government Code. Based on that representation, Vendor states that is has provided volume pricing discounts based on the aggregate volume of purchases expected to be made by the State of Texas under this Contract. Vendor agrees that it will not license through a volume licensing agreement the commodity Software to other state agencies within the State of Texas outside of this Contract unless DIR provides notification that DIR has granted a waiver to that

state agency to purchase the commodity Software outside of this Contract. DIR acknowledges that Vendor cannot monitor purchases of the commodity Software made by Texas state government agencies directly through resellers and distributors and, as such, this Section 6.B. shall not apply to such purchases by Texas state government agencies. This section applies only to Texas State Agencies and does not apply to institutions of higher education, K-12 and local government.”

- D. Section 7, Pricing is hereby deleted.
- E. Section 8, Contract Fulfillment and Promotion, Subsection A. Service, Sales and Support of the Contract, Subsection B. Use of Order Fulfillers, Subsection C. Product Warranty and Return Policies, Subsection D. Customer Site Preparation, Subsection E. Internet Access to Contract and Pricing Information, Subsection I, Orientation Meeting, Subsection J. Performance Review Meetings and Subsection K. DIR Cost Avoidance are hereby deleted.
- F. Section 10, Software License and Service Agreement, Subsection A. Software License Agreement and Subsection C. Service Agreement are hereby deleted.
- G. Section 11, Contract Administration, Subsection A. Contract Administrators 2) Vendor Contract Administrator is hereby amended to read as follows:
“Vendor shall provide a dedicated Contract Administrator whose duties shall include supporting the marketing and management of the Contract.”
- H. Section 11, Contract Administration, Subsection B. Reporting and Administrative Fees is hereby deleted in its entirety.
- I. Section 11, Contract Administration, Subsection C. Records and Audit, 1) shall apply only to the Reseller as the Reseller is the only party receiving funds from Customers under this Contract.
- J. Section 11, Contract Administration, Subsection C. Records and Audit, 2), 3) and 4) are hereby deleted in their entirety.
- K. Section 11, Contract Administration, Subsection D. Contract Administration Notification is hereby restated as follows:
“1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information and ii) Vendor sales representative name and contact information.
2) Upon execution of the Contract, DIR shall provide Vendor with written notification of DIR Contract Administrator name and contact information.”
- L. Section 12, Vendor Responsibilities, Subsection A, Indemnification, is hereby restated as follows:
“A. Indemnification
1) Acts or Omissions
Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, reasonable costs, and awarded damages, including attorneys fees, arising out of, or resulting from any negligent acts or omissions of the Vendor or its agents, employees, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR.
Infringements
2) Infringements
a) Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all third party claims involving infringement of United States patents, copyrights, trade marks in connection with the use of any product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims at Vendor’s expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control

Vendor Contract No. _____

over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

b) Vendor shall have no liability if the alleged infringement is caused in whole or part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing."

- M. Section 12, Vendor Responsibilities, Subsection B, Vendor Certifications, is hereby amended to read 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 acknowledges 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) is not ineligible to receive the Contract under §2155.004, Texas Government Code, (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) is 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, is 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. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

- N. Section 12, Vendor Responsibilities, Subsection C. Ability to Conduct Business in Texas, Subsection E. Use of Subcontractors, Subsection H. Security of Premises, Equipment, Data and Personnel and Subsection I. Background and/or Criminal History Investigation are hereby deleted in their entirety.

- O. Section 13, Contract Enforcement, Subsection A. Enforcement of Contract and Dispute Resolution 1) is hereby amended to read as follows:

" Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to

demand strict compliance with that or any other provision, and (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used.”

- P. Section 13, Contract Enforcement, Subsection B. Termination 1) Termination for Non-Appropriation is hereby amended to read:
 “Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services.”
- Q. Section 13, Contract Enforcement, Subsection B. Termination 3) Termination for Convenience is hereby amended to read:
 “DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice.”
- R. Section 13, Contract Enforcement, Subsection B. Termination, 4) Termination for Cause, b) Purchase Order is hereby deleted in its entirety.

This Contract is executed to be effective as of the date of last signature.

SYMANTEC CORPORATION

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

Authorized By: *signature on file*

Authorized By: *signature on file*

Name: Steven B. Messick

Name: Larry Zeplin

Title: VP Sales, Americas

**Title: Assistant Director
Service Delivery Division**

Date: May 18, 2005

Date: May 17, 2005

Approved Legal: JK

Legal: CJHK 5-17-05