

# Master Agreement

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Between

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

*and*

**Texas NICUSA, LLC**

July 31, 2009

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# Master Agreement

This Master Agreement is entered into effective July 31, 2009 (the "Effective Date") by and between the State of Texas, acting by and through the Texas Department of Information Resources ("DIR"), with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Texas NICUSA, LLC, a limited liability company ("Vendor"), with a principal place of business at 301 Congress, Suite 1500, Austin, Texas 78701.

## Preamble

A. WHEREAS, in accordance with the laws of the State, DIR issued the "Request for Offers for TexasOnline 2.0" on the Texas Comptroller of Public Accounts' "Electronic State Business Daily" Web site, agency requisition number DIR-TXO-001 (the "RFO");

B. WHEREAS, in response to the RFO, Vendor submitted Vendor's Offer, dated January 15, 2009, as revised, amended and supplemented thereafter (the "Offer");

C. WHEREAS, based on the Offer, DIR and Vendor have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Master Agreement; and

D. WHEREAS, DIR desires to procure from Vendor, and Vendor desires to provide to DIR and the Customers on the terms and conditions specified in this Master Agreement, the Services described in this Master Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, DIR and Vendor (collectively, the "Parties" and each, a "Party") hereby agree as follows:

## 1. Introduction.

### 1.1 Provision, Performance and Management by Vendor.

DIR desires that certain services presently provided, performed and managed by or for DIR and the Customers (including pursuant to Subchapters F and I, Chapter 2054, Texas Government Code) be provided, performed and managed by Vendor as and to the extent described in this Master Agreement. Vendor has carefully reviewed DIR's requirements, has performed all due diligence it deems necessary, and desires to perform and manage such services for DIR and the Customers who execute Customer Agreements.

## 1.2 Vendor's Experience and Qualifications.

The Vendor is an established provider of Web Portal technology and services and has the skills, qualifications, expertise, financial resources and experience necessary to provide the services and deliverables described in this Master Agreement.

## 1.3 Definitions.

Except as otherwise expressly provided in this Master Agreement, all capitalized terms used in this Master Agreement shall have the meanings ascribed to them in *Exhibit A Definitions*.

## 1.4 Other Terms.

The terms defined in this Master Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Master Agreement as a whole and not to any particular Article, Section, Subsection, Exhibit, Attachment or other subdivision. Article, Section, Subsection, Exhibit and Attachment references refer to articles, sections and subsections of, and exhibits and attachments to, this Master Agreement. The words "include" and "including" shall not be construed as terms of limitation. Unless otherwise modified, the words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year.

The word "notice" and "notification" and their derivatives means notice or notification in writing unless a different meaning is evident from the context in which such term is used. References in this Master Agreement to any law shall be to such law in changed or amended form or to a newly adopted law replacing a prior law. All references to this Master Agreement shall include the Exhibits and Attachments to this Master Agreement unless otherwise provided. Other terms used in this Master Agreement are defined in the context in which they are used and have the meanings there indicated.

## 2. Contract Documents.

### 2.1 Definition.

This Master Agreement includes each of the Exhibits, Attachments and other documents attached to this Master Agreement which are hereby incorporated into and deemed part of this Master Agreement, and unless otherwise expressly stated all references to this Master Agreement shall include the Exhibits, Attachments and other documents attached to this Master Agreement. A listing of the Exhibits and Attachments is included in the Table of Contents.

### 2.2 Order of Precedence.

In the event of any conflict or contradiction between or among the Master Agreement elements, the documents will control in the following order of precedence:

- (1) The Master Agreement, and all amendments thereto,
- (2) *Exhibit A Definitions* to the Master Agreement, and all amendments thereto,
- (3) *Exhibit B Terms and Conditions* to the Master Agreement, and all amendments thereto,
- (4) All other Exhibits to the Master Agreement, and all amendments thereto,

- (5) Attachments to the Master Agreement, and all amendments thereto,
- (6) Vendor's Revised Offer, dated March 12, 2009, and incorporated by reference herein.
- (7) The Vendor's Offer, dated January 15, 2009, and incorporated by reference herein.
- (8) The RFO, as amended and clarified by the Vendor questions and the DIR official responses, and incorporated by reference herein.

### **3. Term.**

#### **3.1 Initial Term.**

The Initial Term of this Master Agreement shall commence as of 12:00:01 a.m., Central Time on the Effective Date and continue until 11:59:59 p.m., Central Time, on August 31, 2016, unless this Master Agreement is terminated earlier as provided herein, in which case the Initial Term of this Master Agreement shall end at 11:59:59 p.m., Central Time, on the effective date of such termination (the "Initial Term").

#### **3.2 Extension.**

By giving written notice to Vendor no less than 180 days prior to the expiration date of the Initial Term or the then-current Renewal Term, DIR shall have the right to extend the Term of the Master Agreement for up to two (2) years in any combination of months or years as necessary to complete the purpose of this procurement. The exact period of the extension shall be specified in the DIR notice of extension.

### **4. Notices.**

#### **(a) Delivery of Notice**

Any notice or other legal communication required or permitted to be made or given by either Party pursuant to this Master Agreement will be in writing and deemed to have been duly given:

- (1) Three (3) business days after the date of mailing if sent by certified U.S. mail, postage prepaid, with return receipt requested;
- (2) When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
- (3) When delivered if delivered personally or sent by express courier service.

#### **(b) Notice**

Any notice under this Master Agreement will be sufficient if delivered to the following persons or their successors.

- (1) Communications that are routine and administrative in nature should be sent to the Contract Managers identified in the Policies and Procedures Manual.
- (2) Legal notices should be sent to the following:

If to Vendor:

Texas NICUSA, LLC.  
301 Congress, Suite 1500  
Austin, Texas 78701  
Telephone: (512) 651-9300  
Fax: (512) 651-9337  
Attn: Executive Director

With a copy to:

NIC, Inc. (LEGAL NOTICE)  
25501 West Valley Parkway  
Suite 300  
Olathe, Kansas 66061  
Telephone: (877) 234-3468  
Fax: (913) 498-3472  
Attn: General Counsel

If to DIR:

Deputy Executive Director  
Operations and Statewide Technology Sourcing

With a copy to:

General Counsel  
Department of Information Resources  
300 W. 15<sup>th</sup> Street  
Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759

(c) Change of Designee

Either Party may change the above-referenced designees or address with five (5) days' written notice to the other Party.

## **5. Contract Amendments.**

(a) This Section 5 represents the Parties' business plan for negotiating amendments and modifications to the Master Agreement, as required by Article 7 of *Exhibit B Terms and Conditions*.

(b) DIR or the Vendor may propose changes in the Services, Deliverables, or other aspects of this Master Agreement. Proposed changes will be processed in accordance with the Governance Model, as documented in *Attachment H-1 Policies and Procedures Manual*, and as subsequently modified and agreed to by the Parties.

(c) All modifications to the Master Agreement must be accomplished through a formal written amendment executed by an authorized representative of DIR and Vendor, except for modifications to Attachments which will be made in accordance with the methodology described in each exhibit for updating associated attachments and plans.

## Authority to Execute.

The Parties have executed this Master Agreement in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

**DEPARTMENT OF INFORMATION RESOURCES**

**TEXAS NICUSA, LLC**

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Cindy Reed  
Deputy Executive Director  
Operations & Statewide Technology  
Sourcing

Jeffery A. McCartney  
President

\_\_\_\_\_

\_\_\_\_\_

Date

Date