TexasOnline 2.0
Customer Agreement

Between

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

and

Texas NICUSA, LLC

and

Texas Office of the Secretary of State

DIR Contract No. DIR-SDD-IC454

This Customer Agreement is effective on the 1st day of January, 2010 by and between the Texas Department of Information Resources (DIR), Texas NICUSA, LLC (Vendor), and Texas Office of the Secretary of State (Customer). DIR, Vendor, and Customer may each be referred to as Party, and collectively DIR, Vendor, and Customer may be referred to as the Parties herein.

Capitalized terms not defined herein shall have the meaning set forth in the Master Agreement.

BACKGROUND

TexasOnline 2.0 is based on, and subject to, the TexasOnline 2.0 Master Agreement between DIR and Vendor dated July 31, 2009, including the Customer Agreement Standard Terms and Conditions. TexasOnline 2.0 is the name of the official web portal and application delivery framework for the State of Texas.

AGREEMENT

IN CONSIDERATION of mutual covenants and agreements contained in this Customer Agreement, DIR, Vendor, and Customer agree as follows:

1. Customer may receive Services provided by TexasOnline 2.0 by agreeing to abide by this Customer Agreement, including the Customer Agreement Standard Terms and Conditions. The TexasOnline 2.0 Master Agreement and this Customer Agreement represent the entire agreement for access to, and use of, TexasOnline 2.0 Services by Customer.
2. TexasOnline 2.0 offers a variety of website development and hosting, e-commerce and related support services to Customers. Exhibit A provides the List of Applications, List of Services, and Fee Schedule for this Customer Agreement. Specifications and additional terms for a service or application may be described in a Business Case. The applicable approved Business Case will be listed in Exhibit A and attached thereto, and is incorporated by reference for all purposes into this Customer Agreement.
3. All notices permitted or required under this Customer Agreement will be in writing and will be by personal delivery, a nationally recognized overnight courier service, e-mail, or certified mail, return receipt requested. Notices will be deemed given upon the earlier of actual receipt or one (1) day after deposit with the courier service, receipt by sender of confirmation of electronic transmission or five (5) days after deposit with the U.S. Postal Service. Notices will be sent to the addresses listed below, or to such other address as each Party may specify in writing.

If to DIR:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, TX 78701

If to Vendor:

Texas NICUSA, LLC
301 Congress Avenue, Suite 400
Austin, TX 78701

With a copy to:

NIC, Inc. General Counsel (Legal Notice)
25501 West Valley Parkway, Suite 300
Olathe, Kansas 66061

If to Customer:

Office of the Secretary of State
Attn: Purchasing
P.O. Box 12887
Austin, Texas 78701

AGREED AND ACCEPTED:

Vendor:

By: _____

Name: Jeffrey A. McCarthy

Title: President

Texas Department of Information Resources:

By: Cindy Reed M. Zolnosky

Name: Cindy Reed

Title: Deputy Executive Director

Customer:

By: Mary Jon Urban

Name: MARY JON URBAN

Title: Operating Support Mgr.

Customer Agreement—Standard Terms and Conditions

These terms and conditions apply to each Customer Agreement, to which they are incorporated, by and between the Texas Department of Information Resources (DIR), TexasOnline 2.0 Vendor (Vendor) and Customer of TexasOnline 2.0. DIR, Vendor, and Customer may each be referred to herein as Party, and collectively DIR, Vendor, and Customer may be referred to as the Parties herein.

BACKGROUND

A. TexasOnline 2.0 is based on, and subject to, the TexasOnline 2.0 Master Agreement between DIR and Vendor dated July 31, 2009. TexasOnline 2.0 is the name of the official web portal and application delivery framework for the State of Texas.

B. DIR executed a contract with International Business Machines Corporation (IBM) on November 22, 2006, (Data Center Services Master Services Agreement) based on House Bill 1516, 79th Legislature (Regular Session) to establish a consolidated Data Center, and accordingly all data center services provided by Vendor, excluding DIR-approved Services under the TexasOnline 2.0 Master Agreement are managed and provided by IBM under the Data Center Services Master Services Agreement.

STANDARD TERMS AND CONDITIONS

1. Customer Agreement Elements

    1.1 The Parties acknowledge and agree that the terms of the TexasOnline 2.0 Master Agreement will apply to the Customer Agreement, and will remain in full force and effect except as may be expressly modified by the terms of a Customer Agreement or any amendment to the TexasOnline 2.0 Master Agreement made in accordance with specific provisions of the TexasOnline 2.0 Master Agreement, Section 5 Contract Amendments. In the event of any conflict between the terms and conditions of a Customer Agreement and those of the TexasOnline 2.0 Master Agreement, the terms and conditions in the TexasOnline 2.0 Master Agreement will govern with respect to the Parties and the Services delivered, unless the Customer Agreement specifically identifies by section number a clause of the TexasOnline 2.0 Master Agreement and indicates that the Customer Agreement will be controlling. Notwithstanding the foregoing, the Parties agree that as between Vendor and DIR on the one hand, and Customer on the other, Sections 8.1, 8.2 and 9.7 in the Customer Agreement Terms and Conditions will control over any expressly conflicting statement contained in the TexasOnline 2.0 Master Agreement, if any. The Parties acknowledge the TexasOnline 2.0 Master Agreement is subject to subsequent amendment by Vendor and DIR pursuant to its terms and agree that, to the extent any such amendments impact any Customer Agreement terms and conditions, such amendments will automatically apply to the Customer Agreement with no further action by the Parties.

    1.2 These Customer Agreement Standard Terms and Conditions may be modified by DIR and Vendor pursuant to the modification of terms of the TexasOnline 2.0 Master Agreement. Such modifications will be effective as to the affected Customer Agreements following thirty days written notice to the Customers.

1.3 Customer Agreements will continue until terminated as specified therein, and subject to the terms of the TexasOnline 2.0 Master Agreement, and Vendor will provide the Services described in the agreed attachments to the Customer Agreement.

2. DIR Approval

Customer acknowledges that in order for Vendor to provide services pursuant to a Customer Agreement, DIR must approve placing Customer's website and/or applications (each approved website or application is an "Application") on the TexasOnline 2.0 system. A list of websites and/or applications using services under a Customer Agreement is included in the Customer Agreement (which also includes information on the specific applications and fees).

3. Services Available to Customer

Vendor offers a variety of website development and hosting, e-commerce and related support services to participants. The specific list of services and applications that Vendor has agreed to provide Customer will be specified in each Customer's Customer Agreement.

4. Customer Website Security

If Customer is hosting its own website, Customer will follow recommended security standards for Texas State and local government websites, and will conform to security policies and procedures in the TexasOnline 2.0 Master Agreement, Attachment G-9 Security Plan. Customer acknowledges that any failure on its part to follow recommended security standards may place its own data and operations at risk as well as those of Vendor and other governmental entities. Vendor will not be liable for violations of security policies and procedures by Customer. Additionally, failure to comply with security standards may lead to the suspension or termination of the availability of the Applications on TexasOnline 2.0 by Vendor and DIR. Vendor will give DIR and the Customer notification of non-compliance immediately upon suspension.

5. Strategic Outreach

In marketing Customer services accessible through TexasOnline 2.0 through brochures, press releases, advertisements, and other mail-outs and information pieces, Customer will include in any marketing piece in any medium that the services are provided in affiliation with TexasOnline 2.0 and will use the TexasOnline 2.0 logo and universal resource locator (URL) provided by Vendor for such purpose. Customer agrees to explore the possibility of co-marketing with Vendor the Customer services available through TexasOnline 2.0 so that marketing costs are shared. There will be a link to the Customer URL from TexasOnline 2.0.

6. Fees

For the Services provided by Vendor, Vendor is entitled to the fees set out in Exhibit A to this Customer Agreement. A Customer Agreement can be modified for the addition of fees as new Applications are included in Customer Services based on mutual agreement of DIR, Vendor, and Customer.

7. Customer Obligations

In addition to any other Customer obligations set out in the Exhibits to this Customer Agreement and the TexasOnline 2.0 Master Agreement, Customer will have the obligations herein.

7.1 Customer will utilize a single merchant ID for the Application(s) listed on Exhibit A, unless expressly set out in Exhibit A.

7.2 Customer will provide a contact number for the Application or Application(s) on an 8:00 a.m. - 5:00 p.m. CT (Monday through Friday) basis to receive 2nd level inquiries routed from the Help Desk.

7.3 Customer will cooperate with Vendor in Vendor's performance of its obligations under this Agreement. Customer will agree to an online security audit if requested by Vendor. Customer will not store or retain any credit card number or the automated clearing house (ACH) account number captured on its systems.

7.4 Customer will comply with the terms of use and privacy statements, which are displayed on the TexasOnline 2.0 Website, and with all applicable laws related to information received from or distributed to individuals using the TexasOnline 2.0 Applications. Customer acknowledges that no personally identifiable or private information collected through TexasOnline 2.0 may be used by Customer for any purpose or provided to any third party unless: (i) the user is given clear prior notice of the possibility of such other use, and (ii) the user affirmatively consents to such use (i.e., the user "opts-in" to the contemplated use of his or her personally identifiable or private information), and (iii) the Customer agrees to its use or the use is otherwise permitted under the privacy statement. Notwithstanding the foregoing, the Parties acknowledge that such information may be required by law to be provided to law enforcement, or may be used in investigating unauthorized use of TexasOnline 2.0.

7.5 Customer will provide access to information and systems as necessary to assist Vendor in performing its obligations hereunder and under the TexasOnline 2.0 Master Agreement.

7.6 Customer will follow reasonable security standards regarding physical security, data, and systems, and will not knowingly or negligently take actions to, or by omissions put, State Information or Customer at risk of loss, damage, or breach of security.

7.7 Customer will at all times be responsible for the backup and preservation of any data within its control, which does not reside on TexasOnline 2.0.

7.8 Customer will process all refunds for its users. Customer will use the Vendor Customer Service interface application to process credit card refunds requested by its users.

7.9 Customer will notify Vendor in writing of all laws, rules and regulations, and changes thereto, that affect TexasOnline 2.0.

8. Representations and Warranties by Vendor

8.1 VENDOR REPRESENTS AND WARRANTS THAT ALL SERVICES PERFORMED UNDER THIS CUSTOMER AGREEMENT WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.2 NEITHER DIR NOR VENDOR WILL HAVE ANY LIABILITY WHATSOEVER TO CUSTOMER FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS CUSTOMER AGREEMENT OR THE RIGHTS PROVIDED HEREUNDER SUFFERED BY CUSTOMER EVEN IF VENDOR IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DIR'S OR VENDOR'S TOTAL LIABILITY TO

CUSTOMER HEREUNDER FOR ANY REASON EXCEED THE SHARE OF TOTAL REVENUE RECEIVED, BY VENDOR OR DIR AS APPROPRIATE, UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING SUCH CLAIM. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS LIMITATION OF DAMAGES IS A FREELY BARGAINED FOR ALLOCATION OF RISK.

8.3 Vendor represents and warrants that Vendor, to the best of its knowledge, has no actual or potential conflicts of interest in providing services to Customer under the Customer Agreement and that Vendor's provision of services under the Customer Agreement to the best of its knowledge would not reasonably create an appearance of impropriety.

8.4 Vendor represents and warrants that neither Vendor nor any person or entity, which will participate financially in the Customer Agreement, has received compensation from Customer for participation in preparation of specifications for the Customer Agreement. Vendor represents and warrants that it 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 any public servant or employee in connection with the Customer Agreement.

9. General Terms

9.1 Customer agrees and acknowledges that the terms of the TexasOnline 2.0 Master Agreement related to force majeure, confidentiality, and any additional limitations on damages will apply to the Customer Agreement. This section only applies to the extent authorized by law.

9.2 Except as expressly provided herein, no provision of the Customer Agreement will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to Customer. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Customer by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Except as expressly provided herein, Customer does not waive any privileges, rights, defenses, remedies or immunities available to Customer.

9.3 This Customer Agreement will be construed and governed by the laws of the State of Texas and is performable in Travis County, Texas. Venue for any action relating to a Customer Agreement is in Texas state courts in Austin, Travis County, Texas, or, with respect to any matter in which the federal courts have exclusive jurisdiction, the federal courts for Travis County, Texas.

9.4 If one or more provisions of this Customer Agreement, or the application of any provision to any Party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of the Customer Agreement and the application of the provision to other Parties or circumstances will remain valid and in full force and effect

9.5 Except as provided in Section 1.2 above, the Customer Agreement may be amended only upon written agreement between DIR, Vendor, and Customer, but in no case will the Customer Agreement be amended so as to make it conflict with the laws of the State of Texas.

9.6 Neither DIR, nor Vendor, nor Customer may assign or transfer this Customer Agreement without the written consent of the other Parties, which consent will not be unreasonably withheld, except that upon written notice to DIR and Customer, Vendor may assign the Customer Agreement without

DIR's and Customer's consent to any entity that Vendor controls, is controlled by, or is under common control with, (provided such entity is adequately capitalized) or to any entity which acquires or succeeds to all or substantially all of the business or assets of Vendor whether by consolidation, merger, sale or otherwise (such as a spin-off of Vendor).

9.7 *Exhibit B Terms and Conditions,* Section 14.01 Ownership of Intellectual Property; Infringement and Misappropriation of the TexasOnline 2.0 Master Agreement is incorporated herein by reference and will apply to work product created by Vendor pursuant to the Customer Agreement.

9.8 Vendor will serve as an independent contractor in providing services under this Customer Agreement. Vendor's employees are not and will not be construed as employees of Customer.

9.9 Vendor will have no authority to act for or on behalf of Customer except as provided for in the Customer Agreement and the TexasOnline 2.0 Master Agreement; no other authority, power, or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of Customer other than those incurred in performance of the Customer Agreement.

9.10 In addition to the requirements of Exhibit B Terms and Conditions, Section 8.01 Financial record retention and audit of the TexasOnline 2.0 Master Agreement, Vendor will maintain and retain supporting fiscal documents adequate to ensure that claims for Customer Agreement funds associated with the Customer Agreement are in accordance with applicable State of Texas requirements. These supporting fiscal documents will be retained by Vendor for a period of four (4) years after the date of submission of the final invoices.

9.11 *Exhibit D Performance Criteria* of the TexasOnline 2.0 Master Agreement addresses the agreed upon performance criteria for TexasOnline 2.0, including Applications developed or maintained by Vendor, or otherwise provided to Customer by Vendor. Customer may notify DIR in writing of alleged performance failures and DIR may, in its sole and exclusive discretion as between DIR and Customer, determine that a performance failure may have occurred.

10. Termination

10.1 The Customer Agreement is effective upon execution by representatives of DIR, Vendor, and Customer and expires upon termination or expiration of the TexasOnline 2.0 Master Agreement (as renewed or extended), unless the Customer Agreement is earlier terminated as set forth below, or extended in accordance with Section 10.5 below.

10.2 In the event that any Party fails to carry out or comply with any of the material terms and conditions of the Customer Agreement, another Party may notify the breaching Party of such failure or default in writing and demand that the failure or default be remedied within thirty (30) days. In the event that the breaching Party fails to remedy such failure or default within thirty (30) days of receiving written notice, each other Party will have the right to cancel the Customer Agreement upon thirty (30) days written notice. Notwithstanding the foregoing, Customer will not have the right to cancel the Customer Agreement if Vendor's failure or inability to comply with the terms and conditions of the Customer Agreement is caused by or arises from, in whole or in part, the refusal or inability, for whatever reason, of Customer to provide the support and assistance that Vendor requires from Customer to perform its obligations under the Customer Agreement, and which Customer previously agreed to provide to Vendor. If Customer does not provide Vendor with the

requisite level or amount of support, for whatever reason, Vendor will, upon receipt of DIR approval, be entitled, but not obligated, to suspend or cancel any further work on the particular service or product or Application for which adequate support is not available, and focus its efforts on other services, products or Applications.

10.3 Except as otherwise provided in the TexasOnline 2.0 Master Agreement, or as provided below, DIR or Vendor may terminate the Customer Agreement without cause and without cost or penalty upon ninety (90) days' prior written notice. Notwithstanding the foregoing, with respect to services under Business Cases which are funded through Convenience Fees or Premium Subscription Fees, DIR or Vendor may terminate said Business Case without cost or penalty upon one hundred and eighty (180) days' prior written notice.

10.4 Upon written amendment signed by all Parties, Customer and Vendor may elect to continue Vendor's services under the Customer Agreement, notwithstanding the expiration or termination of the TexasOnline 2.0 Master Agreement.

10.5 Unless otherwise provided in Exhibit A herein, pursuant to the provisions of TexasOnline 2.0 Master Agreement and with respect to services that are not funded through Transaction Fees and Premium Subscription Fees, the Customer will pay any unrecovered costs associated with Vendor providing service to them through TexasOnline 2.0, if the Customer terminates the Customer Agreement for convenience or lack of funding before those costs are fully recovered. Such unrecovered costs will be calculated in accordance with Exhibit B Terms and Conditions, Section 11.03(d) Termination fee of the Master Agreement.

10.6 DIR may terminate this Customer Agreement following the determination by a competent judicial or quasi-judicial authority and Vendor's exhaustion of all legal remedies that Vendor, its employees, agents or Subcontractors have either offered or given any thing of value to an officer or employee of Customer or the State of Texas in violation of State law.

11. Dispute Resolution

If a dispute seeking money damages is identified by DIR, Vendor, or Customer, dispute resolution will follow the procedures outlined in Exhibit B Terms and Conditions, Section 11.11 Dispute Resolution of the TexasOnline 2.0 Master Agreement, which references Chapter 2260 of the Texas Government Code. Any pursuit of equitable relief will not constitute a waiver by DIR or Customer of any immunity from suit or liability. Notwithstanding the foregoing, DIR and Customer are not precluded from initiating a lawsuit for damages against Vendor in a court of competent jurisdiction and may do so without engaging in the process provided by Chapter 2260 of the Texas Government Code or 37 TEX. ADMIN. CODE § 34.1, et seq. (2001) (Department of Public Safety, Negotiation and Mediation of Certain Contract Disputes).

12. Miscellaneous Provisions

12.1 Customer Copyright and Content Non-Supervision Acknowledgment. The Customer represents to Vendor and DIR that the content and other materials furnished to Vendor by the Customer for TexasOnline 2.0 do not (i) violate any third party's copyright, intellectual property rights, rights of privacy or publicity or other similar rights and (ii) violate any applicable law or State rules and regulations for TexasOnline 2.0. The Customer acknowledges that neither Vendor nor DIR is responsible for investigation or approval of the content of any third party sites to which Customer's

links on TexasOnline 2.0. Further, the Customer acknowledges that neither DIR nor Vendor is responsible for the accuracy, completeness, or review of the content of the Customer's public records or text furnished by the Customer to Vendor or TexasOnline 2.0.

12.2 Any situation that could adversely affect TexasOnline 2.0 may lead to the suspension of the Customer's Applications on TexasOnline 2.0. Vendor will give DIR and the Customer written notice immediately upon suspension.

Exhibit A

List of Application(s) Supported Under this Customer Agreement
1. Online Voter Registration Change of Information System

List of Service(s) Provided Under this Customer Agreement
1. Online Voter Registration Change of Information System A. TexasOnline Hosting and Application Services Provider Services B. TexasOnline Directory and Access Services C. Help Desk Support D. Certificate Authority Services E. Strategic Outreach F. Change Management

Fee Schedule
1. Online Voter Registration Change of Information System A. TexasOnline will provide these services at no cost to the Secretary of State