

Georgia Courts Automation Commission Electronic Court Filing Interoperability Pilot Agreement

THIS AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2000, between Georgia Courts Automation Commission ("GCAC"), and _____ ("Vendor"). In consideration of the premises and their mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

1. Recital of Predicate Circumstances

The parties enter into this Agreement under the following circumstances:

Vendor is a [STATE] corporation with a principal place of business at [ADDRESS] and is in the business of designing and implementing electronic court filing systems. Its participation in this Agreement is in response to the Request for Proposals issued by GCAC numbered 2000-1 and entitled "ELECTRONIC COURT FILING INTEROPERABILITY PILOT PROJECT" ("RFP").

GCAC is an agency of the judicial branch of the government of the State of Georgia located at 244 Washington Street, Suite 550, Atlanta, Georgia 30334. Its mission is to facilitate the electronic automation of Georgia's courts.

In this Pilot selected vendors will install one or more end-to-end electronic court filing systems. GCAC's primary purposes in promoting this pilot are to provide Georgia courts and attorneys with proof-of-concept of electronic court filing, to test interoperability among filing systems implemented in different Georgia courts using open, non-proprietary standards and also to understand better the need for, and barriers to, developing court filing standards in Georgia. GCAC also wishes to test specifically the JTC/Legal XML Court Filing 1.0 Proposed Standard.

For further background see RFP at 2.2.

2. Basic Agreement; Undertakings; Scope of Work

In consideration of GCAC's organization and coordination of the Project, and in consideration of other benefits resulting hereunder, Vendor agrees:

- to participate in the Pilot under the terms and conditions of this Agreement
- to provide the deliverables in and as described in the Requirements Document, the RFP at 3.2 and Vendor's Proposal.

GCAC will allow Vendor's participation, will introduce Vendor to the Court with which Vendor will participate, will include Vendor in the roundtable deliberations of the Project and will otherwise conduct the Pilot according to this Agreement.

This Agreement incorporates by reference the RFP and Vendor's Proposal in response to the RFP. In case of conflict, the hierarchy will be this Agreement, the RFP and then the Proposal.

However, Vendor will perform any greater undertaking described in a junior document not specifically negated by senior documents. The Requirements Document is annexed as part of this Agreement as Appendix A.

GCAC will match vendors with selected courts in Georgia. GCAC will select the appropriate court or courts for each Vendor. Vendors may not solicit courts to participate in this Pilot.

Courts and Court officers will not participate as parties. Courts will allow the conduct of the Pilot by order or local rule in their absolute discretion, and parties in cases will participate by their consent and the consent of counsel.

Clerks of participating courts will be third party beneficiaries of this Agreement.

All selected pilot participants must work together in a workgroup environment with other Vendors, GCAC staff, Court officers and staff and other participants selected and invited by GCAC for purposes of this Pilot.

Detailed Requirements Document

Vendors agree to participate in the Project as it is defined in the "Requirements Document." The Initial Draft of the "Requirements Document" is annexed as Appendix A but will be a "living document," discussed among GCAC, Participating Vendors, Participating Courts and other participants invited by GCAC in a workgroup setting. As a "living document" the "Requirements Document" may change from time-to-time based on discussions of all Pilot Participants. Where consensus is in doubt or cannot be reached, GCAC will make final decisions but it may not substantially alter the scope of the Pilot. The "Requirements Document" is binding on all parties to this agreement. Some requirements may be different for some vendors.

Use of JTC/Legal XML Standard

In implementing its electronic court filing system, Vendor must adhere as closely as possible to the JTC/Legal XML Court Filing 1.0 Standard as further specified in the "Requirements Document." The "JTC/Legal XML Court Filing Standard" is the July 24th JTC/Legal XML Court Filing standard published at <http://www.legalxml.org/CourtFiling/>. JTC is The Joint Technology Committee. The JTC is a joint committee of Conference of State Court Administrators ("COSCA") (<http://cosca.ncsc.dni.us/>) and National Association of Court Managers ("NACM") (<http://nacm.ncsc.dni.us/>).

Cooperation with GCAC, Courts, and Vendors

Vendors shall use all commercially reasonable effort to meet deadlines, provide information needed by Pilot Participants, and otherwise cooperate to achieve the Pilot requirements and goals. Vendor will use all commercially reasonable effort to work with other pilot vendors to achieve technical interoperability. Vendor is required to communicate about the interoperability aspects of the Pilot during face-to-face meetings, telephone conferences, and mailing list discussions as such communication takes place from time-to-time.

No Interoperability Guarantee

All parties acknowledge that this Pilot is a test and that there can be no guarantee by any party of interoperability among competing systems. This does not obviate the obligation to make best efforts to achieve interoperability.

Consulting Services

No Vendor will consult beyond the terms of this Agreement regarding the conduct of the Pilot or its subject matter without the written permission of the Commission. Any further consulting with the Commission beyond the terms of this Pilot will be by separate agreement or amendment to this Agreement.

Training and Support for Court

At its own cost and responsibility, and no cost to them, Vendor must provide training and support necessary to operate its system to court administrators, clerks, judges, and other staff.

Security and Virus Detection

Vendor must comply with industry standard security standards. Vendor will make all commercially reasonable effort to ensure that systems do not contain, or transmit to the Clerk, Court or Participating Counsel, viruses or other defects that may reside within documents or other transmissions. The parties will make all commercially reasonable effort to identify and to correct or remove any document or file that may contain a virus. When a Participating Court Officer and Participating Counsel has submitted a virus-infected electronic filing, Vendor will work with the submitting person to accept corrected and purged submissions but will have no duty of expense or responsibility for correcting the systems of others.

Upgrades

While Vendor must complete the work defined in the Requirements Document made part of this Agreement, Vendor is not required to provide upgrades to any software after the completion of the Pilot.

Follow-on Work

There is no guarantee, either express or implied, of follow-on work as a part of this Pilot.

Cooperation with other Contractors

GCAC has entered in similar agreements with other Vendors and may enter into with other contractors for additional work related to the Pilot. Vendor agrees to cooperate fully with such Vendors and other contractors. The parties shall not commit any act that will interfere with the performance of work by any other contractor.

3. Payments

Unless stated otherwise by special stipulation annexed hereto and signed by both parties, neither GCAC nor Vendor will pay or reimburse the other monetarily for performing this Agreement. Each party acknowledges and accepts the sufficiency of their mutual promises as consideration for this Agreement.

Usage Fees Charged to Lawyers and Other Third-Parties

Vendor may charge attorneys any usage fee bearable by the market for use of its electronic filing services and other services, subject to reasonable reduction by GCAC to induce greater participation. Vendor may provide a mechanism for payment of court fees if the Clerk approves, and may charge Participating Counsel for such service. Vendor may not charge the Clerk.

Fees to Courts and GCAC

Vendor may not charge the court or GCAC any fee for filing or retrieving electronically filed documents or other information related to electronically filed documents. By written agreement, vendor may charge GCAC or the Court other fees for software licensing or consulting services.

Unless otherwise agreed, GCAC or the Court will pay for their own court-related hardware and networking costs associated with the Pilot. GCAC and the Court will not pay for hardware or networking required by Vendor to perform electronic court filing services.

4. Term; Duration of Agreement; Early Termination

Term

The term of the agreement shall commence at the date and time it is signed by the last signing party and shall continue until all technical requirements are fulfilled or the parties agree that the Pilot is finished. The agreement shall not last longer than _____ except by consent of the parties.

Termination

Upon termination or other expiration of this contract, each party shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes of performance of this contract. In addition, each party will assist the other in the orderly termination of this contract and the transfer of all aspects hereof, tangible or intangible, as may be necessary for the business continuation of each party. Vendor will permanently erase all electronic records of the electronic filings submitted by Participating Counsel, the Clerk and the Court, including the electronic record and docket. At no time will Vendor make available electronic copies of any electronic filing to third parties except designated representatives of the Commission or as otherwise order by the Court.

4. Relationships of Parties and Third Parties

Marketing of Service

Vendor may market its electronic court filing services to lawyers and other third parties. Marketing of electronic court filing services should not, however, conflict with the term titled "Advertisement and Statements to the Press."

Customer Support

Vendor may provide customer support to lawyers and other third parties, at its option.

Options to extend to follow through on initiatives presented may be negotiated.

5. Ownership and Permissions

Software License

Vendor will provide all Participants with needed proprietary software. Vendor hereby grants to GCAC, the Clerk of the Participating Court, and the Court a license for all software required by them for Vendor's participation in the Pilot. Vendor will not charge GCAC, the Clerk or Court for such license. Vendor will also grant its license to Participating Counsel but may charge Participating Counsel subject to reasonable approval of GCAC as provided above.

Rights in Filed Documents

The Clerk shall have full custody, control, right, title, and interest in all filings submitted through Vendor into the Court. Court may, at any time, restrict Vendor's ability to publish Court documents, based on state law, court rule, court order, public policy or any other reason.

Intellectual Property

All right, title, and interest in intellectual property developed by Vendor belongs to Vendor. All right, title, and interest in intellectual property developed by GCAC belongs to GCAC. All right, title, and interest in intellectual property developed by the Court belongs to the Court. All right, title, and interest in jointly developed intellectual property will belong to GCAC, as a work for hire, and Vendor hereby assigns all its right, title and interest in such work to GCAC. GCAC will be under no duty to copyright or patent such joint work and may put it in the public domain. However, regardless, Vendor shall have a perpetual license to use, modify and sublicense such work.

6. Contingencies; Indemnity, and Insurance

Pilot Participants will each participate at its own sole, risk and responsibility, without recourse against one another for claims of third parties, except as follows:

- Vendor may provide separately for release and indemnity in agreements with Participating Counsel.
- Vendor will indemnify and hold harmless all participants from any loss or liability, including attorneys' fees, from claims for patent and copyright infringement and from all other claims for violation of intellectual property rights.

7. Warranties, Representations, Assurances and Limitations of Liability

Disclaimer Of Warranty And Limitation Of Liability

The parties make no warranty, representation or promise not expressly set forth in this agreement. The parties disclaim and exclude any and all implied warranties of merchantability, title and fitness for a particular purpose. The parties do not warrant that any software, programs or customization or its documentation will be without defect or error or that the operation of same will be uninterrupted. Because of the diversity of conditions under which, and computer equipment upon which, any software, programs or customization, or its documentation may be used, the parties cannot guarantee that any particular functional result can or will be obtained. The parties shall not in any case be liable to one another for any special, incidental, consequential, indirect or punitive damages even if the parties have been advised of the possibility of such damages. The parties are not responsible to one another for lost profits or revenue, loss of the use of any software, loss of data, costs of re-creating lost data, the cost of any substitute equipment or program, loss from improper functioning equipment or software, downtime costs, downtime costs, loss of use of any equipment, facilities or services, unauthorized modifications, misuse, abuse, failure to follow instructions or claims, but GCAC may specifically enforce this Agreement.

8. Disclosures; Announcements; Privacy; Confidentiality; Nondisclosure Agreement

Disclosure of Proprietary Information

Vendor is not required to disclose proprietary information to GCAC, the Court, or other vendors. Vendor is, however, expected to fully cooperate in achieving technical interoperability with other Vendor systems.

Confidentiality

GCAC, the Court, and Vendor acknowledge that they may possess and will continue to possess information and intellectual property that has commercial value and that is not in the public domain. Accordingly, all parties agree to hold such information and intellectual property confidential and refrain from disclosing it unless otherwise agreed by the parties. The confidentiality requirement shall not extend to feedback given to Legal XML or the COSCA/NACM Joint Technology Committee on the JTC/Legal XML Court Filing 1.0 proposed standard. The confidentiality requirement shall not extend to information contained in a "lessons learned" document written as a result of the Pilot.

At the request of GCAC or with its consent, GCAC and Vendor, or all Vendors and GCAC, will sign Nondisclosure Agreements presented by GCAC in substantially conventional form.

Advertisement and Statements to the Press

Vendor may make statements about the Pilot in advertisements and statements to the press. However, until the completion of the Pilot, all such statement must be first submitted and approved by GCAC.

9. General Miscellaneous Terms including Definitions

9.1 Definitions

The definitions in the RFP and the Requirements Document are incorporated by reference.

Time Is of The Essence

Time is of the essence of this Agreement.

Governing Law

This contract is deemed to be made under and shall be construed according to the laws of the State of Georgia.

Force Majeure

No party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party. Such acts shall include, but are not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or disaster.

Assignment

Performance under this contract shall not be delegated, assigned or subcontracted by Vendor without prior written consent of GCAC, which GCAC will determine in its absolute discretion.

Trading with State Employees

The provisions of O.C.G.A. Sections 45-10-20 et seq., have not and will not be violated under the terms of this agreement.

Notices

All notices shall be deemed duly given upon delivery if delivered by hand, or on three days after posting if sent by certified mail, return receipt requested. Notice by email is sufficient only if the recipient acknowledges receipt or knowledge of the email. All other notice shall only be given to the following persons or officials at the following addresses:

GCAC:

Don Forbes or Jerry Garland
244 Washington Street
Suite 550
Atlanta, Georgia 30334

Vendor:
[FILL IN]

Compliance with Statutes

Vendor shall perform its obligations hereunder in accordance with all applicable Federal and State laws and regulations now or hereinafter in effect, including laws, rules and regulations relative to nondiscrimination in employment practices, licenses or permit requirements, and provisions of the Fair Labor Standards Act of 1983. Vendor certifies that a drug free workplace will be provided for Vendor's employees during the performance of this contract and that any approved subcontractor shall so certify in the event any subcontractor is engaged, all pursuant to O.C.G.A. section 50-24-3. Vendor may be suspended, terminated or debarred if it is determined that such certification pursuant to 50-24-3 is false or has failed to carry out the requirements of such code section.

Entire Agreement

This Agreement embodies the entire agreement between the parties. If any provision herein is held to be invalid, it shall be considered deleted here from and shall not invalidate the remaining provisions.

IN WITNESS WHEREOF, each of the parties hereto have caused this agreement to be executed and delivered on this, the _____ day of _____ 2000.

GCAC Name and Title Date

Vendor Name and Title Date
