

## APPLICATION SERVICE PROVIDER AGREEMENT

This agreement ("Agreement") is made the date last set forth below, this 27th day of September, 2007 ("Effective Date"), between **Tyler Technologies, Inc.**, a Delaware corporation, with offices at 370 U.S. Route 1, Falmouth, Maine 04105 ("Tyler") and the **City of Richmond, California**, with offices at 1401 Marina Way South, Richmond, California 94804 ("Client").

Tyler and Client agreed as follows:

1. Tyler shall make the products available and furnish the services, as described in this Agreement, and Client shall pay the prices set forth in this Agreement. Tyler shall mail invoices to Client at the above address to the attention of Accounts Payable Division, Wanda Mason Lewis.
2. This Agreement consists of this cover sheet ("Cover") and the following Sections and Exhibits, each of which is attached hereto and incorporated herein by reference:

Section A – Investment Summary

Section B – Definitions

Section C – Software License Agreement

Section D – Professional Services Agreement

Section E – Maintenance Agreement

Section F – Third Party Product Agreement

Section G – General Terms and Conditions

Exhibit 1 – Verification Test

Exhibit 2 – Support Call Process

Exhibit 3 – Adobe End User License Agreement

Exhibit 4 – Statement of Work

Appendix A – Functional Requirements

Exhibit 5 – Service Level Agreement

Exhibit 6 – Client's Request for Proposals ("RFP")

Exhibit 7 – Tyler's Proposal in response to Client's Request for Proposals ("Proposal")

Exhibit 8 – Tyler's Three (3) Responses to Client's Requests for Clarification (collectively, "RFC Responses")

Exhibit 9 – Intentionally omitted

Exhibit 10 – Business Travel Policy

Exhibit 11 – HIPAA Business Associate Agreement

3. The order of precedence among the contract documents shall be as follows:
  1. This Agreement, excluding Exhibits.
  2. Exhibit 4 - Statement of Work
  3. Section A – Investment Summary
  4. Section F - Third Party Product Agreement
  5. Exhibit 2 - Support Call Process
  6. Exhibit 1 - Verification Test
  7. Exhibit 8 – RFC Responses
  8. Exhibit 7 – Proposal
  9. Exhibit 6 – RFP
4. For clarity, the term "Agreement" refers collectively to this Cover and all Sections and Exhibits listed on this Cover.

5. This Agreement and Sections A, B, C and D are governed by the General Terms and Conditions in Section G, and those conditions are applicable as if included specifically in those sections.

IN WITNESS WHEREOF, persons having been duly authorized and empowered enter into this Agreement.

Tyler Technologies, Inc.

City of Richmond, California

By: 

By: 

Title: President - Fms Division

Title: Mayor

Name: Richard E. Peterson Jr

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

Date: 9-24-07

Date: 9/27/07



Quoted By: Kyle Johnson  
 Date: 09/06/2007  
 Quote Expiration:  
 Quote Name: Richmond ASP (5 Year ) 090607  
 Quote Number: 2761

## Sales Quotation For:

Mr. Jim Richmond  
 City of Richmond  
 1401 Marina Way South  
 Richmond, CA 94804

Phone: (510) 621-1254  
 Fax:  
 Email: james\_richman@ci.richmond.ca.us

## 1 Software

Model #	Description	Quantity	Price	Extended Price	Discount	Software Total
OF-TCM-SW-F	Tyler CM MUNIS - Software - F	1.00	\$22,000.00	\$22,000.00	\$5,500.00	\$16,500.00
					Total:	Total:
					\$5,500.00	\$16,500.00

## 2 Services

Model #	Description	Quantity	Price	Extended Price	Discount	Services Total
ASP-VPN-HDW-1001	VPN Device and Installation	1.00	\$4,000.00	\$4,000.00	\$0.00	\$4,000.00
MISC-SV-001	eSchoolMall Training	14.00	\$1,000.00	\$14,000.00	\$0.00	\$14,000.00
MISC-SV-002	On-Site Project Management	48.00	\$1,150.00	\$55,200.00	\$0.00	\$55,200.00
MISC-SV-003	Tyler CM MUNIS Training	3.00	\$1,000.00	\$3,000.00	\$0.00	\$3,000.00
OF-ESMI-INST-B	eSchoolMall Installation & Integration	5.00	\$1,000.00	\$5,000.00	\$0.00	\$5,000.00
OF-TCM-INST	Tyler CM MUNIS Installation	1.00	\$1,500.00	\$1,500.00	\$0.00	\$1,500.00
SVC-MCG-CHANGE	Change Management Program	1.00	\$39,600.00	\$39,600.00	\$0.00	\$39,600.00
SVC-MCG-DAY	MCG Consulting Services	1.00	\$260,700.00	\$260,700.00	\$39,105.00	\$221,595.00
SVC-TVL-EST	Estimated Travel Expenses	1.00	\$177,100.00	\$177,100.00	\$0.00	\$177,100.00
TF-AC-IMP-F	Tyler Forms Processing - Configuration - F	3.00	\$1,000.00	\$3,000.00	\$0.00	\$3,000.00
					Total:	Total:
					\$39,105.00	\$523,995.00

### Consulting

Model #	Description	Quantity	Price	Extended Price	Discount	Consulting Total
FA-AC-CS-F	Accounting/GL/BG/AP - Consulting - F	6.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-BM-CS-F	Bid Management - Consulting - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-CM-CS-F	Contract Management - Consulting - F	2.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-FA-CS-F	Fixed Assets - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-IN-CS-F	Inventory - Consulting - F	0.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PA-CS-F	Project & Grant Accounting - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PBB-CS-F	Performance Based Budgeting - Consulting - F	8.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PO-CS-F	Purchase Orders - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-RQ-CS-F	Requisitions - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00

FA-TM-CS-F	Treasury Management - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-WO-CS-F	Work Orders - Consulting - F	4.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-AT-CS-E	Applicant Tracking - Consulting - E	2.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-PM-CS-E	HR Management - Consulting - E	2.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-PR-CS-E	Payroll - Consulting - E	4.00	\$0.00	\$0.00	\$0.00	\$0.00
MISC-CO-001	GASB 34 Report writer	4.00	\$0.00	\$0.00	\$0.00	\$0.00
MISC-CO-002	Tyler Forms Processing	1.00	\$0.00	\$0.00	\$0.00	\$0.00
RB-AR-CS-F	Accounts Receivable - Consulting - F	2.00	\$0.00	\$0.00	\$0.00	\$0.00
RB-GB-CS-F	General Billing - Consulting - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00

Total:  
\$0.00

**Training**

Model #	Description	Quantity	Price	Extended Price	Discount	Training Total
FA-AC-TR-F	Accounting/GL/BG/AP - Training - F	17.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-BM-TR-F	Bid Management - Training - F	6.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-CM-TR-F	Contract Management - Training - F	9.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-FA-TR-F	Fixed Assets - Training - F	9.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-IN-TR-F	Inventory - Training - F	4.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PA-TR-F	Project & Grant Accounting - Training - F	12.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PBB-TR-F	Performance Based Budgeting - Training - F	8.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-PO-TR-F	Purchase Orders - Training - F	8.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-RQ-TR-F	Requisitions - Training - F	9.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-TM-TR-F	Treasury Management - Training - F	6.00	\$0.00	\$0.00	\$0.00	\$0.00
FA-WO-TR-F	Work Orders - Training - F	10.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-AT-TR-E	Applicant Tracking - Training - E	4.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-PM-TR-E	HR Management - Training - E	10.00	\$0.00	\$0.00	\$0.00	\$0.00
HR-PR-TR-1245	Payroll - Training - E	16.00	\$0.00	\$0.00	\$0.00	\$0.00
MISC-TR-002	Tyler Forms Processing	3.00	\$0.00	\$0.00	\$0.00	\$0.00
OF-CRW-TR-F	MUNIS Crystal Reports - Training - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
OF-GASB-TR-F	GASB 34 Report Writer - Training - F	12.00	\$0.00	\$0.00	\$0.00	\$0.00
OF-MO-TR-F	MUNIS Office - Training - F	3.00	\$0.00	\$0.00	\$0.00	\$0.00
RB-AR-TR-F	Accounts Receivable - Training - F	7.00	\$0.00	\$0.00	\$0.00	\$0.00
RB-GB-TR-F	General Billing - Training - F	12.00	\$0.00	\$0.00	\$0.00	\$0.00
WEB-MOL-EMP-TR-E	Employee Self Service - Training - E	2.00	\$0.00	\$0.00	\$0.00	\$0.00
WEB-MOL-VND-TR-F	Business Self Service - Training - F	2.00	\$0.00	\$0.00	\$0.00	\$0.00

Total:  
\$0.00

**Conversion**

Model #	Description	Quantity	Price	Extended Price	Discount	Conversion Total
CV-AC-OA-F	AC Opt 1 - Actuals - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-AC-OB-F	AC Opt 2 - Budgets - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-AC-STD-F	AC Standard COA - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-AP-OC-F	AP Opt 1 - Checks - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-AP-OI-F	AP Opt 2 - Invoice - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-AP-STD-F	AP Standard Master - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-FA-OH-F	FA Opt 1 - History - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00



CV-FA-STD-F	FA Std Master - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-GB-OPB-F	GB Opt 2 - Bills - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-GB-OPR-F	GB Opt 1 - Recurring Invoices - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-GB-STD-F	GB Std CID - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-IN-OPC-F	IN Opt 1 - Commodity Codes - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-IN-STD-F	IN Std Master - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PO-STD-F	Purchase Orders - Standard - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP1-E	PR Payroll - Option 1 Deductions - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP2-E	PR Payroll - Option 2 Accruals - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP3-E	PR Payroll - Option 3 Accumulators - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP4-E	PR Payroll - Option 4 Check History - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP5-E	PR Payroll - Option 5 Earning/Deduction Hist - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP6-E	PR Payroll - Option 6 Applicant Tracking - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP7-E	PR Payroll - Option 7 PM Action History - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-OP8-E	PR Payroll - Option 8 Position Control/History - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-PR-STD-E	PR Payroll - Standard - E	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-WO-OP1-F	WO Opt 1 - Work Order - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-WO-OP2-F	WO Opt 2 - Fleet History - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
CV-WO-OP3-F	WO Opt 3 - Facilities - F	1.00	\$0.00	\$0.00	\$0.00	\$0.00
MISC-CV-001	Detailed GL Conversion (2 yrs)	1.00	\$0.00	\$0.00	\$0.00	\$0.00

Total:  
\$0.00

Total Other Services:	Total Consulting:	Total Training:	Total Conversion Services:	Total Services:
\$523,995.00	\$0.00	\$0.00	\$0.00	\$523,995.00

Total  
Training  
Days: 172

Total  
Consulting  
Days: 54

### 3 Maintenance

Model #	Description	Quantity	Price	Extended Price	Discount	Maintenance Total
FA-AC-AS-F	Accounting/GL/BG/AP - ASP - F	5.00	\$89,160.00	\$445,800.00	\$0.00	\$445,800.00
FA-BM-AS-F	Bid Management - ASP - F	5.00	\$11,211.20	\$56,056.00	\$0.00	\$56,056.00
FA-CM-AS-F	Contract Management - ASP - F	5.00	\$12,041.20	\$60,206.00	\$0.00	\$60,206.00
FA-FA-AS-F	Fixed Assets - ASP - F	5.00	\$26,222.00	\$131,110.00	\$0.00	\$131,110.00
FA-IN-AS-F	Inventory - ASP - F	5.00	\$26,982.00	\$134,910.00	\$0.00	\$134,910.00
FA-PA-AS-F	Project & Grant Accounting - ASP - F	5.00	\$17,352.80	\$86,764.00	\$0.00	\$86,764.00
FA-PBB-AS-F	Performance Based Budgeting - ASP - F	5.00	\$30,800.00	\$154,000.00	\$0.00	\$154,000.00
FA-PO-AS-F	Purchase Orders - ASP - F	5.00	\$25,582.00	\$127,910.00	\$0.00	\$127,910.00
FA-RQ-AS-F	Requisitions - ASP - F	5.00	\$18,290.40	\$91,452.00	\$0.00	\$91,452.00
FA-TM-AS-F	Treasury Management - ASP - F	5.00	\$17,690.40	\$88,452.00	\$0.00	\$88,452.00
FA-WO-AS-F	Work Orders, Fleet & Facilities - ASP - F	5.00	\$28,992.00	\$144,960.00	\$0.00	\$144,960.00
HR-AT-AS-E	Applicant Tracking - ASP - E	5.00	\$12,546.00	\$62,730.00	\$0.00	\$62,730.00
HR-PM-AS-E	HR Management - ASP - E	5.00	\$25,032.00	\$125,160.00	\$0.00	\$125,160.00
HR-PR-AS-E	Payroll - ASP - E	5.00	\$65,510.00	\$327,550.00	\$0.00	\$327,550.00

OF-CRW-AS-F	MUNIS Crystal Reports - ASP - F	5.00	\$15,400.00	\$77,000.00	\$0.00	\$77,000.00
OF-GASB-AS-F	GASB 34 Report Writer - ASP - F	5.00	\$13,580.00	\$67,900.00	\$0.00	\$67,900.00
OF-MO-AS-F	MUNIS Office - ASP - F	5.00	\$15,648.00	\$78,240.00	\$0.00	\$78,240.00
OF-TCM-SP-F	Tyler CM MUNIS - Support - F	5.00	\$3,282.22	\$16,411.10	\$0.00	\$16,411.10
RB-AR-AS-F	Accounts Receivable - ASP - F	5.00	\$22,380.00	\$111,900.00	\$0.00	\$111,900.00
RB-GB-AS-F	General Billing - ASP - F	5.00	\$12,666.00	\$63,330.00	\$0.00	\$63,330.00
TF-AC-ASP-F	Tyler Forms Processing - ASP - F	5.00	\$12,710.00	\$63,550.00	\$0.00	\$63,550.00
TF-FL-AS-F	Tyler Forms Financial Library - ASP - F	5.00	\$800.00	\$4,000.00	\$0.00	\$4,000.00
TF-GBL-AS-F	Tyler Forms General Billing Library - ASP - F	5.00	\$800.00	\$4,000.00	\$0.00	\$4,000.00
TF-HR-AS-F	Tyler Forms Human Resources Library - ASP - F	5.00	\$800.00	\$4,000.00	\$0.00	\$4,000.00
WEB-MOL-EMP-MO-E	Employee Self Service - Annual Fee - E	5.00	\$14,680.00	\$73,400.00	\$0.00	\$73,400.00
WEB-MOL-VND-MO-F	Business Self Service - Annual Fee - F	5.00	\$14,680.00	\$73,400.00	\$0.00	\$73,400.00

Total:	Total:
\$0.00	\$2,674,191.10

## 4 System Software Maintenance

Model #	Description	Quantity	Price	Extended Price	Discount	System Software Maintenance Total
VAR-ESM-PPS-F	ESM Professional Purchasing Solution - Annual - F	5.00	\$14,865.58	\$74,327.90	\$0.00	\$74,327.90
VAR-ESM-PSS-F	ESM Professional Sourcing Solution - Annual - F	5.00	\$14,865.58	\$74,327.90	\$0.00	\$74,327.90

Total:	Total:
\$0.00	\$148,655.80

## Summary

	Fees	Maintenance
Total Software	\$16,500.00	\$2,674,191.10
Total Services	\$523,995.00	
Summary Total	\$540,495.00	\$2,822,846.90

## Comments

Customer Approval: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_  
P.O. #: \_\_\_\_\_

All primary values quoted in US Dollar

## Section B - Definitions

1.1 “Change Order” means a document describing potential or actual changes to the scope of the Services, as further defined in Article 8 of Section C – Professional Services Agreement.

1.2 “Tyler Personnel” means the Tyler Project Manager, the Key Personnel, and all employees and subcontractors of Tyler, who are providing the Services at any time during the Project Term. An individual within such description is a “Tyler Person.” Tyler shall make available the number of Tyler Personnel necessary to properly perform Tyler’s obligations under this Agreement. At any time, and from time to time during the Project Term, upon the request of the Client, Tyler shall provide the Client with a list of all persons who at such time are Tyler Personnel, which list shall include the positions occupied by each such person.

1.3 “ERP Deliverable” means a deliverable that will be subject to the ERP Acceptance procedures described in Section 5 of Section D of this Agreement.

1.4 “ERP Software” means the Tyler Software Products (version 6.2 or higher) Client is licensing from Tyler pursuant to the terms this Agreement.

1.5 “ERP System” means the Enterprise Resource Planning System described in the Documentation. The ERP System includes the ERP Software, Third-Party Software specified in Section F, modifications, configurations, and any custom programming specified in Exhibit 4, as well as all revisions and customizations to any or all of the above software which may be required and is provided for in Exhibit 4 hereto.

1.6 “Deliverables” means the items identified as “Deliverables” or a “Deliverable Material” under Appendix A.

1.7 “Design Document” means a certain Deliverable that is described under Exhibit 4.

1.8 “Documentation” means, collectively: (i) the then-current Tyler user manuals; and (ii) Appendix A – Functional Requirements to the Statement of Work; subject to Article 4(d) of Section C Software License Agreement.

1.9 “Fees” means the fees payable by the Client to Tyler hereunder in consideration of Tyler’s provision of the Services and the ERP System.

1.10 “Final Acceptance” means the description provided in Article 5.1 of Section D.

1.11 “Go-Live Date” means the date on which a Software Component or the entire ERP System, as the case may be, has entered Productive Use. The Go-Live Dates are further described in Exhibit 4 to this Agreement and the Project Plan.

1.12 “Key Personnel” means those Tyler Personnel (or the holders of those positions with Tyler) who are identified in Exhibit 4 and such other Tyler Personnel as the parties may agree, in writing, to designate as Key Personnel. The initial Key Personnel, and their respective positions, are identified in Exhibit 4.

1.13 “New Services” means the description provided in Article 2 of Section D.

1.14 “Notice-to-Proceed Date” means the date on which the Client, by written notice, authorizes Tyler to begin performing the Services hereunder.

1.15 “Phase” means a contained portion of the project dedicated to implementing a particular portion of the

ERP System. The Phases comprising the project are further described in Exhibit 4.

1.16 “Productive Use” means use of the ERP System, or portion thereof, to run the business of the Client.

1.17 “Client Project Manager” means the representative of the Client designated to oversee the provision of the Services by Tyler on a day-to-day basis, as further described in Exhibit 4.

1.18 “Tyler Project Manager” means the Tyler Person designated to manage the day-to-day provision of the Services, as further described in Exhibit 4.

1.19 “Project Executive Committee” means the Client’s Deputy County Administrator-Finance, Information Systems Director, Human Resources Manager and Project Manager.

1.20 “Project Plan” means a certain Deliverable that is described under Exhibit 4.

1.21 “Services” means the (i) installation, implementation, integration, configuration, and other services with respect to the ERP System that Tyler is engaged to perform pursuant to this Agreement, as described in Article 2 of Section D and Exhibit 4, and (ii) the New Services.

1.22 “Software Component” means a portion of ERP System which will be tested and accepted in accordance with the procedures described in Article 5.1 of Section D. The Software Components are more specifically described in Section C.

1.23 “Specifications” means the descriptions of the ERP System and all other Deliverables hereunder, and their components, capacities, functions and/or methods, set forth in this Agreement (including all Exhibits hereto) and the Documentation, or as otherwise provided to the Client by Tyler in writing.

1.24 “Statement of Work” means a document incorporated into this Agreement, which describes, in more detail, the Services, Deliverables, and anticipated schedule for delivering the Services and Deliverables. An initial Statement of Work is attached to this Agreement as Exhibit 4. The parties may, from time to time, amend this Agreement with additional Statements of Work.

1.25 “Project Term” means the period during which Tyler shall be obligated to provide the Services, as specified in Article 9 of Section D.

1.26 “Third Party Software” means the software specifically described in Section F.

1.27 “Work Product” means the description provided in Article 7 of Section D - Professional Services Agreement.

1.28 “Term” means collectively:

Phase I Term: January 1, 2008 through December 31, 2012

Phase II Term: April 1, 2008 through March 31, 2013

Phase III Term: July 1, 2008 through June 30, 2013

1.29 “ASP” means Application Service Provider.

1.30 “VPN” means Virtual Private Network.

## Section C - Software License Agreement

### 1. License Grant.

- a) For the duration of the Term, as may be extended by mutual agreement of Tyler and Client, Tyler shall grant to Client and Client shall accept from Tyler a non-exclusive, nontransferable, non-assignable license to use the Tyler software products and related interfaces (collectively, the "Tyler Software Products") and Tyler user manuals, for internal business purposes of Client, subject to the terms and conditions of this Agreement.
- b) Tyler shall retain ownership of the Tyler Software Products and user manuals.
- c) The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the Effective Date of this Agreement.
- d) Client acknowledges and agrees that the Tyler Software Products and user manuals are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. Client shall use best efforts to keep the Tyler Software Products and user manuals confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or user manuals by any party.
- e) The Tyler Software Products may be modified, but such modification shall only be for the use on Client's system and shall not cause Client or anyone performing such modification to gain any proprietary or other interest in the Tyler Software Products or such modification. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products shall be void.
- f) Client may make copies of the Tyler user manuals for internal use only.
- g) Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source code of each major release of the Tyler Software Products. At Client's request, Tyler will add Client as a beneficiary to such escrow agreement for the duration of the Term, as may be extended by mutual agreement of Tyler and Client. Client shall pay the annual beneficiary fee directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary.

2. **ASP Fees.** Client agrees to pay Tyler, and Tyler agrees to accept from Client as payment in full for the license granted herein, the ASP fees set forth in the Investment Summary.

### 3. Verification of the Tyler Software Products.

- a) On or before thirty (30) days after the VPN has been installed on Client's hardware, Tyler will provide written notice of such installation to Client and Client will select one (1) of the following two (2) verification methods: i) Within thirty (30) days after the VPN has been installed on Client's hardware, Tyler will verify the Tyler Software Products by demonstrating to Client that the Tyler Software Products perform all of the functions set forth in Exhibit 1 - Verification Test, which demonstration shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in the Proposal, including Appendix A – Functional Requirements to the Statement of Work; or ii) Within sixty (60) days after the VPN has been installed on Client's hardware, Client may use its own process to verify that the Tyler Software Products perform all of the functions set forth in Exhibit 1 - Verification Test, which shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in the Proposal, including Appendix A – Functional Requirements to the Statement of Work.
- b) In the event verification is not confirmed pursuant to this paragraph, Tyler shall correct the cause thereof. In the event Tyler cannot correct the cause thereof, Client may invoke its rights under Article 4 Limited Warranty of Section C - Software License Agreement.
- c) Tyler shall promptly correct any functions of the Tyler Software Products that failed verification.
- d) Verification in accordance with Article 3(a)(i) of this Section C shall be billable to Client at the rate for Training services set forth in the Investment Summary, and shall not exceed a maximum of \$1,000.

### 4. Limited Warranty.

For the duration of the Term, as may be extended by mutual agreement of Tyler and Client, Tyler warrants that:

- a) The Tyler Software Products will substantially conform to the then-current Tyler user manuals and Appendix A - Functional Requirements to the Statement of Work, subject to Article 4(d) of Section C;
- b) The Tyler Software Products will integrate with each other as described in the Proposal; and
- c) Any customizations performed by Tyler, or Client as authorized by Tyler, will not impede Client's ability to upgrade the Tyler Software Products and will be supported as part of the Maintenance Agreement.
- d) In the event of conflict between Appendix A - Functional Requirements to the Statement of Work and the then-current Tyler user manuals, Appendix A - Functional Requirements to the Statement of Work shall control through twenty-four (24) months after Final Acceptance. Final Acceptance is defined in Article 6 of Section D. Thereafter, the then-current version of the Tyler user manuals shall control.
- e) If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the defect in accordance with Exhibit 2 - Support Call Process.
- f) Should Tyler be unable to cure a defect in a Core Module or provide a replacement product, Client shall be entitled to a refund of all Software fees Client would have paid under a self-hosted arrangement, if such defect occurs within two (2) years of the Effective Date of this Agreement. If such defect occurs after two (2) years of the Effective Date of this Agreement, Client shall be entitled to a refund of all Software fees Client would have paid under a self-hosted arrangement, as depreciated on a straight-line basis over a seven (7) year period commencing upon the Effective Date of this Agreement.
- g) Should Tyler be unable to cure a defect in a non-Core Module or provide a replacement product, Client shall be entitled to a refund of the Software fee Client would have paid under a self-hosted arrangement for the defective Tyler Software Product, if such defect occurs within two (2) years of the Effective Date of this Agreement. If such defect occurs after two (2) years of the Effective Date of this Agreement, Client shall be entitled to a refund of Software fee Client would have paid under a self-hosted arrangement for the defective Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing upon the Effective Date of this Agreement.

## **Section D - Professional Services Agreement**

### **1. Services Provided.**

- a) Tyler agrees to perform the Services, and Client agrees to compensate Tyler for its performance of the Services, in accordance with the terms of this Agreement and the Exhibits hereto. In addition, Tyler shall perform all of its obligations with respect to the Services in accordance with the performance standards, timetables, and milestones set forth in this Agreement and the Exhibits hereto. Except as explicitly set forth in this Agreement, Tyler shall furnish all labor, materials, equipment, products, tools, transportation, and supplies required to perform the Services.
- b) As part of the ERP System, Tyler will provide to the Client all of the functionality set forth in Appendix A to Exhibit 4-Statement of Work, for an amount not to exceed the Fees set forth in Section A, provided Client fulfills its obligations set forth in this Agreement, Exhibit 4-Statement of Work, and the Project Plan and Design plan, and subject to any exceptions set forth in this Agreement. Functionality set forth in Appendix A to Exhibit 4 - Statement of Work that cannot be met fully out-of-the-box with the ERP Software may be fulfilled by Tyler with modification to the ERP Software source code, only with written notification to Client and upon subsequent confirmation by Client, not to be unreasonably withheld. Notwithstanding the foregoing, Tyler is not obligated to obtain Client's prior written approval in the event Tyler modifies the source code to the ERP Software for a release generally available to all Tyler clients.
- c) If requested by the Client in writing and agreed by Tyler, with such agreement not to be unreasonably withheld, the parties may substitute the Deliverables, Services, or tasks that are described in Exhibit 4 for new Deliverables, Services, or tasks that are reasonably and substantially equivalent to those Deliverables, Services, or tasks being substituted and any such substitution shall not result in any adjustment to the Fees, unless otherwise mutually agreed by the parties.
- d) All Consulting and Training Services shall be provided in half-day and full-day increments. Upon the completion of each service day, or group of days, Tyler will present a Customer Service Report to Client. Client will sign the report indicating that services were delivered.
- e) Fees do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy,

based on Tyler's usual and customary practices. Tyler's current Business Travel Policy is attached to this Agreement as Exhibit 10. Notwithstanding anything to the contrary in Exhibit 10, Tyler shall utilize lodging designated from time to time by Client, provided such lodging is safe and within a reasonable distance of Client's site, and is made available to Tyler at Client's negotiated rates. All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Copies of receipts shall be provided on an exception basis at no charge. Should all receipts for non-per diem expenses be requested, an administrative fee shall be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available. When applicable, invoices will contain days spent by Tyler, the time period covered by the invoice, and will identify the milestone to which the invoice relates.

**2. Additional Services.** For a period of twenty-four (24) months from the Effective Date of the Agreement, Client may elect to have Tyler perform services that are not specifically described in the Investment Summary Section A hereto but are related to the Services (the "New Services"), in which event Tyler shall perform such New Services on a time-and-materials basis, at a daily rate not to exceed \$1,150 per day for Consulting services and \$1,000 per day for Training services. Tyler shall commence performing the applicable New Services promptly upon receipt of written approval from the Client, subject to availability of Tyler Personnel. New Services performed by Tyler after the expiration of such twenty-four (24) month period will be billed to Client at then-current rates. New Services will be billed as provided, except as otherwise mutually agreed.

### **3. Indemnification.**

a) Intellectual Property Services/Work Product Infringement. Tyler will defend and indemnify Client against any claim that a Tyler Services/Work Product infringes on a patent, copyright or other intellectual property right, including intellectual property rights of a third party, and foreign patents held to be enforceable in the United States, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement that Tyler pre-approves in writing, provided that Client promptly notifies Tyler in writing of any such claim, gives Tyler reasonable cooperation, information, and assistance in connection with it, and consents to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim. Tyler will not be obligated under this section if the infringement results from: (i) Client's use of a previous version of a Tyler Services/Work Product and the claim would have been avoided had the Client used the current version of the Tyler Services/Work Product provided that Tyler has provided Client access to such current version and has provided Client with reasonable notice that use of such version is necessary in order to avoid an infringement claim; (ii) Client's combining the Tyler Services/Work Product with devices or products not provided by Tyler, (iii) use of a Tyler Services/Work Product in applications, business environments or processes for which the Tyler Services/Work Product was not designed or contemplated, and where use of the Tyler Services/Work Product outside such application, environment or business process would not have given rise to the claim, (iv) corrections, modifications, alterations or enhancements that Client made to the Tyler Services/Work Product that were not made at the direction of Tyler; (v) use of the Tyler Services/Work Product by any person or entity other than Client or Client's employees or individuals who were intended to use the Tyler Services/Work Product (e.g., citizens, as in the case of Self-Service for Citizens); or (vi) Client's willful infringement. In the event a Tyler Services/Work Product is finally determined to be infringing and its use by Client is enjoined, Tyler shall, at its election (i) procure for Client the right to continue using the infringing Tyler Services/Work Product; (ii) modify or replace the infringing Tyler Services/Work Product so that it becomes non-infringing; or, should Tyler not be able to accomplish (i) or (ii) after making all commercially reasonable efforts, (iii) terminate Client's license for the infringing Tyler Services/Work Product and refund to Client (i) the Fee paid for the infringing Tyler Services/Work Product in its entirety in the event the infringement occurs within two (2) years of the Effective Date of this Agreement, or (ii) the Fee paid for the infringing Tyler Services/Work Product, as depreciated on a straight-line basis over a seven (7) year period commencing upon the Effective Date of this Agreement, if the infringement occurs after two (2) years of the Effective Date of this Agreement. In the event Client modifies a Tyler Services/Work Product without Tyler's prior written consent and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement, apportionment of damages and expenses shall be determined by the governing court decision. Tyler shall have no liability hereunder if Client continues using the infringing Tyler Services/Work Product after Client becomes aware that such infringing Tyler

Services/Work Product is or is likely to become the subject of a claim hereunder, or if the infringement would have been avoided by Client's use of the most current version of the Tyler Services/Work Product, provided that Tyler has provided Client access to such current version and has provided Client with reasonable notice that use of such version is necessary in order to avoid an infringement claim. The foregoing states Tyler's entire liability and Client's sole and exclusive remedy with respect to the subject matter hereof.

b) Injury, Property, or Other Damage. Subject to the limitation of liability set forth herein, Tyler shall indemnify, defend, at its expense, and hold harmless the Client from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of or relating to bodily injury or death of any person, or to damage to tangible personal or real property, arising out of or relating to the negligence or willful misconduct of Tyler, its officers, agents and employees in their performance under this Agreement, unless such injury or damage is caused by the sole negligence of the Client, its officers, employees, or agents, subject to limitation of liability set forth herein. If Tyler's negligence combines with the Client's negligence to cause injury or damage, the parties agree that liability will be apportioned as determined by a court of competent jurisdiction.

c) Third-Party Services. Subject to the limitation of liability set forth herein, Tyler shall indemnify and defend, at its expense, and hold the Client harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, based on allegations of non-payment, from Tyler's subcontractors arising out of or related to services performed or products provided by them hereunder.

d) Technology. Subject to the limitation of liability set forth herein, Tyler shall indemnify, defend, and hold the Client harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of Tyler's failure to observe and follow any written requirements or specifications issued by manufacturers, vendors, or lessors of equipment, software, and other products furnished by Client for use by Tyler under this Agreement; provided however that (i) Client shall be responsible for obtaining any consents required or necessary for Tyler to use such equipment, software or other products provided by Client; and (ii) unless such requirements or specifications are already in Tyler's possession prior to the Effective Date of this Agreement, Client shall provide Tyler with written copies thereof. Tyler represents that Tyler shall comply with Article 4 of Section G General Terms and Conditions, subject to the limitation of liability set forth.

#### **4. Price of the Services**

The Services set forth in the Statement of Work will be charged to the Client on a not-to-exceed basis subject to the maximum cost provided Client fulfills its obligations set forth in this Agreement and in the Exhibit 4 - Statement of Work, excluding travel and reimbursable expenses, as set forth in Section A. Tyler estimates travel and reimbursable expenses to be \$177,100. Tyler's Project Manager shall provide Client with a weekly report of travel and reimbursable expenses incurred by Tyler, and in the event such expenses exceed \$177,100, then as long as the additional expenses are incurred by Tyler both in accordance with Article 1(e) of Section D Professional Services Agreement and in performance of the services set forth in the Investment Summary, Client shall reimburse Tyler for the additional expenses in accordance with the terms of this Agreement. As used in this Section, "not-to-exceed" means that Tyler will perform its obligations under this Agreement even if it is required to expend more than the number of hours used to determine the cost set forth in Section A and will not charge the Client for such excess hours or associated expenses unless otherwise permitted under this Agreement. In no event will the cost to the Client of the Services set forth in the Statement of Work exceed the cost as set forth in Section A - Investment Summary, unless agreed upon in advance in writing signed by authorized representatives of both parties through the Change Order process outlined in Article 9 of Section D. Services to be provided by Tyler under any duly authorized Change Orders that increase the cost will be provided as set forth in Article 2 of Section D. If material changes in the timing of the Services to be provided by Tyler are agreed upon in a Change Order, the parties will also amend the payment schedule set forth in Article 23 of Section G to reflect the change in the timing of the Services. Tyler may request a Change Order in the event Client fails to fulfill its responsibilities under Exhibit 4 - Statement of Work and/or Project Plan, as may be amended by the Project Managers.



## 5. Acceptance

### 5.1 ERP System Acceptance

#### a) Conditional Acceptance

Upon Tyler's notification to the Client that Tyler has completed the installation of the VPN and that one or more components of the ERP System ("Software Components") are ready for testing, the Client shall begin testing such Software Components in a non-production environment using the test procedures and standards contained in Exhibit 4– Statement of Work and the Project Plan, or such other standards as are mutually agreed upon in writing ("Acceptance Test Procedures"), to determine whether each Software Component meets in all material respects, the Documentation and acceptance criteria set forth in the Agreement, Exhibit 4– Statement of Work, the Project Plan, or such other criteria as are mutually agreed upon in writing ("Pre-Live Testing"). After the Client has completed the Pre-Live Testing for a Software Component (for which the Client shall have up to forty-five (45) days), the Client shall notify Tyler in writing that "Conditional Acceptance" of such Software Component (or the entire ERP System, as the case may be) has occurred. If the Client determines that a Software Component, or the ERP System as a whole, does not perform as provided for in this Agreement, the Client shall deliver to Tyler a report describing the discrepancies. Tyler shall correct the errors or defects and the Client may re-test the Software Components and the ERP System, at the end of which the process described above in this Section shall be repeated. This procedure shall continue until Conditional Acceptance of the Software Components. In the event Tyler disagrees with Client's determination that a Software Component or the ERP System as a whole does not perform as provided for in this Agreement, Tyler will invoke the dispute resolution process set forth herein.

#### b) Final Acceptance

Once Conditional Acceptance of each of the Software Components has occurred, and the Go-Live Date has been reached, the Client shall begin using the ERP System in a production environment. After Client has operated the ERP System for up to ninety (90) consecutive calendar days and there are no reported unresolved Priority 0 or Priority 1 issues, Final Acceptance shall be issued by Client. If the Priority 0 and Priority 1 issues are resolved within the last fifteen (15) days of the ninety (90) day period, Client will have an additional fifteen (15) days of Live Testing. Priority 0 and Priority 1 issues and their resolution procedures are defined in the Support Call Process document attached hereto as Exhibit 2. Failure to materially adhere to these procedures by Tyler may be interpreted by the Client as a "Failure of Testing," as described in 5.1(c) below, at Client's reasonable discretion. The Go-Live Date can be adjusted by the mutual agreement of the Client and Tyler, not to be unreasonably withheld. Go-Live and Final Acceptance shall occur by Phase.

#### c) Failure of Live Testing

If after Live Testing the Software Components or the ERP System, the Software Components or the ERP System do not function in compliance with the Documentation Client shall have the option, upon notice to Tyler to:

- Terminate this entire Agreement for cause in accordance with the provisions of this Agreement in the event of a Priority 0 issue; or
- Accept the ERP System at its then level of performance; or
- Permit the Live Testing to be further extended for such period as mutually agreed upon by the parties in writing; or
- Accept those portions of the ERP System which pass the acceptance criteria and require Tyler to correct the remaining portions, in which event Client shall not be liable for any payments associated with the implementation of such remaining portions until they have been Accepted; or
- Pursue such remedies as may be available to Client at law or in equity.

Final Acceptance of the ERP System by the Client will not release Tyler from complying with the warranties and maintenance requirements set forth herein.

## 5.2 Non-ERP System Deliverable Acceptance

The Client will review, approve and provide written sign-off for all non-ERP System project deliverables (e.g., plans, reports) in the following way:

- a) Tyler Project Manager will review "drafts" of each deliverable with the Client Project Manager or Process Lead as appropriate prior to formal submittal of each deliverable.
- b) The Client resource will identify in writing any required changes, deficiencies, and/or additions necessary, based on the Documentation and Specifications, as applicable, within ten (10) business days of receipt of each draft deliverable. For the purposes of this section, business days do not include Client or Tyler holidays. A period greater than ten (10) business days will be allowed upon mutual agreement of both parties.
- c) Tyler will revise each deliverable based on feedback from the Client and submit a final version of the deliverable for review and sign-off from the Client Project Manager. The Client Project Manager will identify in writing any required changes, deficiencies, and/or additions necessary, based on the Documentation and Statement of Work, as applicable, within five (5) business days of receipt of the final version of each deliverable. A period greater than five (5) business days will be allowed upon mutual agreement of both parties.
- d) Upon acceptance of the final deliverable, the Client Project Manager will sign a Deliverable Acceptance form and shall return it to the Tyler Project Manager. For final deliverables that are rejected by the Client, Tyler must re-perform the services and resubmit the deliverable for review in accordance with the procedures outlined in this section (including the five (5) day review period).
- e) If a dispute arises through this process, it shall be resolved pursuant to the dispute resolution provision contained in this Agreement.
- f) Notification of the lack of action on the acceptance of a deliverable (no signed acceptance or no notification of required changes, deficiencies, and/or additions) will be reported in writing to the Client Project Manager by the Tyler Project Manager at the end of the review period following delivery. The period may then be extended for two (2) business days at the Client Project Manager's request.

## 6. Services Warranty

Tyler warrants that:

- a) Its Services will be performed consistent with generally accepted industry standards;
- b) The ERP System has been configured as agreed to by the Client and Tyler as set forth in the Statement of Work, Exhibit 4.
- c) The scope of functionality identified in Exhibit 4, Appendix A (FR Matrix) that is designated as "Fully Provided 'Out of the Box' ", as certified by Tyler in the Functional Requirements in Appendix A, will be delivered without modifications to source code, bolt-on programs, or work-around, subject to Article 1 of Section D.
- d) For the duration of the Term, as may be extended by mutual agreement of Tyler and Client, Tyler represents and warrants that all Tyler-provided ERP Software configurations, modifications, customizations, data conversions and interfaces shall function properly and in accordance with, the Proposal, Statement of Work, and Tyler's user manuals, separately and as a fully integrated system. The Statement of Work (Exhibit 4) and the Proposal (Exhibit 7) will take precedence over Tyler's user manuals, through twenty-four (24) months from Go-Live. Thereafter, Tyler represents and warrants that (i) all Tyler-provided ERP Software configurations, modifications, customizations, data conversions and interfaces shall function properly and in accordance with Tyler's then-current user manuals, and (ii) when operated together will not cause any material delays, defects, or problems with the ERP Software, in accordance with industry standards, subject to any constraints of Client's or Client-provided environment. In addition, Tyler warrants that the modifications to the ERP Software performed by Tyler hereunder will not detract from or otherwise interfere with the full functionality of the ERP Software as described in this Agreement.

1. Client shall provide Tyler with written notification of an error in the ERP Software. Tyler shall assign the error as either Priority 0, 1, 2, or 3, as described in Exhibit 2. Tyler shall perform in accordance with Exhibit 2.
2. If after making all reasonable efforts, Tyler is unable to correct a Priority 0 or Priority 1 issue as defined in Exhibit 2 ("Issue") in a Core Module, Tyler shall refund to Client (i) all Software fees Client would have paid under a self-hosted arrangement if the Issue occurs within two (2) years of the Effective Date of this Agreement, or (ii) all Software fees Client would have paid under a self-hosted arrangement, as depreciated on a straight-line basis over a seven (7) year period commencing upon the Effective Date of this Agreement, if the Issue occurs after two (2) years from the Effective Date of this Agreement. If Tyler is unable to correct an Issue in a non-Core Module, then Tyler shall refund to Client (i) the Software fee Client would have paid under a self-hosted arrangement associated with the non-Core Module containing the Issue in the event the Issue occurs within two (2) years of the Effective Date of this Agreement, or (ii) the Software fee Client would have paid under a self-hosted arrangement for the non-Core Module containing the Issue, as depreciated on a straight-line basis over a seven (7) year period commencing upon the Effective Date of this Agreement, if the Issue occurs after two (2) years from the Effective Date of this Agreement.
3. For purposes of this Section, "Resolution of an error" shall include but not be limited to the following:
  - a. Provide a workaround for the error that allows the ERP System to support the Client's business operations,
  - b. Provide a system fix or update, or
  - c. Provide a correction to the system setup provisions of this Section and the Statement of Work, within the period specified in this section, as determined by the parties in their reasonable discretion. The parties agree that, for Tyler's failure to provide the deliverable(s), the Client may elect to seek any and all available remedies under this Agreement
  - d. Notwithstanding anything to the contrary contained herein, the failure (or prospective failure) of Tyler to meet a Critical Milestone (defined as the Deliverables described in Appendix A) or otherwise perform its obligations under this Agreement shall be excused if, and to the extent that, such failure is caused by one of the following (an "Excusing Event"): a Force Majeure Event; a breach or Default by the Client under this Agreement or such other failure by the Client to meet its responsibilities hereunder or any related Statement of Work; Client requiring the replacement of Tyler personnel; or the issuance by the Client of directions that are substantially different from the normal and ordinary course of performance of the Services, provided that Tyler, promptly upon receipt of the particular direction, shall have given notice to the Client that it is likely to result in the failure to meet a Critical Milestone or other failure to perform hereunder. If an Excusing Event occurs, Critical Milestone dates in the Project Plan will be adjusted accordingly on an equitable basis.

## 7. Ownership of Work Product

To the extent that the Deliverables provided under this Agreement contain programs provided by third parties or Tyler under one or more software license agreements, the applicable software license agreement shall govern Client's use of such third party or Tyler programs.

All Deliverables provided hereunder, including but not limited to computer software programs, operating instructions, unique design concepts, training materials, or other documentation developed for or specifically relating to the Statement of Work, as well as ideas, know-how, techniques, products and inventions, shall be and remain the property of the third party supplier or Tyler, as appropriate. Tyler grants to Client, subject to the terms of the applicable software license agreement, for the duration of the Term, as may be extended by mutual agreement of Tyler and Client, a nonexclusive, nontransferable, worldwide, fully paid up license to use, solely for its own internal business purposes, such elements of the Deliverables.

Ownership of all documents and records is addressed in Section G General Terms and Conditions, Article 29.

## **8. Change Orders**

If Client requires the performance of Services that are not then being performed, or requires a change to the existing Services, Client's Project Manager shall deliver to Tyler's Project Manager a Change Order specifying the proposed work with sufficient detail to enable Tyler to evaluate it. Tyler, within five (5) business days, or longer as may be mutually agreed between the parties, following the date of receipt of such Change Order, shall provide Client with an evaluation of the Change Order and a written proposal containing the following: a detailed description of the employees required to perform the requested Services; specifications (if applicable); implementation plans, with implementation to commence not later than thirty (30) days after approval thereof, subject to the availability of Tyler personnel, unless otherwise mutually agreed; the timeframe for performance; acceptance criteria; and the estimated price for such performance based on the applicable charges set forth in this Agreement. All Change Orders shall be governed by the terms and conditions of this Agreement, including the daily rates for services, unless mutually agreed in writing otherwise. Within the reasonable timeframe specified in Tyler's proposal, which timeframe shall not be less than ten (10) business days from the Project Manager's receipt of such Change Order (the "Response Period"), Client shall notify Tyler in writing if Client elects to proceed with the Change Order (the "Proceed Order"). If, within the Response Period, the Client gives notice to Tyler not to proceed, or fails to give any notice to Tyler, then the Change Order shall be deemed withdrawn and Tyler shall take no further action with respect to it. Tyler shall promptly commence performing the Services described in the Change Order upon Tyler's receipt of a Proceed Order during the Response Period, subject to the availability of Tyler personnel unless otherwise mutually agreed. Tyler acknowledges that any Change Order that affects the total cost of the project is subject to the Client's policies and that the Response Period must provide adequate time for Client's consideration. Client acknowledges that such Change Orders may affect the implementation schedule and Go-Live Dates, which will be changed by mutual agreement.

All changes and/or extra work shall be performed and paid for in accordance with the following:

- a) Only Client's Chief Financial Officer or Client's Project Manager may authorize extra and/or changed work, and will be approved via the Change Order process described in this Agreement. Tyler expressly recognizes that other Client personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Tyler to secure Client's Chief Financial Officer's or Client's Project Manager's authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Tyler thereafter shall be entitled to no compensation whatsoever for performance of such work.
- b) If Tyler is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, it shall promptly notify Client of the fact. Client shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that Client determines that such work does constitute extra work, it shall provide compensation to Tyler per Article 2 of the Professional Services Agreement. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between Client and Tyler, subject to the Additional Services section of this Agreement. Such Supplemental Agreement shall be executed by Tyler and be approved by the necessary Client officials.
- c) In the event Client determines that such work does not constitute extra work, Tyler shall not be paid extra compensation above that provided herein and if such determination is made by Client, said determination may be appealed in accordance with the dispute resolution section herein.

## **9. Term of the Professional Services.**

This Section D – Professional Services Agreement shall expire on December 31, 2009. If, at that time, Tyler has not completed the Services for which it is responsible under Exhibit 4 (Statement of Work), the term of this Section D shall be extended, at Client's sole option, by such additional time period as may be necessary to complete said Services, with such time period determined by the Client. The following subsections in this Section D will survive the expiration of the term of Section D:

Section 2 – Additional Services

Section 6 – Services Warranty  
Section 7 – Ownership of Work Product  
Section 8 – Change Orders

## **Section E - Maintenance Agreement**

**1. Scope of Agreement.** Client agrees to purchase and Tyler agrees to provide maintenance services for the Tyler Software Products in accordance with the following terms and conditions.

**2. Term of Agreement.** This Maintenance Agreement is effective on installation of the Tyler Software Products and shall remain in force for the duration of the Term, as may be extended by mutual agreement of Tyler and Client.

**3. Additional Charges.** Any maintenance services performed by Tyler for Client which are not covered by this Maintenance Agreement, as set forth in Article 5 of Section E, including materials and expenses, shall be billed to Client at Tyler's current rates in effect for the Maintenance Agreement.

**4. Maintenance Services Terms and Conditions.**

- a) For the duration of the Term, as may be extended by mutual agreement of Tyler and Client, Tyler shall, in a professional, good and workmanlike manner, perform its obligations set forth in the Support Call Process document attached hereto as Exhibit 2 in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products shall be void.
- b) Tyler shall provide telephone support on the Tyler Software Products. Tyler personnel will accept telephone calls during the hours set forth in Exhibit 2 - Support Call Process.
- c) Tyler shall continuously maintain a master set of the Tyler Software Products on appropriate media, a hardcopy printout of source code to the Tyler Software Products, and Tyler user manuals.
- d) Tyler shall maintain personnel appropriately trained to be familiar with the Tyler Software Products in order to provide maintenance services.
- e) Tyler shall provide Client with all releases Tyler makes to the Tyler Software Products that Tyler makes generally available without additional charge to customers under the Tyler Software Product annual Maintenance Agreement. Client acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the current or future Tyler Software Products as they exist without Client modification or unauthorized customization. Tyler agrees that releases will be compatible with reasonably current versions of manufacturers' supported operating systems and relational database management systems software which are currently compatible with the Tyler Software Products.
- f) Tyler will maintain the Tyler Software Products in conformance with applicable state and federal mandates, and regulatory/compliance reporting changes as needed.
- g) Client acknowledges and agrees that Tyler reserves the right to cease supporting a prior release of the Tyler Software Products one (1) year after shipping a new release of the Tyler Software Products.

**5. Limitations and Exclusions.** ASP fees do not include installation or implementation of the Tyler Software Products, onsite support (unless Tyler cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, and support outside Tyler's normal business hours.

**6. Client Responsibilities.** Client shall provide, at no charge to Tyler, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.

## Section F - Third Party Product Agreement

**1. Agreement to License or Sell Third Party Products.** For the price set forth in the Investment Summary, Tyler agrees to license or sell and deliver to Client, and Client agrees to accept from Tyler the Third Party Products set forth in the Investment Summary ("Third Party Products").

**2. License of Third Party Software.**

- a) For the duration of the Term, as may be extended by mutual agreement of Tyler and Client, Tyler shall grant to Client and Client shall accept from Tyler a non-exclusive, nontransferable, non-assignable license to use the Third Party Products and related documentation for Client's internal business purposes, subject to the terms and conditions set forth herein.
- b) The developer of the Third Party Products (each a "Developer", collectively "Developers") shall retain ownership of the Third Party Products.
- c) Client acknowledges and agrees that the Third Party Products and related documentation are proprietary to the Developer and have been developed as trade secrets at the Developer's expense. Client shall use best efforts to keep the Third Party Products and related documentation confidential and to prevent any misuse, unauthorized use, or unauthorized disclosure of the Third Party Products and related documentation by any party.
- d) Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Third Party Products.

**3. Delivery.** Unless otherwise indicated in the Investment Summary, the prices for Third Party Products include costs for shipment while in transit from the Developer or supplier to Client.

**4. Installation and Acceptance.** Unless otherwise noted in the Investment Summary, the VPN installation fee includes installation of the Third Party Products. Upon completion of installation, Client shall obtain from Tyler a certification of completion, or similar document, which shall constitute Client's acceptance of the Third Party Products. Such acceptance shall be final and conclusive except for latent defect, fraud, and a gross mistake as amount to fraud.

**5. Warranties.**

- a) Tyler is authorized by each Developer to grant licenses or sublicenses to the Third Party Products.
- b) Tyler warrants that each Third Party Product shall be new and unused, and if Client fully and faithfully performs each and every obligation required of it under this Third Party Product Agreement, Client's title or license to each Third Party Product shall be free and clear of all liens and encumbrances arising through Tyler.
- c) Client acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the condition or operating characteristics of the Third Party Products. Tyler hereby grants and passes through to Client any warranty adjustments that Tyler may receive from the Developer or supplier of the Third Party Products.

**6. Maintenance.**

- a) Tyler will support Client through resolution of a defect in a Third Party Product with the Developer in the same manner outlined in the support services for Tyler products, and will keep the Client informed as to the progress of defect resolution based on severity level. Client acknowledges that Tyler does not provide maintenance services on hardware.
- b) In the event the Developer charges a fee for future Third Party Software release(s), Client shall be required to pay such fee.

## **Section G- General Terms and Conditions**

**1. Taxes.** The fees set forth in the Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by Client to Tyler. In the event Client possesses a valid direct-pay permit, Client will forward such permit to Tyler on the Effective Date of this Agreement, in accordance with Article 15 of Section G General Terms and Conditions. In such event, Client shall be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, Client shall provide Tyler with Client's tax-exempt certificate.

### **2. Invoice Dispute.**

a) In the event Client believes products or services do not conform to the provisions of this Agreement, Client shall make best efforts to provide written notice to Tyler within fifteen (15) calendar days of receipt of the applicable invoice, but in no event longer than thirty (30) calendar days from invoice receipt. Client is allowed an additional fifteen (15) calendar days to provide written clarification and details. Tyler shall provide a written response to Client that shall include either a justification of the invoice or an adjustment to the invoice. Tyler and Client shall develop a plan to outline the reasonable steps to be taken by Tyler and Client to resolve any issues presented in Client's notice to Tyler. Client may only withhold payment of the amount actually in dispute until Tyler completes its action items outlined in the plan. Notwithstanding the foregoing, if Tyler is unable to complete its actions outlined in the plan because Client has not completed its action items outlined in the plan, Client shall remit full payment of the invoice.

b) Any invoice not disputed as described above shall be deemed accepted by Client. Tyler reserves the right to suspend delivery of all services in the event Client fails to pay an invoice not disputed as described above within sixty (60) calendar days of receipt of invoice.

**3. Force Majeure.** Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

Force majeure shall not be allowed unless:

a) Within five (5) business days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

b) Within ten (10) business days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

Either party shall have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph shall not relieve Client of its responsibility to pay for services and goods provided to Client and expenses incurred on behalf of Client prior to the effective date of termination.

### **4. Indemnification.**

a) Subject to the limitation of liability set forth herein, Tyler shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) arising from Tyler's negligence or willful misconduct. Tyler shall not be liable to the degree or extent of damages, loss, or expense determined to be the fault of the Client.

b) Injury, Property, or Other Damage: Subject to the limitation of liability set forth herein, Tyler shall indemnify, defend, at its expense, and hold harmless the Client from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of or relating to bodily injury or death of any person, or to damage to tangible personal or real property, arising out of or relating to the negligence or willful misconduct of Tyler, its officers, agents and employees in their performance under this Agreement, unless such injury is caused by the sole negligence of the Client, its officers, employees, or agents, subject to limitation of liability set forth herein. If Tyler's negligence combines with the Client's

negligence to cause injury, the parties agree that liability will be apportioned as determined by a court of competent jurisdiction.

c) Third-Party Services: Subject to the limitation of liability set forth herein, Tyler shall indemnify and defend, at its expense, and hold the Client harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, based on allegations of non-payment, from Tyler's subcontractors arising out of or related to services performed or products provided by them hereunder.

d) Technology: Subject to the limitation of liability set forth herein, Tyler shall indemnify, defend, and hold the Client harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of Tyler's failure to observe and follow any written requirements or specifications issued by manufacturers, vendors, or lessors of equipment, software, and other products furnished by Client for use by Tyler under this Agreement; provided however that (i) Client shall be responsible for obtaining any consents required or necessary for Tyler to use such equipment, software or other products provided by Client; and (ii) unless such requirements or specifications are already in Tyler's possession prior to the Effective Date of this Agreement, Client shall provide Tyler with written copies thereof. Tyler represents that Tyler shall comply with Article 3 of Section D - the Professional Services Agreement subject to the limitation of liability set forth in this Section.

e) Limitation on Liability. In no event shall either party be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Tyler Software Products. Tyler's liability for damages and expenses arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to two (2) times the ASP fees during the twelve (12) month period prior to the claim. Such ASP fees reflect and are set in reliance upon this limitation of liability.

f) Infringement: Subject to the limitation of liability set forth herein, in the event that the Tyler Software Products/Work Product are determined to infringe upon any existing patent, copyright or trademark rights held by any other person or entity, Tyler shall defend and hold harmless Client and its officers, agents and employees from any claim or proceedings brought against Client and from any cost damages and expenses which arise as a result of any claim that is based on an assertion that Client's use of the Tyler Software Products/ Work Product under this Agreement constitutes an infringement of any patent, copyright or trademark provided that Client notifies Tyler promptly of any such claim or proceeding and gives Tyler full and complete authority, information and assistance to defend such claim or proceeding and further provided that Tyler shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that Tyler shall keep Client informed of such defense. In the event that the Tyler Software Products/ Work Product are finally held to be infringing and its use by Client is enjoined, Tyler shall, at its election; (1) procure for Client the right to continue use of the Tyler Software Products/ Work Product; (2) modify or replace the Tyler Software Products/ Work Product so that it becomes non- infringing; or (3) if procurement of the right to use or modification or replacement can not be completed by Tyler, terminate the license for the infringing Tyler Software Product/Work Product (as needed), and upon termination, refund i) the Software fee Client would have paid under a self-hosted arrangement for the infringing Tyler Software Product/Work Product(s), as applicable, if such infringement claim arises within two (2) years of the Effective Date of this Agreement, or ii) if such infringement claim arises after two (2) years from the Effective Date of this Agreement, the Software fee Client would have paid under a self-hosted arrangement for the infringing Tyler Software Product/Work Product, as applicable, each as depreciated on a straight line basis over a period of seven (7) years with such depreciation to commence on the Effective Date of this Agreement. If Client modified the Tyler Software Products/ Work Product in any manner without the prior written consent of Tyler and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement, Client will share proportionately in the cost of the defense and damages. In the event Tyler modifies the Tyler Software Products/ Work Product so that it becomes non-infringing ("Modified Software Products/ Work Product") and Client does not have a current Maintenance Agreement with Tyler, Tyler shall provide the Modified Software Products/ Work Product to Client at no charge. Tyler shall have no liability hereunder if the infringement would have been avoided by Client's use of either i) the most current revision of the Tyler Software Products/ Work Product or ii) the Modified Software Products/ Work Product. The



foregoing states Tyler's entire liability and Client's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the Tyler Software Products/Work Product, any part thereof, or use thereof.

**5. Disclaimer.** THE RIGHTS, REMEDIES, AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED BY TYLER.

**6. Dispute Resolution.**

a) In the event of any dispute or disagreement between the parties which does not require immediate legal relief, whether with respect to the interpretation of any provision of the Agreement, or with respect to the performance of either party hereto, each of the parties will have their respective Project Managers meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to a meeting of the Project Executive Committee and Tyler's Regional Implementation Manager. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to the President level of Tyler and the Deputy County Administrator - Finance for the Client. If Tyler and Client are unable to reach a mutually agreeable resolution after such meeting, Client's County Administrator will make a final determination. If Tyler does not agree with such determination, Tyler may institute legal action in a court of competent jurisdiction in accordance with the laws and jurisdiction of the State of California and the County of Contra Costa.

b) Notwithstanding anything to the contrary contained herein, and even if any problem or other dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Tyler interrupt or suspend or terminate the provision of Services to Client or perform any action that prevents, impedes, or reduces in any way the provision of Services or Client's ability to conduct its activities, unless: (i) authority to do so is granted by Client or conferred by a court of competent jurisdiction; or (ii) the Term of this Agreement has been terminated; or (iii) Client has failed to pay Tyler undisputed invoices that are past due in excess of sixty (60) days after receiving notice from Tyler of such delinquency.

**7. No Intended Third Party Beneficiaries.**

a) This Agreement is entered into solely for the benefit of Tyler and Client. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

b) Nothing in this Agreement shall be construed to impose any liability upon Government persons, firms, associations, or corporations engaged by Tyler as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Tyler of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Tyler, its servants, agents or independent contractors.

**8. Governing Law.**

a) This Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

b) Tyler shall comply with all applicable Federal, State, County and local laws, ordinances, rules and regulations in the performance of Services under this Agreement, including the procurement of permits and certificates where required, and including, but not limited to, laws related to Worker's Compensation, Occupational Safety and Health and the Environment.

**9. Entire Agreement.** This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not

rely on any information not explicitly set forth in this Agreement.

**10. Severability.** If any term or provision of this Agreement or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**11. Modification.** This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

**12. Cancellation or Termination.**

a) In the event of cancellation or termination of this Agreement, Client will make payment to Tyler for all Deliverables, Services and expenses delivered or incurred prior to the termination or cancellation of this Agreement.

b) Tyler may terminate this Agreement for material breach by Client provided Client has not cured said breach within thirty (30) days after written notification of breach by Tyler. Tyler must notify Client in writing in the event Tyler believes Client failed to cure said breach within such thirty (30) day period. In the event Client believes in good faith it has cured said breach, the parties will utilize the dispute resolution process prior to Tyler terminating this Agreement in accordance with this Article 12(b).

c) Client may terminate this Agreement for material breach by Tyler provided Tyler has not cured said breach within thirty (30) days after written notification of breach by Client. If Client terminates this Agreement in accordance with this subparagraph (c), then Client will only be liable to pay for Services satisfactorily rendered, and Deliverables and expenses delivered or incurred, prior to termination, as determined through the dispute resolution process referenced herein.

d) Client may terminate this agreement subject to Article 5.1(c) of Section D, "Failure of Testing," immediately upon that Article 5.1(c) becoming applicable.

**13. Approval of Governing Body.** Client represents and warrants to Tyler that this Agreement has been approved by its governing body and is subject to the limitations and conditions enumerated in Article 21 of this Section G.

**14. No Assignment.** Neither the Client nor Tyler may assign its rights and responsibilities under this Agreement without the other party's prior written permission, not to be unreasonably withheld, except that Tyler may, without the prior express written consent of the Client, assign this Agreement in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of Tyler's assets.

**15. Notices.** All notices or communications required or permitted as a part of this Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

a) Actually received,

b) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,

c) Upon receipt by sender of proof of email delivery, or

d) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Tyler Technologies, Inc.  
370 U.S. Route 1

Falmouth, ME 04105  
 Attention: Chief Financial Office

Client:  
 City of Richmond  
 1401 Marina Way South  
 Richmond, CA 94804  
 Attention: James Richman, Project Manager

**16. Independent Contractor.** This is not an Agreement of partnership or employment of Tyler or any of Tyler's employees by Client. Tyler is an independent contractor for all purposes under this Agreement.

**17. Insurance.** Prior to performing services under this Agreement, Tyler shall provide Client with certificates of insurance evidencing the following insurance coverage:

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000.00 each accident
General Liability	\$2,000,000.00 aggregate \$1,000,000.00 each occurrence
Automobile Liability	\$1,000,000.00 combined single limit

Certificates of insurance shall be placed on file with the City's Purchasing Division prior to beginning performance.

**18. Confidentiality.** Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement for a period of two (2) years. This obligation of confidentiality shall not apply to information that:

- a) At the time of the disclosure is in the public domain;
- b) After disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party;
- c) A party can establish by reasonable proof was in that party's possession at the time of disclosure;
- d) A party receives from a third party who has a right to disclose it to that party; or
- e) Is subject to Freedom of Information Act requests, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law, provided, however, that that receiving party shall give prompt notice of the service of process or other documentation that underlies such requirement and use its best efforts to assist the disclosing party if the disclosing party wishes to obtain a protective order or otherwise protect the confidentiality of such confidential information. The disclosing party reserves the right to obtain a protective order or otherwise protect the confidentiality of its confidential information.
- f) Client agrees that the Tyler Software Products and Third Party Software, any modifications and enhancements and any related interfaces are proprietary to Tyler or the Developer and have been developed as a trade secret at Tyler's or the Developer's expense. Client agrees to keep the Tyler Software Products and Third Party Software confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the Tyler Software Products and Third Party Software or accompanying documentation, to the extent permitted by California law. In the event that Client is required under California law to make any

disclosures that relate to Tyler's or a Developer's proprietary rights in Tyler's or the Developer's software products, modifications and enhancements and any related interfaces, Client agrees to notify Tyler immediately after becoming aware of such request and give Tyler or the Developer the opportunity to challenge same.

**19. Nondiscrimination.** Tyler shall not discriminate against any person employed or applying for employment concerning the performance of Tyler's responsibilities under this Agreement. This discrimination prohibition shall apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

**20. Subcontractors.** Tyler shall not subcontract any services under this Agreement without Client's prior written permission, not to be unreasonably withheld.

**21. Non-appropriation.** If Client should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, Client may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler. Upon termination, Client shall remit payment for all products and services delivered to Client and all expenses incurred by Tyler prior to Tyler's receipt of the termination notice.

**22. Risk of Loss.** Delivery shall be F.O.B. destination.

**23. Payment Terms.**

a) Client will pay \$134,722.50 upon execution of this Agreement:

25% of the Software fees (\$4,125)

50% of the Change Management Program fees (\$19,800)

50% of the MCG Consulting Services fees (\$110,797.50)

b) Client will pay \$37,981.16 upon delivery of the Tyler Software Products:

50% of the Software fees (\$8,250)

100% of the ESM Professional Purchasing Solution (\$14,865.58)

100% of the ESM Professional Sourcing Solution (\$14,865.58)

c) Client will pay upon installation of the Tyler Software Products:

100% of the year 1 Tyler CM MUNIS Maintenance fee (\$3,282.22)

d) Client will pay upon Initiation ("Initiation" is defined as the first day of training in a particular phase) of Phase III, not to exceed July 1, 2008:

25% of the Software fees (\$4,125)

e) Client will pay the balance of the Change Management Program fees (\$19,800) upon completion of such services.

f) Client will pay the balance of the MCG Consulting Services fees (\$110,797.50) upon the earlier of ninety (90) days from Phase III Go-Live Date or January 1, 2009, provided Tyler has resolved all Priority 0 or Priority 1 issues reported during or prior to such ninety (90) day period (Priority 0 and Priority 1 issues and their resolution procedures are defined in the Support Call Process document attached hereto as Exhibit 2).

g) The quarterly Phase I Maintenance (ASP) fees of \$69,819.90 are due and payable commencing upon January 1, 2008 and on the first day of each quarter (January 1, April 1, July 1, October 1) of the Phase I term.

- h) The quarterly Phase II Maintenance (ASP) fees of \$33,427.10 are due and payable commencing upon April 1, 2008 and on the first day of each quarter (January 1, April 1, July 1, October 1) of the Phase II term.
- i) The quarterly Phase III Maintenance (ASP) fees of \$29,642 are due and payable commencing upon July 1, 2008 and on the first day of each quarter (January 1, April 1, July 1, October 1) of the Phase III term.
- j) The Investment Summary includes travel expenses estimated at \$177,100 and incurred in accordance with Tyler's then-current Business Travel Policy. Tyler's current Business Travel Policy is attached hereto as Exhibit 10.
- k) Services, plus expenses, are billed if and as provided/incurred and are due and payable thirty (30) days after receipt of invoice.
- l) Records. Tyler, when applicable, will present documented, precise records, in the form of Customer Service Reports, of time and/or money expended under this Agreement.
- m) Right To Withhold. If Services under this Agreement are not performed in accordance with the terms hereof, Client will have the right to withhold the Fees associated with such Services until the matter is resolved in accordance with the dispute resolution process set forth herein. The Client will immediately notify Tyler in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Client if and while Tyler gives satisfactory assurance to the Client that such claims will be paid by Tyler or its insurance carrier, if applicable, in the event that such contest is not successful.

#### **24. Deliverables.**

- a) Tyler will deliver an initial Project Plan to Client within forty five (45) days of the Effective Date of this Agreement.
- b) Tyler will deliver a Design Document to Client within ninety (90) days of the Effective Date of this Agreement.

**25. Liquidated Damages.** Tyler acknowledges that untimely submission of the Project Plan and Design Document, and untimely achievement of the Go-Live Dates (collectively known as "Critical Deliverables") are critical components of this project and will cause actual economic damage to the Client in amounts that Tyler acknowledges would be difficult to estimate or prove. The Client also acknowledges that untimely submission or achievement can be caused by either an act of God or for reasons outside of Tyler's control but under the control of the Client.

Provided an Excusing Event has not occurred, in the event (i) Tyler fails to deliver an initial Project Plan to Client within forty five (45) days of the Effective Date of this Agreement; (ii) Tyler fails to deliver a Design Document to Client within ninety (90) days of the Effective Date of this Agreement; or (iii) the Tyler Software Products are not available for use in live production by the date set forth in the mutually agreed Project Plan; due to Tyler's action or inaction, Tyler shall remit to Client \$750 per business day until the Critical Deliverable is delivered or achieved.

#### **26. Key Personnel** **Project Manager**

Tyler represents that Tyler's initial Project Manager, and any replacement Project Manager, shall be an experienced manager who shall be knowledgeable as to Client's activities related to the ERP System and shall direct the efforts in fulfilling Tyler's obligations under this Agreement. Tyler will make best efforts to keep the same Project Manager for the duration of Client's project. Tyler will make best efforts not to reassign its initial Project Manager without Client's prior written consent, which consent shall not be unreasonably withheld and

shall be promptly provided, during the Term of this Agreement or any permitted replacement Project Manager during the period beginning on the date such individual commences performing the Services hereunder, to other functions if doing so would adversely affect the Services.

Tyler shall make best efforts not to reassign any individual designated as Key Personnel during the period beginning on the date such individual commences performing the Services hereunder to other functions if doing so would adversely affect the Services. In the event any one of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Tyler and therefore becomes unable to perform the functions or responsibilities assigned to him or her, Tyler shall (i) make best efforts within forty-eight (48) hours, to temporarily replace such person with another person properly qualified to perform the functions of such replaced person, and (ii) within one (1) month, permanently replace such replaced person with another person approved by Client in its reasonable discretion and properly qualified to perform the functions of such replaced person.

### **Qualified Personnel**

Tyler agrees that each Tyler employee performing Services in connection with this Agreement (each an "Employee", collectively "Employees") shall have the qualifications and shall fulfill the requirements set forth in this Agreement and as reasonably specified by Client and agreed by Tyler from time to time. For each Employee, to the extent permitted by, and in accordance with, applicable law, Tyler shall conduct routine reference checks (e.g., work experience). Tyler agrees that each Employee will be properly trained to perform the Services and is oriented with respect to the written policies and procedures of Client provided to Tyler prior to commencement of the Services. Client shall not be required to pay any Fees relating to any Employee prior to such time as the training and orientation referenced in the preceding sentence with respect to such Employee is completed and such Employee commences performing the Services hereunder.

### **Minimum Proficiency Levels**

Employees, including the Key Personnel, shall have experience, training, and expertise at least equal to prevalent industry standards applicable to such personnel for their responsibilities in the business in which Tyler is engaged and shall have sufficient knowledge of the relevant aspects of the Services and the Deliverables to enable them to properly perform the duties and responsibilities assigned to them in connection with this Agreement. Subject to the terms and conditions herein, in the event of a breach by Tyler of its obligations in respect of the minimum proficiency levels of Employees, Tyler shall promptly take one or the other (as mutually agreed by the parties) of the following actions: (i) remove and replace any Employee after receipt of notice from Client that such Employee does not meet the required minimum proficiency levels; or (ii) take appropriate action in respect of any such Employee, including, but not limited to, training to bring such Employee's proficiency levels in line with such required minimums.

### **Replacement of Personnel**

Client, on a reasonable basis, shall have the right to require the removal and replacement of any Employee, including the Project Manager and the Key Personnel, at any time during the Term. Client shall notify Tyler in writing in the event Client requires such action. Tyler shall accomplish any such removal within fourteen (14) calendar days after receipt of notice from Client and shall promptly replace such person with another person, reasonably acceptable to Client, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

If Tyler replaces Key Personnel, the new Key Personnel shall, at no cost to Client, devote sufficient time to becoming familiar with the project prior to performing Services. In the event Client makes a reasonable determination that such new Key Personnel is not sufficiently familiar with the project, Tyler shall devote such additional time as is necessary to familiarize the new Key Personnel with the project.

### **Status Reports**

Once every two (2) weeks, the Tyler Project Manager shall deliver to the Client's Project Manager a "status report" summarizing the progress of the Services under the Statement of Work during the preceding two (2)

weeks, including problems that have occurred that could delay Tyler's performance of anticipated activities and expected problems during the upcoming month. At a minimum, the status report shall include: (i) the current status of progress under the Statement of Work; (ii) all actual delays; (iii) all anticipated delays; and (iv) such other information as the Client may reasonably request from time to time. The Client shall have the right to assume that Tyler does not know of any problems, difficulties, or issues that may have an adverse impact on the applicable Services (whether from a timing, cost, or performance standpoint) unless Tyler specifically identifies such problems, difficulties, or issues in its written status reports.

27. **Live Date.** Provided Client (i) fulfills its obligations set forth in this Agreement, and in the Exhibit 4 - Statement of Work, and in the Project Plan and Design Plan, and (ii) executes this Agreement by September 28, 2007 the following Tyler Software Products will be ready for use in live production by the dates set forth below:

Phase I            Target Live Date: July 1, 2008

Accounting, General Ledger, Budgeting, Accounts Payable  
Purchase Orders  
Accounts Receivable  
Treasury Management  
Performance Based Budgeting  
Requisitions  
General Billing  
Project & Grant Accounting  
MUNIS Office  
MUNIS Crystal Reports  
Tyler Forms Processing  
Tyler GoDocs

Phase II            Target Live Date: October 1, 2008

Work Orders, Fleet & Facilities  
Bid Management  
Contract Management  
Business Self Service  
Fixed Assets  
Inventory  
GASB 34 Report Writer

Phase III            Target Live Date: January 1, 2009

HR Management  
Payroll  
Applicant Tracking  
Tyler Content Management  
Employee Self Service

28. **Non-collusion.** Tyler agrees that it has not employed or retained any company or person, other than a bona fide employee working solely for Tyler, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Tyler, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, Client shall have the right to terminate this Agreement, subject to Article 12 of Section G.

29. **Documents and Printouts.** All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Agreement, excluding the Tyler Software Products, Third Party Software, Documentation, and Specifications, shall become the property of the Client and shall

be turned over to it at the termination of this Agreement. The above described materials shall not be used by Tyler or by any other person or entity except upon the written permission of the Client. The items described in this paragraph do not include any pre-existing materials owned by Tyler.

**30. Waivers and Amendments.** No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

**31. Partial Termination.** The performance of work under this Agreement may be terminated by the Client in part, whenever the Client shall deem such termination advisable. This partial termination shall be effected by delivering to Tyler written notice at least sixty (60) days in advance a Notice of Partial Termination specifying the extent to which the term and/or duties under this Agreement are terminated and the date upon which such termination becomes effective. Tyler shall be entitled to receive payment for products, services, and expenses provided or incurred to the date of termination, including payment for the period of the sixty (60) day notice.

**32. Hosting.** Tyler shall host the ERP System at Tyler's data center for the duration of the Term, as may be extended by mutual agreement of Tyler and Client. Such hosting will be in accordance with the Service Level Agreement attached hereto as Exhibit 5.

**33. Self-Host.** Client may terminate this Agreement three (3) or five (5) years from the Effective Date of this Agreement to self-host the Tyler Software Products. In such event, Tyler and Client will enter into a mutually agreed Amendment to this Agreement, and Client will pay the then-current Software fees, annual Maintenance fees, and Third Party Product fees, provided, however, that the then-current Software fees will be reduced by 10% per twelve (12) month period this Agreement is in force, not to exceed a maximum reduction of 50%.



## Exhibit 1

## Verification Test

The verification tests detailed below will be conducted following installation and prior to implementation. Only the tests corresponding to the software products licensed by Client will be conducted. The tests are performed using the MUNIS Verification Database. This database contains general information applicable to all customers. Given this, the verification tests will not validate site specific functionality. Rather, the tests will prove the MUNIS system is installed and performs base line functions. Client-specific functionality will be reviewed during the implementation phase when site-specific data will be built and applied against desired functionality.

Each phase contains three sections: table views, reports, and process. The phases are intended to be completed in 4 hours. Finally, each phase has a space where Client will be asked to initial, certifying the verification has been accepted.

<b>FINANCIALS:</b>
--------------------

**Phase 1**

1. View General Ledger Master Table
2. View Budget Master Table
3. View Vendor Master Table
4. View General ledger Account Inquiry – perform drill down
5. Find PO's/Reqs in PO Inquiry
6. View Inventory Master
7. View Fixed Assets Master
8. View Work Order Master

**Phase 2**

- 9 Enter a requisition
- 10 Approve the requisition
- 11 Convert to a PO
- 12 Post the PO
- 13 Enter an invoice against the requisition
- 14 Post the invoice
- 15 Select items to be paid report
- 16 Print Checks (on blank paper without forms)
- 17 Find journals in Journal Inquiry using date find

**Phase 3**

18. Reports:
  - b. GL Trial Balance
  - c. YTD Budget Report
  - d. Vendor Invoice List
  - e. Purchase Orders by GL Account (Select Open POs)
  - f. Inventory List by Location
  - g. Fixed Asset List by Location

<b>PAYROLL/HR:</b>
--------------------

**Phase 1**

1. View Deduction master
2. View Pay Type Master
3. View Employee Master

4. View Employee Detail History – Perform Drill Down
5. View Position Table
6. View Terminated Employee Table

**Phase 2**

7. Add new Employee
8. Build Job Pay Records
9. Start a new PR
10. Generate employee records
11. Enter exceptions
12. Print Final Proof
13. Update Employee files
14. Print checks (on blank paper without forms)

**Phase 3**

15. Reports
  - b. Employee Detail
  - c. Employee Accrual
  - d. Detail Check History Report
  - e. Payroll Register

**UTILITY BILLING:****Phase 1**

1. View Charge Code file with Rate Tables
2. View Account Master – Perform Drill Down
3. View Customer File
4. View Bill Inquiry
5. View Account Inquiry

**Phase 2**

6. Add new account
7. Create water service record
8. Start a new bill run
  - a. View Charges File Maintenance
9. Enter meter reading manually
10. Run Charges Proof Register
11. Generate AR
12. Print Bills (on blank paper without forms)
13. Make a payment to a bill

**Phase 3**

14. Reports:
  - a. Consumption Inquiry/Report
  - b. UB Aging Report
  - c. Charge/Payment History
  - d. Detail Receivables Register

**OTHER REVENUE (TAX/EXCISE/GENERAL BILLING):****Phase 1**

1. View Customer File
2. View Parcel File
3. View Charge Code File

4. View Tax Year Parameter
5. View Motor Vehicle Master File
6. View Bill Inquiry
7. View Lien File
8. View Receipt Inquiry
9. View Activity Totals Inquiry/Report

**Phase 2**

10. Create a new General Billing Customer
11. Add a GB Invoice
12. Make a payment against the GB
13. Make a payment against a Tax/Excise/Personal Property/Ect. Bill
14. Print Payments Proof
15. Post Payments
16. Use Receipt Inquiry to find the payment

**Phase 3**

17. Reports
  - a. Summary Receivables
  - b. Detail Receivables
  - c. Posted Payments Report

**PERMITS & CODE ENFORCEMENT:****Phase 1**

1. View Permit Type f/m
2. View Project Type f/m
  - a. Find a Project type with the 4 “bottom buttons” checked which indicates there is data. If none, build some defaults at the bottom.
  - b. Drill down using the bottom buttons.
3. View Inspection Type f/m
  - a. Drill down into Inspectors and Checklist at bottom
4. View Violation Code f/m
  - a. Drill down into Enforcement Steps
5. View Property Master
  - a. Perform drill down using the Side Menu options.

**Phase 2**

6. Add a new Property.
  - a. Set up default Restrictions, Hazards, and Violations at the bottom.
7. Add a new Application.
  - a. Use a Project/Act that has the four defaults set in Project Type f/m (One each is fine.)
  - b. Make sure the App automatically set up the default Permits, Prerequisites, Inspections, and Dept/Board Reviews by choosing the options to view.
  - c. Choose the Collect side menu option. Make sure you can accept payments for the Fees and the system links to the A/R module properly.

**Phase 3**

8. Reports
  - a. Applications Status Report
  - b. Inspections History Report
  - c. Violations Report
  - d. Contractors Report

## e. Dept/Board Review Report

**PARKING TICKETS:****Phase 1**

1. View Parking Ticket (PT) Parameter File
2. View PT Charge Codes
3. View Owner Maintenance

**Phase 2**

1. PT Entry
2. PT Inquiry
3. Review Export/Import of data
4. Review Late Processing

**Phase 3**

1. Issue by location report
2. Violations by issue date report
3. Issuer productivity report

**BUSINESS LICENSES:****Phase 1**

1. View Customer File
2. View Description Codes
3. View BL Charge Codes
4. View BL Master File
5. View BL Late Payment process
6. View Bill Inquiry
7. View Business Master Report
8. View Business Location Report

**ANIMAL LICENSES:****Phase 1**

1. View Animal Type File
2. View Customer File
3. View AL Master File
4. View License Detail Report
5. View License History Report
6. View Tag Report

**PROJECT ACCOUNTING:**

(Performed with General Ledger)

**Phase 1**

1. View Project Master Table
2. View GL Master with Project Code

### 3. View Project Budget Report

#### **MUNIS OFFICE:**

##### **Phase 1**

1. Export from GL Account Inquiry into Excel
2. Export from GL Account Inquiry in Word

#### **MUNIS CRYSTAL REPORTS:**

##### **Phase 1**

1. Select ZZ – Verification Report from the System Admin section of the MUNIS Crystal Reports Library. This will display results from the MUNIS live database so no configuration needs to be done to the Crystal setup to run this report.

#### **CONTRACT MANAGEMENT:**

##### **Phase 1**

1. View Contract Master File
2. Enter a Requisition against a contract
3. View Contract Master to highlight changes

#### **TREASURY MANAGEMENT:**

##### **Phase 1**

1. View a Recurring Cash Flow record for current FY in Recurring Cash Flow F/M.
2. Generate Cash Flow File Maintenance.
3. Generate a journal entry on the Cash Flow File Maintenance record created.
4. Go to General Journal Entry/Proof, find journal that was generated and post it.

#### **MUNIS SELF SERVICE – EMPLOYEES:**

##### **Phase 1**

1. View and update the General Administration Settings
2. Add a new user under Users

##### **Phase 2**

3. View and update Application Administration under Employee Admin
4. View and add a web link or document under Document Administration

## Exhibit 2

## Support Call Process

**Tyler Technologies Technical Support Department**

**Goal:** To provide an effective support mechanism that will guarantee timely resolution to calls, resulting in high-level customer satisfaction.

## HOW TO CONTACT US

Call the Tyler toll free number (800-772-2260) or e-mail support through the Tyler Website ([www.tyler-munis.com](http://www.tyler-munis.com)).

## HOW SUPPORT IS ORGANIZED

The Tyler Technologies Technical Support department is divided into 8 teams; Financials, Payroll/HR, Tax/Other Revenue and Collections, Utility Billing and Collections, OS/DBA (Operating System and Database Administration), Crystal Reports, Tyler Education Management and Tyler Forms.

These “product specific” teams allow support staff to focus on a group of products or services. A team of specialists assigned to each team will handle your calls quickly and accurately.

Each team consists of a Tyler Support Product Manager, Support Analysts and Technical Support Specialists. The Support Product Manager is responsible for the day-to-day operations of the team and ensuring we provide exceptional technical support to our clients. The Support Analysts are responsible for assisting the team with client’s issues and provide on-going training for the team. Technical Support Specialists are responsible for diagnosing and resolving customer issues in a timely and courteous manner.

**Standard support hours**

Financials	8 AM-8 PM EST (Monday-Friday)
Payroll/HR	8 AM-8 PM EST (Monday-Friday)
Tax/Other Revenue and Collections	8 AM-6 PM EST (Monday-Friday)
Utility Billing and Collections	8 AM-8 PM EST (Monday-Friday)
OS/DBA	8 AM-6 PM EST (Monday-Friday)
Crystal Reports	8 AM-5 PM EST (Monday-Friday)
Tyler Education Management	8 AM-4:30 PM EST (Monday-Friday)
Tyler Forms	8 AM-4:30 PM EST (Monday-Friday)

Support is not available on the following holidays:

- New Year’s Day (January 1)
- Memorial Day (observed)

- Independence Day (July 4)
- Labor Day (observed)
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Day (December 25)

## FOCUS ON INCOMING RATE

When you call Technical Support your call will be answered incoming by a support technician, or you will be transferred into the support voice mail. Our goal is to capture 75% of our daily calls incoming, which means you will often be able to start working with a support specialist immediately when you call.

## LEAVING MESSAGES FOR SUPPORT

When you leave a message on the support voice mail, make sure the following information is in the message:

- Your full name (first name, last name) and the site you are calling for/from
- A phone number where you can be reached
- The details of the issue or question you have (i.e.: program, process, error message)
- The priority of the issue (0, 1, 2, or 3)
- When you will be available for a return call from support (most times support will call back within an hour of your message)

## E-MAIL SUPPORT

Some questions can be handled very effectively by e-mail. Once you have registered as a user on the Tyler Website ([www.tyler-munis.com](http://www.tyler-munis.com)) there is an option under “Customer Tools” that allows you to ask questions or report issues to support.

You will be asked for some required information such as Customer Number, Customer Name, Contact Name, Phone Number, and E-mail Address. In addition you need to select the Module, Priority, and Tyler Version from drop down menus. There is unlimited text for you to describe the question or problem, plus the ability to attach files or screenshots that you think would be helpful to support.

The appropriate team will review your e-mail and respond back within two business days.

## CUSTOMER RELATIONSHIP MANAGEMENT SYSTEM

Every call or e-mail from you is logged into our customer relationship management system and given a unique call number. This system tracks the history of each incident, including the person calling, time of the call, priority of the call, description of the problem, support recommendations, client feedback, and resolution.

## CALL NUMBERS

Support's goal is to return client's calls as soon as possible. If you are not available when we call back we will leave a message with the open call number on your voice mail or with a person in your office. Then when you call back you can reference this call number so you do not have to re-explain the issue.

An open call number is also given to you once an initial contact has been made with support and it is determined that the issue will not be resolved during the initial call. The open call number lets you easily track and reference specific open issues with support.

### Development Work Tickets

A Work Ticket is created when a program fix is escalated to Development. A unique number is used for each issue to track the status of every program fix.

Priority 0 work tickets are fixed immediately and distributed to the clients who are impacted.

Priority 1 work tickets are fixed within 30 days of the date the call came into Technical Support.

Priority 2 work tickets are fixed within 60 days of the date the issue was brought to Development for assistance.

Priority 3 work tickets are worked on as time permits and have no time constraint or deadline.

Priority 1, 2 and 3 work tickets are included in the next Tyler release once they are corrected and quality assured.

## CALL PRIORITIES

A call escalation system is in place where, each day, Support Analysts and Product Support Managers, review open calls in their focus area to monitor progress.

Each call logged is given a priority (0, 1, 2, and 3) according to the client's needs/deadlines. The goal of this structure is to clearly understand the importance of the issue and assign the priority for closure. The client is responsible for setting the priority of the call. Tyler support keeps track of responsiveness to priority 0, 1 and 2 calls each week. This measurement allows us to better evaluate overall customer satisfaction.

Priority 0 call – issue is critical to the client, the Tyler Software Product or process is down.

Priority 1 call – issue is severe, but there is a work around the client can use.

Priority 2 call – issue is a non-severe support call for the client.

Priority 3 call – issue is a low priority for the client and they would like to work with support as time permits.

Open Call Priority	Goal – maximum number of days a support call is open	Goal – Support managers and analysts review open calls	Goal – maximum number of days a development work ticket is open
0	Less than a day	Daily	Immediate action
1	10 Days or less	Every other day	30 Days from support call
2	30 Days or less	Weekly	60 Days from work



			ticket
3	60 Days of less	Weekly	N/A

## FOLLOWING UP ON OPEN CALLS

Some of your issues will not be resolved during the first call with a support technician. If the call remains open, the technician will give you an open call number to reference.

If you want to follow up on a call you have open with a support technician, call the appropriate support team and reference the call # to the technician who answers or leave this information in your message. Referencing the open call number allows anyone in support to quickly follow up on the issue for you. You can also e-mail support through the Tyler Website ([www.tyler-munis.com](http://www.tyler-munis.com)) and reference the open call number in the support call number field.

## ESCALATING A SUPPORT CALL

If you feel you are not getting the service you need, call the appropriate Product Manager and tell them the open call number for which you need assistance. The Product Manager will follow up on your open issue and determine what needs to be done to meet your needs.

### Technical Support Product Managers:

John Carolan	(X4196)	Financials Team
Sonja Johnson	(X4157)	Payroll Team
Steve Jones	(X4255)	Tax and Other Revenue Team
Laurie Littlejohn	(X4392)	Utility Billing Team
Greg Mehlhorn	(X4391)	OS/DBA Team
Michele Violette	(X4381)	Crystal Team
Greg Mehlhorn	(X4391)	Tyler Forms Team
Tracy Silva	(X4433)	Tyler Education Management

If you are unable to reach the Product Manager, you should call CJ McCarron, Vice President of Technical Support at extension 4124.

## REMOTE SUPPORT TOOL

There will be support calls that require further analysis of your database or setup to diagnose a problem or assist you with a question. GoToAssist® is used to share your desktop via the Internet and provide you with virtual on-site support. The GoToAssist tool from Citrix ([www.citrix.com](http://www.citrix.com)) provides a highly secure connection with 128-bit, end-to-end AES encryption. Support is able to quickly connect to your PC and view your site's set up, diagnose problems, or assist you with screen navigation.

At the end of each GoToAssist session, there is a quick survey you should complete so we have accurate and up-to-date feedback on your support experiences. We review the survey data so that we can continually improve our services.

## E-MAIL REGISTRATION

Customers can go to our web site and register for email “groups” based on specific Tyler Software Products. We use these groups to inform clients of issues and to distribute helpful technical tips and updated technical documentation. There is an option to unregister at any time if you want to do so.

**Tyler Website**

Once you have registered as a user on the Tyler Website ([www.tyler-munis.com](http://www.tyler-munis.com)) you will have access to “Customer Tools” and other information such as on-line documentation, user forums, group training schedule/sign-up and annual user conference updates/registration.

## Exhibit 3

**ADOBE® CENTRAL OUTPUT SERVER  
PRODUCT DESCRIPTION**

Customer Name: **City of Richmond, California**

Name of Program: **Adobe® Central Output Server**

Scope of Use: **LIMITED TO USE WITH THE MUNIS APPLICATION ONLY AND  
(ATTACHED) ACCORDING TO THE ADOBE® END-USER LICENSE AGREEMENT**

Designated Location(s): **ACCORDING TO ADOBE® END-USER LICENSE AGREEMENT  
(ATTACHED)**

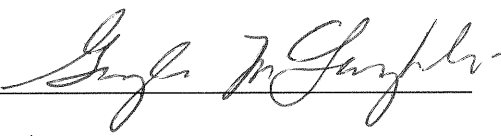
Operating Requirements: **ACCORDING TO ADOBE® END-USER LICENSE AGREEMENT  
(ATTACHED)**

Implementation Schedule: **ACCORDING TO ADOBE® END-USER LICENSE AGREEMENT  
(ATTACHED)**

Term of License: **ACCORDING TO ADOBE® END-USER LICENSE AGREEMENT  
(ATTACHED)**


Accepted by Customer:

Accepted by Tyler  
Technologies, Inc.:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

## ADOBE END USER LICENSE AGREEMENT

NOTICE TO USER: THIS LICENSE AGREEMENT GOVERNS YOUR USE OF THE ADOBE SOFTWARE ACCOMPANYING IT. BEFORE OPENING THE PACKAGE CONTAINING THE ADOBE SOFTWARE, CLICKING TO "ACCEPT" DURING REVIEW OF THIS LICENSE, DOWNLOADING, INSTALLING OR USING THE SOFTWARE, PLEASE CAREFULLY READ THIS AGREEMENT, WHICH CONTAINS THE TERMS UNDER WHICH YOU ("LICENSEE") ARE ACQUIRING A LICENSE TO USE THE ACCOMPANYING ADOBE SOFTWARE. IF LICENSEE DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, PLEASE DO NOT OPEN THE ACCOMPANYING SOFTWARE, CLICK TO "ACCEPT" DURING REVIEW OF THIS LICENSE, DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND PROMPTLY RETURN (IF APPLICABLE) THE UNOPENED OR UNINSTALLED SOFTWARE TO THE PLACE AT WHICH LICENSEE ACQUIRED IT FOR A FULL REFUND OF ANY LICENSE FEE PAID. IF LICENSEE OPENS THE ACCOMPANYING SOFTWARE, CLICKS TO "ACCEPT" DURING REVIEW OF THIS LICENSE, DOWNLOADS, INSTALLS OR USES IT, LICENSEE WILL BE ACQUIRING A LICENSE TO USE THE ADOBE SOFTWARE PRODUCT IN OBJECT CODE FORM, INCLUDING ANY RELATED PRINTED OR ELECTRONIC DOCUMENTATION (COLLECTIVELY THE "PROGRAM"), ONLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, AND LICENSEE WILL BE CONSIDERED TO HAVE ACCEPTED AND AGREED TO THE TERMS OF THIS AGREEMENT.

NOTWITHSTANDING THE FOREGOING, IF YOU RECEIVED THE ADOBE SOFTWARE AS PART OF A NEGOTIATED LICENSE AGREEMENT OR VOLUME LICENSING AGREEMENT WITH ADOBE, THE TERMS OF SUCH NEGOTIATED LICENSE AGREEMENT OR VOLUME LICENSING AGREEMENT SHALL SUPERCEDE THE TERMS OF THIS AGREEMENT TO THE EXTENT THEY ARE INCONSISTENT.

**IN THE EVENT THAT A SYSTEM INTEGRATOR, CONSULTANT, CONTRACTOR OR OTHER PARTY BREAKS THE SEAL FOR LICENSEE, OR USES OR INSTALLS THE SOFTWARE ON LICENSEE'S BEHALF PRIOR TO LICENSEE'S USE OF THE SOFTWARE, SUCH SYSTEM INTEGRATOR, CONSULTANT, CONTRACTOR OR OTHER PARTY WILL BE DEEMED TO BE LICENSEE'S AGENT ACTING ON LICENSEE'S BEHALF AND LICENSEE WILL BE DEEMED TO HAVE ACCEPTED ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS IF LICENSEE HAD BROKEN THE SEAL OR USED OR INSTALLED THE SOFTWARE.**

NOTICE TO SYSTEM INTEGRATORS, CONSULTANTS, CONTRACTORS AND OTHER PARTIES WHO DO NOT INTEND TO BE END USERS OF THE SOFTWARE: IF YOU BREAK THE SEAL, OR USE OR INSTALL THE SOFTWARE AS AN AGENT ACTING ON BEHALF OF THE LICENSEE, THEN, UNLESS YOU HAVE ENTERED INTO A SEPARATE AGREEMENT WITH ADOBE, (I) YOU AGREE TO DELIVER THE TANGIBLE MEDIA CONTAINING THE SOFTWARE AND THIS LICENSE AGREEMENT TO THE LICENSEE PRIOR TO PROVIDING THE LICENSEE ACCESS TO THE SOFTWARE, AND (II) YOU AGREE THAT YOU WILL NOT RETAIN ANY COPIES OF THE SOFTWARE. OTHERWISE, YOU WILL BE DEEMED TO BE THE USER OF THE SOFTWARE AND BOUND BY THE TERMS OF THIS AGREEMENT.

### 1. Definitions

"*Adobe*" means Adobe Systems Incorporated, a Delaware corporation, 345 Park Avenue, San Jose, California 95110, USA, if subsection 12(a) of this Agreement applies; otherwise it means Adobe Systems Software Ireland Limited, Unit 3100, Lake Drive, City West Campus, Saggart D24, Dublin, Republic of Ireland, a company organized under the laws of Ireland and an affiliate and licensee of Adobe Systems Incorporated. Adobe is the successor in interest to Accelio Corporation and all references in the Program to Accelio Corporation or JetForm Corporation shall mean Adobe. "*Access*" means to use or benefit from using the functionality of the Program in accordance with the accompanying documentation.

"*CPU*" means a single central processing unit within a computer.

"*Development Environment*" means Licensee's technical environment in which Licensee uses the Program for testing and development purposes only. "*Development Server*" means a network server within Licensee's Development Environment that contains one or more CPUs and that is not used in a

Production Environment. "*Disaster Recovery Environment*" means Licensee's technical environment designed solely to allow Licensee to respond to an interruption in services due to an event, beyond Licensee's control, that creates an inability on Licensee's part to provide critical business functions for a material period of time.

"*Effective Date*" means, unless otherwise specified in the Agreement, the date upon which Licensee acquires a license to use the Program.

"*Electronic Gateway*" means an electronic password or other electronic security measure that allows authorized Licensee employees access to the Program, but prevents

other third party access.

"*Extranet*" means a network that uses secured TCP/IP technology to link Licensee and other selected entities to facilitate private business communications.

"*Handheld Application*" means one (1) .xft form template related to a single business process deployed on Windows CE devices.

"*Individual*" means a natural person (i.e., not a corporation or

other legal entity).

“*Install*” means to place a copy of the Program onto a hard disk or other storage medium through any means (including but not limited to use of an installation utility application accompanying the Program) for the purpose of permitting Access to the Program.

“*Intranet*” means the collection of computer network connected by means of a common communications protocol commonly known as TCP/IP.

“*Intranet*” means a network used within Licensee’s enterprise (which may include secured TCP/IP technology connections), which network may include servers in the control of third parties whose principal business is providing such server outsourcing and which network has the purpose of sharing information and computing resources among Users.

“*Location*” means a geographical location where Licensee normally carries on business at which Users are accessing the Program through either (a) Licensee’s local area network contained within such geographical location or (b) an Electronic Gateway using the Internet, an Intranet or an Extranet, for Licensee’s own internal business purposes.

“*Permitted Number*” means: one (1) in the case of CPUs, Development Servers, Servers, Users and Workstations; and ten (10) in the case of Locations; unless otherwise indicated herein or in another valid license granted by Adobe. With respect to *Adobe Output Pak for Oracle E-Business Suite (Adobe Accelio Present Output Pak for Oracle E-Business Suite)* and *Adobe Output Pak for mySAP.com (Adobe Accelio Present Output Pak for accessing mySAP.com)*, “*Permitted Number*” means the number of

Licensee’s licensed users of Oracle E-Business Suite software or SAP software respectively, on the Effective Date of the Agreement unless otherwise indicated herein or in another valid license granted by Adobe.

“*Production Environment*” means Licensee’s technical environment in which Licensee uses the Program for its business purposes.

“*Program*” means the Adobe software in object code form only, and any related printed or electronic documentation.

“*Server*” means a network server that contains one or more CPUs.

“*Users*” means any Individual who is authorized by Licensee to access and use the Program for Licensee’s own internal business purposes.

“*Workstation*” means a computer workstation or personal computer that allows the Program to only be accessed by a single processor and that is not used as a network server.

## **2. Grant of License**

In consideration of the payment of the license fee for the Program, subject to the terms of this Agreement, Adobe grants to Licensee a non-exclusive, non-transferable, limited and restricted license to use the Program for Licensee’s own internal business purposes as described in this Section 2. Some third-party materials included with the Program may be subject to other terms and conditions, which are typically found in a separate license agreement, or a “Read Me” or other file located in or near such materials. In addition, for purposes of clarification, certain Programs have been renamed and are referenced herein by both their current name and their previous name (in parentheses). Each such Program referenced by two names shall be treated as a single

Program without regard to the name. References to any such Program by either name in this Agreement or the Program itself shall be deemed a reference to one in the same Program.

(a) If the Program is *Adobe Central Output Server (Adobe Accelio Present Central)* or *Adobe Central Pro Output Server (Adobe Accelio Present Central Pro)*, Licensee may (i) with respect to a per-Server license, Install the Program on any number of Servers provided that the total number of Servers on which the Program is Installed does not exceed the Permitted Number, or (ii) with respect to a per-CPU license, Install the Program on any number of CPUs provided that the total number of CPUs on which the Program is Installed does not exceed the Permitted Number. The Program shall be deemed to be licensed on a per-Server basis unless otherwise provided in writing by Adobe. Without regard to whether the Program is licensed on a per-Server or per-CPU basis, Licensee may deliver the output from the Program to any computer or device on Licensee’s Intranet provided that such output is not delivered to more than the Permitted Number of Locations for each copy of the Program validly licensed.

(b) If the Program is *Adobe Central Output Server Workstation Edition (Adobe Accelio Present Central Workstation Edition)*, or *Adobe Form Client (Adobe Accelio Capture Advanced Client)*, Licensee may (i) Install the Program on any number of Workstations provided that the total number of Workstations on which the Program is Installed does not exceed the Permitted Number, (ii) Access the Program provided that such Access is initiated by an Individual (not by an automated process) directly on a Workstation containing a properly licensed copy of the Program, and (iii) deliver the output from the Program directly for use by that Individual

(c) If the Program is *Adobe Output Pak for Oracle E-business Suite (Adobe Accelio Present Output Pak for Oracle E-Business Suite)*, Licensee may (i) Install the Program only on Servers that also have properly licensed copies of *Adobe Central Pro Output Server (Adobe Accelio Present Central Pro)* Installed upon them, (ii) Access the Program only in conjunction with Oracle E-Business Suite software, and (iii) Install and Access the one (1) copy of the *Adobe Central Pro Output Server (Adobe Accelio Present Central Pro)* product included with such Program in accordance with Section 2(a) of this Agreement. If Licensee has licensed the Program on a per-Server basis, the number of Servers with Access to the Program must not exceed the Permitted Number of Servers that have properly licensed copies of *Adobe Central Pro Output Server (Adobe Accelio Present Central Pro)* Installed upon them. If Licensee has licensed the Program on a per-User basis, Licensee may only use the Program in connection with Oracle E-Business Suite software, and the total number of Users must not exceed the Permitted

Number.

**(d)** If the Program is *Adobe Output Pak for mySAP.com* (*Adobe Accelio Present Output Pak for mySAP.com*), Licensee may (i) Install Program only on Servers that also have properly licensed copies of *Adobe Central Pro Output Server* (*Adobe Accelio Present Central Pro*) Installed upon them, (ii) Access the Program only in conjunction with SAP software, and (iii) Install and Access the one (1) copy of the *Adobe Central Pro Output Server* (*Adobe Accelio Present Central Pro*) product included with such Program in accordance with Section 2(a) of this Agreement. If Licensee has licensed the Program on a per-Server basis, the number of Servers with Access to the Program must not exceed the Permitted Number of Servers that have properly licensed copies of *Adobe Central Pro Output Server* (*Adobe Accelio*

*Present Central Pro*) Installed upon them. If Licensee has licensed the Program on a per-User basis, Licensee may only use the Program in connection with SAP software, and the total number of Users must not exceed the Permitted Number.

**(e)** If the Program is *Adobe Web Output Pak* (*Adobe Accelio Present Web Output Pak*), *Adobe Accelio Present Web Output Pak for mySAP.com*, or *Adobe Form Server* (*Adobe Accelio Capture Enterprise Server*), Licensee may Install and Access the Program on any number of Servers provided that the total number of CPUs used to operate the Program does not exceed the Permitted Number.

**(f)** If the Program is *Adobe Form Designer* (*Adobe Accelio Capture Designer*), *Adobe Accelio Present Classic Design*, *Adobe Output Designer* (*Adobe Accelio Present Output Designer*), *Adobe Accelio Integrate InTempo Designer* or *Adobe Workflow Designer* (*Adobe Accelio Integrate Designer*), Licensee may Install and Access the Program on any number of Workstations provided that the total number of Workstations on which the Program is Installed does not exceed the Permitted Number.

**(g)** If the Program is *Adobe Accelio Capture Handheld Client*, Licensee may Install and Access the Program on any number of Workstations provided that (i) the Workstations are handheld personal computers and (ii) the total number of Workstations on which the Program is Installed does not exceed the Permitted Number.

**(h)** If the Program is *Adobe Accelio Integrate InTempo* or *Adobe Workflow Server* (*Adobe Accelio Integrate Suite*), (i) when the Program is licensed on a per-CPU basis, Licensee may Install and Access each of the Agent and Web Access components of the Program on any number of Servers provided that the total number of CPUs used to operate the Program does not exceed the Permitted Number; or (ii) when the Program is licensed on a per-User basis, Licensee may Install and Access each of the Agent and Web Access components of the Program provided that the total number of Users with Access to the Program does not exceed the Permitted Number.

**(i)** If the Program is *Actional Control Broker* (*Adobe Accelio Integrate EAI Tools*) and Licensee has not otherwise agreed to license terms for the Program, Licensee may (i) Install the Program on any number of Servers provided that the total number of CPUs on which the Program operates does not exceed the Permitted Number, and (ii) Access the Program only in conjunction with a validly licensed Adobe software product.

**(j)** If the Program is a Development Environment version of any Program, Licensee may Install and use the Program only in Licensee's Development Environment and only on one of the following, as applicable: (i) with respect to a per Workstation license, Licensee may Install and Access the Program on any number of Workstations (or on a single server) provided that the total number of Workstations on which the Program is Installed (or that have access to the Server on which the Program is Installed) does not exceed the Permitted Number; or (ii) with respect to a per-Server license, Licensee may Install and Access the Program on a single Server provided that the total number of Servers or Workstations that Access the Program or its output does not exceed the Permitted Number. In addition, with respect to Development Environment versions of *Adobe Output Pak for Oracle E-Business Suite* (*Adobe Accelio Present Output Pak for Oracle E-Business Suite*) and *Adobe Output Pak for mySAP.com* (*Adobe Accelio Present Output Pak for mySAP.com*), the license granted for *Adobe Central Pro Output Server* (*Adobe Accelio Present Central Pro*) product included with such Programs shall also be deemed a Development Environment license.

**(k)** Licensee may make one (1) additional copy of the Program in machine readable form for backup purposes only, provided Licensee include any and all Adobe copyright notices or other designations that appear or may appear in or on the Program, without alteration or removal of any such copyright or other notice on the original copy of the Program.

**(l)** Licensee may Install and use the Program within Licensee's Disaster Recovery Environment, provided that such use is not for any purpose other than disaster recovery. For greater clarity, without limitation, Licensee may not use the Program within Licensee's Disaster Recovery Environment for production, pilot or testing purposes, other than to ensure that the Program within Licensee's Disaster Recovery Environment is capable of replacing the primary usage of the Program within Licensee's Production and/or Development Environment in the event of a disaster.

**(m)** Where a Program is not specifically mentioned in this Section 2, the license granted to the applicable Program shall be for a single Workstation only. Notwithstanding the foregoing, where the Permitted Number for a license granted to a particular Program is indicated within an applicable purchase order issued by Licensee to Adobe, or in any other documentation employed by or on behalf of either party in connection with the subject matter of this Agreement, then upon acceptance of such purchase order or other documentation by the other party, such purchase order or documentation shall be determinative of the Permitted Number with respect to the Programs licensed hereunder. For greater certainty, no terms or conditions from any such purchase order or other document, other than those identifying the Products and the Permitted Number, shall be of any force and effect, in accordance with Section 14.

**(n)** Where Adobe has agreed to license the Program to Licensee on the basis of Locations, Licensee will be licensed to use the Program, subject to the terms of this Agreement, at the Locations as they exist at the Effective Date. Should the character of any of the Locations (including, but not limited to, processing performed at the Location or number of employees working at such Location) materially change in Adobe's opinion acting reasonably, Licensee shall seek Adobe's written consent prior to allowing such altered/new

Location(s) to access and use the Program.

(o) Where a User is not an employee of Licensee, (i) Licensee shall be responsible for ensuring that any such User fully complies with the terms of this Agreement as they relate to the use of the Program on the same basis as applies to Licensee; (ii) use by such User shall only be in relation to Licensee's internal business purposes as restricted herein; and (iii) Licensee shall remain fully liable for any and all acts or omissions by such User, related to this Agreement.

(p) If font software is included with the Program, Licensee may install the font software only on the Server or Workstation on which Licensee also installs the Program accompanying it, and use the font software for any purpose provided that rights to embed the font software into electronic files is limited as follows: (i) Licensee may embed the font software, or outlines of the font software, for the Swiss Italic, Swiss Bold and Swiss Bold Italic fonts into electronic documents for the purpose of printing and viewing only, and (ii) Licensee may embed the font software, or outlines of the font software, for the rest of the fonts included with the Program into electronic documents for the purpose of printing, viewing and editing only.

### **3. Exclusions**

Except as expressly authorized under this Agreement, Licensee is prohibited from doing any of the following things to the fullest extent permitted by law:

- (a) sublease, lease, assign, sell, resell, license, re-license, distribute, rent, export, re-export, permit concurrent use of or grant other rights in the Program;
- (b) provide use of the Program in a computer service business, third party outsourcing facility or service, service bureau arrangement, network, or time sharing to users who are not properly licensed by Adobe;
- (c) transfer this Agreement or any license to use the Program;
- (d) translate, reverse engineer, modify, adapt, create derivative works, decompile, merge, separate or disassemble any part of the Program;
- (e) if the Program is a Development Environment version of the Program, use the Program in any other environment except Licensee's Development Environment (i.e. where the Program is a Development Environment version, the Program shall not be used in a Production Environment);
- (f) if the Program is *Adobe Accelio Present Classic Design*, *Adobe Output Designer* (*Adobe Accelio Present Output Designer*), *Adobe Form Designer* (*Adobe Accelio Capture Designer*), *Adobe Workflow Designer* (*Adobe Accelio Integrate Designer*) or *Adobe Accelio Integrate InTempo Designer*, use the forms, applets, process maps or roles sets created using the Program except with Adobe solutions properly licensed to Licensee;
- (g) if the Program is *Actional Control Broker* (*Adobe Accelio Integrate EAI Tools*), transfer the Program to a computer different from the computer to which the Program was originally node locked.

### **4. Ownership**

The Program is licensed, not sold. All intellectual property rights, including all copyrights and patent rights, in and to the Program shall, at all times, remain with Adobe or its licensors. Licensee shall acquire no right whatsoever to all or any part of the Program except the right to use the Program in accordance with the terms of this Agreement and Adobe and its licensors reserve all rights not expressly granted to Licensee. Physical copies of the Program remain the property of Adobe. Licensee must fully reproduce any copyright or other notice marked on any part of the Program on all authorized copies and must not alter or remove any such copyright or other notice.

### **5. Audit**

Adobe may, at its expense, appoint an independent third party to audit no more than once annually the number of copies of the Program in use by Licensee or its Contracting Party (ies). Any such audit shall be conducted during regular business hours at Licensee's offices and shall not unreasonably interfere with Licensee's business activities. If such audit shows that Licensee is using a greater number of copies of the Program than that indicated herein, Licensee shall pay the applicable fees for such additional copies within thirty (30) days of invoice, with such underpaid fees being the license fees as per Adobe's then current, country specific, price list. If underpaid fees are in excess of five percent (5%) of the value of the fees paid under this Agreement, then Licensee shall pay such underpaid fees and Adobe's reasonable costs of conducting the audit.

### **6. Limited Warranty**

Licensee is entitled to Adobe's 90-Day Free Warranty from the date that Licensee acquired Licensee's copy of the Program. For the period ending ninety (90) days from the date Licensee acquires the Program, Adobe warrants that: (a) the media on which Adobe has supplied the Program are not defective and the Program is properly recorded on them; (b) any users manuals, whether in electronic or paper media, provided by Adobe with the Program are substantially complete; and (c) the Program functions substantially as described in the accompanying users manuals. Notice of breach of the 90-Day Free Warranty must be received within the warranty period. Licensee's sole and exclusive remedy under this limited warranty and Adobe's sole obligation is to return the Program for replacement within the warranty period, and if the problem persists following such replacement to require a full refund of license fees paid hereunder provided Licensee purges all copies of the Program and related materials from all computer systems on which it was stored and returns to Adobe all physical copies of the Program and related materials. Adobe shall have no responsibility for the Program and this warranty shall be void if (a) the Program has been altered in any way; (b) the media has been damaged by accident, abuse or misapplication; (c) the problem arises out of use of the Program other than as intended as set out in the user manual; or (d) the problem arises out of use of the Program in conjunction with software or hardware for which it is not intended to be used as set out in the user manual. **THE WARRANTIES IN THIS AGREEMENT GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO**

**JURISDICTION.****7. Disclaimer**

THE FOREGOING LIMITED WARRANTY STATES THE SOLE AND EXCLUSIVE REMEDIES FOR ADOBE'S OR ITS SUPPLIER'S BREACH OF WARRANTY. ADOBE AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS LICENSEE MAY OBTAIN BY USING THE SOFTWARE. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO LICENSEE IN LICENSEE'S JURISDICTION, ADOBE AND ITS SUPPLIERS MAKE NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO ADOBE AGENT, REPRESENTATIVE, OR DEALER IS AUTHORIZED TO MODIFY, EXTEND OR ADD TO THIS WARRANTY ON BEHALF OF ADOBE.

The provisions of Section 7 and Section 8 shall survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Program after termination of this Agreement.

**8. Limitation of Liability**

THE ENTIRE RISK, AS TO THE RESULTS AND PERFORMANCE OF THE PROGRAM, IS ASSUMED BY LICENSEE. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL ADOBE, ITS AGENTS, REPRESENTATIVES OR LICENSORS BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. THE MAXIMUM AGGREGATE LIABILITY OF ADOBE AND ITS AGENTS, REPRESENTATIVES AND LICENSORS IN ANY CONNECTION WITH THIS AGREEMENT OR THE PROGRAM, WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE SHALL NOT EXCEED THE LICENSE FEES PAID BY LICENSEE TO ADOBE UNDER THIS AGREEMENT. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL

**BREACH OR A BREACH OF THE FUNDAMENTAL TERMS OF THIS AGREEMENT.****9. Term**

Subject to the terms and conditions of this Agreement, the license granted under this Agreement shall remain in effect until Licensee ceases all use of the Program and provides written notice to Adobe of same. Adobe may terminate this Agreement due to Licensee's failure to comply with any of the provisions of this Agreement if after thirty (30) days written notice such failure remains uncured. Upon termination by Licensee or Adobe, Licensee agrees to promptly purge all copies of the Program from all computer systems on which it was stored, return to Adobe all physical copies of the Program and any other confidential information, and make immediate payment of any outstanding fees owed to Adobe.

**10. U.S. Government End Users**

*Notice to U.S. Government End Users.* The Program and documentation are "Commercial Item(s)," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States. Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704, USA. *U.S. Government Licensing of Adobe Technology.* Licensee agrees that when licensing Adobe Program for acquisition by the U.S. Government, or any contractor therefore, Licensee will license consistent with the policies set forth in 48 C.F.R. §12.212 (for civilian agencies) and 48 C.F.R. §§227-7202-1 and 227-7202-4 (for the Department of Defense). For U.S. Government End Users, Adobe agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference in this Agreement.

**11. Export/Import Restrictions**

Licensee represents and warrants that (a) no relevant agency has suspended, revoked or denied Licensee's export and/or import privileges; (b) Licensee is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited; and (c) Licensee shall not, in any manner whatsoever, either remove, convey, export, import or transmit the Program from or to Licensee's jurisdiction in violation of the applicable laws and regulations.

**12. Governing Law**

This Agreement, each transaction entered into hereunder, and



all matters arising from or related to this Agreement (including its validity and interpretation) will be governed by and construed and enforced in accordance with the substantive laws in force in: (a) the State of California, if a license to the Program is purchased when Licensee is in the United States, Canada, or Mexico; or (b) Japan, if a license to the Program is purchased when Licensee is in Japan, China, Korea, or other Southeast Asian country where all official languages are written in either an ideographic script (e.g., hanzi, kanji, or hanja), and/or other script based upon or similar in structure to an ideographic script, such as hangul or kana; or (c) Ireland, if a license to the Program is purchased when Licensee is in any other jurisdiction not described above. This Agreement will not be governed by: (i) the principles of conflicts of law and that body of law applicable to choice of law; (ii) the United Nations Convention on Contracts for the International Sale of Goods, and/or its implementing and/or successor legislation and/or regulations; and/or (iii) the Uniform Computer Information Transactions Act and/or its implementing and/or successor legislation and/or regulations, as applicable respectively. The respective courts of Santa Clara County, California when California law applies, Tokyo District Court in Japan, when Japanese law applies, and the competent courts of Ireland, when the law of Ireland applies, shall each have non-exclusive exclusive jurisdiction over all disputes relating to this Agreement. Each party hereby agrees to comply with all applicable laws, regulations and government orders in performing its obligations under this Agreement.

### **13. Assignment & Sub-license**

Licensee may not transfer or assign this Agreement without the prior written consent of Adobe, which shall not be unreasonably withheld. The parties agree that Adobe is hereby entitled to assign and/or transfer all or part of its rights and obligations under this Agreement to any third party. Notwithstanding the foregoing, any successor, representative or assignee which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of Licensee shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under this Agreement, provided that such entity executes a prior acknowledgement confirming such entity's acceptance and agreement to be bound by and comply with the terms of this Agreement and Adobe receives such written acknowledgement prior to the transfer. Notwithstanding anything to the contrary in this Agreement, Licensee may sub-license the use of the Program to a third party outsourcing or facilities management contractor to operate the Program on Licensee's behalf, provided that (a) Adobe receive prior written notice; (b) Licensee shall be responsible for ensuring that any such contractor fully complies with the terms of this Agreement as they relate to the use of the Program on the same basis as applies to Licensee; (c) such use is only in relation to Licensee's internal business purposes as restricted herein; (d) such use does not represent or constitute an increase in the number of licenses provided hereunder; and (e) Licensee shall remain fully liable for any and all acts or omissions by the contractor, related to this Agreement.

### **14. Entire Agreement**

This Agreement is the entire agreement between the parties

with respect to its subject matter and supersedes and replaces all prior oral or written agreements, representations, negotiations or understandings between the parties relating to such subject matter. No change or modification to this Agreement shall be valid unless it is in writing and signed by an authorized representative of each party. Except as specifically permitted in Section 2 hereof, no provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted.

### **15. Publication**

Licensee consents to written and oral disclosure by Adobe of its name as an end user of the Adobe software and/or services in a factual listing of Adobe customers (with or without a list of the category of software licensed by Licensee) to be published within marketing and promotional materials, in presentations, on trade show signs and materials, on its external Web site, and to financial and industry analysts. Adobe will seek Licensee's prior written authorization for use of Licensee's name for promotional activities beyond the above-mentioned, which may include press releases and brochures, or descriptions of the specific software and/or services provided by Adobe.

### **16. Waiver**

No party will be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. Failure or delay by either party to exercise any of its rights, powers or remedies hereunder shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **17. General**

Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Should any provision or part of any provision of this Agreement be found void or unenforceable by a court of competent jurisdiction, such provision, or part thereof, shall be deemed severed, and the remainder of this Agreement shall remain in full force and effect. The English version of this Agreement shall be the version used when interpreting or construing this Agreement. The parties acknowledge and agree that the limited warranty, exclusive remedies and limited liability set forth in this Agreement are fundamental elements of the basis of the bargain between Adobe and Licensee, and that Adobe would not be able to provide the Program on an economic basis without such limitations. The provisions within this Agreement which are meant, by their nature, to survive termination of this Agreement shall survive such termination, including, without limitation, the ownership, limitation of liability, governing law, entire agreement, waiver and general sections herein. Licensee acknowledges and agrees that Adobe's licensors (and/or Adobe if Licensee obtained the Program from any party other than Adobe) are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth in this Agreement. In this Agreement words importing a

singular number only shall include the plural and vice versa. The division of this Agreement into sections and the insertion of headings are for convenient reference only, and

shall affect neither the construction nor the interpretation of this agreement.

Copyright © 2001-2002. Adobe Systems Incorporated. All rights reserved. Adobe, the Adobe logo, Adobe Accelio Capture, Adobe Accelio Capture Advanced Client, Adobe Accelio Capture Designer, Adobe Accelio Capture Enterprise Server, Adobe Accelio Capture Handheld Client, Adobe Accelio Integrate, Adobe Accelio Integrate Designer, Adobe Accelio Integrate InTempo, Adobe Accelio Integrate InTempo Designer, Adobe Accelio Integrate Suite, Adobe Accelio Present, Adobe Accelio Present Central, Adobe Accelio Present Central Pro, Adobe Accelio Present Central Workstation Edition, Adobe Accelio Present Classic Design, Adobe Accelio Present Output Designer, Adobe Accelio Present Output Pak and Adobe Accelio Present Web Output Pak are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. Microsoft and Windows are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries. Oracle is a registered trademark of Oracle Corporation. SAP is a trademark or registered trademark of SAP AG in Germany and in several other countries. Adobe Server Solutions EULA 102102

**Exhibit 4**

**Statement of Work**

For an

Enterprise Resource Planning System Implementation

**For the**

**City of Richmond, California**



## Exhibit 5

## SERVICE LEVEL AGREEMENT

*I. Service Levels*

Service levels shall be as in this section. In the event of a conflict between the summary chart and the explanation that follows the summary chart, the explanation shall govern.

**A. Definitions**

When used in this section the following shall mean:

Application shall mean Application Services.

Business Day shall mean Monday through Friday excluding Tyler holidays.

Business Hours shall mean 8:00 a.m. – 6:00 p.m. (EST) on Business Days.

Critical Production Modules shall mean one or more of the following Tyler Software Products required to perform the daily functions of the Client: General Ledger, Payroll, and Purchase Orders.

EST shall mean Eastern Standard Time and, where applicable, Eastern Daylight Savings Time.

OSDBA shall mean Operating System and Data Base Administration of Tyler.

ISP shall mean Internet Service Provider.

**B. Service to the Client**

The following service levels apply to ASP Operations Support. Application support calls are handled by the Application Support Teams. All service levels are based on attainment rates shown below and calculated on a quarterly basis on the following summary chart and explanations following. The measurement of all service levels shall be effective upon implementation and testing, and any subsequent credits may occur as a result of the first quarterly reporting period following Go-Live. Client may request reports for specific metrics performance more often than once a quarter if Client reasonably believes that Tyler is under performing with regard to the metric.

SUMMARY CHART

Service Type	Time	Attainment
Application Availability - Green	6:00 a.m. to 9:00 p.m. EST Mon-Fri 6:00 a.m. to 3:00 p.m. EST Sat	99%
Application Availability – Yellow	9:00 p.m. to 12:00 a.m. EST Mon – Fri 3:00 p.m. to 12:00 a.m. EST Sat 8:00 a.m. to 12:00 p.m. EST Sun 6:00 p.m. to 12:00 a.m. EST Sun	No SLA
Application Availability – Red	12:00 a.m. to 6:00 a.m. EST Mon – Sun 12:00 p.m. to 6:00 p.m. EST Sun	No SLA
Adding/Changing User Access or Printer	Request by noon: same day before 9:00 p.m. Request by noon: by noon next business day Request after noon; by noon next business day Request by noon: next business day before 9:00 p.m.	90% 100% 90% 100%
Data or File Restoration	Next Business Day Second Business Day	95% 100%
Synchronization of “live” and “test” databases	Next Business Day No later than three business days	95%
New Release/Update Testing Period	10 Business Days	95%
VPN Appliance Repair	Next Business Day No later than three business days	95%
Support Call Response	By Severity Level Level 0 2 Business Hours Level 1 4 Business Hours Level 2 8 Business Hours Level 3 12 Business Hours	80%
Support Call Response for Escalated Issues	By Severity Level Level 0 1 Business Hours Level 0 2 Business Hours Level 1 4 Business Hours Level 2 8 Business Hours Level 3 12 Business Hours	90% 100% 100% 100% 100%

File Back-up	Nightly	95%
--------------	---------	-----

## *Explanations*

### 1. Application Availability:

Green Time: Guaranteed system availability. SLA applies to green time only.

Yellow Time: User access permitted. Tyler reserves the right to use this time for scheduled maintenance, repairs that require a longer window of downtime, scheduled testing. 24-hour advance user notification will be given when possible.

Red time: System is not available. Reserved for backups and routine maintenance.

Measurement: A log is kept to report any system issues including down time. Total minutes down will be compared to total green minutes in a quarter to determine % of goal in the above summary chart. All percentage calculations shall be rounded to the lowest whole number.

Exclusions: Red Time. Yellow time.

Target is 99% attainment.

If actual attainment is 98-97%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 96-94%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 94%, a credit of 5% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

### 2. Adding/Changing User Access or Printer:

A request to add or change a user or printer must be made through the Tyler support department. All requests / issues should be logged by calling the OSDBA team in support at 800.772.2260 and following the recorded instructions. Support hours are 8:00 AM to 6:00 PM EST. Messages may be

left after hours. After initial call is made to support for logging purposes, email may be used to provide needed information. If Tyler subsequently creates an internal logging system that utilizes email to log calls, the Client will be notified of such and may use such to log calls.

Measurement: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Exclusions: Requests that are not made through the OSDBA team will not be counted toward the SLA. Calls that are left on a personal voicemail box or e-mailed will not be counted toward the SLA.

Where target is 90% within guidelines specified above:

If actual attainment is 89-88%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 87-85%, a credit of 1% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 85%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if in the quarter immediately following the correction Tyler does not attain that service level, the credits that would normally be due will be doubled.

Where target is 100% within guidelines specified above:

If actual attainment is 99-98%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 97-95%, a credit of 1% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 95%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in



the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

### 3. Data or File Restoration:

Data that may be restored include the complete database, files in the user's home directory and spool files.

A request to restore spool file must be made through the Tyler support department and must include the user name, exact file name and date when file may be found. A request to restore a database must be made through the Tyler Support Department and must be made only by the Client's authorized personnel. A list of such will be provided by the Client signed by the Comptroller or Director of Information Technology Department. All requests / issues should be logged by calling the OSDBA team in support at 800.772.2260 and following the recorded instructions. Support hours are 8:00 AM to 6:00 PM EST. Messages may be left after hours. After initial call is made to support for logging purposes, email may be used to provide needed information. If Tyler subsequently creates an internal logging system that utilizes email to log calls, the Client will be notified of such and may use such to log calls. A list of personnel with authority to make specific requests, other than relating to the database, will also be provided by the Client's authorized representative.

Measurements: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Exclusions: Service levels exclude files that are older than 20 business days. Requests that are not made through the OSDBA team will not be counted toward the SLA. Calls that are left on a personal voicemail box or e-mailed will not be counted toward the SLA.

Where target is 95% attainment:

If actual attainment is 94-93%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 92-90%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 90%, a credit of 3% of the quarterly payment due shall be posted to the next quarterly payment unless the non performance materially and adversely affects Critical Production Modules making them unavailable to Client, in which case a credit of 5% of the quarterly payment shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under

the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

Where target is 100% within guidelines specified above:

If actual attainment is 99-98%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 97-95%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 95%, a credit of 3% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

#### 4. Data Synchronization in the Test Database:

Tyler shall maintain two databases containing the Client data: Production Database and Test Database. Tyler shall synchronize the Test Database upon request of the Client. There shall be no limit to such requests. However, it is understood that all users must be off of the system during such synchronization.

A request to synchronize the test database must be made through the Tyler support department. All requests / issues should be logged by calling the OSDBA team in support at 800.772.2260 and following the recorded instructions. Support hours are 8:00 AM to 6:00 PM EST. Messages may be left after hours. After initial call is made to support for logging purposes, email may be used to provide needed information. If Tyler subsequently creates an internal logging system that utilizes email to log calls, the Client will be notified of such and may use such to log calls.

Measurement: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Exclusions: Requests that are not made through the OSDBA team will not be counted toward the SLA. Calls that are left on a personal voicemail box or e-mailed will not be counted toward the SLA.

Target is 95% attainment.

If actual attainment is 94-93%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 92-90%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 90%, a credit of 3% of the quarterly payment due shall be posted to the next quarterly payment.

If attainment delay is longer than three business days, a credit of 3% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

#### 5. New Release/Update Testing Period:

New releases of Tyler will be loaded into the training database prior to Production. These releases will remain in the training environment for a minimum of ten business days, and shall be loaded into Production within ten business days of Client's request. A migration plan should be developed and published for each release for each site. Changes to the plan should be discussed with both parties.

Client agrees to devote time and resources to testing new release to remain no more than two releases behind.

Measurement: A date stamp is created when the program directory for training is updated. This will be compared to the requested date for migration to production.

Exclusions: Individual programs that have been requested to fix a "bug" or add functionality for a site may be moved from training to production at the Client's request.

Target is 95% attainment.

If actual attainment is 94-93%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 92-90%, a credit of 1% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 90%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

#### 6. VPN Appliance Repair:

Client's data is encrypted using a Nokia CryptoCluster. This is a piece of hardware that is installed on Client's network to create a virtual private network. If the appliance should fail, we have guaranteed 4-hour response from the vendor. Should a new device be required during the reconfiguration of the Client's network by the Client, if we are notified by 2PM EST, a preconfigured device can be sent via overnight mail.

A hardware failure notice must be made through the Tyler support department. All requests / issues should be logged by calling the OSDBA team in support at 800.772.2260 and following the recorded instructions. Support hours are 8:00 AM to 6:00 PM EST. Messages may be left after hours. After initial call is made to support for logging purposes, email may be used to provide needed information. If Tyler subsequently creates an internal logging system that utilizes email to log calls, the Client will be notified of such and may use such to log calls.

Measurement: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Exclusions: Requests that are not made through the OSDBA team will not be counted toward the SLA. Calls that are left on a personal voicemail box or e-mailed will not be counted toward the SLA.

Target is 95% attainment.

If actual attainment is 94-93%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 92-90%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 90%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment takes longer than three business days, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations

under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

#### 7. Support Call Response:

##### *Definition of Severities:*

- 0 Critical Issue – Tyler is down
- 1 Severe issue, but there is a work around
- 2 Important issue – not severe
- 3 Lowest priority

All requests / issues should be logged by calling support at 800.772.2260 and following the recorded instructions. Support hours are 8:00 AM to 6:00 PM EST. Messages may be left after hours. After initial call is made to support for logging purposes, email may be used to provide needed information. If Tyler subsequently creates an internal logging system that utilizes email to log calls, the Client will be notified of such and may use such to log calls.

Currently you would press 3 for support, then you would press one of the following numbers based on Client's need:

##### Application Teams:

- 1 Financials  
This includes general ledger, budget, project accounting, fixed assets, accounts payable, purchase orders, requisitions, bids and quotes.
- 2 Payroll, personnel, applicant tracking
- 3 Tax  
This team also handles any accounts receivable or general billing questions.
- 4 Utility Billing  
This team also handles any accounts receivable or general billing questions.

##### Operating System / Database:

- 5 OSDBA  
This would cover any non-application requests such as setting up new users or printers, scheduling a refresh of Client's test database or restoration of Client's file.

You may press 0 at any time and be transferred to the operator. The Operator phone is answered by a receptionist between the hours of 8:00 AM and 6:00 PM EST.

#### Escalation Procedure:

If you need to escalate a reported problem, please page/call the following people in the order shown:

Name	Title	Business Phone	Cell Phone
	Receptionist	800-772-2260	
On-Call Support:			
Tom Lowrie	OS/DB Administrator	ext 4126	207.831.5218
John MacVane	Network Engineer	ext 4181	207.671.8347
Danelle Daley	Mgr, ASP Operations	ext 4456	207.229.2688
Catherine Joy	Mgr, Support	ext 4124	

Dick Peterson	VP, Corporate	ext 4102	
Jim Hurley	VP, Sales	ext 4108	

Exclusions: Calls that are left on a personal voicemail box or e-mailed will not be counted toward the SLA.

Holiday Schedule:

Tyler will observe the following Holiday schedule. If assistance is required on a published holiday, 30 days advance notice must be given.

**New Year's Day**

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Day after Thanksgiving

Christmas

Measurement: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Target is 80% within guidelines specified above.

If actual attainment is 79-78%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 77-75%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 75%, a credit of 5% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

8. Support Call Response for Escalated Issues:

*After call is placed according to the procedures described in service level 7. Support Call Response, the Client may make an additional call to Tyler's receptionist to have the receptionist page the ASP department.*

Measurement: Support logs include time request was made and time request closed. Each call for which response does not meet the agreed upon levels in the above summary chart will be compared against total calls to determine attainment.

Where target is 90%:

If actual attainment is 89-88%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 87-85%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 85%, a credit of 5% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

Where target is 100%:

If actual attainment is 99-98%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 97-95%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 95%, a credit of 5% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter, unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

## 2. Data or File Back-Up:

*Nightly backups of the following files will be completed: live database, training database, home directories, and spool directories.*

Back-up media will be cycled off-site nightly to a fireproof vault.

Target is 95% attainment.

If actual attainment is 94-93%, Tyler shall include in its quarterly report descriptions of the failure to reach the target and the remedial action that has been or will be taken.

If actual attainment is 92-90%, a credit of 2% of the quarterly payment due shall be posted to the next quarterly payment.

If actual attainment is less than 90%, a credit of 4% of the quarterly payment due shall be posted to the next quarterly payment.

Notwithstanding the above, the total of all credits that would be due under this SLA shall not exceed 5% of the quarterly fee for any one quarter unless the credits are all for non performance which materially and adversely affects Critical Production Modules making them incapable of use by Client, in which event the total of all credits that would be due under this SLA shall not exceed 10% of the quarterly fee for any one quarter. Issuing of such credit does not relieve Tyler of its obligations under the ASP Agreement to correct the problem which created the service to fall below the agreed upon levels in the above summary chart. However, the Client acknowledges that correction may occur in the following quarter, and, because of the time reasonably needed to perform any such correction, the quarter in which the correction occurs may also fall below the agreed upon service levels. If Tyler does not perform the correction within the quarter immediately following the quarter that contained the unattained service levels, or if Tyler does not attain that service level in the quarter immediately following the correction, the credits that would normally be due will be doubled.

#### C. TELECOMMUNICATIONS

Tyler is constantly measuring the speed of its network to ensure the highest level of data delivery and efficiency. At the time of execution of this Agreement, Client's ISP commitment levels from its ISP provider, Net Telcos, Inc. are set forth in Exhibit B to this Amendment. Tyler and the Client will mutually agree upon the service levels in this section as follows.

Service	Level	Goal
Latency	190ms or less (Site specific)	90%

##### 1. Latency:

Speed is measured from the ASP network through the encryption equipment to the CLIENT VPN device.

Measurement: Data will be collected every 10 minutes during green time. Quarterly statistics will be derived from all readings taken during the quarter.

Goal: Total roundtrip latency readings of Xms or less will be divided by total readings for the quarter.



Exclusions: Delays due to customer network(s) or ISP, or failures of Client's ISP provider to perform in accordance with the ISP provider's service level agreement guarantees.

## II. Force Majeure

Failure to meet service levels caused by any bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God or any other delays reasonably deemed to be beyond Tyler's control will be recognized by Client. Tyler may be relieved of responsibility of meeting service levels as stipulated in this SLA upon Tyler's filing with Client just and true statements requesting that such failure to meet the service levels, signed by Tyler and giving in detail all the essential circumstances which, justify such action under the provisions of this section by Client and are reasonably acceptable to the Client.

## Business Continuity Plan

When a situation occurs that could result in the interruption of processing for our ASP customers, the following people must be notified:

- - ASP DRT
- - Vice President, ASP Operations
- - Vice President, Operations
- - Director of Human Resources / Facilities Liaison
- - ASP OS/DB Administrator
- - ASP Network Engineer
- - ASP Administrator
- - ASP Webmaster
- - Vice President, Implementation
- - Vice President, Support Services

### **2.3.3 Business Continuity**

Initiation of the Plan is the responsibility of the ASP DRT Chairman, Vice President, ASP Operations or the most senior member of the team if a Vice President is not available.

### **2.3.4 Activation of Shell Site**

If the estimated recovery of the damaged facility is greater than 24 hours, the shell site will be activated. Activation of the shell site is delegated to the OS/DB Administrator. In the absence of the OS/DB Administrator, responsibility reverts to the Manager of ASP Operations. The office manager for the shell site should be notified of the intention to occupy.

### **2.3.5 Notification of Customers**

The Client Communications member of the ASP DRT is responsible for ensuring all ASP customers are notified. This should occur as soon as possible.

Communications should address issues such as the health/welfare of employees and others, address and hours of operation at alternate sites, contact information, the expected duration of the emergency (if known) and the expected time of the next communication.

The Client Communication member of the ASP DRT is also responsible for maintaining a list of the ASP Disaster Recovery contacts. The list should provide business, home and cell telephone numbers for client contacts. A Tyler employee should directly contact every affected client. Communications points will be outlined by the DRT. If a Toll Free Number is established to provide updated information, the clients should be made aware of the number.

The ASP Disaster Recovery contact lists are included in section 4.1 of this Plan.

### **2.3.6 Support Services**

During and following the disaster, additional Tyler personnel may be required to aid the ASP team. The Office Supervisor of the shell site, or their designee, will coordinate these resources.

## **2.4 Disaster Recovery Strategy**

If there is no equipment or power damage, remote access is available to ASP staff. Employees can login via secure, VPN connections from their home.

The disaster recovery strategy below pertains specifically to a disaster disabling the Falmouth Data Center. The ASP department provides for the recovery of critical functions for our ASP customers within 24 hours.

This section covers three phases: emergency, backup and recovery.

#### **2.4.1 Emergency Phase**

The emergency phase begins with the initial response to the disaster. During this phase, the plans of procedure of Tyler Technologies, Inc. direct efforts to protect life and property, the primary goal of the initial response. The ASP DRT Chairman is alerted by the Building Liaison and begins to monitor the situation.

If the emergency appears to affect the data center or critical service, such as Internet access, the ASP DRT Chairman will closely monitor the situation. Once access to the facility is permitted, an assessment of the damage is made to determine the estimated length of outage. If access is precluded, then the estimate includes the time until the effect of the disaster on the data center can be evaluated.

#### **2.4.2 Back-Up Phase**

The back-up phase begins with the initiation of the Plan for outages enduring longer than 24 hours. In the initial stage of the back-up phase, the goal is to resume critical processing. Processing may resume at the Falmouth Data Center or the Westborough Office, depending on the assessment of damage to equipment and physical structure of the building.

During this period, processing may be degraded.

If the damaged area requires a period of construction longer than 12 weeks, the second stage of backup commences. During the second stage, space will be leased and configured in a data housing facility, or equivalent, providing for processing of all applications and users.

#### **2.4.3 Recovery Phase**

Time for recovery and return to normal processing depends on the damage caused by the disaster. In either case, the recovery process begins immediately after the disaster takes place and takes place in parallel with backup operations. The goal is to restore normal operations as soon as possible.

### **2.5 Other Building Security**

Doors to the ASP floor and the data center require ID card access. A limited number of employees have clearance for the ASP data center. If a member of the ASP staff is unavailable, the following people also have access:

- President
- Vice President
- HR Director
- Marr Realty

In the event of a power outage or other outage that impacts operation of the key card system, access may also be obtained through the back emergency exit with a key. The manager of the ASP department and the building manager have these keys.

## **Part 3 General Responsibilities**

### **3.1 Operations Coordinator**

- Notify Tyler personnel
- Monitor activities of recovery team

Report status to Vice President on a regular basis  
 On an hourly basis, or other appropriate level, update Recovery Status Information

### 3.2 ASP OS/DB Administrator

Recover Tape from off-site storage  
 Deliver Tape to shell site  
 Configure Live Database for each ASP customer  
 Enable critical user access to databases  
 Configure Printers  
 Provide Support for File Transfer

### 3.3 ASP Network Administrator

Travel to shell site  
 Establish VPN tunnel for customers

### 3.4 Webmaster

Obtain NT backup from off-site storage  
 Travel to shell site  
 Load most recent backup of NT server  
 Work with OS/DBA to reestablish printing of Formunis documents  
 General shell site resource

### 3.5 Communications Coordinator

Ensure that the Employee and Client Communications numbers are current and that appropriate parties have copies on and off-site.  
 Ensure that Emergency Contact information is current for all employees and that key parties have copies on and off-site.  
 Retain a copy of the Disaster Recovery Plan on and off-site, including the names and telephone numbers of the Disaster Recovery Task Force  
 Participate in the Disaster Recovery Task Force. Execute plans as determined appropriate.

### 3.6 Director of Human Resources

Notify Building Management  
 General notification for all employees  
 Assess damage to facility  
 Arrange for facility repairs

### 3.7 Vice President of Operations

Update senior managers, as appropriate

### 3.8 Office Supervisor of Shell Site

Ensure requirements of workstations, networking, and telephone lines are met.  
 Facilitate additional resources, if required  
 Reserve rooms at local hotel

**Part 4**  
**Important Recovery**

Notification List

<b>Tyler</b>	<b>Work</b>	<b>Home</b>
	800.772.2260	
Dick Peterson	ext 4102	207.839.2793
John Marr Jr.	ext 4104	207.781.4585
Bob Sansone	ext 4132	207.846.0876
Danelle Daley	ext 4456	207.985.9037
Tom Lowrie	ext 4126	207.626.0647
John Hill	ext 4467	207.878.7767
John MacVane	ext 4181	207.998.8258
Jason Raven	ext 4194	207.829.9393

**Shell Site – Location and Directions:**

Our shell site is located in the Westborough Office Park, Westborough, MA.

**Directions to Westborough Office Park, MA**

**From The North:**

Route 495 South to Route 9 West, Exit 23. Once on Route 9, take the 1<sup>st</sup> exit, Computer Drive / Research Drive. Take left off the exit to the end – left again over Route 9, then 1<sup>st</sup> left onto Research Drive.

**From The East:**

Take the Mass Pike to 495 North. Then, 1-2 miles to Route 9 West Exit. Once on Route 9, take the 1<sup>st</sup> exit, Computer Drive / Research Drive. Take left off the exit to the end – left again over Route 9, then 1<sup>st</sup> left onto Research Drive.

**From the South:**

Take Route 495 North (or Route 128 North to Mass Pike, to 495 North), then 1-2 miles to Route 9 West Exit. Once on Route 9, take the 1<sup>st</sup> exit, Computer Drive / Research Drive. Take left off the exit to the end – left again over Route 9, then 1<sup>st</sup> left onto Research Drive.

**From the West:**

Take Mass Pike East to 495 North. Then, 1-2 miles to Route 9 West Exit. Once on Route 9, take the 1<sup>st</sup> exit, Computer Drive / Research Drive. Take left off the exit to the end – left again over Route 9, then 1<sup>st</sup> left onto Research Drive.

**From Logan Airport:**

Exit Logan Airport, following the signs to Route 93 South. Once on 93 South, take the exit for the Mass Pike / 90 West. Once on Mass Pike (Approx. 30 minutes), take 495 North, then ½ mile to Route 9 West Exit. Once on Route 9, take the 1<sup>st</sup> exit, Computer Drive / Research Drive. Take left off the exit to the end – left again over Route 9, then 1<sup>st</sup> left onto Research Drive.

**\*\* Follow Research Drive all the way past the Westborough Business Park, past the New England Electric Building into the Westborough Office Park.**

Go up over a little hill and into the complex. Our building is 1700, which is the 1<sup>st</sup> right and then the 1<sup>st</sup> building on the left. The office is located on the 1<sup>st</sup> floor.

## Vendor Support Agreements and Contact Information:

### Network

#### ISPs

Time Warner

#### Road Runner Business Class Escalation List

#### **On-call Tech can be paged by sending e-mail to**

[oncall.pager@twmaine.com](mailto:oncall.pager@twmaine.com) [mailto:oncall@twmaine.com](mailto:mailto:oncall@twmaine.com).

**Help Desk Emergency Pager:** 471-0592 or [helpdesk.pager@twmaine.com](mailto:helpdesk.pager@twmaine.com)

The number for Time-Warner Cable of Maine is 207-253-2200.

Business Help Desk phone hours:

Monday – Friday – 7:00am – 5:30pm-After Hours-Rollover to National Help Desk

Saturday & Sunday – National Help Desk

Business Help Desk technicians have expert knowledge in all aspects of Road Runner operations. Senior Technicians are available 24/7/365 for escalation requirements

*Help Desk is always first call @ 253-2300 or **Help Desk Emergency Pager:** (207)-471-0592*

Escalation is listed in order of call. from top to bottom.

**Amy Lake** (x2223)

Cell: 939-4736

Help Desk Supervisor

**Doug Chick** (x2211)

Cell: 415-4984

Dedicated Bandwidth Technician

**Randy Wilbur** (x2338)

Cell: 752-2910

Dedicated Bandwidth Manager

**Brad Jordan** (x2334)

Cell: 415-1806

Senior Network Supervisor

**Rod Wintle** (x2322)

Cell: 415-4987

Director of Network

**Lance Bell** (2377)

Cell: 329-8745

Director of Commercial Services

Global Crossing	800.249.4672
Account	0204018066

GBLX Circuit Id FRO1999040432DS1

### Routers

Systems Engineering 207.772.3199  
 CISCO TAC 800.553.2447  
     Contact number 1327418  
     Router serial numbers 74029482, 74029538  
     Contact number 1394186  
     Catalyst 6509 serial number sca005300kd  
 Norm Farrington cell 978.337.5834

### Firewalls and VPNs

Interliant  
     8-5, M-F 781.756.3700  
     Evenings and Weekends 800.247.5734  
     Contact number GAW00829  
 Nokia 800.762.9270  
     Serial Number L0034-E0639

### **Hardware**

#### Server

IBM  
 Services Assistant number: G0104QVN  
 Customer Number: 06097538

Cust No.	Model	Serial	
3153	BG3	0000BH796	
3153	BG3	0000BH814	
7014	T00	0000CBA3D	
7026	H80	0000000AF	Server
7133	D40	0000KJ679	SSA Disk Subsystem
7133	D40	0000KJ716	SSA Disk Subsystem

UPS  
 Liebert 800.222.5877  
     nfinity N104f0412600  
 Jason Sprague, Lordon Associates 207.839.3323

### **Operating System**

IBM  
 AIX

### **Database**

IBM Informix  
 IDS Workgroup Edition 7.31.UC7-1  
 IBM RS6000 models  
 AIX 4.3  
 Class: UBP  
 AAC#J961997

**Part 5**

The following have reviewed the documentation of this Business Continuity Plan (BCP) and have approved the identified roles, responsibilities and strategies contained within it. Based upon this understanding the organization will underwrite all decisions made by the Disaster Recovery Task Force (DRTF) during a major incident.

---

*The following executives approve and support the ongoing requirements to maintain this document, test the plan, train BCP participants and ensure its ongoing integrity.*

---

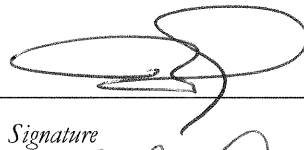
Site Manager:

  
Signature

9/24/2007

Date

Division President:

  
Signature

9-24-07

Date

Tyler CFO:

  
Signature

9/24/07

Date

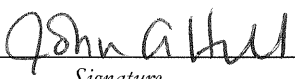



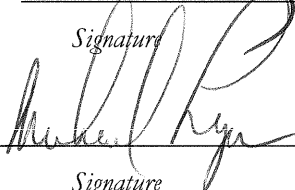
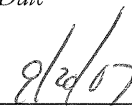


## 5.0 Test Signoff

***DISASTER RECOVERY TEST******TYLER TECHNOLOGIES – Tyler DIVISION******ASP DATA CENTER***

- 1) A dbexport of each client's database is transferred to our Westborough office as part of our nightly backup routine.
- 2) On December 8, 2005 we imported Tyler Technologies database so that it was accessible on the Westborough server. The following tests were run to verify that the database was accessible and worked properly.
  - a) John Hill connected to the database from home via a VPN client and verified that he could list the printers and users on the system.
  - b) Rachel Miller connected to the database from home via a VPN client and verified that she could run a payroll warrant, do employee inquiries, and make changes to employees.
  - c) Lorena Dubois connected to the database from home via a VPN client and verified that she could run a payroll warrant, do employee inquiries, and make changes to employees.
- 3) On December 14, 2005 we imported Wayne County Airport's database so that it was accessible on the Westborough server. The following tests were run to verify that the database was accessible and worked properly.
  - a) John Hill connected to the database via the Internet and verified that he could login and list printers and users on the system.
  - b) Danelle Daley connected to the database via the Internet and verified that she could login and run Tyler.

The following executives acknowledge the occurrence and approve of the BCP Test:

Site Manager:	 <i>Signature</i>	 <i>Date</i>
Division President:	 <i>Signature</i>	 <i>Date</i>
Tyler CFO:	 <i>Signature</i>	 <i>Date</i>

# AT&T PremierSERV<sup>SM</sup> DEDICATED INTERNET ACCESS SERVICE

## TERMS AND CONDITIONS

*for Stand-alone agreements*

### 1. DEFINITIONS

- A. "COE" shall mean customer owned or provided equipment.
- B. "Federal Universal Service Pass-Through Fee ("FUSPF")" shall mean a pass-through of the Federal Universal Service Fees ("FUSF") associated with the telecommunications services underlying the Service, based on current FUSF rates. The FUSPF may be modified from time to time to reflect changes in the FUSF.
- C. "AT&T" shall mean either SBC Internet Services, Inc. dba AT&T Internet Services or SBC Long Distance, LLC, as identified and set forth on the first page of this Agreement.
- D. "Service" shall mean the service(s) as identified and set forth on the first page of this Agreement. AT&T reserves the right at any time during the Term of this Agreement to modify the Service and/or to migrate Customer to AT&T's Managed Internet Service or other comparable service AT&T may have at that time ("AT&T MIS").
- E. "Service Activation Date" or "Cutover Date" shall mean the date Customer has connectivity over the transport network to AT&T's Internet Access Network. In the case of connectivity via ISDN, Frame Relay or ATM, connectivity shall have occurred when a physical connection has been installed and a permanent virtual circuit ("PVC") has been established to permit routing of traffic from Customer's equipment to AT&T's Internet access network. The Service Activation Date shall not be dependent on correct configuration of Customer's computer equipment, applications (e.g., Domain Name Service, Electronic Mail Service), Local Area Network ("LAN") or Wide Area Network ("WAN").
- F. "Site(s)" means Customer locations where AT&T is to perform Services.

### 2. TERM

The Term of this Agreement and the Service provided hereunder will commence on the Service Activation Date and will continue for the Term specified on the first page of this Agreement. The Term of the Service shall automatically renew on a month-to-month basis on the terms and conditions set forth herein, unless either party delivers to the other party thirty (30) days advance written notice of termination. Upon renewal under this provision, the price to Customer will be as stated in AT&T's standard price list in effect at the time of renewal for month-to-month Service.

If during the Term of this Addendum, AT&T chooses to migrate the Customer to AT&T MIS, AT&T will provide the Customer with a prior written (via e-mail) notice to that effect. The terms and conditions specified in this Agreement shall continue unchanged.

### 3. TERMINATION

- A. In the event a ruling, regulation or order issued by a judicial, legislative or regulatory body causes AT&T to believe that its performance under this Agreement may be in conflict with such rule, regulation or order, Customer shall either agree to modify this Agreement to conform to the requirements of such rule, regulation or order, or AT&T may terminate this Agreement immediately upon giving written notice to Customer and without any liability to Customer.
- B. This Agreement may be terminated immediately by either Party or AT&T may suspend performance of this Agreement, upon written notice to the other Party if the other Party (i) is in material breach of this Agreement (including but not limited to failure to make timely undisputed payments) and such failure or breach is not remedied within thirty (30) days after the terminating Party provides written notice to the breaching Party specifically describing such breach; (ii) ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets; (iii) engages in fraud, criminal conduct, or willful misconduct; or (iv) breaches the confidentiality obligations under this Agreement. Except as expressly provided in this Agreement, in the event of a breach of this Agreement by either party, the other party will be entitled to pursue any and all remedies available to it at law or in equity, including court costs and reasonable attorney's fees.
- C. *Termination for Convenience:*
  - 1) Prior to the date upon which AT&T installs transport to provide Service, (i) Customer may cancel this Agreement by providing ten (10) days prior written notice to AT&T and (ii) AT&T may cancel this Agreement based on Customer's non-responsiveness or non-readiness to have AT&T provision/fulfill the requested Service within ninety (90) days after Customer orders the Service. In either event, Customer shall pay AT&T as liquidated damages, not as a penalty, a cancellation charge equal to two (2) months of the Service charges.
  - 2) After the date upon which AT&T installs transport to provide Service, in the event Customer terminates this Addendum without cause by providing thirty (30) days prior written notice to AT&T or in the event AT&T terminates this Addendum based on Customer's non-responsiveness or non-readiness as set forth above, Customer will be liable to AT&T as liquidated damages, not as a penalty, for any installation charges waived or

#### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*

unpaid, any other unpaid charges due and owing, plus fifty percent (50%) of the Monthly Charges for the remaining Term of the Service from the date of termination.

#### **4. PAYMENT AND DELINQUENCY**

- A. Taxes and then current FUSPF associated with Customer's use of the Services will be added, if applicable, to monthly charges specified herein.
- B. For all charges, including installation charges and taxes, if applicable, AT&T will bill Customer through Customer's monthly bill from the AT&T affiliate providing Customer's local telephone service. For circumstances where Customer is outside AT&T affiliate local telephone service territory or where deemed necessary, at AT&T's sole discretion, Customer may receive an invoice directly from AT&T for all charges. Monthly recurring charges will be billed in advance and usage charges will be billed in arrears. Partial months of Service will be prorated. Payments will be applied first to the oldest charges on the bill, without regard to any notation Customer may make on its check. Monthly charges shall commence on the date that AT&T makes Internet connectivity available to Customer. If Customer delays Internet connectivity for more than ten (10) business days after the date that the transport is installed, AT&T will begin billing Customer for the Service on the eleventh (11<sup>th</sup>) business day following the installation of the transport.
- C. Payment shall be due within thirty (30) days after the date of the invoice. Customer shall advise AT&T of any billing discrepancies or disputes about an invoice within thirty (30) days after receiving the invoice or the invoice shall be deemed correct. In addition to recovering attorneys' fees and costs of collection, AT&T may assess a late payment fee equal to the less of 1.5% per month or the maximum amount allowed by law. Payment provisions are subject to AT&T's credit review and AT&T may require a security deposit to ensure prompt payment.
- D. AT&T may suspend or discontinue Services provided under this Agreement, without notice, if charges for these Services are not paid when due.

#### **5. DOMAIN NAME REGISTRATION**

Customer is responsible for choosing a domain name and submitting an application to AT&T. AT&T makes no warranty or representation that the requested domain name will be available for registration. Customer will retain ownership of the registered domain name(s).

#### **6. CUSTOMER OWNED EQUIPMENT**

- A. Unless specified in this Agreement, Customer is solely responsible for provisioning, installing, configuration and maintenance of all COE hardware and software, including without limitation TCP/IP routers, CSU/DSU line interface units, primary domain name servers, electronic mail servers, netnews servers and firewall or proxy servers. AT&T shall not be responsible for delays in the provision of Service resulting from incompatibility of such COE, or resulting from improper provisioning, configuration or maintenance of such COE. AT&T may provide configuration files for certain routers, at its sole discretion, and only as a convenience to Customer. The connection of COE and wire will at all times comply with the terms, conditions, limitations and responsibilities normally applicable to the connection of customer premise equipment to the telephone network, including those now or hereafter established in the Federal Communication Commission's Part 68 Rules and Regulations.
- B. AT&T may make changes in its Services, equipment, operations or procedures, including those related to the Service, where such action is not inconsistent with the proper operation of the Service provided under this Agreement. If any such change can be reasonably expected to render any of Customer's COE incompatible or otherwise materially affect its use or performance, Customer will be provided written notice at least three (3) months in advance of the change. If Customer determines that the cost of replacing or modifying its equipment or system in order to reestablish compatibility and maintain uninterrupted Service is unreasonable, Customer may terminate this Agreement without penalty or liquidated damages (e.g., cancellation or termination charges).
- C. Customer will provide the proper environment, electrical and telecommunication connections for the Services and router, if applicable, as specified by AT&T and/or the router manufacturer. No combination of COE will: require change in or alteration of the equipment or Service of AT&T; cause electrical hazards to AT&T's personnel or damage to AT&T's equipment; cause the malfunction of AT&T's billing equipment; or cause degradation of Service to persons other than the user of the subject terminal equipment or communications system. Upon notice from AT&T that Customer's COE is causing such hazard, damage, malfunction or degradation of Service, Customer will promptly make such changes as will be necessary to remove such hazard, damage, malfunction or degradation of Service.

#### **7. AT&T RESPONSIBILITIES**

- A. Router installation and maintenance. If specified on the first page of this Agreement, AT&T will:
  - 1) Provide, install and maintain a fully configured, staged, and tested router, configured with the IP software suite and LAN interface (the "Router"). Title to the Router shall pass to Customer upon AT&T's completion of the installation of the Router. AT&T will terminate the Service in the Router's LAN interface, which will be the Service point of demarcation. Customer is responsible for interfacing its equipment/LAN with the Router. If Customer

#### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*

requests and agrees to pay time and material charges, the Service interface may be extended to another Customer requested location. If Customer chooses to terminate its maintenance agreement with AT&T, Customer will become responsible for all router configurations and configuration requests, and request for support beyond basic access to the internet, will be performed by DataComm Customer Care solely on a Time and Materials ("T&M") basis. If Customer does not turn up its Router at the same time it is installed, AT&T's hardware maintenance obligations will not be affected, but AT&T will be excused from all other obligations concerning the router, including configuration and IOS support. Further, if Customer alters the configuration of its Router or otherwise interferes with AT&T's ability to perform ICMP traffic-based monitoring, AT&T will be excused from all further router monitoring obligations.

- 2) Provide support for basic internet service connectivity including the following custom Router configurations: up to 10 extended IP access list lines (ACL) in addition to standard ACL (excluding reflexive or other dynamic ACLs); DHCP with up to two options; dynamic network and port address translation; up to 10 static network and/or port address translation entries; one read-only SNMP community. These custom Router configuration requirements are to be provided by the Customer to Maintenance 24 hours after basic internet service activation. All other Router configuration requests by the Customer will be performed on a Time and Material (T&M) basis by customer care. Not offered: routing protocols on the Router, or custom configurations on the AT&T network routers.
  - 3) Provide project management of the Service and Router installation;
  - 4) Provide to Customer the Service circuit IDs and an 800 number for trouble reporting after the Service Activation date.
  - 5) Retain the Router password and will be solely authorized to make changes to the Router configuration;
  - 6) Maintain and repair the Router for the duration of the Service period in accordance with Section 12 hereof. If, however, Customer chooses to manage the Router password, then Customer will be responsible for the maintenance and repair of the Router. In that instance, AT&T will no longer have the responsibility to maintain and repair the Router as stated herein.
- B. Except with respect to Service provided over AT&T's Integrated Services Digital Network ("ISDN"), AT&T will monitor the Service 24 hours a day, 7 days a week for Service troubles and failure and will provide Customer with Service information and documentation for trouble reporting.
- C. AT&T will allocate the necessary number of IP addresses to Customer based on the mutually agreed upon design and provide specific LAN/WAN assignments for the Router. AT&T reserves the right to decrease, increase, modify or otherwise restrict the number of IP addresses assigned to Customer, but will not do so without prior discussion with Customer.

## 8. **CUSTOMER RESPONSIBILITIES**

Customer is responsible the following:

- A. Providing the path for the extension of the Service interface beyond the network interface demarcation;
- B. Providing access to the network demarcation and Router during installation and for the Term of the Service;
- C. Providing an on-site project manager/contact at mutually agreed upon times and for the duration of the installation interval who will designate the Service interface requirements, assist in the installation and configuration of the Router, and accept the Service;
- D. Providing network security for its LAN and access to Customer's LAN. This may include numbering/ renumbering Customer's LAN IP devices using the new address to permit access to the Internet;
- E. IP addressing of any hosts connected to the Router and IP sub-netting behind the Router. AT&T does not provide professional services regarding sub-netting beyond the LAN interface on the Router;
- F. Providing a firewall or other device to protect its internal network if Customer has not elected to obtain security services from AT&T; and
- G. Providing AT&T with access to all wiring closets, equipment rooms and/or demarcation locations during installation and maintenance procedures.

## 9. **SPECIAL CONSTRUCTION**

Special construction will be required if (1) the facilities or equipment are not available to meet an order for Service and AT&T or its affiliates or vendors must construct facilities; (2) Customer requests Service to be furnished using a type of facility or equipment, or via a route, other than that which AT&T would ordinarily utilize in providing the requested Service; or (3) Customer requests construction be expedited and such expedited construction results in added cost to AT&T. Special construction charges will be developed based upon estimated costs and Customer must provide written approval

### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*

and payment for all special construction costs before AT&T or its affiliates or vendors will begin any special construction. If Customer fails to provide written approval of and pay for special construction charges, Services ordered under this Agreement will be terminated by AT&T.

#### **10. SERVICE MOVES, CHANGES & UPGRADES**

The Site(s) to receive the Service which are specified on the first page of this Agreement may be moved or changed from one Site to another within the LATA, so long as the new Site can be served from an AT&T wire center, and the Service and associated charges will continue uninterrupted. Non-recurring charges and new recurring charges that would apply for the new location will be negotiated at the time of the move. If Customer elects to upgrade the Service to a higher speed, Customer may do so without liability for the early termination charges specified in this Agreement if Customer signs a new agreement with a term at least equal to the Term of this Agreement. Customer will be responsible for installation charges and the new monthly rate.

#### **11. TRANSPORT SERVICES**

Unless purchased with the Service, Customer must obtain local transport services ("Transport") from a transport provider for use with the Service and the terms and conditions applicable to those services are not in any way affected by the terms of this Agreement. Additionally, ANY LONG DISTANCE, MEASURED SERVICE OR TOLL CHARGES INCURRED BY CUSTOMER TO ACCESS THE SERVICE DURING CUSTOMER'S USE OF THE SERVICE SHALL BE CUSTOMER'S SOLE RESPONSIBILITY.

#### **12. MAINTENANCE AND TESTING**

- A. The Parties will cooperate with each other in performing joint tests to the extent reasonably necessary to establish the Service or to detect, isolate and remedy Service related problems. Joint tests will be at no charge to the other Party, if such tests are conducted by remote testing systems. If an AT&T on-site technician is necessary and the trouble is located on Customer's side of the interface, actual material and labor prices at AT&T's standard rates will apply. AT&T will negotiate and coordinate the maintenance of transmission services with Customer's chosen local transport provider.
- B. AT&T will perform routine maintenance as is customary to reasonably maintain the Service, Transport, and Router, if applicable, as described herein. All such maintenance will be performed at no additional charge to Customer if the fault which gives rise to the maintenance request is determined by AT&T to reside on the AT&T side of the point of demarcation between AT&T and Customer or in the Router. Actual material and labor prices at AT&T's standard rates will apply to troubles isolated to COE, to Customer's misuse of the Router, or to any condition on Customer's side of the point of demarcation between AT&T and Customer.
- C. Customer understands and agrees that temporary interruptions may occur as normal and reasonable events in the provision of the Service. All computer systems and networks need routine maintenance from time to time. AT&T generally schedules and performs such maintenance, on an as needed basis, during the times indicated on AT&T's website (located at <http://dedicated.sbcis.sbc.com/NDWS/>). Not all scheduled network/systems maintenance will affect Customer's Service. However, AT&T will endeavor to provide Customer five (5) business days advance notice, or if not possible, reasonable advance notice if AT&T believes that such routine scheduled maintenance will affect Customer's Service. In the event of a network/systems emergency requiring immediate attention, AT&T reserves the right to perform emergency maintenance without notice or upon short notice, and shall use all reasonable efforts to minimize the effect of such work on Customer's Service.
- D. Customer acknowledges and agrees that AT&T has no control over third party networks Customer may access in the use of the Service, and therefore, delays and disruption of other network transmissions are completely beyond the control of AT&T. AT&T will not be responsible for Customer's inability to access the Internet due to circumstances not in the direct control of AT&T, such as individual Internet user's own equipment capabilities and/or limitations, Internet limitations and/or browser software limitations.

#### **13. SERVICE LEVEL AGREEMENT** (Visit <http://dedicated.sbcis.sbc.com/NDWS/sla/> for SLA Details and Methodology)

- A. *Network Service Levels:* AT&T agrees to meet the following network service levels:
  - 1) *Network Availability:* AT&T's IP Backbone Network, from which it provides AT&T PremierSERV Dedicated Internet Access, will be available 99.99% of the time, based upon a monthly average between AT&T-selected MegaPOP and MiniPOP endpoints.
  - 2) *Network Latency:* Average round-trip transmissions will be 40 milliseconds or less between AT&T-selected MegaPOP endpoints within AT&T's IP Network, measured by averaging samples taken during a calendar month between these endpoints.
  - 3) *Network Packet Loss:* During any calendar month, packet loss will not exceed 0.1% based upon monthly averages, between AT&T-selected MegaPOP and MiniPOP endpoints within AT&T's IP network.

#### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*

- 4) *Off-net Performance ("AT&T KB40")*: The monthly average full-page download time for the Keynote Business 40 websites, from within selected domestic AT&T MegaPOP locations, will not exceed 110% of the US25 Overall metric. The Keynote Business 40 (KB40) Internet Performance Index measures the average download time for the home pages of 40 significant US-based business Web Sites. These measurements are taken by automated agents attached to key points in the Internet backbone in the 25 largest metropolitan areas of the United States.
- B. *Network Service Credits*: If AT&T fails to meet any of the above monthly aggregate network service levels in a calendar month, Customer shall be entitled to one (1) day's credit pro-rated from Customer's recurring monthly charges for the Service for each monthly aggregate service level failed ("Network Service Credit"). In order to receive this Network Service Credit, Customer must request a credit by visiting AT&T's SLA website at <http://dedicated.sbcis.sbc.com/NDWS/sla/credit.jsp>. All Network Service Credit requests must be received by AT&T by the last day of the month after the monthly aggregate infraction occurred. Failure to comply with this requirement will forfeit Customer's right to receive a Network Service Credit.
- C. *Customer Service Level*: AT&T agrees to meet the following Internet availability service level:
  - 1) *Internet Service Availability*: AT&T PremierSERV Dedicated Internet Access Service will be available to Customer 99.95% of the time in a calendar month. "Service Unavailability" exists when Customer's Internet connection is unable to transmit and receive IP Packets to/from On-Net Hosts and AT&T records such failure in the AT&T trouble ticketing system ("Impaired DIA Service"). Service Unavailability is measured from the time AT&T has actual knowledge of a service outage and a trouble ticket is opened, either in response to notification by the Customer or in response to alarms from internal network management systems, to the time Customer's Impaired DIA Service is again able to transmit and receive IP Packets from AT&T On-Net Hosts.
- D. *Internet Service Credits*: If AT&T fails to meet the above Internet service availability, then for each cumulative hour of Service Unavailability, exceeding the initial twenty (20) minutes of unavailability per month, Customer shall be entitled to one (1) day's credit pro-rated from Customer's recurring monthly charges for the DIA Port fees, not to exceed a total of fifteen (15) day's pro-rated recurring monthly service charges for the Service ("Internet Service Credit"). (E.g., Service Unavailability of greater than twenty (20) minutes but less than or equal to an hour shall entitle Customer to one (1) day's credit prorated; Service Unavailability of greater than one (1) hour but less than or equal to two (2) hours shall entitle Customer to two (2) day's credit prorated; etc.). In order to receive an Internet Service Credit, Customer must timely contact the Dedicated Enhanced Service Center ("DESC") to open a trouble ticket and also request an Internet Service Credit. If the DESC determines that the reported Service Unavailability was AT&T's responsibility, an Internet Service Credit shall be provided in accordance with this subsection. Failure to comply with this requirement will forfeit Customer's right to receive an Internet Service Credit.
- E. This Service Level Agreement ("SLA") will not apply to infractions caused by (i) factors outside of AT&T's reasonable control, including force majeure events, (ii) scheduled network maintenance, (iii) actions or inactions of Customer or any third parties not under the sole control of AT&T, (iv) problems caused by COE, (v) problems isolated to the Local Access Transport and packet switching facilities connecting the AT&T POP to Customer's premise; or (vi) transmission errors across the portion of the Internet which is off-net to AT&T.
- F. To provide a means of verifying performance of the service levels specified in this section of the Agreement, AT&T will use network health monitoring software to validate the data for any calendar month.
- G. Customer acknowledges that the warranties contained herein measure AT&T's IP Backbone from selected endpoints and may not represent Customer's actual IP network experience.

#### 14. **USE AND LIMITATIONS**

- A. AT&T may: (i) reject or refuse to perform any Services that are not in compliance with its applicable specifications and standards, laws and regulations and/or public interest standards as determined by AT&T; and (ii) from time to time and without notice, make changes in Services that in its sole judgment will best serve AT&T's customers. AT&T's partial rejection or refusal of any portion of Services will not release Customer from its obligations with respect to the remaining Services being performed.
- B. Customer agrees to comply with the Acceptable Use Policy (AUP), all policies applicable to AT&T and all policies applicable to any network that is accessed through AT&T. Violation of any such rules, regulations and policies, or any attempt to break security or to access an account which does not belong to Customer, shall be considered a material breach of contract, and AT&T may terminate this Agreement without liability or may suspend or terminate Service to Customer, or suspend or terminate any user ID, electronic mail address, universal resource locator or domain name used by Customer. Upon such termination by AT&T, Customer shall be liable for any applicable charges, including early termination charges as set forth in Section 3 of this Agreement. If Customer's Service is suspended pursuant to this Section, Customer will remain responsible for charges for the Service incurred during the period of suspension. The AUP can be viewed at: [http://dedicated.sbcis.sbc.com/NDWS/sbc\\_policy/aup.jsp](http://dedicated.sbcis.sbc.com/NDWS/sbc_policy/aup.jsp).
- C. Nothing contained in this Agreement may be construed to convey to Customer any interest, title, or license in the user ID, electronic mail address or universal resource locator used by Customer in connection with the Service.

#### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*

- D. Customer acknowledges and agrees that AT&T has the right to enforce its policies and guidelines pertaining to Customer's use of the Service and may be required to take immediate action to protect the integrity, quality, reputation and/or availability of the Service.

## 15. WARRANTY

- A. AT&T warrants that for the Term of this Agreement, AT&T will make reasonable efforts to provide continuous, uninterrupted, expedient and error-free Service to Customer. If, under normal and proper use, the Services fail to perform substantially as specified above, and Customer notifies AT&T during such Term, AT&T will make commercially reasonable efforts to correct such Service degradations or failures without charge to Customer. AT&T's liability for damages for interruptions of Service, or for mistakes, omissions, delays, errors and defects in the provision of Services, shall in no event exceed an amount equal to the *pro rata* charges to Customer for the period during which the Services are affected.
- B. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AT&T HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY AND PERFORMANCE. AT&T MAKES NO WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES AT&T MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE. AT&T MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH THE SERVICE, AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT CUSTOMER'S OWN RISK.

## 16. INDEMNITY

Customer will indemnify and defend AT&T, its directors, officers, employees, agents and their successors ("Agents") from and against any and all third party claims and related loss, liability, damage and expense, including attorneys' fees, (collectively "Damages") arising from improper use of Services or information or any content or data transmitted over any AT&T network or facilities. AT&T will indemnify and defend Customer and its Agents from and against any Damages finally awarded or paid in settlement based on a claim that any Service, or AT&T-provided equipment and software (collectively, "Materials"), infringe a U.S. patent or copyright. If a final injunction or judgment is awarded against Customer prohibiting use of Service/Materials by reason of infringement of a U.S. patent or copyright, AT&T will at its option and expense either (a) procure the right for Customer to continue using the Service/Materials; (b) obtain and deliver equivalent non-infringing Service/Materials; or (c) terminate the infringing Service/Materials and refund to Customer amounts paid for infringing Service/Materials, less a reasonable charge for use. An indemnified Party shall provide the indemnifying Party with notice for any claim of indemnity and the indemnifying Party shall have complete authority to assume the sole defense and settlement of such claim. The indemnified Party may participate in the settlement or defense at its own expense and shall reasonably cooperate to facilitate the defense and settlement of such claims.

## 17. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATED TO LOST PROFITS, TOLL FRAUD, LOSS OF USE, AND LOSS OF DATA, OR FAILURE TO REALIZE SAVINGS OR BENEFITS) ARISING UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. THE TOTAL AGGREGATE LIABILITY OF AT&T, ITS SUPPLIERS, LICENSORS, AFFILIATES, DIRECTORS, OFFICERS, AND/OR EMPLOYEES UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER TO AT&T FOR SERVICE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CIRCUMSTANCES GIVING RISE TO THE FIRST CLAIM FOR DAMAGES UNDER THIS AGREEMENT.

## 18. CONFIDENTIAL INFORMATION

During the Term of this Agreement, each Party may obtain Confidential Information (including ideas, know-how, trade secrets, computer programs, technical information, and other confidential information which is disclosed by a disclosing Party to a receiving Party under this Agreement) from the other Party. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within 15 days after disclosure. Neither Party may during the Term and for three (3) years thereafter disclose any of the other Party's Confidential Information to any third party. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, or (iv) disclosed by the disclosing Party to a third party without an obligation of confidentiality. Upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information. The terms of this Agreement shall be deemed Confidential Information by the Parties.

### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*



## 19. CUSTOMER INFORMATION AND WORKING ENVIRONMENT

AT&T may rely on any information provided by Customer and assumes no liability for any damages or costs that result from errors or omissions in such information. Customer shall provide AT&T with timely access to Customer information, facilities or equipment as AT&T reasonably requires to provide the Services and keep AT&T informed on developments in Customer business or operations that may impact Service. To the extent that AT&T provides Services on Customer's premises, Customer shall maintain the premises in a suitable and safe working environment, free of hazardous substances (including pollutants, contaminants, or toxic substances) ("Hazardous Materials"). AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials on Customer's premises and Customer shall pay AT&T for any additional costs incurred as result of the presence of Hazardous Materials. AT&T may terminate this Agreement or suspend performance until Customer removes any such Hazardous Materials and otherwise complies with the terms herein.

## 20. MISCELLANEOUS

- A. *Governing Law*. This Agreement will be governed by and construed in accordance with the domestic laws of the State indicated on the first page of this Agreement. The Parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.
- B. *Relationship of Parties*. AT&T, its employees, agents, and representatives are not employees, servants, partners, or joint venturers of or with Customer. AT&T is an independent contractor and will at all times direct, control, and supervise all of its employees.
- C. *Assignment*. Neither this Agreement nor any portion or interest in this Agreement may be assigned, sublet, or in any manner transferred by a Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, AT&T may assign all or any part of this Agreement to an AT&T Affiliate or use subcontractors to perform Services.
- D. *Severability and Waiver*. If any provision of this Agreement is determined to be invalid or unenforceable, this Agreement will be construed as if it did not contain such provision. The failure of a Party to insist upon strict performance of any provision of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of such provision and the same will remain in full force and effect.
- E. *Survival*. Any term of this Agreement that by its sense and context is intended to survive the expiration or termination of this Agreement shall survive the expiration or termination hereof.
- F. *Timely Actions*. Any legal action under this Agreement must commence within two (2) years after the cause of action arises.
- G. *Publicity*. During the Term of this Agreement, AT&T may refer to Customer, orally and in writing, as a customer of AT&T and may publish a press release announcing in general terms that AT&T and Customer have entered into this Agreement and AT&T may in general terms describe the activities contemplated hereunder. Any other reference to one Party by the other Party requires written consent of the first Party.
- H. *Notice*. Any notice required or permitted under this Agreement shall be in writing and shall be delivered to Customer and/or AT&T via mail, fax or e-mail to the address set forth on the first page of this Agreement.
- I. *Force Majeure*. Except in the case of payment of amounts due, neither Party will be liable to the other Party for any failure of performance due to any cause beyond that Party's reasonable control, including acts of God, fire, explosion, vandalism, terrorism, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action, or request by any government, civil, or military authority, national emergencies, insurrections, riots, wars, labor difficulties, supplier failures, shortages, breaches, or delays, or preemption of existing Service to restore Service in compliance with the regulatory rules and regulations, or, in the case of AT&T, delays caused by Customer or Customer's service or equipment vendors.
- J. *Entire Agreement*. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, representations, and understandings relating to the subject matter hereof. No modifications or subsequent agreements concerning the subject matter of this Agreement will be effective unless made in writing and signed by the Parties. AT&T shall not be bound by any electronic or pre-printed terms additional to, or different from, those in this Agreement that may appear in Customer's form documents, orders, acknowledgments or other communications.

**END OF DOCUMENT**

### **CONFIDENTIAL INFORMATION**

*The information contained herein is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their respective companies.*



Exhibit 6

Client's Request for Proposals ("RFP")

Incorporated by reference

Exhibit 7

Tyler's Proposal in response to Client's Request for Proposals

Incorporated by reference

Exhibit 8

Tyler's Three (3) Responses to Client's Requests for Clarification

Incorporated by reference

Exhibit 9

Intentionally Omitted

## Exhibit 10

## Business Travel Policy

## 1. Introduction

This statement of company policy on travel and related business expenses is intended to establish equitable standards and achieve consistent and fair treatment of all employees who incur such expenses.

Travel should be consistent with the needs of the business and used to accomplish business objectives in a cost efficient and safe manner. The Company recognizes that all reasonable and necessary expenditures by an employee on behalf of the Company are reimbursable to the employee.

Employees are expected to:

- a. exercise good judgment with respect to expenses, spending the Company's money as judiciously as they would their own and
- b. report all expenses promptly and accurately with the required documentation.

## 2. Company Travel Agent

All travel arrangements (Air, Lodging and Car Rental) must be made through Dube Carlson Wagonlit Travel, the Company Travel Agent. Dube Carlson will provide employees with the convenience of one phone call reservations and help the Company monitor and manage travel expenses. The local number is 883-8938 and the toll free number is (800) 622-8938.

## 3. American Express Corporate Card

Tyler Technologies has selected American Express as its official corporate card for all business travel and entertainment expenses. Employees who travel on a regular basis will be issued a card in their name without having to fill out an application. An employee who does not travel enough to qualify for a corporate card may use a personal credit card if they are required to travel on company business.

Frequent travelers may choose to participate in the Membership Rewards Program which grants cardholders one point for every dollar charged on the card. The annual fee for this program is the responsibility of the individual employee.

#### 4. Expense Reports

Expense reports must be accompanied by original receipts and, if applicable, signed Customer Services Reports. For hotels and car rentals, employees must submit all establishment statements in addition to the credit card receipt. For airline tickets, attach the passenger receipt or the original "Amex Square" that accompanies the statement. If the ticket is charged to the corporate account, the airline ticket receipt should be attached to the expense report but not reported for reimbursement.

The Company encourages employees to plan their business trips as far in advance as possible in order to obtain lower fares. If the American Express bill arrives before the ticket is used, submit the original "Amex Square" with the next expense report. Do not submit the passenger receipt, as it may be needed during the actual trip. When the ticket is actually used, indicate on that week's expense report that the fare was previously reimbursed.

Employees must submit an expense report to their manager or designee for approval no later than the week following the travel. Approved expense reports received in accounting by noon Tuesday will be processed for payment on Friday.

#### 5. Air Travel

##### A. Reservations and Tickets

All air travel must be booked through Dube Carlson Wagonlit Travel and charged to the employee's Corporate American Express Card. Airline tickets for employees who have not received their card yet or do not qualify for one will be charged to the Company account. Dube Carlson will identify all reasonable travel alternatives and discounts available including choice of airport, airline, dates and times. The employee will select the most cost-effective flight available. Employees are encouraged to make reservations far enough in advance to take full advantage of discount opportunities.

Unused tickets must be returned to the Company Travel Agent immediately to ensure proper credit.

##### B. Restrictions

No more than 5 members of management or 10 employees may travel together on the same aircraft. Exceptions to these restrictions require the written approval of senior management.

Employees may not pilot a private plane while on company business.

#### 6. Ground Transportation

##### A. Private Automobile

Business use of an employee's private automobile will be reimbursed at a rate of \$ .485 per mile plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

Mileage, parking and tolls incurred in traveling to an employee's office are considered commuting expenses and are not reimbursable travel expenses.

Employees must carry insurance, at their own expense, with limits appropriate to the states in which they drive. The Company requires a minimum of \$100,000 combined single limit for bodily and property damage; however \$300,000 is recommended. The Company does not assume liability for damages incurred in the event of an accident.

#### B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience and the specific situation require their use.

The Company has selected Avis as its primary rental car firm. Reservations must be made through the Company Travel Agent to ensure that we take full advantage of the contract. When renting a car for Company business, employees should decline the "collision damage waiver" and "personal accident insurance" on the rental agreement as the Company carries leased vehicle coverage for any employee leasing a vehicle for business purposes. Travelers should also decline the "fuel purchase option" and return the car with a full tank of gas.

If the rental is split between personal and business use, the employee is responsible for any accident occurring during the personal portion of the rental.

#### C. Public Transportation

Taxi or airport limousine services should be considered when traveling in and around cities or to and from airports. The Company will reimburse the actual fare plus a reasonable tip (15-18%). In the case of a free hotel shuttle to the airport, a \$1 tip per bag is reimbursable.

### 7. Lodging

All hotel reservations must be made by the Company Travel Agent except when a block of rooms has been reserved as a part of a meeting or convention being attended. Dube Carlson will select hotel chains that are well established, reasonable in price and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Fairfield Inn, Hampton Inn and Holiday Inn Express. If none are available, Dube Carlson will identify comparable hotels in the area and negotiate a competitive rate. If the customer has a discount rate with a local hotel, notify Dube Carlson as soon as possible to ensure that all employees can take advantage of the rate. When the Company anticipates a substantial number of overnight stays at a location, Dube Carlson will negotiate a special rate for employees traveling to that site.

Employees should inform Dube Carlson of membership in travel clubs such as AAA. In some cases, the club rate may be lower than the company rate.

Employees who do not utilize the Company Travel Agent or choose hotels that are not comparable to the selected chains may have their reimbursement prorated.

When reporting hotel costs, include just the price of the room and applicable taxes. Other items on the hotel bill, such as telephone and fax expenses, should be segregated and accounted for in the appropriate places on the travel expense report. Reasonable calls to the employee's home are allowable. Refer to Section 8 of this policy for details on telephones. Tips for the maid are a personal matter and not reimbursable.

### 8. Meals

Employee meals while on travel status are reimbursable in the form of a flat per diem rate. The reimbursement rates for individual meals are as follows:

Breakfast	\$ 6.00
Lunch	10.00
<u>Dinner</u>	<u>28.00</u>
Total	\$44.00

Receipts are not necessary to claim a per diem meal.

An employee on travel status will not be reimbursed for a meal that was purchased by another Tyler employee or a customer.

#### A. Overnight Travel

Employees on overnight travel status are eligible to claim all three meals on their expense report except as follows:

##### Departure Day

depart before 12:00 noon	lunch and dinner
depart after 12:00 noon	dinner

##### Return Day

Return before 12:00 noon	breakfast
Return between 12:00 noon & 8:00 p.m.	breakfast and lunch
Return after 8:00* p.m.	breakfast, lunch and dinner

\*8:00 is defined as direct travel time and does not include time taken to stop for dinner

#### B. Same Day Travel

Employees traveling at least 2 hours to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 8:00\* p.m.

\*8:00 is defined as direct travel time and does not include time taken to stop for dinner

#### C. Entertainment

All entertainment expense must have a business purpose and there are strict legal requirements regarding this activity. A business discussion must occur either before, after or during the event in order to qualify for reimbursement.

In order to comply with the IRS substantiation requirement, all entertainment expenses must be supported by the following details:

1. the date of the event
2. the item (e.g., dinner lunch, drinks, etc.)
3. the name of the service establishment
4. the business topic (e.g., payroll, UB), "business discussion" and similar phrases are not sufficient descriptions



5. the name, title and company of each person in attendance to establish the business relationship
6. the total amount of the expense

An employee who submits an entertainment expense for a meal or participates in a meal submitted by another employee, as entertainment can not claim a per diem for that same meal.

9. Communication

A. Telephone Credit Cards

The Company provides employees who travel on a regular basis with a Qwest Calling Card. Employees should use the card when making business calls from their hotel room, home or pay phones to take advantage of the lower rates. Reasonable calls to an employee's home while traveling on Company business are allowable.

B. Company Toll Free Number: 800 772-2260

Employees who are traveling should use the 800 number rather than a calling card to call the office. The 800 number should be only used for long distance calls to the office, local calls are charged at the same rate as long distance calls.

C. Cellular Phones

The Company has determined that the following positions require the use of a cellular phone:

- Senior Management
- Sales
- Project Managers

Employees in such positions will be reimbursed up to \$100 for the one time purchase of a cellular phone. The employee will own the phone and be responsible for its maintenance. The company will not reimburse the employee for the cost of a replacement phone or any accessories.

The company will reimburse eligible employees up to \$100 per month for the cost of a monthly plan that offers a specified number of free minutes each month. The employee is responsible for finding the calling plan that best suits his/her business usage. The Company may also designate employees in other positions to be eligible for this plan if the circumstances justify the expense.

The Company has determined that the following positions do not require the use of a cellular phone but due to extensive travel the employee may choose to use one while traveling on company business:

- Implementation Specialists
- Installation Specialists

The company will reimburse eligible employees up to \$50 per month for the cost of a monthly plan that offers a specified number of free minutes each month. The employee is responsible for finding the calling plan that best suits his/her business usage. The Company

may also designate employees in other positions to be eligible for this plan if the circumstances justify the expense.

#### D. High Speed Internet Access

Implementation Specialists are expected to conduct some training days via webex. Those who live more than 45 miles from the closest MUNIS office (Falmouth, Westborough, Phoenix or Raleigh) will be reimbursed up to \$45 per month for the cost of high speed internet access in their home. Report the cost on an expense report accompanied by the monthly bill. Implementation Specialists living within a 45 mile radius of a regional office are expected to use the office for webex training.

#### E. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If your hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

### 10. Unallowable Expenses

Except as covered elsewhere in this policy, the following is a list of items considered to be of a personal nature and, therefore, not reimbursable by the Company:

- a. shoe shines, haircuts, and similar personal grooming services
- b. movies, shows and sporting events
- c. travel and personal property insurance
- d. excess cost of making a personal side trip
- e. fines for traffic violations
- f. laundry and valet charges on trips less than five days
- g. loss or theft of personal property, money or tickets
- h. travel expenses to and from your principal place of work
- i. purchase of clothing or items for personal use
- j. cost of personal credit cards

### 11. Responsibilities

Management is responsible for the administration of this policy as it relates to their employees. The Chief Financial Officer must approve all interpretations and exceptions to this policy. The Company reserves the right to amend this policy at any time, without advance notice.

Effective Date: January 1, 2007

## Exhibit 11

## HIPAA Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT ("Business Associate Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF RICHMOND, a political subdivision and municipal corporation of the State of California, with offices at 1401 Marina Way South, Richmond, California 94804 (hereinafter referred to as the "Covered Entity") and Tyler Technologies, Inc., with offices at 370 U.S. Route 1, Falmouth, Maine 04105 (hereinafter referred to as the "Business Associate"), as part of the services to be provided under the Agreement.

## WITNESSETH:

WHEREAS, the Covered Entity requires the Business Associate to provide services that will involve the regular use and/or disclosure of protected health information; and

WHEREAS, the Business Associate is capable of performing the services while complying with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended ("HIPAA"); and

WHEREAS, the Business Associate desires to provide the services which the Covered Entity requires and abide by the required privacy standards of HIPAA.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED, as follows:

1. DEFINITIONS: Unless otherwise provided below, the terms used in this Business Associate Agreement shall have the same meaning as those definitions set forth in 45 CFR 160.103, 45 CFR 162.103 and 45 CFR 164.501.
  - (a) Business Associate. "Business Associate" shall mean Tyler Technologies, Inc.
  - (b) Covered Entity. "Covered Entity" shall mean the City of Richmond, California.
  - (c) Individual. "Individual" means the person who is the subject of the Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
  - (d) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
  - (e) Protected Health Information. "Protected Health Information" shall mean individually identifiable health information as set forth in 45 CFR 164.501, limited to the information created or received by the Business Associate from or on behalf of the Covered Entity.
  - (f) Required By Law. "Required By Law" shall mean a mandate contained in law that compels the Covered Entity to make a use or disclosure of protected health information and that is enforceable in a court of law and as further defined in 45 CFR 164.501.

(g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

2. SCOPE OF SERVICES: Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity. The Agreement shall be executed at the same time this Business Associate Agreement is executed. The Agreement is incorporated by reference into this Business Associate Agreement and made a part hereof. Specifically, the services covered by this Business Associate Agreement include full access to all Covered Entity employee protected health information ("PHI") and vendor protected health information ("PHI") to install, implement, upgrade and maintain the system. The access to protected health information ("PHI") shall also include the conversion of existing data to the Business Associate system. All other uses and disclosures are prohibited.

3. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION: Except as otherwise limited by this Business Associate Agreement, the Business Associate may:

(a) Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Disclose Protected Health Information for the proper management and administration of the Business Associate, provided that the Business Associate represents to the Covered Entity in writing that (i) the disclosures are required by law, or (ii) the Business Associate obtains written assurances from the third party to whom the information is disclosed regarding its confidential handling of such Protected Health Information as required under 45 CFR 164.504(e)(4) and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

4. RESPONSIBILITIES OF THE BUSINESS ASSOCIATE WITH REGARD TO PROTECTED HEALTH INFORMATION: With regard to its use and/or disclosure of Protected Health Information, the Business Associate agrees to the following:

(a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as required by law.

(b) The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Business Associate Agreement.

(c) The Business Associate agrees to report, in writing, to the designated Privacy Officer of the Covered Entity any use or disclosure of the Protected Health Information not provided for by this Business Associate Agreement, within five (5) days of the Business Associate's discovery of such unauthorized use and/or disclosure.

(d) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this Business Associate Agreement to the Business Associate with respect to such information.

(e) The Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information, in accordance with 45 CFR 164.528.

(f) The Business Associate agrees to provide to the Covered Entity, within thirty (30) days of receiving a written request, information relating to disclosures of Protected Health Information as would be required for the Covered Entity to respond to a request by an Individual or an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(g) The Business Associate agrees to make internal practices, books, records, including policies and procedures, and agreements relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule or to allow the Covered Entity to monitor compliance with this Business Associate Agreement.

(h) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Business Associate Agreement.

(i) Subject to Section 7 below, the Business Associate agrees to return to the Covered Entity, or destroy, the Protected Health Information in its possession, within thirty (30) days of the termination of this Business Associate Agreement, and retain no copies, including the destruction of all backup tapes, if applicable.

5. RESPONSIBILITIES OF THE COVERED ENTITY WITH REGARD TO PROTECTED HEALTH INFORMATION: With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Covered Entity hereby agrees:

(a) To provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR 164.520, as well as any limitations to such notice, to the extent that such limitations may affect the Business Associate's use or disclosure of Protected Health Information.

(b) To provide the Business Associate with any changes in, or revocation of, or consent by an Individual to use or disclose Protected Health Information, if such changes affect the Business Associate's permitted or required uses and disclosures. (45 CFR 164.506 and 164.508)

(c) To notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Insurance.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY: The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

7. TERM AND TERMINATION:

(a) Term. The term of this Business Associate Agreement shall be effective for a term concurrent with the Agreement. In the event the Agreement is terminated, this Business Associate Agreement will terminate when the Agreement terminates.

(b) Termination for Cause.

(i) Upon the Covered Entity's knowledge of a material breach by the Business Associate, the County may immediately terminate this Business Associate Agreement.

(ii) The Covered Entity may provide an opportunity for the Business Associate to cure the breach or end the violation to the satisfaction of the Covered Entity within ten (10) days upon written notice of the existence of the alleged breach. In the event the Business Associate does not cure the breach or end the violation within the set time, the County shall terminate this Business Associate Agreement; or

(iii) If neither termination nor cure are feasible, the Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(i) Except as provided in paragraph (b) of this Section, upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.

(ii) In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible whether from itself or from an agent or subcontractor, the Business Associate shall provide to the Covered Entity written notification of the specific reasons that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or

destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(iii) In the event this Business Associate Agreement is terminated but the Agreement is not terminated, Business Associate's warranty and support obligations set forth in the Agreement shall be void.

8. INTERPRETATION: Any ambiguity in this Business Associate Agreement shall be resolved to permit the Covered Entity to comply with the Privacy Rule.
9. INDEMNIFICATION AND HOLD HARMLESS. Subject to the limitation of liability set forth in the Agreement, the Business Associate shall, at its own expense, protect, defend, indemnify, save and hold harmless the Covered Entity and its elected and appointed officers, employees, servants and agents from all claims, damages, costs and expenses, including, but not limited to, all costs from administrative proceedings, court costs and attorney fees, that they may incur as a result of any acts, omissions or negligence of the Business Associate, its officers, employees or agents that may arise out of this Business Associate Agreement.
10. WAIVERS. No failure or delay on the part of either of the parties to this Business Associate Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.
11. MODIFICATION OF AGREEMENT. Modifications, amendments or waivers of any provision of this Business Associate Agreement may be made only by the written mutual consent of the parties hereto.
12. SECTION TITLES. The titles of the sections set forth in this Business Associate Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Business Associate Agreement.
13. COMPLETE AGREEMENT. This Business Associate Agreement and any additional or supplementary documents incorporated herein by specific reference contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Business Associate Agreement or any part thereof shall have any validity or bind any of the parties hereto.
14. INVALID/UNENFORCEABLE PROVISIONS. If any clause or provision of this Business Associate Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Business Associate Agreement. Where the deletion of the invalid or unenforceable clause or provision would result in the illegality and/or unenforceability of this Business Associate Agreement, this Business Associate Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable.
15. NON-BENEFICIARY CONTRACT. This Business Associate Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the parties to this Business Associate Agreement.

16. CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT. The person signing on behalf of the Business Associate certify by his signatures that he is duly authorized to sign this Business Associate Agreement on behalf of the Business Associate and that this Business Associate Agreement has been authorized by the Business Associate.
17. SUBCONTRACTING OR ASSIGNMENT. The Business Associate shall not assign, subcontract, or otherwise transfer any of its duties or obligations under this Business Associate Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have fully signed this Business Associate Agreement on the day and year first above written.

Tyler Technologies, Inc.

City of Richmond, California

By: 

By: 

Name: Richard E. Peterson Jr.

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

Title: President - FAS Division

Title: Mayor

Date: 9-24-07

Date: 9/27/07