

**AMENDMENT NUMBER 3  
TO  
CONTRACT NO. DIR-SDD-1075  
BETWEEN  
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES  
AND TEXAS NICUSA, LLC**

This Amendment Number 3 (the “Amendment”) to the TexasOnline 2.0 Master Agreement (as previously amended, the “Master Agreement”) dated July 31, 2009 is entered into by and between The State of Texas, acting by and through the Texas Department of Information Resources (“DIR”) and Texas NICUSA, LLC, a limited liability company with a principal place of business at 100 Congress Avenue, Suite 600, Austin, Texas 78701 (“Vendor”). Capitalized terms used but not otherwise defined in this Amendment shall have the meaning set forth in the Master Agreement. This Amendment is executed in accordance with the authority granted in the Master Agreement, Section 5 *Contract Amendments*.

All other terms and conditions of the Master Agreement as amended, not specifically modified herein, shall remain in full force and effect. In the event of any inconsistencies between the terms and conditions contained in the Master Agreement and the terms and conditions contained in this Amendment, the terms and conditions contained in the Amendment shall control.

Background

In order to meet certain Texas.gov program project delivery goals, DIR authorized the use of Non-DCS Data Centers to provide some of the Texas.gov program’s required data center services;

The use of the Non-DCS Data Centers requires the addition of new service levels in Exhibit D Performance Criteria not previously documented in the Master Agreement;

The addition of the Non-DCS Data Centers also requires additional clarification regarding ownership of hardware and software located in Non-DCS Data Centers. To support this, Vendor will provide two additional reports related to the Technology Management Plan;

In addition, the Parties have agreed to other Master Agreement changes, including a more objective calculation at contract expiration for End of Term Business Cases and documentation of revised annual due date for the Marketing Plan.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Vendor and DIR hereby amend the Master Agreement as follows:

## Terms

1. Effective August 25, 2014, **Article II of Exhibit A – Definitions** is amended by adding the following definition:

**Non-DCS Data Centers** – All data centers providing data center services to the Texas.gov program other than those managed services provided by Data Center Services Providers under the DCS Contract and the Master Data Center Services Contracts, including but not limited to co-location services and third party cloud services retained by Vendor.

2. Effective August 25, 2014 **Article 11. Remedies and Disputes, Section 11.03(d) Termination Fee, of Exhibit B – Terms and Conditions** is hereby revised as follows:

(d) *Termination fee.*

(1) In the event DIR terminates the Master Agreement prior to the expiration of the Master Agreement for any reason other than the material uncured breach by Vendor, notwithstanding any other provision contained in this Master Agreement, the provisions regarding licensing of Software, and transfer of title to Hardware to DIR, shall be contingent upon payment of a negotiated fee to Vendor.

(2) The fee will be calculated in accordance with the process set forth in *Attachment H-1 Policies and Procedures Manual* and based upon a combination of the following:

- (A) TexasOnline 2.0 build-out associated with Implementation,
- (B) Purchase price of Vendor-provided third party products and services,
- (C) Value associated with the Business Case Project Value Score of Vendor Proprietary Software, and

(D) for approved End of Term Business Cases, the End of Term (EOT) Value as described in *Attachment H-1, Section 6.1.11.1 Business Case Flow – End of Term.*

The TexasOnline 2.0 build-out set forth in clause (A) above will be amortized over seven years from the Effective Date, and the amounts set forth in clauses (B) and (C) above will be amortized over five years commencing upon the date of completion of each Project.

(3) Upon expiration of the Master Agreement, at the completion of the Initial Term or any extension granted by DIR, a calculated fee equal to the EOT Value shall be due and payable to Vendor with respect to Projects described in *Attachment H-1 Policies and Procedures Manual* as End of Term Business Cases.

3. Effective August 25, 2014 **Article 11. Remedies and Disputes, Section 11.09 Rights upon termination or expiration of Master Agreement, of Exhibit B – Terms and Conditions** is hereby revised as follows:

(a) Notwithstanding anything in this Master Agreement to the contrary, Vendor will retain all ownership rights in Vendor's Proprietary Software (including, without limitation, source code and documentation, and all modifications and updates made under this Master

Agreement) and DIR will receive a fully paid up (in the instances described in this Master Agreement) perpetual, non-exclusive license to use such Software as necessary to operate, maintain and improve TexasOnline 2.0 at the Expiration Date, or upon termination of the Master Agreement by DIR as a result of the uncured material breach by Vendor. Such license will include the right to make modifications to the Vendor's Proprietary Software for use in the operation of TexasOnline 2.0, and the right to allow contractors engaged by the State to use and modify the Vendor's Proprietary Software as necessary for the operation of TexasOnline 2.0, provided such contractors must execute a confidentiality agreement for that express purpose in form acceptable to Vendor. Title or lease to all hardware and related accessories used to support TexasOnline 2.0 applications and services which are located in the State of Texas Data Centers and/or identified as "DIR" in the Current Owner column of the Server Device Inventory sheet of the most recently delivered and DIR-accepted Technical Reference Model (as required in the G-10 Technology Management Plan) shall be transferred to DIR or a vendor designated by DIR, at DIR's option upon expiration, subject to payment of the calculated fee in accordance with Section 11.03(d), or termination as a result of the uncured material breach by Vendor of the Master Agreement. Third party Software will be transferred to DIR subject to the manufacturer's or vendor's license agreement, provided such transfer is permitted.

- (b) In all other instances in which DIR terminates this Master Agreement, including termination for convenience, termination for non-appropriation of funds, and in which Vendor terminates the Master Agreement based on insufficient Total Revenue, DIR will receive a license to use Vendor's Proprietary Software and Deliverables, (or, in the case of termination under Section 3.01, to Vendor's Proprietary Software excluding such for which DIR chooses not to pay the unamortized project value associated with the Business Case Project Value Score under Section 3.01(b)) and a transfer of title or lease, as appropriate, to the hardware and related accessories used to support TexasOnline 2.0 applications and services which are located in the State of Texas Data Centers and/or identified as "DIR" in the Current Owner column of the Server Device Inventory sheet of the most recently delivered and DIR-accepted Technical Reference Model, subject to payment of the negotiated fee in accordance with Section 11.03(d).

4. Effective August 25, 2014 **Article II. Performance Criteria Contractual Principles, Section 2.13 Data Center Services, of Exhibit D – Performance Criteria** is hereby added as follows:

### **Section 2.13 Data Center Services**

Vendor will provide data center services using the following service levels.

- (a) The Vendor will measure availability and reliability as defined below, and report on performance as described in Exhibit F Reporting.
- (b) The following tables of activities and expectations provides additional specific criteria regarding potential liquidated damages. DIR reserves the right to modify the monitoring frequency through the Contract Amendment process in accordance with the Master Agreement Section 5 Contract Amendments.

(c) The Vendor will provide the following service levels:

SERVICE LEVEL NAME	START DATE
<i>Non-DCS Data Centers Environment – Backup</i>	December 1, 2014
<b>METRIC DESCRIPTION</b>	<p>The system and data backup requirements from the Master Agreement will also be applied to Non-DCS Data Centers in the same way they do for other services provided by Vendor.</p> <p>Backups of: File systems and file system contents, databases and database system contents, including but not limited to Solaris, Windows, Sharepoint, Oracle DB, Oracle SOA, MS SQL Server, and transactional and run-time data and components.</p> <p>Content and design changes are configured for offsite deployment via application specific technologies within the Enterprise Internet environment.</p> <p><b>Backups:</b> Full database backups are taken at least weekly and stored on a separate storage device. Incremental backups are taken, at a minimum, on a daily basis. Point-in-time recovery capabilities are retained for a minimum of 21 days.</p> <p>Backups are transferred offsite to a geographically remote datacenter in the event a restoration is needed.</p>
<b>METRIC INCLUSIONS</b>	<p>All applications hosted at Non-DCS Data Centers – currently includes:</p> <ul style="list-style-type: none"> <li>a) TxPay</li> <li>b) Texas.gov portal</li> <li>c) TX OTC</li> <li>d) DPS Direct</li> <li>e) Payment systems (TPE, CCP)</li> <li>f) TicketPay</li> <li>g) UtilityPay</li> <li>h) eCommDirect (TDCJ)</li> </ul> <p>The up-to-date list of all applications included in this metric shall be maintained by Vendor through the ID 06 Progress and Performance Report.</p>
<b>METRIC EXCLUSIONS</b>	<ul style="list-style-type: none"> <li>a. Individual applications and services unavailable for reasons other than the fault of the Vendor, including but not limited to DCS outages, Customer work on systems or applications</li> <li>b. Force Majeure Events</li> <li>c. Scheduled maintenance</li> </ul>
<b>HOURS OF MEASUREMENT</b>	24 hours per day
<b>DAYS OF MEASUREMENT</b>	365
<b>EXPECTED SERVICE LEVEL</b>	95%
<b>ALGORITHM</b>	<p>The Service Level calculation for successful Backup is the total number of backup jobs that are completed successfully and on time during the applicable Measurement Window, divided by the total number of back up jobs that should have been completed during the applicable Measurement Window, with the result expressed as a percentage.</p>
<b>COLLECTION PROCESS</b>	Remedy, ServiceNow, Web Reports
<b>REPORTING TOOLS</b>	Monthly Progress and Performance Report (“ID-06 Progress and Performance” report)

<b>REMEDY UNIT</b>	\$100 for each tenth of a percent below Expected Service Level
<b>EARN BACK UNIT</b>	\$100 for each tenth of a percent above Expected Service Level
<b>PERFORMANCE CATEGORY</b>	Non-DCS Data Center Services
<b>MEASUREMENT WINDOW</b>	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

<b>SERVICE LEVEL NAME</b>	<b>START DATE</b>
<i>Non-DCS Data Center Environment – Disaster Recovery – Recovery Time Objective</i>	December 1, 2014
<b>METRIC DESCRIPTION</b>	<p>In the event of a declared disaster, the time required to recover the impacted service(s) is measured with the Recovery Time Objective (RTO).</p> <p>The system and data backup requirements from the Master Agreement will also be applied to Non-DCS Data Centers in the same way they do for other services provided by Vendor. Content and design changes are configured for offsite replication via application specific technologies within the Enterprise Internet environment.</p> <p>Database mirroring is established to replicate databases associated with the authoring Enterprise Internet environment. This same technology is used for other web applications.</p> <p>Protection of the database transaction/TPE environments are two-fold.</p> <p><b>Replication:</b> Transactions are replicated between multiple data centers using an database aware replication technology. Fully committed transactions, typically, are replicated via these technologies in real time.</p> <p><b>Backups:</b> Full database backups are taken at least weekly and stored on a separate storage device. Incremental backups are taken, at a minimum, on a daily basis. Point-in-time recovery capabilities are retained for a minimum of 21 days.</p>
<b>METRIC INCLUSIONS</b>	<p>All applications hosted at Non-DCS Data Centers – currently includes:</p> <ul style="list-style-type: none"> <li>a) TxPay</li> <li>b) Texas.gov portal</li> <li>c) TX OTC</li> <li>d) DPS Direct</li> <li>e) Payment systems (TPE, CCP)</li> <li>f) TicketPay</li> <li>g) Utility Pay</li> <li>h) eCommDirect (TDCJ)</li> </ul> <p>The up-to-date list of all applications included in this metric shall be maintained by Vendor through the ID 06 Progress and Performance Report.</p>
<b>METRIC EXCLUSIONS</b>	<ul style="list-style-type: none"> <li>a. Individual applications and services unavailable for reasons other than the fault of the Vendor, including but not limited to DCS outages, Customer work on systems or applications</li> <li>b. Force Majeure Events</li> <li>c. Scheduled maintenance</li> </ul>
<b>HOURS OF MEASUREMENT</b>	24 hours per day

<b>DAYS OF MEASUREMENT</b>	365
<b>EXPECTED SERVICE LEVEL</b>	Disaster Recovery Time Objective for the Portal Presence and the Emergency Preparedness Page is 24 hours from declaration to recovery. All other services are 72 hours.
<b>ALGORITHM</b>	Calculation is based on the difference between Expected Service Level for RTO and the actual amount of time that the recovery is completed, measured in hours – in the case of an actual declared disaster. Each quarter, if there has not been a declared disaster, the algorithm is not calculated for that Measurement Window.
<b>COLLECTION PROCESS</b>	Remedy, ServiceNow, Web Reports
<b>REPORTING TOOLS</b>	Monthly Progress and Performance Report (Non-DCS Data Centers provides data to Texas for the “ID-06 Progress and Performance” report)
<b>REMEDY UNIT</b>	\$100 for each hour above Expected Service Level
<b>EARN BACK UNIT</b>	\$100 for each hour below Expected Service Level
<b>PERFORMANCE CATEGORY</b>	Non-DCS Data Center Services
<b>MEASUREMENT WINDOW</b>	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

<b>SERVICE LEVEL NAME</b>	<b>START DATE</b>
<i>Non-DCS Data Center Environment – Disaster Recovery – Recovery Point Objective</i>	December 1, 2014
<b>METRIC DESCRIPTION</b>	<p>In the event of a declared disaster, the Recover Point Objective (RPO) is the measure of what point in time, based on current time being “zero time”, that the data associated with a the service(s) is recovered back to.</p> <p>Recovery Point Objectives align with the back-up and replication technologies of all database products included with services.</p> <p>Database mirroring is established to replicate databases associated with the authoring Enterprise Internet environment. This same technology is used for other web applications.</p> <p><b>Replication:</b> Transactions are replicated between multiple data centers using database aware replication technology. Fully committed transactions, typically, are replicated via these technologies in real time.</p>
<b>METRIC INCLUSIONS</b>	<p>All applications hosted at Non-DCS Data Centers – currently includes:</p> <ul style="list-style-type: none"> <li>a) TxPay</li> <li>b) Texas.gov portal</li> <li>c) TX OTC</li> <li>d) DPS Direct</li> <li>e) Payment systems (TPE, CCP)</li> <li>f) TicketPay</li> <li>g) Utility Pay</li> <li>h) eCommDirect (TDCJ)</li> </ul>

	The up-to-date list of all applications included in this metric shall be maintained by Vendor through the ID 06 Progress and Performance Report.
<b>METRIC EXCLUSIONS</b>	<ul style="list-style-type: none"> <li>a. Individual applications and services unavailable for reasons other than the fault of the Vendor, including but not limited to DCS outages, Customer work on systems or applications</li> <li>b. Force Majeure Events</li> <li>c. Scheduled maintenance</li> </ul>
<b>HOURS OF MEASUREMENT</b>	24 hours per day
<b>DAYS OF MEASUREMENT</b>	365
<b>EXPECTED SERVICE LEVEL</b>	Disaster Recovery Point Objective will not exceed one hour of data loss prior to the timestamp that the disaster is declared.
<b>ALGORITHM</b>	Calculation is based on the actual time that the data for the service(s) is recovered back to, measured from the timestamp that the disaster is declared in hours, less the Expected Service Level, in the case of an actual declared disaster. Each quarter, if there has not been a declared disaster, the algorithm is not calculated for that Measurement Window.
<b>COLLECTION PROCESS</b>	Remedy
<b>REPORTING TOOLS</b>	Monthly Progress and Performance Report (Non-DCS Data Centers provides data to Texas for the “ID-06 Progress and Performance” report)
<b>REMEDY UNIT</b>	\$100 for each hour that the Algorithm is greater than zero
<b>EARN BACK UNIT</b>	\$100 for each hour that the Algorithm is less than zero
<b>PERFORMANCE CATEGORY</b>	<u>Non-DCS Data Center Services</u>
<b>MEASUREMENT WINDOW</b>	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Semi Annual

5. Effective August 25, 2014 a new subsection (c) to **Article II. Contractual Principles, Section 2.11 Technology Management Plan, of Exhibit G –Plans** is hereby added as follows:

(c) The Technology Management Plan must also include the following reports, updated annually in conjunction with the Technology Management Plan and/or upon request by DIR:

(i) The Technical Reference Model, which shall provide a current list of (A) hardware and related accessories used to support TexasOnline 2.0 applications and services which are located in the State of Texas Data Centers, including physical location of each tangible asset (which may transfer upon expiration or termination of the Master Agreement to the extent described in Section 11.09 of Exhibit B and

any other applicable provision of the Master Agreement) and (B) software used to support TexasOnline 2.0 (which may be licensed upon expiration or termination of the Master Agreement to the extent described in Section 11.09 of Exhibit B and any other applicable provision of the Master Agreement).

(ii) The Configuration Management Report, which must describe the current technology stack comprising the layers of components used to support each of the applications and services for TexasOnline 2.0.

**6. Effective August 25, 2014 Article IV. Documents Referenced in Exhibit J Marketing, Section 4.02 Exhibit J Associated Plans and Timelines, of Exhibit J – Marketing is hereby revised as follows:**

(a) The following plans and timelines are associated with *Exhibit J Marketing*:

Table 1: Exhibit J Marketing Associated Plans and Timelines

Title	Initial Draft Due	Final Draft Due	Updates
<i>Attachment J-1 Marketing Plan</i>	Submitted with the Offer.	The final draft of the Marketing Plan is to be submitted to DIR for approval within sixty (60) calendar days after the Effective Date of the Master Agreement.	A revised Marketing Plan will be submitted to DIR by October 1 each year.

7. No Other Modification; Controlling Document. The parties agree that except as otherwise specifically modified in this Amendment, the Master Agreement has not been modified, supplemented, amended, or otherwise changed in any way and the Master Agreement remains in full force and effect between the parties hereto as modified by this Amendment. To the extent of any inconsistency between the terms and conditions of the Master Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall apply and govern the parties.

8. Miscellaneous. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Amendment. Upon mutual execution of this Amendment by the parties as evidenced by each party’s respective signature below, this Amendment shall be binding on the parties hereto and each party’s respective successors and assignees.

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IN WITNESS WHEREOF, the parties having read and understood the foregoing sections of the Master Agreement as Amended including all Attachments and Exhibits incorporated therein by reference, expressly agree to these terms and conditions as evidenced by their respective dated signatures below:

**DEPARTMENT OF INFORMATION RESOURCES**

**TEXAS NICUSA, LLC**

Signature: Signature on File

Signature: Signature on File

Name: Todd Kimbriel

Name: Erin Hutchins

Title: Chief Operating Officer

Title: Director of Portal Operations

Date: 9/3/14

Date: 8/20/14

Legal: Signature on File