

TexasOnline 2.0 Master Agreement

Between

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

and

Texas NICUSA, LLC

Exhibit A Definitions

July 31, 2009

Exhibit A Definitions

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Article I. Introduction

The purpose of *Exhibit A Definitions* is to comprehensively define the terms used for TexasOnline 2.0.

Article II. Definitions

Annual Budget – The annual operating budget for TexasOnline 2.0 operations approved by the Parties in accordance with *Attachment H-1 Policies and Procedures Manual*.

Application – Has the meaning set forth in *Attachment R-1 Form of Customer Agreement*.

Breadcrumb – A navigation technique used in user interfaces. Its purpose is to give users a way to keep track of their location within programs or documents and retrace their steps, if necessary.

Breakeven – In the Texas Electronic Framework Agreement, Second Renewal Agreement, Definitions, the point at which the Current Contractor fully recovered its investment costs in each of the following: the Existing Projects as a whole, and each individual New Project. On an ongoing basis, Breakeven means the point at which the Vendor's investment costs in a project or defined group of projects have been fully recovered.

Business – A person, partnership, corporation, or other entity engaged in commerce, manufacturing, or a service.

Business Case – A formal document as described in *Attachment H-1 Policies and Procedures Manual* that will include an analysis of a proposed project, including the high-level requirements, technical and architecture approach, schedule, proposed fee schedules and payback, rough-order-of-magnitude cost, impact on TexasOnline financial results, technical and business risk analysis, and a statewide impact analysis where applicable.

Business Day – Monday through Friday, excluding State holidays, 7:00 a.m. to 6:00 p.m. local time. State holidays will include all holidays with the status "All Agencies closed." State holidays will not include State optional holidays or holidays that require skeleton crews. If the Master Agreement calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

Cause – The conditions described in *Exhibit B Terms and Conditions, Section 11.03(e) Termination for cause.*

Change Request – A request for authorization to make a change in the Services or Deliverables under this Master Agreement.

Citizen – Any member of the public.

Comptroller of Public Accounts (CPA) – The State’s chief tax collector, accountant, revenue estimator, and treasurer. CPA includes the Texas State Treasury.

Confidential Information – Any communication or record (whether oral, written, electronically stored, or transmitted, or in any other form) that consists of:

1. Non-public budget, expense, payment, and other financial information;
2. Privileged Work Product;
3. Information designated by DIR or any other State agency as confidential, including all information designated as confidential under the Texas Public Information Act, Texas Government Code, Chapter 552, or otherwise exempted from public disclosure under such Act;
4. Information that is utilized, developed, received, or maintained by DIR, the Vendor, or participating State agencies for the purpose of fulfilling a duty or obligation under this Master Agreement and that has not been publicly disclosed by the party that developed such information; and
5. Vendor’s Proprietary Software and related technical and design documentation provided by the Vendor pursuant to this Master Agreement, excluding user-related materials that have been released by the Vendor to the public.

Contract Year – For the first Contract Year, a period commencing on the Effective Date and ending on August 31, 2010, and for each ensuing Contract Year, a twelve (12) month period commencing on September 1st and ending on August 31st.

Convenience Fees – Fees charged with the permission of the DIR Board in exchange for the convenience of accessing information or conducting transactions via TexasOnline 2.0 rather than in person, by mail, or by other non-electronic means.

Corrective Action Plan – The detailed written plan required by DIR to correct or resolve a deficiency, or event that could cause the assessment of a liquidated damage against Vendor.

Current Contract – The Texas Electronic Framework Agreement.

Current Contractor – The vendor contractually bound to provide all services for the existing TexasOnline as of the date of the issuance of the RFO (BearingPoint, Inc.).

Custom Software Deliverable – Any Deliverable, and any Software developed by Vendor in connection with the Master Agreement.

Customer – Collectively, any of the following entities that are designated by DIR to receive Services under the Master Agreement, whether directly from Vendor or from DIR:

- a. Department of Information Resources in its capacity as a recipient of Services;
- b. Any State agency, as defined in Texas Government Code, Section 2054.003(13);
- c. Any unit of Texas local government, as defined in Texas Government Code, Section 2054.003 (9);
- d. Any licensing entity, as defined in Texas Government Code, Section 2054.251;
- e. Any other entity permitted under law to purchase Services from or through DIR; and
- f. Other entities to which the Parties agree.

The Parties acknowledge and agree that the definition of eligible Customers is subject to modification by the State Legislature, and the then-current definition of Customers will apply for all purposes.

Customer Agreement – A contractual document containing the terms, conditions, and scope for projects to be implemented under TexasOnline 2.0 or Services provided to a Customer, and executed by Customer, Vendor, and DIR. *Attachment R-1 Customer Agreement* contains the template for the form of Customer Agreement.

Cutover – 11:59:59 p.m., Central Time, on December 31, 2009, or such other date as the Parties may agree upon in writing as the date on which Vendor will assume full responsibility for TexasOnline 2.0.

Data Center Services (DCS) – The statewide effort to consolidate infrastructure services, as directed by House Bill 1516, 79th Texas Legislature, Regular Session.

Data Center Services Master Services Agreement – The contract between The State of Texas, acting by and through DIR and International Business Machines, Inc., dated November 22, 2006.

Deliverable – A report or item that must be completed and delivered under the terms of the Master Agreement. The measurable result or output of a process prepared, developed, or procured by Vendor as part of the Services under this Master Agreement for the use or benefit of DIR or the State of Texas. The term Deliverable does not include Software and related documentation, except if DIR and the Vendor agree that any specific Software and related documentation should be considered a Deliverable as part of a Business Case Process.

Derivative Work – A work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable law, but excluding the preexisting work.

DIR Board – The Board of Directors of the Texas Department of Information Resources.

DIR Programs – The statewide or agency programs administered by DIR, including but not limited to TexasOnline.

Disability – A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Disentanglement – The period of time and activities for the transition of TexasOnline 2.0 services from the Vendor to the State or a third party designated by the State.

Effective Date – Has the meaning given in the Master Agreement.

ePay – Current Contractor's payment processing engine.

Equipment – Computer hardware, routers, telecommunication devices, and the like utilized under this Master Agreement.

E-Services Software – Software developed outside the Master Agreement by Vendor, and hosted by Vendor or its affiliate outside this Master Agreement, for use by a number of governmental customers, that enables applications developed under this Master Agreement for TexasOnline 2.0, to authorize and capture credit and debit cards for payments; to process all other forms of Electronic Funds Transfer, and to manage the registration, billing, and collection of funds, Convenience Fee services, and such other online services as may be from time to time developed or used by Vendor outside of this Master Agreement and made available to TexasOnline 2.0 as a Service through Vendor.

ETOL – Existing TexasOnline. Acronym used by Current Contractor in financial and transaction reporting.

Expiration Date – 11:59:59 p.m., Central Time, on August 31, 2016, unless the Initial Term or the then-current Renewal Term, is extended in accordance with the Master Agreement, in which case the Expiration Date shall be 11:59:59 p.m., Central Time on the last day of such extension.

Full Time Equivalent (FTE) – A measurement equal to one staff person working a full-time work schedule for one year.

Government Entities – A subset of TexasOnline Customers that includes all publicly funded entities, such as State agencies, higher education, and local governments.

Implementation – The process of transitioning from the Current Contract to the TexasOnline 2.0 Master Agreement.

Information and Communication Technology (ICT) Contracts Program – A streamlined cooperative purchasing program for state, local, public education, and other public entities within and outside the State of Texas.

Initial Term – Has the meaning given in the Master Agreement.

Key Personnel – All individuals identified by Vendor in *Attachment G-8 Organization and Staffing Plan* as Key Personnel will be considered Key Personnel.

Level I Support – Support that is provided as the entry point for inquiries or problem reports. If Level I personnel cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate personnel or third party for resolution.

Master Agreement – The final version of the contractually binding agreement between the Texas Department of Information Resources and the Vendor awarded pursuant to the RFO; including all Exhibits and Attachments thereto.

Master Work Order (MWO) – The Master Work Order Agreement document attached as Attachment A to Amendment 10 to the Texas Electronic Framework Agreement that describes the particulars of the MWO Projects and sets forth obligations of both parties in connection therewith.

Master Work Order Projects – Those projects included in the Master Work Order.

Modifications – Has the meaning set forth in of *Exhibit B Terms and Conditions, Section 14.09(c) Ownership of modifications.*

Net Revenue – The amount remaining after applying the Breakeven analysis on Attachment D of the First Renewal Agreement to the Texas Electronic Framework Agreement, as applicable to Master Work Order Projects.

Offer – Has the meaning given in the Preamble to the Master Agreement.

Opportunity Proposal – Under the Current Contract, the term for the file or format for adding, modifying, or removing an application to or from the Texas Electronic Framework Agreement and submitted to DIR by the Current Contractor, or the Current Contractor and a Government Entity jointly. See Section 3 of the First Renewal Agreement and Section 7 of the Second Renewal Agreement for more detailed information.

Outside Project – Has the meaning set forth in *Exhibit B Terms and Conditions, Section 16.01 Bidding on Outside Projects.*

Parties – Has the meaning given in the Preamble to the Master Agreement.

Party – Has the meaning given in the Preamble to the Master Agreement.

Premium Subscription Fees – Fees charged with the permission of the DIR Board in exchange for access to one or more of a combination of Services offered to members of the public via TexasOnline 2.0.

Privileged Work Product – Work product considered privileged from discovery/disclosure under the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure or Federal Rules of Evidence.

Program – Has the meaning set forth in *Attachment H-1 Policies and Procedures Manual.*

Privacy Incident – The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users, and for an other than authorized purpose, have access or potential access to sensitive personal information in usable form, whether physical or electronic. The term encompasses both suspected and confirmed incidents involving sensitive personal information that raise a reasonable risk of harm.

Public information – Information that meets the following two conditions:

1. Is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body; and

2. Is determined to not be Confidential Information, or exempt from disclosure, under the Texas Public Information Act, Texas Government Code, Chapter 552.

Purchase Order – DIR's or the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

Request for Offers (RFO) – Has the meaning given in the Preamble to the Master Agreement.

Scope of Work – The description of Services and Deliverables specified in this Master Agreement, the RFO, and any agreed modifications thereto.

Security Incident – An unauthorized act or circumstance against any system or data contained within that deviates from the confidentiality, integrity, or availability of predefined policies and procedures.

Services – The tasks, functions, and responsibilities assigned and delegated to Vendor under this Master Agreement.

Service Level Agreement (SLA) – A negotiated agreement between Parties that contains service performance metrics with corresponding service level objectives. Under the Current Contract, an SLA represents the agreement between the Current Contractor and Customer for TexasOnline Services.

Service Revenue – All revenues TexasOnline 2.0 derives from maintenance, hosting, and support of an application developed by the Vendor that is subscribed to or whose cost is shared by a user. Service Revenue includes Premium Subscription Fees. This revenue is recognized ratably over the service period, usually one year.

Share of Net Revenue – The share the State receives of Net Revenue under the Texas Electronic Framework Agreement collected by Vendor in connection with its performance under the Texas Electronic Framework Agreement.

Share of Total Revenue – The share the State receives of Total Revenue collected by the Vendor in connection with its performance under the Texas Electronic Framework Agreement and this Master Agreement, as applicable.

Software – All operating systems, applications software, and related documentation used by Vendor to provide the Services under this Master Agreement. Notwithstanding any provision of this Master Agreement to the contrary, the definition of "Software" shall not include E-Services Software.

Software as a Service (SaaS) – A model of software deployment where an application is hosted as a service provided to customers across the Internet.

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

State Treasury – The Treasury Operations Division of the Texas Comptroller of Public Accounts.

Subcontract – Any written agreement between Vendor and other party to fulfill the requirements of this Master Agreement. All Subcontracts are required to be in writing and signed by the Vendor and Subcontractor.

Subcontractor – A party to a Subcontract.

Subcontractor Compliance Obligations – Has the meaning set forth in *Exhibit B Terms and Conditions, Section 4.03(c) Subcontractor's compliance*.

Team for Texas – The partners providing services under the Data Center Services contract, including IBM, Unisys, Pitney Bowes, and Xerox. This team was developed in response to the statewide effort to consolidate infrastructure services, as directed by House Bill 1516, 79th Texas Legislature, Regular Session.

TEX-AN Next Generation (TEX-AN NG) – The shared technology transport services of DIR, which will be accomplished by contracting with multiple statewide Multi-Protocol Label Switching (MPLS) vendors to facilitate secure transport while supporting both Quality of Service (QoS) and Class of Service (CoS).

Texas Electronic Framework Agreement – The contract for TexasOnline services between DIR and Texas NICUSA, LLC, successor in interest to BearingPoint, Inc., dated May 5, 2000, as amended and renewed. For purposes of clarity, references to the Texas Electronic Framework Agreement include Attachment 1 to the Master Work Order Agreement.

Texas Project Delivery Framework – A consistent statewide method to select, control, and evaluate projects based on their alignment with business goals and objectives.

TexasOnline – The current Texas e-government portal or electronic framework.

TexasOnline 2.0 – A placeholder name for the resulting program, portal, and website from the RFO.

Total Revenue – The total amounts received from Transaction Revenue and Service Revenue (less credit card and ACH fees) and does not include statutory fees charged by State Agencies and Local Government to the users of TexasOnline 2.0 or other government revenues collected in connection with the transactions.

Transaction – Exchange of something of value from one entity to another that involves a financial component.

Transaction Revenue – All revenues TexasOnline 2.0 derives from Convenience Fees on Transactions. These fees are typically priced at a fixed dollar, per-Transaction amount or based on a percentage of the total Transaction and are recognized as revenue when the Transaction is completed.

USAS – The Texas Comptroller's Uniform Statewide Accounting System.

Vendor – Has the meaning given in the Preamble to the Master Agreement.

Vendor Portion of Total Revenue – Has the meaning set forth in *Exhibit C Financial Model*.

Vendor's Proprietary Software – All software owned by Vendor or its affiliates and used in TexasOnline 2.0 and all Modifications and enhancements to such software, excluding the E-Services Software.

Article III. Governance Terms

Terms related to Governance are defined in *Attachment H-1 Policies and Procedures Manual*.