

APPROVED

AI-33902

16.0.

CC CONSENT

Meeting Date: 09/11/2012

Submitted For: Martha Salazar

Submitted By:

Vangie Garcia, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

Approval of clarification on action taken on July 24, 2012, of an error as displayed on page 5 of Amendment submitted by Texas.gov Contracts, stipulating "Brooks County" and whereas it has been corrected by Texas.gov to reflect "Hidalgo County".

BACKGROUND

Page Five requires for County Judge to initial said revised page. Said agreement provides customer services through the Texas.gov services for eFiling and ePay services as provided by the County Clerk and District Clerk Offices through this agreement at no cost to Hidalgo County.

Fiscal Impact

FISCAL YEAR:

ACCT. #:

FUNDS AVAILABLE Y/N?:

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

NO FISCAL IMPACT ON THIS AGENDA SINCE THIS IS ONLY FOR CLARIFICATION PURPOSES.

Attachments

Previous Agenda Documentation

Revised page and correspondence

Form Review

Inbox	Reviewed By	Date
Purchasing Department		
Budget & Management		
Auditor's Office		
Form Started By: Vangie Garcia		Started On: 08/28/2012 01:18 PM

APPROVED

AI-33262

Purchasing Department 40. A. 0.

CC REGULAR

Meeting Date: 07/24/2012

Department Head: Martha Salazar

Submitted By: Vangie Garcia, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

Acceptance and approval of an "Amendment" to the current DIR Contract No. DIR-SDD-IC427 (approved by CC-12/01/09) as submitted by Texas.gov Contracts, acting by and through the Texas Department of Information Resources and Texas NICUSA, LLC., for the purposes of a transition that will begin September 1, 2012 with new fees, terms and conditions as utilized by the Hidalgo County Clerk and District Clerk Offices.

BACKGROUND

Said service customer agreement provides the Texas.gov services for eFiling and ePay services for Hidalgo County Clerk and District Clerk Offices.

Fiscal Impact

FISCAL YEAR:

ACCT. #:

FUNDS AVAILABLE Y/N?:

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

This is at no cost to the County-rates are incurred and paid by customers utilizing these on-line services as offered by the County Clerk and District Clerk Offices through this contract with Texas NICUSA.

Attachments

Current Agreement with Texas NICUSA
Amendment to agreement and legal's approval

Form Review

<u>Inbox</u>	<u>Reviewed By</u>	<u>Date</u>
Purchasing Department	Marty Salazar	07/19/2012 04:36 PM
Budget & Management	Merlen P. Munoz	07/19/2012 04:50 PM
Purchasing Department	Marty Salazar	07/19/2012 04:36 PM
Budget & Management	Merlen P. Munoz	07/19/2012 04:50 PM
Sylvia Solis		
Auditor's Office		
Form Started By: Vangie Garcia		Started On: 07/13/2012 05:03 PM



100 Congress Avenue
Suite 600
Austin, Texas 78701
tel 512.651.9300
fax 512.651.9334

Texas.gov is a service of Texas

June 28, 2012

Arturo Guajardo Jr.
County Clerk
Hidalgo County
100 N. Clossner
Edinburg, Texas 78540

RE: Customer Agreement Amendment for eFiling services

Dear Mr. Guajardo Jr.:

As you are aware, the Texas eFiling program is entering a period of transition that will begin September 1, 2012. As detailed in the letter from the Office of Court Administration (OCA), dated June 1, 2012, the transition requires new fees and new terms and conditions, requiring an amendment to your Texas.gov Customer Agreement.

Attached is the Customer Agreement amendment supporting the following changes:

- The OCA and Texas Supreme Court anticipate requiring eFiling services from Texas.gov through February 2014.
- The Customer Agreement for eFiling will expire at the same time the Texas Supreme Court eFiling Agreement expires or is terminated.
- Early termination of the Customer Agreement requires 12-months prior written notice.
- The eFiling and eService fees have been increased by \$1 each.

Please have the appropriate individual with signatory authority sign the amendment and return the executed document no later than August 31, 2012, via electronic delivery or via postal service to the following address:

Texas.gov Contracts
100 Congress Ave, Suite 600
Austin, TX 78701
TXNICUSA-Contracts@egov.com

We will continue to update you on the progress of the transition, communications with constituents, and materials that will assist you in updating your website, written materials, etc. so that you can better serve your constituents. We will also be working with OCA to communicate with constituents regarding the transition to the new vendor for Texas eFiling.

We appreciate your continued support of the eFiling service and will work diligently to ensure a smooth transition. Please contact our Contract Manager, Brittany Perkins via phone at 512.501.5981 or email bperkins@egov.com, should you have any questions or comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Erin Hutchins". The signature is stylized with a large initial "E" and a long horizontal stroke.

Erin Hutchins
Director of Portal Operations
Texas NICUSA, LLC

Evangelina Garcia

From: Evangelina Garcia [evangelina.garcia@co.hidalgo.tx.us]
Sent: Wednesday, July 18, 2012 4:21 PM
To: 'Mayra Rangel'
Subject: RE: TEXAS NICUSA

Will do, appreciate your response.

Thank you

Vangie Y. Garcia, Contract's Manager
2802 S. Business Hwy. 281
New Administration Building
Edinburg, Texas 78539
(956) 292-7000-Extension 1856
email: evangelina.garcia@co.hidalgo.tx.us

From: Mayra Rangel [mailto:mayra.rangel@co.hidalgo.tx.us]
Sent: Wednesday, July 18, 2012 4:06 PM
To: evangelina.garcia@co.hidalgo.tx.us
Cc: 'The Honorable Laura Hinojosa'; 'Stephanie Palacios'; 'Ricardo Contreras'; 'Nilda Vanhook'
Subject: RE: TEXAS NICUSA

Good afternoon Evangelina,

Ms. Hinojosa has approved to proceed with agenda item. If you should have any questions, please do not hesitate to call me at 956.289.7808 or Ms. Hinojosa at 956.318.2200 ext. 6251.

Thank you,
Mayra Rangel

From: Stephanie Palacios [mailto:stephanie.palacios@co.hidalgo.tx.us]
Sent: Monday, July 16, 2012 3:08 PM
To: 'Mayra Rangel'
Subject: FW: TEXAS NICUSA

From: Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]
Sent: Monday, July 16, 2012 11:31 AM
To: 'Stephanie Palacios'
Cc: 'Martha Salazar'
Subject: TEXAS NICUSA

Good Morning Stephanie:

Hope you are doing fine, listen, please brief Ms. Hinojosa on the following so that I may proceed with an agenda item.

Back on December 1, 2009 (see attachment), an agenda item was approved with "TEXAS NICUSA"-DIR CONTRACT for the E-Pay and E-Filing Services for both the County Clerk and District Clerk Offices.

**AMENDMENT 1 TO THE CUSTOMER AGREEMENT
BETWEEN
THE STATE OF TEXAS, ACTING BY AND THROUGH THE
TEXAS DEPARTMENT OF INFORMATION RESOURCES
AND,
TEXAS NICUSA, LLC
AND
HIDALGO COUNTY**

Purpose: The purpose of this amendment is to edit the Customer Agreement.

Whereas, effective January 1, 2010, the Texas Department of Information Resources (DIR), Hidalgo County (Customer), and Texas NICUSA, LLC (Vendor) entered into a Customer Agreement to provide Texas.gov services.

BACKGROUND

The Office of Court Administration (OCA), the Texas Supreme Court, and the Judicial Committee on Information Technology (JCIT), have jointly extended eFiling service through Texas.gov, for up to 18 months, to February, 2014, to accommodate OCA procurement of a new eFiling provider and transition to the new solution.

AUTHORITY

This amendment is coterminous with the Texas Supreme Court Customer Agreement for the eFiling service.

EFFECTIVE DATE

This amendment is effective as of **September 1, 2012**.

For good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties do hereby amend the Customer Agreement as follows, all other terms and conditions remain the same.

1. Edit Customer Agreement:

1.1. Customer Agreement—Standard Terms and Conditions, delete Section 10 in its entirety and replace with the following:

10. Termination

10.1 The Customer Agreement is effective on September 1, 2012 and expires no later than the earlier of February 28, 2014 or the termination or expiration of either the TexasOnline 2.0 Master Agreement or the Texas Supreme Court eFiling Customer Agreement, unless this Customer Agreement is earlier terminated as set forth below, or extended in accordance with Section 10.4 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 Texas Online 2.0 Master Agreement or as provided below, DIR and Vendor may terminate the Customer Agreement without cause and without cost or penalty no earlier than August 31, 2013 and with 90-day 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 Except as otherwise provided in the Texas Online 2.0 Master Agreement or as provided below, Customer may terminate the Customer Agreement without cause and without cost or penalty no earlier than August 31, 2013 and with 45-day prior written notice.

10.6 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 Texas.gov, if the Customer terminates the Customer Agreement for convenience or lack of funding prior to August 31, 2013 and 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.

10.7 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 anything of value to an officer or employee of Customer or the State of Texas in violation of State law.

2. Replace Exhibit A in its entirety with the attached Exhibit A to apply the following changes:

2.1. Edit Fee Schedule – Section 1. Electronic Filing Manager (EFM) Application, as follows:

2.1.1. Update Texas.gov Filing Fee

2.1.2. Update payment terms

3. Add Exhibit B in its entirety with the attached Exhibit B.

AGREED AND ACCEPTED:

Vendor:

By: 

Print Name: Erin Hutchins

Title: Director of Portal Operations

Date: 6/28/12

Texas Department of Information Resources:

By: _____

Print Name: Carl D. Marsh

Title: Chief Operating Officer

Date: _____

Legal: _____

Customer:

By: 

Print Name: Ramon Garcia

Title: Hidalgo County Judge

Date: 7/26/12

Phone: 956-318-2600

Email: _____

ATTEST:


ARTURO GUAJARDO, JR., COUNTY CLERK

Exhibit A: Amendment 1

Customer: Hidalgo County

List of Application(s) Supported Under this Customer Agreement

1. Electronic Filing Manager (EFM) Application

- A. Court Intake Application
- B. Court Profile
- C. Court Registration
- D. Filer Registration
- E. Payment Services

List of Service(s) Provided Under this Customer Agreement

- **Electronic Filing Manager (EFM) Application**
 - Electronic Payments System Credit Card Authorization Services/Settlement Services
 - Electronic Payments Chargeback Services
 - Filing Purge Services
 - Customer Information Center Services for Government Entity Applications
 - Customer Information Center Services for Electronic Payments transaction services
 - TexasOnline Hosting and Application Service Provider (ASP) Services
 - TexasOnline Training
 - Strategic Outreach
 - Physical Environment Management
 - Network Infrastructure Management
 - Hardware Management
 - Operating System Administration

Fee Schedule

1. Electronic Filing Manager (EFM) Application

Fee Schedule

1. Electronic Filing Manager (EFM) Application

The fee schedule listed below outlines the Texas.gov Services Fees required from the Internet user for each completed transaction.

Service Type	Texas.gov Services Fee
Electronic Filing Manager Court Intake Services	<ul style="list-style-type: none">• \$5.00 Texas.gov Filing Fee• \$2.00 Customer Fee
Credit Card Payment Processing (not applicable to Indigent Filing)	2.25% of all fees collected – Credit Card Payment Processing Fee

- Vendor will be paid a Texas.gov Filing Fee plus the Credit Card Payment Processing Fee as indicated in the above table.
- Vendor will process payment and pay to Customer the Customer Fee identified in the above table along with the statutory filing fees associated to filing cases in Hidalgo County as approved by the Department of Information Resources Board.
- Vendor will pay any applicable credit card fees per the terms of its agreement(s) with the payment card companies.
- Vendor is responsible for processing Texas.gov Filing Fee refunds.
- Customer is responsible for processing all Customer Fee refunds.
- Customer is responsible for financial reconciliation of chargebacks and any associated fees.
- Vendor understands and agrees that Vendor may not change the Customer Fee unless the Vendor receives the express written approval of the Customer and approval by the DIR Board.


Customer Initials & Date


Vendor Initials & Date

Exhibit B: Application and Services Description

The Vendor offers a variety of support services to Customers. The specific list of services and applications that Vendor has agreed to provide to Customer under this Agreement are set forth in Exhibit A of the Agreement between the Customer and Vendor.

The following table is a comprehensive list of all services currently offered by Vendor, and may be amended from time to time by Vendor.

Service	Description
<p>A. Electronic Payment Engine Payment Interface Services</p>	<p>Vendor will provide a Payment interface (“Electronic Payment Engine”) that will be hosted at a Vendor web site. The Customer applications will pass encrypted transaction data to the site using a secured connection. The interface will include:</p> <ul style="list-style-type: none"> • SSL 128bit encryption or greater secure interface to Electronic Payment Engine • Pre-load validation of record packet submitted by the Customer application • Response record packet returned to the Customer application <p>If the Customer is hosting the application, they will be responsible for submitting to Electronic Payment Engine, hosted by Vendor, the required record as specified in the Texas.gov Payment Engine, Payment Services Specifications.</p>
<p>B. Electronic Payment Engine Credit Card Authorization Services/Settlement Services</p>	<ul style="list-style-type: none"> • Vendor will provide authorization and settlement transaction services for credit cards (Visa, MasterCard, Discover, and American Express). • Vendor will receive the encrypted pay request transaction through a secure (minimum SSL 128bit) interface. • Each incoming transaction will be logged for auditing. • Pre-authorization validation will be performed against the payment record, which includes all required information to process an electronic payment. • If valid, the transaction will be submitted for approved credit and process authorization. • A response record will be returned to the Customer application containing either authorization data or denial/error codes. • An outgoing transaction record will be recorded for auditing. • The cutoff for transactions will be 2:00 a.m. ET daily. • The processor will transfer all funds to the Customer bank account. Vendor is not responsible for actual fund transfers.
<p>C. Electronic Payment Engine ACH Services</p>	<p>For Automated Clearing House (ACH), Vendor will provide the following services: Vendor will receive the encrypted pay request transaction</p>

	<p>through a secure (minimum SSL 128 bit) interface.</p> <ul style="list-style-type: none"> • Each incoming transaction will be recorded for auditing. • Pre-authorization validation will be performed against the payment record, to verify that all information required to process an electronic payment is provided. • If valid, the transaction will be authorized using current financial data. Only the ABA routing number is validated. • A response record will be returned to the Customer application containing either authorization data or denial/error codes. • An outgoing transaction record will be recorded for auditing.
D. Automated USAS Interface	<p>Vendor will prepare a file of online transactions and forward it to the Comptroller each banking day. In turn, the file is provided to the Customer via the Comptroller. The file will be formatted according to the specification defined in the Texas.gov Payment Engine Specifications.</p>
E. Application for Electronic Payment Engine Refund Services for Credit Cards	<p>Vendor will provide an online, secured application for the Customer to access in order to process refunds to Visa, MasterCard, American Express, and Discover.</p> <ul style="list-style-type: none"> • Only authorized users will have access to the Refund application, which will be controlled by login. • A unique identifier for the transaction that is being refunded will be required to initiate the refund. • Users will enter the Customer program specific data and the amount to be refunded. • The transaction will be submitted to the credit card processor for settlement, which will result in funds being debited from the Customer's accounts and the user's card being credited with the refund. • Incoming and outgoing transactions will be recorded for audit. • Refund transactions will be included with other authorized transactions that are sent to the Comptroller each day as a batch file. Transfers will only occur on bank business days. • The Customer will be able to print and save a record of the refund transaction.
F. Application for Electronic Payment Engine Refund Services for ACH (non-USAS Vendor)	<p>Vendor will provide an online, secured application for the Customer to access in order to process refunds to ACH transactions.</p> <ul style="list-style-type: none"> • Only authorized users will have access to the Refund application, which will be controlled by login. • A unique identifier for the transaction that is being refunded will be required to initiate the refund.

	<ul style="list-style-type: none"> • Users will enter the Customer program specific data and the amount to be refunded. • The transaction will be submitted to the NACHA network for settlement, which will result in funds being debited from the Customer's accounts and the user's bank account being credited with the refund. • Incoming and outgoing transactions will be recorded for audit. • Refund transactions will be included with other authorized transactions that are sent to the Customer each day as a batch file. Transfers will only occur on bank business days. <p>The Customer will be able to print and save a record of the refund transaction.</p>
<p>G. Hosting Support Services</p>	<p>Vendor may provide services related to the support of Texas.gov. These services include, but are not limited to:</p> <ul style="list-style-type: none"> • Application hosting • Architecture development and/or review • Security services as they relate to the Master Agreement • System monitoring and administration • Log-in credentialing • Offsite back-up storage • Operational maintenance • Remote management • SSL certificate services
<p>H. Texas.gov Authentication Service</p>	<ul style="list-style-type: none"> • Section 2054.271 of the Texas Government Code allows for Texas.gov to authenticate customers against Customer databases in lieu of requiring a signed or notarized document. <ul style="list-style-type: none"> • The Texas.gov Authentication Service is a web service that allows the Customer to collect data from a user and verify that the data elements match the Texas.gov Authentication Database. • Vendor provides Texas.gov Authentication Service • Customer agrees to use the service solely for the Customer Application specified in Exhibit A.
<p>I. Helpdesk Services for Texas.gov Applications</p>	<p>Vendor may provide first through third level customer support through the Texas.gov Helpdesk.</p> <p>Level 1 Support duties:</p> <ul style="list-style-type: none"> • Responding to user phone calls via a published toll free number • Responding to user email queries via a published help desk email address. • Following established procedures to answer questions

	<ul style="list-style-type: none"> • Escalating issues that are not resolved to Level 2 support • Recording all issues in a tracking system. <p>Level 2 Support duties:</p> <ul style="list-style-type: none"> • Responding to phone calls escalated from Level 1 support • Responding to emails escalated from Level 1 Support • Following established procedures to answer questions and issues • Escalating issues that are not resolved to Level 3 Support • Recording issue resolution into the tracking system <p>Level 3 Support duties:</p> <ul style="list-style-type: none"> • Responding to issues escalated from Level 2 support • Conducting a systems analysis to determine cause for issue • Development of a work around or fix for the issue <p>Vendor may provide Level 1 and Level 2 support for the Customer hosted application(s) through the Texas.gov Helpdesk. If Helpdesk support is not able to resolve the issue, the issue will be escalated to the Customer for Level 3 support.</p> <p>For Texas.gov Hosted applications, Vendor may provide Level 1 through Level 3 support.</p> <p>A live call center operation will handle user phone calls and email 24 hours a day, 7 days a week. However, future alterations to these times and days may occur periodically throughout the term of this Agreement if Vendor determines that peak usage of the Framework is at times other than those described above. The call center services are offered in English and Spanish.</p>
J. Change Management	<p>Change Management is a process used to ensure that changes are introduced and managed in a way that provides quality assurance and prevents unnecessary changes. The process is described in the Master Agreement, Exhibit H: Governance, Attachment H1: Policies and Procedures Manual, Section 6.3 Change Management Process.</p>
K. Texas.gov Service Desk	<p>The primary point of contact for Customers regarding day-to-day customer, technical, and planning support. Additionally, the Service Desk will be responsible for providing communications regarding impairments and outages.</p>
L. Filing Purge Services	<ul style="list-style-type: none"> • Customer will check and accept or reject all filings on at least a daily basis. • Vendor will purge all filings 10 days after the Customer acts on the filing by accepting or rejecting the filing.

	<ul style="list-style-type: none"> All filings will be purged no later than 30 days after they are submitted by the filer.
M. Texas.gov Training	Vendor will provide training support documentation on the appropriate use of the Texas.gov EFM.
N. Physical Environment Management	Vendor will provide physical security and access management, protected power supply, air conditioning and fire suppression through its eGovernment Data Center.
O. Network Infrastructure Management	<ul style="list-style-type: none"> Vendor will provide Front-End Network Management, Firewall Infrastructure and Support Services, Intrusion Detection Services, Back-End Network Management and technical support for the Texas.gov EFM located at Vendor's eGovernment Data Center. Vendor will manage all the Texas.gov EFM resources necessary to get users to Customer's applications and return the information to them. This includes the switches, load-balancing devices, bandwidth regulating devices, and other related devices.
P. Hardware Management	<ul style="list-style-type: none"> Vendor will provide Hardware Installation, Hardware Management and support for Texas.gov EFM components located at Vendor's eGovernment Data Center. Vendor will install and maintain Texas.gov EFM servers and server components and will ensure third-party service providers for hardware are notified appropriately, when required.
Q. Operating System Administration	<ul style="list-style-type: none"> Vendor will provide Operating System Software installation, configuration, optimization, and support for Texas.gov EFM components located at Vendor's eGovernment Data Center. Vendor will create the underlying Texas.gov EFM environment and work with Customer to ensure that systems are configured and tuned appropriately to support the needs of Customer applications.
S. Point of Sale Payment Services	<ul style="list-style-type: none"> Vendor will provide application for over-the-counter processing and a magnetic card reader for credit card data collection. MagTek devices encrypt data at the moment of swipe for data security and meet PCI DSS compliance requirements.
T. Card-swiping Device-Support	Vendor will provide specialized Service Desk support to assist Customer with changes, upgrades, and replacement of MagTek card-swiping devices used for data collection, ID validation, and access control at the point of sale (POS).

Electronic Filing Manager (EFM) Application: Specific Descriptions and Definitions

Vendor Obligations

Service	Description
<p>A. EFM Training</p>	<p>Vendor agrees to provide training to the Customer concerning profile, intake functions and financial reconciliation related to the services provided under this Agreement. Vendor agrees to assist the Customer in understanding and implementing the security policies and procedures as needed.</p>
<p>B. EFM Privacy and Security</p>	<p>Vendor agrees that the Customer's information is owned by the Customer, and Vendor agrees that it will not use the Customer's information for any purpose except as authorized by the Customer. Vendor will make commercially reasonable efforts to meet the security standards described in the Master Contract and provide for the security and integrity of all information obtained pursuant to this Agreement.</p>
<p>C. EFM Service Levels - Page Loading Time</p>	<p>Vendor will provide page loading time to the User on an average of 5 seconds, measured at the Web server.</p> <ul style="list-style-type: none"> • Page loading performance will be measured by opening respective pages through a browser at a Web server located at the site hosting the pages. • Pages containing specialized content, specifically those containing eFiling documents, are not exempted from the average page loading time commitment. • The User is the third party who requests service. • Submission of the filing by the filer is exempted from the average loading time commitment. <p>Under no circumstances shall the Customer be construed to be the User under this Agreement.</p>
<p>D. EFM Service Levels- Up-Time and Availability</p>	<p>Vendor will provide up-time and availability of the Texas.gov network and electronic payment system of 99.5%.</p> <ul style="list-style-type: none"> • Service level will be measured monthly by Vendor. • Vendor reserves the right to restrict the size of eFiling attached documents to preserve performance commitments. <p>The following will <u>not</u> be included in Vendor's up-time and availability computation:</p> <ul style="list-style-type: none"> • Scheduled and planned outages for the purposes of upgrades or maintenance. <p>Upon receipt of TDIR approval, Vendor will promptly notify the Customer of all scheduled and planned outages.</p> <ul style="list-style-type: none"> • All outages will be scheduled with a minimum of 72 hours of advance notice to the TDIR, and shall occur only during non-peak hours, unless otherwise agreed

	<p>by the parties.</p> <ul style="list-style-type: none"> • If less than 72 hour notice is given or the TDIR does not approve the upgrade or maintenance, the outage will be considered down-time. <p>Special Circumstances</p> <ul style="list-style-type: none"> • The Customer may request an outage with respect to services and that outage will not be considered down-time. • If systems or components not owned, controlled, or contracted by Vendor fail resulting in an outage, that outage will not be considered down-time, unless the cause of the failure can be shown to have been a result of Vendor negligence or malfeasance. • Service outages caused by the failure of the Customer's application code or Customer maintained portions of the application or infrastructure are not considered down-time.
E. EFM Service Failure	If for any reason Texas.gov or Vendor are unable to electronically receive or transmit a document, then Vendor will deliver the document to the Customer in a form acceptable to the Customer by 5 p.m. on the first business day following Vendor receipt of notice from the Customer of the failure.
F. EFM Convenience Fee	Vendor will submit convenience fee change requests to DIR for approval and fee changes will be implemented within thirty (30) days of approval. <ul style="list-style-type: none"> • The convenience fee charged to users of Texas.gov will be clearly indicated to users. • Users will be required to give explicit confirmation that they have agreed to pay the convenience fee.
G. EFM Unsuccessful Payment	It is the Electronic Filing Service Provider's responsibility to collect the payment amount from the filer for all filings submitted with unsuccessful payment. Outstanding funds for all filings that are accepted without successful payment for a given month will be transferred from the Vendor Bank account to the Customer's bank account by the tenth (10th) business day of the following month.
H. EFM Electronic Payments Chargeback Services	Vendor and the Customer will develop mutually acceptable procedures for the Customer to follow in order to process chargebacks for applicable credit card transactions.
I. EFM Information Center (CIC) Services for County Applications	Vendor will provide first level customer support for the Customer applications through the Texas.gov CIC. <ul style="list-style-type: none"> • First level support includes responding to phone calls

	<p>and email requests for assistance in using the application.</p> <ul style="list-style-type: none"> • Questions that cannot be answered by a first level technician will be forwarded either to the Customer contact or level two support for resolution. • First and second level support is limited to technical support regarding the Texas.gov network or availability and application functionality. <p>Customer business questions or filing rules, as they pertain to eFiling, are the responsibility of the Customer.</p> <ul style="list-style-type: none"> • Questions that require the Customer's response will be forwarded to the Customer for resolution. • Users will be referred appropriately. <p>A live call center operation will handle user phone calls daily from 7:00a.m. to 7:00p.m. CST, 7 days a week. If Vendor determines that peak usage of the framework is at times other than those described above, then alterations to these times and days may occur in accordance with the Agreement.</p>
<p>J. EFM Customer Information Center Services for Electronic Payment Transaction Services</p>	<p>Vendor will provide first through third level customer support through the Texas.gov CIC for the payment transactions processed through the Electronic Payments System.</p> <ul style="list-style-type: none"> • First level support includes responding to phone calls and email requests for assistance in using the application. • Questions that require a Customer response will be forwarded to the Customer contact for resolution. • Questions that require the Electronic Payments Systems investigation or response will be forwarded to the Electronic Payments Customer Support areas. <p>A live call center operation will handle user phone calls daily from 7:00a.m. to 7:00p.m. CST, 7 days a week. If Vendor determines that peak usage of the framework is at times other than those described above, then alterations to these times and days may occur in accordance with the Agreement.</p>
<p>K. EFM Texas.gov Hosting and Application Service provider (ASP) Services</p>	<p>Services provided by Vendor include all services related to the hosting of eFiling applications including:</p> <ul style="list-style-type: none"> • Application design • Database design and setup • Standard interface design to meet the statewide court filing standard. • Interface design for exchange between Texas.gov and the Electronic Payments System • Support secure communications standards between

	<p>Customer can evaluate the services and test for performance and reliability of services.</p> <ul style="list-style-type: none"> • If the Customer is dissatisfied during the initial Pilot Phase, Vendor shall have thirty (30) days from receipt of notice of Customer's dissatisfaction to make changes and satisfy the Customer.
C. EFM Training	After the initial training provided by Vendor, the Customer is responsible for training Customer employees concerning profile, intake functions, and financial reconciliation.
D. EFM Contact Number	The Customer agrees to provide a contact number so that inquiries from the Customer Information Center may be received between 8:00 a.m. and 5:00 p.m. central standard time.
E. EFM Texas.gov Logo and Hyperlink	The Customer agrees to provide on the Customer's web page a hyperlink to Texas.gov home page and display the Texas.gov logo. The Customer will maintain the hyperlink to Texas.gov and change the URL as requested by Texas.gov.
F. EFM Receipt of Electronic Filings	<ul style="list-style-type: none"> • The Customer is responsible for receipt of filings made on Texas.gov, when the filing is available for access on the Texas.gov browser. • The Customer agrees to review electronic filings that occur on regular Customer business days and accept or reject electronic filings, unless the Customer is down or otherwise unable to review electronic filings due to circumstances beyond the Customer's control. • The Customer shall notify Vendor within fifteen (15) minutes or as soon as possible that the Customer is down or otherwise unable to electronically receive documents.
G. EFM System, Software, and Interface	<ul style="list-style-type: none"> • The Customer agrees to support reasonable efforts by Vendor to upgrade the Texas Department of Information Resources environment operating system, application server software, web server software, and hardware on Customer environments, as hosted by Vendor. • The Customer is responsible for reasonable costs associated with the development of an automated interface application that would process data available from eFiling into the Customer's systems, subject to prior written approval by the Customer. • Vendor agrees to support the Customer in creating an interface to the Department of Information Resources in a timely manner, subject to the approval of the Department of Information Resources.

H. EFM Convenience Fee	<p>A convenience fee is paid by the User for each completed transaction.</p> <ul style="list-style-type: none"> • Under no condition shall the Customer be responsible for payment of the convenience fee or any other payment of money under this Agreement or in relation to this Agreement. • The amount of the convenience fee is set out in Exhibit A, attached hereto and incorporated herein.
I. EFM Security and Privacy	<ul style="list-style-type: none"> • The Customer agrees to follow recommended security policies and procedures promulgated by Vendor from time to time. • The Vendor will assist the Customer in understanding and implementing these security policies and procedures to avoid identified risks. • The Customer agrees to comply with the privacy statements displayed on the Texas.gov site.

Evangelina Garcia

From: Steve Crain [scrain@atlashall.com]
Sent: Wednesday, July 18, 2012 8:57 AM
To: 'Evangelina Garcia'
Subject: RE: TEXAS NICUSA-E-filing and E-pay Agreement

Vangie: Ignore my previous email. The amendment is fine.

From: Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]
Sent: Tuesday, July 17, 2012 5:17 PM
To: 'Steve Crain'
Subject: FW: TEXAS NICUSA-E-filing and E-pay Agreement

Here you go Mr. Crain.

Thank you

Vangie Y. Garcia, Contract's Manager
2802 S. Business Hwy. 281
New Administration Building
Edinburg, Texas 78539
(956) 292-7000-Extension 4856
email: evangelina.garcia@co.hidalgo.tx.us

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Tuesday, July 17, 2012 4:45 PM
To: 'Evangelina Garcia'
Subject: FW: TEXAS NICUSA-E-filing and E-pay Agreement

From: Steve Crain [mailto:scrain@atlashall.com]
Sent: Tuesday, July 17, 2012 3:43 PM
To: 'Martha Salazar'
Subject: RE: TEXAS NICUSA-E-filing and E-pay Agreement

Marty: Can you resend as I cannot open the amendment. Thanks.

From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Tuesday, July 17, 2012 8:04 AM
To: scrain@atlashall.com
Cc: 'Evangelina Garcia'; 'Darlene Betancourt'
Subject: FW: TEXAS NICUSA-E-filing and E-pay Agreement
Importance: High

Mr. Crain:
Please review and comment on attached agreement. I suggest you read the text below first as it gives information.
Marty

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

Hidalgo County

DIR Contract No. DIR-SDD-IC427

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 Hidalgo County (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:

Hidalgo County: Attn Martha L. Salazar
2802 S Business Hwy 281, New Administration Building
Edinburg, TX 78539

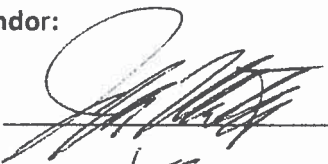
AGREED AND ACCEPTED:

Vendor:

By:

Name:

Title:



Jeffrey A. McEnty


President

Texas Department of Information Resources:

By:

Name:

Title:



Cindy Reed

Deputy Executive Director


Customer:

By:

Name:

Title:

HIDALGO COUNTY



HIDALGO COUNTY JUDGE

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. Electronic Filing Manager (EFM) Application
 - a) Court Intake Application
 - b) Court Profile
 - c) Court Registration
 - d) Filer Registration
 - e) Payment Services

List of Service(s) Provided Under this Customer Agreement

1. Electronic Filing Manager (EFM) Application
 - Electronic Payments System Credit Card Authorization Services/Settlement Services
 - Electronic Payments Chargeback Services
 - Filing Purge Services
 - Customer Information Center Services for Government Entity Applications
 - Customer Information Center Services for Electronic Payments transaction services
 - TexasOnline Hosting and Application Service Provider (ASP) Services
 - TexasOnline Training
 - Strategic Outreach
 - Physical Environment Management
 - Network Infrastructure Management
 - Hardware Management
 - Operating System Administration

Fee Schedule

1. Electronic Filing Manager (EFM) Application

The fee schedule listed below outlines the convenience fees required from the Internet user for each completed transaction.

Government Entity Service Type	TxO Services Fee
Electronic Filing Manager Court Intake Services	\$4.00 TexasOnline \$2.00 County*
Cost Recovery on all Credit Card transactions	Based on the credit card type and starting at 2.25% the first year

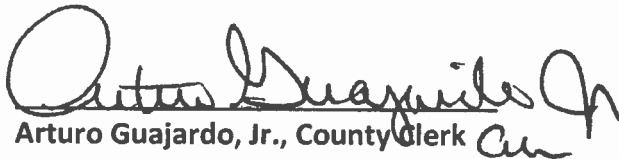
*NIC will pay to Government Entity on a daily basis, for each accepted e-Filing the fee for cost recovery as approved by the Department of Information Resources Board.

C-09-498-12-01

APPROVED BY COMMISSIONERS COURT: 12/01/09

"TEXAS NICUSA"-DIR STATE CONTRACT'S AWARDED VENDOR
"E-PAY AND E-FILING SERVICES" FOR HIDALGO COUNTY CLERK'S AND DISTRICT CLERK'S
OFFICES

ATTEST:


Arturo Guajardo, Jr., County Clerk



AI-18714

13.C.

Texas Online- "E-pay" and "E-filing Services"-Hidalgo County Clerk and District Clerk Offices

CC CONSENT

Date: 12/01/2009
Submitted By: Vangie Garcia, PURCHASING DEPT.
Submitted For: Marty Salazar
Department: PURCHASING DEPT.
Agenda Category: Purchasing Department

Information

CAPTION

A. Requesting approval for the continuation of services for the Texas Online for "E-pay" (e-commerce transactions) and "E-filing Services" with the newly selected awarded vendor "Texas NICUSA" through the Texas Department Of Information Resources (DIR) for the Texas Electronic Framework Standard Service Level Agreement-(TEF) for Hidalgo County Clerk's Office and District Clerk's Office;

B. Requesting approval for the new service agreement for the Texas Online for "E-pay" (e-commerce transactions) and "E-filing Services" with Texas NICUSA-DIR-TXO-001, newly selected and awarded vendor through the Texas Department Of Information Resources (DIR) for Hidalgo County Clerk's Office and District Clerk's Office.

BACKGROUND

Department of Information Resources (DIR) went out on Request For Offers again for these services and a new vendor (Texas NICUSA) was selected and awarded for a seven (7) year term. For the first contract year, a period commencing on the effective date of July 31, 2009 and ending on August 31, 2010, and for each ensuing contract year thereafter will be commencing on September 1st and ending August 31st. The new vendor will manage the Texas Online, the state's Internet portal. (see attachment for further information)

Original service agreement previously approved by Commissioners Court on July 29, 2004 for Hidalgo County Clerk's Office and was amended to include Hidalgo County District Clerk's Office on October 18, 2005 with awarded vendor then being "BearingPoint". (see attachment for review)

Department Of Information Resources (DIR) has notified "BearingPoint, Inc." that they are no longer the contracted vendor for these services thus officially closing out the service agreement in place with them for Hidalgo County.

Fiscal Impact

FISCAL YEAR: ACCT. #:
FUNDS AVAILABLE Y/N?: MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

Will bear no fiscal impact to Hidalgo County. Services are at no cost.

Attachments

Link: [County Clerk's Agreement with Minutes](#)

Link: [District Clerk's Amendment to Agreement with Minutes](#)

Link: [Service Agreement](#)

Link: [DIR'S NOTICE OF AWARD](#)

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
	(Originator)	Vangie Garcia	11/23/2009 12:48 PM	CREATED
1	Purchasing Department	Marty Salazar	11/24/2009 04:44 PM	APRV
2	Budget & Management	Erika Zamora	11/24/2009 04:48 PM	APRV
3	Sylvia Solis			PEND
4	Auditor's Office			

Form Started By: Vangie Garcia

Started On: 11/23/2009 12:48 PM

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

Hidalgo County

DIR Contract No. DIR-SDD-IC427

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 Hidalgo County (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:

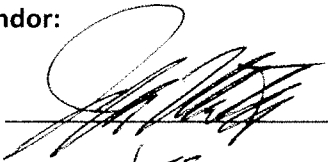
NIC, Inc. General Counsel (Legal Notice)
25501 West Valley Parkway, Suite 300
Olathe, Kansas 66061

If to Customer:

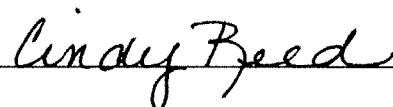
Hidalgo County: Attn Martha L. Salazar
2802 S Business Hwy 281, New Administration Building
Edinburg, TX 78539

AGREED AND ACCEPTED:

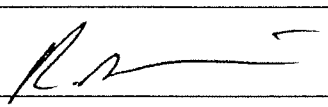
Vendor:

By: 
Name: Jeffrey A. McCreary
Title: President

Texas Department of Information Resources:

By:  MR
Name: Cindy Reed
Title: Deputy Executive Director

Customer:

By: HIDALGO COUNTY
Name: 
Title: HIDALGO COUNTY JUDGE

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. Electronic Filing Manager (EFM) Application
 - a) Court Intake Application
 - b) Court Profile
 - c) Court Registration
 - d) Filer Registration
 - e) Payment Services

List of Service(s) Provided Under this Customer Agreement

1. Electronic Filing Manager (EFM) Application
 - Electronic Payments System Credit Card Authorization Services/Settlement Services
 - Electronic Payments Chargeback Services
 - Filing Purge Services
 - Customer Information Center Services for Government Entity Applications
 - Customer Information Center Services for Electronic Payments transaction services
 - TexasOnline Hosting and Application Service Provider (ASP) Services
 - TexasOnline Training
 - Strategic Outreach
 - Physical Environment Management
 - Network Infrastructure Management
 - Hardware Management
 - Operating System Administration

Fee Schedule

1. Electronic Filing Manager (EFM) Application

The fee schedule listed below outlines the convenience fees required from the Internet user for each completed transaction.

Government Entity Service Type	TxO Services Fee
Electronic Filing Manager Court Intake Services	\$4.00 TexasOnline \$2.00 County*
Cost Recovery on all Credit Card transactions	Based on the credit card type and starting at 2.25% the first year

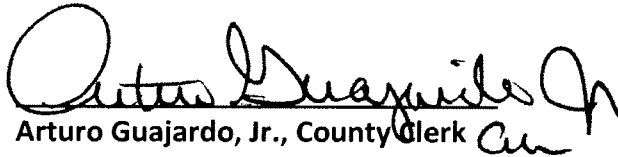
*NIC will pay to Government Entity on a daily basis, for each accepted e-Filing the fee for cost recovery as approved by the Department of Information Resources Board.

C-09-498-12-01

APPROVED BY COMMISSIONERS COURT: 12/01/09

"TEXAS NICUSA"-DIR STATE CONTRACT'S AWARDED VENDOR
"E-PAY AND E-FILING SERVICES" FOR HIDALGO COUNTY CLERK'S AND DISTRICT CLERK'S
OFFICES

ATTEST:


Arturo Guajardo, Jr., County Clerk

AI-18714

13.C.

Texas Online- "E-pay" and "E-filing Services"-Hidalgo County Clerk and District Clerk Offices

CC CONSENT

Date: 12/01/2009
Submitted By: Vangie Garcia, PURCHASING DEPT.
Submitted For: Marty Salazar
Department: PURCHASING DEPT.
Agenda Category: Purchasing Department

Information

CAPTION

A. Requesting approval for the continuation of services for the Texas Online for "E-pay" (e-commerce transactions) and "E-filing Services" with the newly selected awarded vendor "Texas NICUSA" through the Texas Department Of Information Resources (DIR) for the Texas Electronic Framework Standard Service Level Agreement-(TEF) for Hidalgo County Clerk's Office and District Clerk's Office;

B. Requesting approval for the new service agreement for the Texas Online for "E-pay" (e-commerce transactions) and "E-filing Services" with Texas NICUSA-DIR-TXO-001, newly selected and awarded vendor through the Texas Department Of Information Resources (DIR) for Hidalgo County Clerk's Office and District Clerk's Office.

BACKGROUND

Department of Information Resources (DIR) went out on Request For Offers again for these services and a new vendor (Texas NICUSA) was selected and awarded for a seven (7) year term. For the first contract year, a period commencing on the effective date of July 31, 2009 and ending on August 31, 2010, and for each ensuing contract year thereafter will be commencing on September 1st and ending August 31st. The new vendor will manage the Texas Online, the state's Internet portal. (see attachment for further information)

Original service agreement previously approved by Commissioners Court on July 29, 2004 for Hidalgo County Clerk's Office and was amended to include Hidalgo County District Clerk's Office on October 18, 2005 with awarded vendor then being "BearingPoint". (see attachment for review)

Department Of Information Resources (DIR) has notified "BearingPoint, Inc." that they are no longer the contracted vendor for these services thus officially closing out the service agreement in place with them for Hidalgo County.

Fiscal Impact

FISCAL YEAR: ACCT. #:
FUNDS AVAILABLE Y/N?: MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

Will bear no fiscal impact to Hidalgo County. Services are at no cost.

Attachments

Link: [County Clerk's Agreement with Minutes](#)

Link: [District Clerk's Amendment to Agreement with Minutes](#)

Link: [Service Agreement](#)

Link: [DIR'S NOTICE OF AWARD](#)

Form Routing/Status

Route Seq	Inbox	Approved By	Date	Status
	(Originator)	Vangie Garcia	11/23/2009 12:48 PM	CREATED
1	Purchasing Department	Marty Salazar	11/24/2009 04:44 PM	APRV
2	Budget & Management	Erika Zamora	11/24/2009 04:48 PM	APRV
3	Sylvia Solis			PEND
4	Auditor's Office			
Form Started By: Vangie Garcia		Started On: 11/23/2009 12:48 PM		
