

**AI-18714**

**9. C.**

**CC CONSENT**

**Meeting**

12/01/2009

**Date:**

Submitted For: Marty Salazar

Submitted By: Vangie Garcia, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

1. 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;
2. 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

- County Clerk's Agreement with Minutes
- District Clerk's Amendment to Agreement with Minutes
- Service Agreement
- DIR'S NOTICE OF AWARD

Form Review

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Purchasing Department	Marty Salazar	11/24/2009 04:44 PM
Budget & Management	Erika Zamora	11/24/2009 04:48 PM
Sylvia Solis	Sylvia Solis	11/25/2009 10:00 AM
Auditor's Office		11/25/2009 04:48 PM
Form Started By: Vangie Garcia		Started On: 11/23/2009 12:48 PM
Final Approval Date: 11/25/2009		

### DIR Overview

- [What's New](#)
- [DIR Press Room](#)
- [Executive Biographies](#)
- [Mission, Philosophy and the Texas Model](#)
- [DIR Board Members](#)
- [DIR Board Meeting Schedule](#)
- [Division Descriptions](#)
- [Education & Training](#)
- [Get Involved](#)
- [Organizational Chart](#)
- [Contact Information](#)

### Related Information

- [Administrative Rules](#)
- [Information Resources Management Act](#)
- [DIR Agency Strategic Plan](#)
- [Related Legislation](#)
- [Standards Review and Recommendations](#)

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### PRESS RELEASE

**FOR IMMEDIATE RELEASE**  
August 03, 2009

CONTACT: Thomas Johnson  
Department of Information Resources  
(512) 936-6592

To access the PDF file, use the free [Adobe Acrobat Reader](#).

[Printable version of this release](#) (23 KB / 2 pages)

## Texas Department of Information Resources Selects NIC as New TexasOnline Partner

AUSTIN: The Texas Department of Information Resources (DIR) has selected Austin-based Texas NICUSA, part of the NIC family of companies, to manage TexasOnline, the state's Internet portal, under a new seven-year contract beginning July 31, 2009. TexasOnline offers more than 850 services, including driver license renewals and vital records information, to 2.4 million visitors every month and has processed more than \$12 billion in transactions since inception in 2000.

Texas NICUSA will maintain current services and leverage what has been termed "the next generation" of web design and tools to the site. Through expanded use of Web 2.0 tools such as streaming videos, podcasts, and blogs and improved navigation and search features, Texas citizens will have easier access to government services.

"We are pleased that Texas NICUSA will enhance the public-private partnership that is already providing a robust group of services to Texans," said Brian Rawson, executive director of DIR and the State's Chief Technology Officer. "The exceptional track record of success, proven leadership and the legacy of innovation NIC brings to the project will strengthen the state's ability to serve citizens, and set TexasOnline apart as the most successful state web portal in the nation," he continued.

New services will include a content management system that assists state and local agencies to adapt their websites to improve customer service and a new payment processing system that supports the current

system and adds additional options.

Under the new contract, the State of Texas' share of total revenue received from TexasOnline is expected to increase to an estimated \$183 million over the life of the contract. Under the current contract, the State of Texas has received over \$50 million through TexasOnline. Since inception, no general revenue funds have been used in the development or maintenance of TexasOnline and that successful partnership approach will continue with this new contract.

Texas NICUSA, LLC is a subsidiary of NIC, Inc., which manages eGovernment sites for 23 other states. It brings a catalog of more than 3,000 online services that can be customized to meet the specific needs of TexasOnline and the government agencies it serves.

"We are honored that the State of Texas has selected Texas NICUSA to manage and dramatically build out the TexasOnline web site and suite of services," said Harry Herington, Chief Executive Officer of NIC. "We are eager to bring next generation technologies and accelerate the deployment of new informational services that will benefit and be accessible by all Texans."

*The Texas Department of Information Resources promotes a shared vision for Texas that maximizes the value of the State's technology investment by identifying common areas of interest, using technology to advance agency missions, and preserving flexibility to innovate. Visit DIR at [www.dir.state.tx.us](http://www.dir.state.tx.us).*



**D**epartment of Information Resources  
300 West 15th St., Suite 1300  
Austin, TX 78701 ([Map & Directions](#))  
1-512-475-4700

[Privacy & Security Policy](#)  
[Accessibility](#) | [Open Records Policy](#)  
[Link Policy](#) | [Compact with Texans](#)  
[DIR Contacts](#) | [dirinfo@dir.state.tx.us](mailto:dirinfo@dir.state.tx.us)

Last updated August 03, 2009

At this time the Court moved back to Open Forum.

**6. Acceptance of resignation of County Clerk (SEE EXHIBIT G)**

On motion of Commissioner Garza, seconded by Commissioner Flores, the Court made a UNANIMOUS vote of approval.

**7. Acceptance of resignation of Fire Marshal (SEE EXHIBIT H)**

On motion of Commissioner Garza, seconded by Commissioner Flores, the Court made a UNANIMOUS vote of approval.

At this time the Court moved to item #20-E.

**8. District Clerk's Office – Omar Guerrero: (SEE EXHIBIT I)**

**A. Discussion on Lone Star Shredding and Document Storage**

Presentation made by Omar Guerrero.

**B. Approval of Amendment One Agreement between Bearingpoint and Hidalgo County, Texas in order to extend the Texas On Line Electronic Court Filing Application to the District Clerk's Office**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

At this time the Judge Garcia swore Eddy Trevino in as County Clerk.

**9. Emergency Management – Oscar Montoya: (SEE EXHIBIT J)**

- A. Discussion, consideration and approval of Interlocal Agreement between City of Mission and Hidalgo County regarding Pre-2004 State Homeland Security Grant**
- B. Discussion, consideration and approval of Homeland Security Grant equipment transfer from Hidalgo County Sheriff's Department to the City of Mission**
- C. Discussion, consideration and approval of intradepartmental transfer to obj. 841- \$ 20,462.08**

On motion of Commissioner Palacios, seconded by Commissioner Flores, the Court made a UNANIMOUS vote of approval on items A thru C.

At this time Commissioner Flores steps out of the Court.

**10. County Judge's Office – Humberto Garza: (SEE EXHIBIT K)**

**A. Approval to appoint Board Representative and Alternate to the Amigos Del Valle, Inc. Board of Directors**

On motion of Commissioner Garza, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval to appoint Commissioner Tito Palacios as Representative and Commissioner Sylvia Handy as Alternate.

At this time the Court moved to item #12.

**AMENDMENT ONE  
AGREEMENT  
BETWEEN  
BEARINGPOINT AND HIDALGO COUNTY, TEXAS**

**STATE OF TEXAS           §  
  §  
COUNTY OF HIDALGO   §**

**1. PURPOSE**

BearingPoint and Hidalgo County Texas, ("County") do hereby agree to amend their original Agreement, as executed initially effective August 22, 2004 in order to extend the TexasOnline electronic court filing application to the Hidalgo County District Clerk's office.

**2. AMENDMENT TO ADD THE DISTRICT CLERK'S OFFICE TO THE AGREEMENT**

2.1 The first sentence of paragraph 1 of the agreement preamble on page 1 of the Agreement is amended to read as follows:

This Service Level Agreement (this "Agreement") is between BearingPoint, Inc. ("BearingPoint") and the County Clerk and District Clerk of Hidalgo County, a local government entity within the State of Texas. BearingPoint and Government Entity may be referred to each as a "Party," or collectively as "Parties" herein.

**3. AMENDMENT TO PROVIDE THE COUNTY CLERK AND DISTRICT CLERK A COPY OF ANY NOTICE SENT TO GOVERNMENT ENTITY AND TO UPDATE PARTY ADDRESSES**

3.1 Paragraph 12.15 ("Notices") of the Agreement is amended to read as follows:

**12.15 Notices.** All notices permitted or required under this Agreement will be in writing and will be by personal delivery, a nationally recognized overnight courier service, facsimile transmission or certified or registered 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 either Party may specify in writing.

If to BearingPoint:

**BEARINGPOINT**  
Attention: Gary Miglicco  
301 Congress Ave., Suite 1300  
Austin, Texas 78701

with a copy to:

**BEARINGPOINT**  
Attention: Office of General Counsel  
1676 International Drive  
McLean, Virginia 22102

If to Government Entity:

The Honorable Ramon Garcia  
Hidalgo County Judge  
P.O. Box 1356  
Edinburg, Texas 78540

With a copies to:

The Honorable J.D. Salinas III  
Hidalgo County Clerk  
P.O. Box 58  
Edinburg, Texas 78540

The Honorable Omar Guerrero  
Hidalgo County District Clerk  
100 North Closner  
Edinburg, Texas 78539

### 3. ORIGINAL AGREEMENT

By the signing of this amendment, the parties hereto understand and agree that this amendment is hereby made a part of the Agreement identified in Section 1 of this amendment as though the amendment were set forth word-for-word therein.

APPROVED:

BEARINGPOINT

By:   
Gary Miglicco, Vice President

AMENDMENT ONE, AGREEMENT BETWEEN BEARINGPOINT AND HIDALGO COUNTY,  
TEXAS, DATED AUGUST 22, 2004

APPROVED:

HIDALGO COUNTY

By: \_\_\_\_\_  
Omar Guerrero, District Clerk

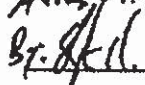
By: \_\_\_\_\_  
Eddy Trevino, Acting County Clerk

By:   
Ramon Garcia, County Judge

Approved by Commission's Clerk  
on 12-18-05 sh

ATTEST   
Eddy Trevino, Acting County Clerk

APPROVED AS TO FORM:

*Attest of Hall, 12/17*  
By:  \_\_\_\_\_

- 5. **Requesting authority to exercise the additional one year extension as provided in current contract for "Fire Extinguisher Maintenance Service" under the same rates, terms and conditions with Corky's Fire Ext Sales & Service. Effective 07-31-04 thru 07-31-05.**

On motion of Commissioner Garza, seconded by Commissioner Flores, the Court made a UNANIMOUS vote of approval.

- \* 6. **Requesting approval of an exemption from competitive bidding requirements under the Texas Local Government Code, 262.024 (a) (7) (C) "...a state agency of this ...", Department of Information Research, DIR's contract with Bearing Point, fka, KPMG, for the Texas Electronic Framework Standard Service Level Agreement-(TEF), for the provision by Texas Online for "epay" (e-commerce transactions) and Efiling services for the Hidalgo County Clerk's Office.**

On motion of Commissioner Flores, seconded by Commissioner Garza, the Court made a UNANIMOUS vote of approval.

- 7. **Requesting approval of the Texas Electronic Service Agreement between Bearing Point, fka-KPMG and Hidalgo County Clerk's Office.**

\* On motion of Commissioner Garza, seconded by Commissioner Flores, the Court made a UNANIMOUS vote of approval.

- 8. **Requesting authority to purchase computer equipment and software from CISV vendors through TBPC Catalogue Purchasing Program for the following:**

Req	Dept	Vendor	Amount	Acct#
54520	Health Dept	Computer Tech	\$12,500.00	4-1293-441-00-340-013-4-745
54470	Health Dept	CDW Govmnt	\$6,233.13	4-1293-441-00-340-013-4-745
54277	District Atty	CDW Govmnt	\$13,734.89	4-1222-412-00-080-006-0-747

On motion of Commissioner Palacios, seconded by Commissioner Garza, the Court made a UNANIMOUS vote of approval.

**B. HIDALGO COUNTY ADULT DETENTION FACILITY-**

- 1. **Recommending award of bid(s) and approval of contract(s) for: "Legend and Non Legend Pharmaceuticals and Infirmary Medical Supplies", to bidder(s) meeting all requirements and/or specifications.**

NO ACTION taken on this item.

- 2. **Presentation for discussion, consideration and approval of a final negotiated contract for "Registered Pharmacist Services" with David Max Castro registered pharmacist.**

On motion of Commissioner Flores, seconded by Commissioner Palacios, the Court made a UNANIMOUS vote of approval.

**TEXAS ELECTRONIC FRAMEWORK  
STANDARD SERVICE LEVEL AGREEMENT**

This Service Level Agreement (this "Agreement") is between BearingPoint, Inc. ("BearingPoint") and Hidalgo County Clerk's Office ("Government Entity"), a local government entity within the State of Texas. BearingPoint and Government Entity may be referred to each as a "Party", or collectively as "Parties", herein.

WHEREAS, the Texas Electronic Framework ("TEF") is a framework constructed pursuant to the Texas Electronic Framework Agreement, as renewed and amended (hereinafter called the "Master Contract") between the Texas Department of Information Resources (DIR) and KPMG Consulting L.L.C.(predecessor-in-interest to BearingPoint").

WHEREAS, "TexasOnline" is the name of the primary Web site for TEF and for hosted applications of state agencies and local governments electing to use the hosting services.

WHEREAS, "Electronic Payment" or "ePay" is the name of the Payment Services and Web site that is used by Texas Online participants for e-commerce transactions.

WHEREAS, this Agreement applies to BearingPoint providing eFiling services on TexasOnline (the "Services") to Government Entity.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following.

**1. Master Contract**

The Parties acknowledge and agree that the terms and conditions of the Master Contract applicable to Government Entities, as well as specific sections of the Master Contract referenced in this Agreement, are incorporated herein by this reference and shall apply with full force and effect to the provision of Services under this Agreement by BearingPoint to Government Entity. No other terms of the Master Contract shall apply to the provision of the Services hereunder as between BearingPoint and Government Entity. Capitalized terms not defined herein shall have the same meaning ascribed to them as in the Master Contract.

**2. Authority Approval**

Government Entity acknowledges that in order for BearingPoint to provide Services pursuant to this Agreement, the TexasOnline Authority ("Authority") must approve placing at least one of Government Entity's applications for inclusion on TexasOnline. A list of available applications using Services under this agreement is included in Exhibit A - Applications, Services and Fee Schedules.

**3. Privacy and Security**

Section IX, Privacy and Security, of the Master Contract is incorporated herein by reference; BearingPoint's obligations set forth in Section IX of the Master Agreement shall apply with respect to Government Entity.

#### 4. Government Entity Website Security

Government Entity hosting its own Web site will follow recommended security standards for State Web sites, and will conform with security policies and procedures promulgated by BearingPoint from time to time. Government Entity 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 BearingPoint and other governmental entities. BearingPoint will not be liable for violations of security policies and procedures by Government Entity.

#### 5. Services

All Services to be provided by BearingPoint to Government Entity under this Agreement are set out in Exhibit A.

#### 6. Limited Warranty by BearingPoint

**BEARINGPOINT WARRANTS THAT ALL SERVICES PERFORMED UNDER THIS AGREEMENT SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. GOVERNMENT ENTITY SHALL PROVIDE WRITTEN NOTICE OF ANY SERVICE WHICH IT BELIEVES IS NOT PERFORMED IN A GOOD AND WORKMANLIKE MANNER. BEARINGPOINT SHALL REPERFORM ANY SERVICES WHICH ARE DETERMINED TO NOT HAVE BEEN PERFORMED IN A GOOD AND WORKMANLIKE MANNER. BEARINGPOINT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### 7. Fees

For the Services to be provided to the Government Entity as outlined in Exhibit A, BearingPoint is entitled to the fees set out in Exhibit A. The convenience fee amounts will be clearly stated to the user. Users will give explicit confirmation that they have agreed to pay the fees. No fees are due to BearingPoint by the Government Entity.

#### 8. Modifications to Fees and Services

This agreement can be modified for the addition of both Services and fees based on mutual agreement in writing of BearingPoint and Government Entity.

#### 9. Government Entity Obligations

9.1. Government Entity shall provide a contact number for the application(s) on an 8:00 a.m. - 5:00 p.m. CT basis to receive 1<sup>st</sup> and 2<sup>nd</sup> level inquiries received by the Customer Information Center.

9.2. Government Entity shall cooperate with BearingPoint in BearingPoint's performance of its obligations under this Agreement.

9.3. Government Entity shall comply with the privacy statements, which are displayed on the TexasOnline site, and with all applicable laws related to information received from or distributed to individuals using the Services.

9.4. Government Entity shall provide access to information and systems as BearingPoint deems necessary to assist BearingPoint in performing its obligations hereunder.

9.5. No later than 60 days prior to implementation, the Government Entity must provide to BearingPoint banking information for all required financial accounts including, but not limited to:

- Government Entity Financial Contact Name
- Government Entity Financial Mailing Address
- Government Entity Financial Contact Title
- Government Entity Financial Contact Telephone Number
- Government Entity Financial Contact email Address
- Government Entity Bank Name(s)
- Government Entity ABA Number(s)
- Government Entity Bank Account Number(s)
- Government Entity Bank Contact Name
- Government Entity Bank Contact Phone Number
- Government Entity Bank Address
- Voided Check or Bank Letter on Government Entity's Bank's Letterhead

The required information is subject to change according to what is necessary to correctly process fees and disburse payments to the Government Entity. BearingPoint shall maintain such banking information confidential and in a secure location and shall not utilize the information for any purposes whatsoever, other than consistent with the terms of this Agreement.

9.6. Government Entity shall at all times be responsible for the back-up and preservation of any data within Government Entity's control which does not reside on TexasOnline Web site or electronic payment Web site.

9.7. Government Entity shall notify BearingPoint within 15 (fifteen) minutes that the Government Entity's system is down or otherwise unable to electronically receive documents.

9.8. Proposals for new applications and services may be developed by either BearingPoint or Government Entity and submitted to the Authority for approval and inclusion for TexasOnline. Government Entity acknowledges that developing new applications and services is essential to TexasOnline becoming and remaining successful.

- 9.9. Government Entity shall at least on a daily basis check and accept or reject all filings.
- 9.10. Government Entity shall accept and use additional eFiling functionality and new document types as is available from TexasOnline.
- 9.11. Government Entity is responsible to test the functionality and performance of all Government Entity produced and maintained applications and interfaces to TexasOnline. Notwithstanding anything to the contrary in this Agreement, both parties agree to one forty-five (45) day initial Pilot Phase beginning on inception of service during which time Government Entity will evaluate the Services and test for performance and reliability of Service toward its purpose as understood by both parties. If the Government Entity is dissatisfied as to the performance of the Services during the initial Pilot Phase, BearingPoint shall have thirty (30) days from receipt of notice of Government Entity's dissatisfaction to make changes as necessary, to the satisfaction of the Government Entity.
- 9.12. Government Entity is responsible to perform user acceptance testing of the TexasOnline eFiling Services and enhancements.
- 9.13. Government Entity is responsible to train staff on profile, intake functions and financial reconciliation functions related to the Services.
- 9.14. Government Entity accepts the responsibility to maintain an accurate profile as required with respect to the Services, including an accurate fee schedule. Government entity agrees to accept any filing and fee that is calculated from information provided in the clerk maintained profile. Any conflict that arises due to the failure of the Government Entity to provide accurate profile information, including accurate fee information is the sole responsibility of the Government Entity.
- 9.15. Government Entity shall provide a hyperlink to the TexasOnline home page from the Government Entity's home page as well as display the TexasOnline logo on the Government Entity's home page. Government Entity will maintain the hyperlink to TexasOnline and make appropriate changes in the URL as requested by TexasOnline.
- 9.16. Government Entity shall support BearingPoint efforts to upgrade the TexasOnline environment Operating System, Application Server Software, Web Server Software, and Hardware on Government Entity environments, as hosted by BearingPoint.
- 9.17. Government Entity is responsible for any reasonable costs related to the development of an automated interface application that would process data available from eFiling into Government Entity Systems, subject to prior written approval by Government Entity.
- 9.18. Government Entity shall work with BearingPoint to develop and implement a plan to increase awareness and usage of TexasOnline goods, services, and conveniences offered through the Government Entity's Web site. Government Entity shall actively promote TexasOnline goods, services and conveniences offered through the Government Entity's web site and TexasOnline through all reasonable means, to the extent allowed by law, including but not limited to the following:

- in printed materials;

- in facilities open to the public;
- in recorded telephone messages;
- in advertising or public relations activities;
- by any other means in which the Government Entity currently interacts with its client base.

Additionally, if Government Entity publishes information about the Services available that are hosted by TexasOnline, then the following language shall also appear: "In affiliation with [www.TexasOnline.com](http://www.TexasOnline.com)."

9.19. Government Entity shall be responsible for receipt (when the filing is available for access on the TexasOnline browser) of any filings made on TexasOnline.

9.19 If Government Entity chooses to charge a convenience fee then Government Entity must give BearingPoint sixty (60) days prior written notice of the fee or change in the fee. BearingPoint will submit fee change requests to the TexasOnline Authority for approval. If approved, such fee changes will be implemented thirty (30) days from approval.

#### 10. Performance and Availability

BearingPoint will provide the Services at the following service levels (the "Service Level(s)" or "SLA(s)"). BearingPoint will provide page loading time to the user (measured at the Web server) on an average of 5 seconds. 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. Submission of the filing by the filer is exempted from the average page loading time commitment.

BearingPoint will provide up-time and availability of the TexasOnline network and Electronic Payment System of 98.5%. This Service Level will be measured monthly. The following will not be included in BearingPoint's up-time and availability computation:

- 1) Scheduled and planned outages for the purpose of upgrades or maintenance. All outages will be scheduled with a minimum of 72 hours of advance notice to the Department of Information Resources, and shall occur only during non-peak hours unless otherwise agreed by the Parties. If less than 72 hours notice is provided or the Department of Information Resources does not approve the upgrade or maintenance period (provided such approval is not unreasonably withheld), it will be considered down-time for the purpose of this SLA. Upon receipt of DIR approval, BearingPoint will notify Government Entity of all scheduled and planned outages.
- 2) Government Entity may at its own discretion request an outage with respect to Services, which will not be considered down-time for the purpose of this SLA.

- 3) Any Framework systems or components that are not owned, controlled or contracted by BearingPoint that fail and result in an outage, will not be down-time for the purpose of this SLA, unless the cause of the failure can be shown to have been a result of BearingPoint's negligence or malfeasance.
- 4) Service outages caused by Government Entity application code failure or failure of Government Entity maintained portions of the application or infrastructure.
- 5) Any downtime that exists as a result of a Government Entity network infrastructure failure will not be considered downtime for the purposes of this SLA.
- 6) BearingPoint reserves the right to restrict the size of eFiling attached documents in order to preserve performance commitments.
- 7) If for any reason, TexasOnline or BearingPoint are unable to electronically transmit a document to the Government Entity, then BearingPoint will deliver the document to the Government Entity in some other manner by 5 p.m. on the first business day following receipt of confirmation from Government Entity of the failure to electronically receive or transmit the documents.

#### **11. Effective Date; Renewal**

This Agreement is effective upon execution by representatives of BearingPoint and Government Entity and expires three years after execution of the contract. Thereafter, the agreement shall renew automatically for one year increments, unless either party gives ninety-days written notice prior to the end of the current term that it is not renewing the Agreement. Termination of the Master Agreement will not terminate this Agreement unless both parties agree to such termination.

Government Entity agrees and acknowledges that the terms of the Master Contract related to force majeure, confidentiality, and limitations on damages are hereby incorporated by this reference and shall apply to this Agreement, and Government Entity shall be bound by the responsibilities for any governmental unit within the State of Texas with regard to such provisions.

Any terms contained in this Agreement, which conflict with or are in violation of Texas law, are void regardless of whether Government Entity accepts such terms or is deemed to have accepted such terms.

#### **12. General Terms**

**12.1. No Waiver.** No provision of this agreement will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Government Entity, as an local government entity within the State of Texas, or otherwise available to Government Entity. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to either party will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

**12.2. Entire Agreement; Conflicts.** Except as expressly provided otherwise herein, this Agreement will represent the entire agreement by and between Government Entity and BearingPoint regarding the subject matter of this Agreement. This Agreement may not be changed or amended except by the mutual written agreement of the parties. In the event of conflict between the terms and conditions of this Agreement and the terms and conditions of the Master Contract, the terms and conditions of this Agreement shall govern.

**12.3. Applicable Law.** This Agreement shall be construed and governed by the laws of the State of Texas.

**12.4. Severability.** If one or more provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

**12.5. Amendments.** This Agreement may be amended only upon written agreement between Government Entity and BearingPoint, but in no case will this Agreement be amended so as to make it conflict with the laws of the State of Texas.

**12.6. Assignments.** Neither Government Entity nor BearingPoint may assign or transfer this Agreement without the written consent of the other, which consent will not be unreasonably withheld, except that upon written notice to Government Entity, BearingPoint may assign this Agreement without Government Entity's consent to any entity that BearingPoint 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 BearingPoint whether by consolidation, merger, sale or otherwise (such as a spin-off of BearingPoint).

**12.7. Partially Completed Work.** Section IV. Ownership of Intellectual Property; Indemnification in the Master Contract is incorporated herein by reference and shall apply to work product created by BearingPoint pursuant to this Agreement

**12.8. Independent Contractor.** BearingPoint shall serve as an independent contractor in providing Services under this Agreement. BearingPoint's employees are not and shall not be construed as employees of Government Entity.

**12.9. Limitation on Authority; No Other Obligations.** BearingPoint shall have no authority to act for or on behalf of Government Entity except as provided for in this Agreement and the Master Contract; no other authority, power or use is granted or implied. BearingPoint may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of Government Entity other than those incurred in performance of this Agreement and the Master Contract.

**12.10. Supporting Documents; Inspection of Records.** Section XIII. Right to Audit of the Master Contract is incorporated herein by this reference. BearingPoint's obligations set forth in Section XIII of the Master Agreement shall also apply with respect to Government Entity. In addition to the requirements of Section XIII. Right to Audit of the Master Contract, BearingPoint shall maintain and retain supporting fiscal documents adequate to ensure that claims for Agreement funds are in accordance with applicable State of Texas requirements. These supporting fiscal documents shall be

maintained and retained by BearingPoint for a period of two (2) years after the date of submission of the final invoices.

**12.11. No Conflicts.** BearingPoint represents and warrants that BearingPoint, to the best of its knowledge, has no actual or potential conflicts of interest in providing Services to Government Entity under this Agreement and that BearingPoint's provision of Services under this Agreement to the best of its knowledge would not reasonably create an appearance of impropriety.

**12.12. Financial Interests; Gifts.** BearingPoint represents and warrants that neither BearingPoint nor any person or entity, which will participate financially in this Agreement, has received compensation from Government Entity for participation in preparation of specifications for this Agreement. BearingPoint 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 this Agreement.

**12.13** BearingPoint is subject to audit by Government Entity during the term of this contract and within two years of the termination of this contract, and thereafter as provided by law, to determine that Services were proper and the billings were correct.

**12.15 Notices.** All notices permitted or required under this Agreement will be in writing and will be by personal delivery, a nationally recognized overnight courier service, facsimile transmission or certified or registered 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 either Party may specify in writing.

If to BearingPoint:

**BEARINGPOINT.**  
111 Congress Ave., Suite 1100  
Austin, TX 78701  
Attention: Gary Miglicco

with a copy to:

**BEARINGPOINT**  
1676 International Drive  
McLean, Virginia 22102  
Attention: Office of General Counsel

If to Government Entity:

Hidalgo County  
County Judges Office  
100 N. Closter  
Edinburg, Texas 78540

**13. Separate Deposit Accounts; Losses.** Any fees specifically related to a legal filing and corresponding services including but not limited to citation, service of process and copy charges, are transferred via ACH to the appropriate Government Entity financial account(s) by the credit card or ACH processor upon fund capture. BearingPoint is responsible for normal processing fees associated with these accounts; however, Government Entity agrees that it shall be liable for any refunds, chargebacks, and additional fees or expenses associated with this payment collection.

**14. Termination.**

**14.1** In the event that either party fails to carry out or comply with any of the material terms and conditions of this Agreement, the other 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, the other party shall have the right to cancel this Agreement upon thirty (30) days written notice. Notwithstanding the foregoing, Government Entity shall not have the right to cancel this Agreement if BearingPoint's failure or inability to comply with the terms and conditions of this Agreement is caused by or arises from, in whole or in part, the refusal or inability, for whatever reason, of Government Entity to provide the support and assistance that BearingPoint requires from Government Entity to perform its obligations under this Agreement, and which Government Entity previously agreed to provide to BearingPoint. If Government Entity does not provide BearingPoint with the requisite level or amount of support, for whatever reason, BearingPoint will, upon receipt of the Authority's approval, be entitled, but not obligated, to suspend or cancel any further work on the particular Services for which adequate support is not available, and focus its efforts on other Services.

**14.2** Either BearingPoint or Government Entity may terminate this Agreement without cause upon ninety (90) days prior written notice.

**14.3** Government Entity may elect to continue to utilize BearingPoint's Services under this Agreement even if the Master Contract expires or terminates.

**15. Indemnification and Release of Liability**

BearingPoint will indemnify, defend and hold harmless Government Entity against any action or claim brought against the Government Entity to the extent that it is based upon a claim that the Software infringes any U.S. patent rights, or incorporates any misappropriated trade secrets (a "Claim"). BearingPoint will pay any damages attributable to such Claim that are awarded against the Government Entity in a judgment or settlement approved in advance by BearingPoint provided that the Government Entity: (i) promptly notifies BearingPoint in writing of the Claim; (ii) grants BearingPoint sole control of the defense and settlement of the claims through the Government Entity; and (iii) provides BearingPoint with all reasonable assistance, information, and authority required for the defense and settlement of the Claim. If Government Entity's use of any of the Software hereunder becomes subject to a Claim, or in BearingPoint's opinion is likely to become subject to a Claim, BearingPoint may, at its sole option and expense; (i) procure for Government

Entity the right to continue using the Software under the terms of this Agreement; (ii) replace or modify such Software so that it is non-infringing; or if options (i) and (ii) above cannot be accomplished despite BearingPoint's good faith efforts, then BearingPoint may terminate this Agreement by complying with the notice requirements in V. (b) of the Master Contract, and the continued operation requirements of paragraph XI.(a) of the Master Contract to the extent that it can continue to be operated or maintained without further infringement.

**THE PROVISIONS OF THIS PARAGRAPH 15 SET FORTH BEARINGPOINT'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE GOVERNMENT ENTITY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF U.S. PATENT RIGHTS, U.S. COPYRIGHT RIGHTS, OR TRADE SECRET RIGHTS. THE PARTIES ACKNOWLEDGE AND AGREE THAT BEARINGPOINT'S OBLIGATION TO INDEMNIFY THE GOVERNMENT ENTITY UNDER THIS PARAGRAPH DOES NOT APPLY TO CLAIMS OF INFRINGEMENT OF FOREIGN INTELLECTUAL PROPERTY RIGHTS.**

**BEARINGPOINT SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, 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 AGREEMENT OR THE RIGHTS PROVIDED HEREUNDER SUFFERED BY GOVERNMENT ENTITY OR BY ANY ASSIGNEE OR OTHER TRANSFEREE OF, OR THIRD PARTY CLAIMING RIGHTS DERIVED FROM GOVERNMENT ENTITY, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. BEARINGPOINT'S TOTAL LIABILITY HEREUNDER SHALL NOT EXCEED THE NET REVENUES ALLOCATED TO BEARINGPOINT UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING ANY CLAIM. THIS LIMITATION SHALL NOT APPLY TO: (1) ANY MONETARY PENALTIES SPECIFIED IN THIS AGREEMENT, PROVIDED THE AMOUNT OF MONETARY PENALTIES HEREUNDER SHALL NOT EXCEED \$10,000 PER INCIDENT OR \$100,000 PER GOVERNMENT ENTITY FISCAL YEAR; OR (2) INTELLECTUAL PROPERTY INDEMNIFICATION DESCRIBED IN PARAGRAPH 15 OF THIS AGREEMENT, PROVIDED THE AMOUNT OF BEARINGPOINT'S COSTS RELATED TO SUCH INDEMNIFICATION SHALL NOT EXCEED \$250,000.00, THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS LIMITATION OF DAMAGES IS A FREELY BARGAINED FOR ALLOCATION OF RISK.**

#### **16. Dispute Resolution**

If a dispute seeking money damages is identified by Government Entity or BearingPoint, dispute resolution will follow the procedures outlined in Section XVII of the Master Contract (which is incorporated herein by this reference), which references Chapter 2260 of the Texas Government Code. Any issue that is not resolved in a timely manner may be taken to the Authority for resolution by either Party.

#### **AGREED AND ACCEPTED:**

BearingPoint, Inc.:

Hidalgo County:

By: [Signature]  
Name: Jose M. [Signature]  
Title: J. [Signature]  
Date: 8/22/01

By: [Signature]  
Name: [Signature]  
Title: COUNTY JUDGE  
Date: 8-16-01

Attest: Juan D. Salinas III [Signature]

Approved by Commissioners' Court  
on 7-29-01

APPROVED AS TO FORM

ATLAS & HALL L.L.P.

[Signature]

**EXHIBIT "A"**  
**SPECIFICATIONS**

**EXHIBIT "B"**  
**PAYMENT SCHEDULE**

## Exhibit A – Applications, Services and Fee Schedules

### List of BearingPoint Application(s) Supported in Association with the Services

1. **Electronic Filing Manager (EFM) Application**
  - a. **Court Intake Application**
  - b. **Court Profile**
  - c. **Court Registration**
  - d. **Filer Registration**
  - e. **Payment Services**
2. **Standard XML Interface**

### List of Services Provided Under Agreement

1. **Electronic Payments System Credit Card Authorization Services/Settlement Services**
  - a. BearingPoint will provide authorization and settlement transaction services for credit cards. Visa and MasterCard transactions will be processed and settled by the credit card processor through the Government Entity Merchant Agreement.
  - b. The processor will transfer all eFiling funds to the appropriate Government Entity bank account based on agreements between the processor and the State. BearingPoint is not responsible for actual fund transfers. The processor will transfer all EFM convenience fee funds to a BearingPoint bank account.
2. **Electronic Payments Chargeback Services**
  - a. BearingPoint will develop and provide the procedures for Government Entity to follow to process chargebacks for applicable credit card transactions should they occur.
3. **Filing Purge Services**
  - a. Government Entity will check and accept or reject all filings on at least a daily basis. BearingPoint will purge all filings 10 days after the Government Entity acts on the filing by accepting or rejecting the filing. All filings will be purged not later than 30 days after they are submitted by the filer.
4. **Customer Information Center Services for Government Entity applications**
  - a. BearingPoint will provide first level customer support for the Government Entity applications through the TexasOnline CIC. First level support includes responding to phone calls and email requests for assistance in using the application. Questions that cannot be answered by a first level technician will be forwarded either to the Government Entity contact or level two support for resolution.
  - b. A live call center operation will handle user phone calls 7:00 am to 7:00 p.m. CT daily, 7 days a week. However, future alterations to these times and days may occur periodically throughout the term of this Agreement if BearingPoint determines that peak usage of the Framework is at times other than those described above.

- c. First and second-level support is limited to technical support regarding the TexasOnline network or availability and application functionality. Government Entity business questions or filing rules, as they pertain to eFiling, are the responsibility of the Government Entity. Questions that require Government Entity response will be forwarded to the Government Entity contact for resolution. The customer will be referred appropriately.
5. **Customer Information Center Services for Electronic Payments transaction services**
  - a. BearingPoint will provide first – third level customer support through the TexasOnline CIC for the Payment transactions processed through the Electronic Payments system. First level support includes responding to phone calls and email requests for assistance in using the application. Questions that require Government Entity response will be forwarded to the Government Entity contact for resolution. Questions that require the Electronic Payments System investigation or response will be forwarded to the Electronic Payments Customer Support areas.
  - b. A live call center operation will handle user phone calls 7:00 a.m. to 7:00 p.m. CT daily, 7 days a week. However, future alterations to these times and days may occur periodically throughout the term of this Agreement if BearingPoint determines that peak usage of the Framework is at times other than those described above.
6. **TexasOnline Hosting and Application Service Provider (ASP) Services**
  - a. Services provided by BearingPoint include all services related to the hosting of eFiling applications including:
    - 1) Application design
    - 2) Database design and setup
    - 3) Standard interface design to meet the statewide Court Filing standard.
    - 4) Interface design for exchange between TexasOnline and the Electronic Payments System
    - 5) Support secure communication standards between TexasOnline and Government Entity
    - 6) Application development and testing
    - 7) Page and form development
    - 8) Continued application enhancements and modifications
    - 9) Applications support and maintenance
7. **TexasOnline Training**
  - a. BearingPoint will provide training support documentation on the appropriate use of the TexasOnline EFM.
8. **Strategic Outreach**
  - a. Services provided by BearingPoint include the following strategic outreach services:
    - 1) Provide a *sample* communication plan for the Government Entity, and
    - 2) If appropriate, consider the possibility of a joint marketing program and/or expenditure with the Government Entity.
9. **Physical Environment Management**
  - (a) BearingPoint will provide physical security and access management, protected power supply, air conditioning and fire suppression through the West Texas Disaster Recovery Operations Center (WTDROC).

**10. Network Infrastructure Management**

(a) BearingPoint will provide Front-End Network Management, Firewall Infrastructure and Support Services, Intrusion Detection Services, Back-End Network Management and technical support for the TexasOnline EFM located at WTDROC. BearingPoint will manage all the TexasOnline EFM resources necessary to get users to Government Entity's applications and return the information to them. This includes the switches, load-balancing devices, bandwidth regulating devices, and other related devices.

**11. Hardware Management**

(a) BearingPoint will provide Hardware Installation, Hardware Management and support for TexasOnline EFM components located at WTDROC. BearingPoint will install and maintain TexasOnline EFM servers and server components and will ensure third-party service providers for hardware are notified appropriately, when required.

**12. Operating System Administration**

(a) BearingPoint will provide Operating System Software installation, configuration, optimization, and support for TexasOnline EFM components located at WTDROC. BearingPoint will create the underlying TexasOnline environment and work with Government Entity to ensure that systems are configured and tuned appropriately to support the needs of Government Entity applications.

**Fee Schedule**

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

<b>Government Entity Service Type</b>	<b>Convenience Fee</b>
Electronic Filing Manager Court Intake Services	\$ 6.00
Cost Recovery on all Credit Card transactions	based on the credit card type and starting at 2.25% the first year.

BearingPoint will pay \$2.00 to Government Entity on a monthly basis the fee for cost recovery as approved by the TexasOnline Authority.

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: \_\_\_\_\_

**Texas Department of Information Resources:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Customer:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **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.