

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving a Limited Waiver of the Tohono O'odham Utility Authority's**  
**Sovereign Immunity to Enter Into Agreement with National**  
**Information Solutions Cooperative)**

**RESOLUTION NO. 18-418**

1 **WHEREAS,** the Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe,  
2 organized pursuant to Section 16 of the Indian Reorganization Act of June 18,  
3 1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its  
4 members, its enterprises, and its lands; and

5 **WHEREAS,** the Constitution of the Tohono O'odham Nation vests the Legislative Council with  
6 the authority to "authorize, charter and regulate public or private corporations  
7 and associations whether organized for profit, or for non-profit or charitable  
8 purposes" and "to promote, protect and provide for public health, peace, morals,  
9 education and general welfare of the Tohono O'odham Nation and its members"  
10 (Constitution, Article VI, Section 1(e) and Section 1(d)(2)); and

11 **WHEREAS,** the Second Restated Plan of Operation of the Tohono O'odham Utility Authority  
12 ("TOUA Plan of Operation"), 24 Tohono O'odham Code Chapter 1, was adopted by  
13 Resolution No. 91-175 (TOUA was formerly known as the "Papapago Tribal Utility  
14 Authority" and was originally established pursuant to Resolution No. 08-70; and

15 **WHEREAS,** the stated powers of the TOUA Management Board include, among other powers,  
16 the power to make "contracts or commitments necessary to the functioning of  
17 [TOUA]," and the TOUA Plan of Operations authorizes the Management Board, in  
18 its discretion, to submit contracts to the Legislative Council for approval or  
19 ratification (24 Tohono O'odham Code Chapter 1, Section 7.A.3. and Section  
20 7.A.12.); and

21 **WHEREAS,** acting pursuant to and within the scope of its authority granted under the Second  
22 Restated Plan of Operations, TOUA has entered into various contracts with  
23 various software companies to provide billing software; and

24 **WHEREAS,** due to the unique nature of utility billing, TOUA currently uses different billing  
25 software providers for each utility service it officers, including software from  
26 National Information Solutions Cooperative ("NISC") for TOUA's telephone  
27 services department; and

28 **WHEREAS,** National Information Solutions Cooperative ("NISC") is an information  
29 technology company that develops and supports software and hardware  
30 solutions for its Member-Owners (who are primarily utility cooperatives and  
31 telecommunications companies across the nation); and

32 **WHEREAS,** TOUA desires to enter into an agreement with NISC for integrated billing  
33 software; and

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1 **WHEREAS,** NISC has expanded its software offerings and NISC asserts that it is qualified,  
2 willing, and able to offer TOUA integrated billing software, which would permit  
3 TOUA to use a single billing software platform across all services offered by TOUA;  
4 and, further, the software would enable TOUA to eventually have in-the-field  
5 billing and payment capabilities; and

6 **WHEREAS,** NISC is offering the integrated billing software pursuant to a new Master  
7 Agreement, entitled "NISC Master Software and Services Terms and Conditions"  
8 ("Master Agreement"), and will incorporate related documents including a  
9 "Software & Services Purchase Order" ("Purchase Order") and a "Statement of  
10 Work," all of which are incorporated by this reference; and

11 **WHEREAS,** TOUA and NISC have negotiated an amendment to the Master Agreement  
12 (hereafter, "Negotiated Amendment") addressing dispute resolution provisions,  
13 including TOUA agreeing to submit to the jurisdiction of the Nation's Judicial  
14 Court for any suit filed by NISC, and NISC agreeing to the jurisdiction of state and  
15 federal courts located in the State of Missouri for any suit filed by TOUA against  
16 NISC for any suit for declaratory judgment, specific performance, or seeking a  
17 temporary or permanent injunction, and agreeing to resolve all other claims  
18 using binding arbitration; and

19 **WHEREAS,** as drafted, the Master Agreement also includes a provision which requires that  
20 TOUA indemnify NISC under certain circumstances explained in detail in the  
21 Master Agreement; and

22 **WHEREAS,** the dispute resolution provisions in the Negotiated Amendment and the  
23 indemnification provisions contained in the Master Agreement between NISC  
24 and TOUA could be construed as a waiver of sovereign immunity; and

25 **WHEREAS,** the Nation's sovereign immunity extends to TOUA, a Nation's enterprise, which  
26 requires an express waiver by the Legislative Council, limited to and consistent  
27 with the terms and conditions of the Master Agreement, including the Negotiated  
28 Amendment and related documents, to enter into the Master Agreement with  
29 NISC (2 Tohono O'odham Code Chapter 2 - Sovereign Immunity; Legislative  
30 Immunity); and

31 **WHEAEAS,** the Legislative Commerce Committee has reviewed the Master Agreement and  
32 the Negotiated Amendment, and templates which will be used for the Purchase  
33 Order and Scope of Work documents, and recommends in the best interests of the  
34 Nation to approve a limited waiver of TOUA's sovereign immunity so that TOUA  
35 may enter into the Master Agreement, including the Negotiated Amendment and  
36 related documents, with NISC.

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1 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council approves a  
2 **limited waiver of sovereign immunity of the TOUA in favor of NISC in accordance**  
3 **with, and subject to the limitations of, the indemnification provisions of the**  
4 **Master Agreement and the dispute resolution provision of the Negotiated**  
5 **Amendment, provided that nothing in this resolution is construed as a waiver of**  
6 **the Nation's sovereign immunity.**

7 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09<sup>TH</sup>**  
8 **day of OCTOBER, 2018 at a meeting at which a quorum was present with a vote of 2,503.5 FOR;**  
9 **-0- AGAINST; -0- NOT VOTING; and 581.1 [07] ABSENT, pursuant to the powers vested in the**  
10 **Council by Article VI, Section 1(e) and Section 1(d)(2) of the Constitution of the Tohono O'odham**  
11 **Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting**  
12 **Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section**  
13 **16 of the Act of June 18, 1934 (48 Stat.984).**

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16 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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20 **Timothy Joaquin, Legislative Chairman**

21  
22 11 day of October, 2018

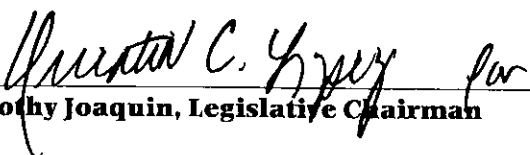
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26 **ATTEST:**

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29 **Evonne Wilson, Legislative Secretary**

30  
31 11 day of October, 2018

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34 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono**  
35 **O'odham Nation on the 12 day of October, 2018 at 8:49 o'clock, a .m.,**  
36 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become**  
37 **effective upon his approval or upon his failure to either approve or disapprove it within 48**  
38 **hours of submittal.**

39  
40 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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44 **Timothy Joaquin, Legislative Chairman**

**RESOLUTION NO. 18-418**

**(Approving a Limited Waiver of the Tohono O'odham Utility Authority's Sovereign Immunity to Enter Into Agreement with National Information Solutions Cooperative)**

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APPROVED

on the 15 day of October, 2018

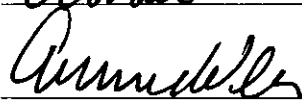
DISAPPROVED

at 5:55 o'clock, P.m.

  
\_\_\_\_\_  
EDWARD D. MANUEL, CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 16 day of

October, 2018, at 8:40 o'clock, a.m.

  
\_\_\_\_\_  
Evonne Wilson, Legislative Secretary

**ACTION: APPROVING A LIMITED WAIVER OF THE TOHONO O'ODHAM UTILITY AUTHORITY'S SOVEREIGN IMMUNITY TO ENTER INTO AGREEMENT WITH NATIONAL INFORMATION SOLUTIONS COOPERATIVE**

**Moved: COUNCILMAN ANTHONY J. FRANCISCO, JR.**

**SECOND: COUNCILWOMAN JANICE FELIX**

**DATE: OCTOBER 09, 2018**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>SIF OIDAK 235.8</b>	<b>1. MARY LOPEZ ( ) 2. LUCINDA ALLEN (Yolonda Garcia)</b>	<b>117.9 117.9</b>	<b>X X</b>			<b>X</b>
<b>SELLS 527.2</b>	<b>1. ARTHUR WILSON (Absent) (Evelyn Juan Manuel) (Present) 2. ADRIANNE TILLER (Idaleen Reyes)</b>	<b>263.6 263.6</b>	<b>X X</b>			
<b>SCHUK TOAK 185.7</b>	<b>1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue) 2. QUINTIN C. LOPEZ (Agnes V. Joaquin)</b>	<b>92.85 92.85</b>	<b>X X</b>			
<b>SAN XAVIER 232.3</b>	<b>1. DANIEL L.A. PRESTON III (Felicia Nunez) 2. JANICE FELIX ( )</b>	<b>116.15 116.15</b>	<b>X X</b>			
<b>SAN LUCY 231.1</b>	<b>1. JANA MONTANA (Absent) (Diana Manuel) (Present) 2. GLORIA RAMIREZ (Lorraine Eiler)</b>	<b>115.55 115.55</b>	<b>X X</b>			
<b>PISINEMO 225.9</b>	<b>1. CHESTER ANTONE (Caroline D. Garcia) 2. MONICA K. MORGAN ( )</b>	<b>112.95 112.95</b>	<b>X X</b>			
<b>HICKIWAN 209.0</b>	<b>1. LOUIS R. LOPEZ (Shirley Molina) 2. SANDRA D. ORTEGA ( )</b>	<b>104.5 104.5</b>	<b>X X</b>			<b>X X</b>
<b>GU VO 256.9</b>	<b>1. GRACE MANUEL ( ) 2. DALLAS LEWIS (Nacho Flores)</b>	<b>128.45 128.45</b>	<b>X X</b>			<b>X</b>
<b>GU ACHI 270.9</b>	<b>1. TIMOTHY L. JOAQUIN (Absent) (Louis L. Johnson) (Present) 2. LORETTA LEWIS (Victoria Hobbs)</b>	<b>135.45 135.45</b>	<b>X X</b>			
<b>CHUKUT KUK 337.7</b>	<b>1. BILLMAN LOPEZ (Patricia Antone) 2. VIVIAN JUAN-SAUNDERS (Absent) (Juanita Homer) (Present)</b>	<b>168.85 168.85</b>	<b>X X</b>			<b>X</b>
<b>BABOQUIVARI 372.1</b>	<b>1. FRANCES MIGUEL (Absent) (Roberta E. Harvey) (Present) 2. LEANDER MASE (Francine Schooling)</b>	<b>186.05 186.05</b>	<b>X X</b>			<b>X X</b>
	<b>TOTAL</b>	<b>3,084.6</b>	<b>2503.5</b>	<b>-0-</b>	<b>-0-</b>	<b>581.1 [07]</b>