tyler technologies

End User License Agreement and Professional Services Agreement

This End User License Agreement and Professional Services Agreement (this "Agreement") is made and entered into by and between Tyler Technologies, Inc., a Delaware corporation ("Tyler"), and El Paso County, Texas (the "End User").

Background

WHEREAS, the Texas Conference of Urban Counties (the "CUC") has previously published a Request for Proposal that defines the CUC's requirements for certain judicial administration software and Tyler responded with a Proposal that met the CUC's requirements; and thereafter the CUC and Tyler entered into a contract (the "CUC Master Agreement") which defines the terms and conditions whereby Tyler will provide to End User certain licenses, professional services, and maintenance and support services; and

WHEREAS, End User is authorized to procure the Licensed Property and services under the CUC Master Agreement; and

WHEREAS, End User desires to engage Tyler to license certain software and to provide certain professional services related thereto, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, along with other good and valuable consideration, the receipt and sufficiency of which all parties mutually acknowledge, Tyler and End User agree as follows:

A. Tyler shall furnish the products and services described in this Agreement, and End User shall pay the prices set forth in this Agreement.

B. This Agreement consists of this cover and signature page and the following attachments and exhibits attached hereto and to be attached throughout the Term of this Agreement, all of which are incorporated by reference herein:

- Schedule 1. – Investment Summary
- Exhibit A. – Software License and Professional Services Agreement
- Exhibit B. – Software Maintenance Agreement
- Exhibit C - Master Escrow Service Agreement

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized officer of each Party hereto to be effective as of the date last set forth below (the "Effective Date"):

TYLER TECHNOLOGIES, INC.   **END USER**

Signature: _____   Signature: _____

Date: _____   Date: _____

Name: Bruce Graham   Name: Anthony Cobos

Title: President – Courts & Justice Division   Title: El Paso County Judge

Address: 6500 International Pkwy, Suite 2000   Address: 500 E. San Antonio, Room 300

Plano, Texas 75093   El Paso County, Texas 79901

KK-10-266

Licensed Software						
Enterprise Courts / Pros / DMS	1,295,000	(129,500)	$ 1,165,500	Tier 1 Support	$	244,755
Jail/LE with Mugshots	462,500	-	$ 462,500	Tier 1 Support	$	97,125
Hot Checks	111,000	(4,000)	$ 107,000	Tier 1 Support	$	22,470
Probation	203,500	(31,500)	$ 172,000	Tier 1 Support	$	36,120
Public Defender	195,000	(97,500)	$ 97,500	Tier 1 Support	$	20,475
DMS Auto Attach	34,000	(34,000)	$ -	Tier 1 Support	$	-
DMS Record on Appeal	17,000	(17,000)	$ -	Tier 1 Support	$	-
DMS Online Docs	15,000	(15,000)	$ -	Tier 1 Support	$	-
DMS E-Signatures	62,000	(62,000)	$ -	Tier 1 Support	$	-
Integration Toolkits	150,000	(150,000)	$ -	Tier 1 Support	$	-
E-Payments	See Sec 6.8	-	$ -			

Professional Services

T&M Services	Rate	Hours		Cost
Implementation Plan	Included	400		Included
Project Management	160.00	4,160	$	665,600
Fit Analysis	149.00	952	$	141,848
Data Conversion	149.00	2,719	$	405,131
Interfaces	149.00	1,350	$	201,150
Customization	149.00	4,500	$	670,500
Config & Consulting	149.00	3,268	$	486,932
Training	138.00	2,288	$	315,744
Go-Live Assistance	138.00	2,980	$	411,240
Go-Live Jail/Evening	138.00	360	$	49,680

Embedded Third Party Software

None

Total License Fees	$ 2,004,500
T&M Services	$ 3,347,825
Subtotal	$ 5,352,325
Estimated Travel Expenses	Included
Total Contract Price	$ 5,352,325

Maintenance & Support Fees:
$420,945
(M&S Fees due annually in advance beginning October 1, 2013 or the Final Acceptance date of the License Agreement, whichever is later). *

* If the Final Acceptance Date results in a due date of less than a full year, the first year's M&S Fees shall be prorated to September 30th of the applicable year.

Software License and Professional Services Agreement

This Software License and Professional Services Agreement is made and entered into as of the Effective Date by and between Tyler and End User.

WHEREAS, End User desires to engage Tyler to license certain software and to provide certain professional services related thereto, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, along with other good and valuable consideration, the receipt and sufficiency of which all parties mutually acknowledge, Tyler and End User agree as follows:

1. CERTAIN DEFINITIONS

1.1.   Agreement means this Software License and Professional Services Agreement, including all exhibits attached hereto and to be attached throughout the Term of this Agreement, all of which are incorporated by reference herein.

1.2.   Business Day means any day, Monday through Friday, excepting any federal holiday.

1.3.   Claims mean any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses, including reasonable attorneys' fees and expenses.

1.4.   CUC Enterprise Modification means any refinement, modification, enhancement, or other customization to the common integrated court administration system which has been or will be developed by Tyler at the shared cost of the participating Members of the Conference of Urban Counties ("CUC") and in coordination with the CUC Technical Committee as detailed in the CUC Master Agreement

1.5.   Current Production Software Version means the current production version of Tyler's software listed on the Investment Summary.

1.6.   Defect means any bug, error, contaminant, malfunction, failure to function or other defect in the Licensed Software caused by, arising from, or emanating from the reasonable control of Tyler that renders the Licensed Software in non-conformance with Tyler's then current published specifications.

1.7.   Documentation means the user's operating manuals and any other materials in any form or media provided by Tyler to the users of the Licensed Software.

1.8.   End User's Confidential and Proprietary Information means the intellectual property and trade secrets underlying software and/or business solutions developed by End User and offered to Tyler's customers in cooperation with Tyler.

1.9.   End User Enhancement means those refinements, modifications, enhancements, or other customizations to the Licensed Software developed by End User and shared with Tyler for the purpose of improved or expanded functionality of End User but which may also be used by other Tyler customers.

1.10.   Embedded Third Party Software means licensed third party software (other than Third Person Software) that is required to provide the functionality of the Licensed Software, which as of the date of this Agreement, consists of the software set forth on Schedule 1 labeled as "Embedded Third Party Software".

1.11.   Escrow Agent means Iron Mountain Intellectual Property Management, Inc.

1.12.   Escrow Agreement means the Master Escrow Service Agreement between Tyler and Escrow Agent executed on August 2, 2006 and attached as Exhibit C and made a part of this agreement by reference thereto.

1.13.   Implementation Phase means a stage of the Implementation Plan.

1.14.   Indemnified Parties mean End User and each of its personnel, agents, successors, and permitted assigns.

1.15.   Investment Summary means the summary of fees and services set forth on Schedule 1.

1.16.   License Fee means the "Total License Fees" as set forth on the Investment Summary, which is due and payable as set forth in Section 5.1.

1.17.   Licensed Property means the Licensed Software and the Documentation.

1.18.   Licensed Software means: (a) the Current Production Software Version of all software listed on the Investment Summary; (b) Embedded Third Party Software; (c) any Local Modifications; (d) applicable CUC Enterprise Modifications; and (e) all other Local Modifications that become a part of the production software in the future.

1.19.   Local Modification means any refinement, modification, enhancement, or other customization to the Current Production Software Version to be developed by Tyler for End User per the Investment Summary or otherwise.

1.20.   Maintenance and Support Fees has the meaning set forth in Exhibit B – Software Maintenance Agreement.

1.21.   Party means, individually, Tyler or End User

1.22.   Project means the delivery and license of the Licensed Property and the performance of all services to be provided by Tyler in accordance with the provisions of this Agreement and the Investment Summary.

1.23.   Project Manager means the person designated by each Party who is responsible for the management of the Project, subject to the requirements of Section 3.

1.24.   Software Maintenance Agreement means the maintenance and support services agreement attached hereto as Exhibit B.

1.25.   T&M means time and materials.

1.26.   Third Person Hardware means the CPUs, servers, and other hardware to be leased, purchased, or otherwise acquired by End User from a third party that is minimally required to operate the Licensed Software and such other CPUs, servers, and other hardware that End User has actually leased, purchased or otherwise acquired and/or may be minimally required in the future to operate the Licensed Software.

1.27.   Third Person Software means the operating systems and other software to be licensed, purchased, or otherwise acquired by End User from a third party that is minimally required to operate the Licensed Software and such operating systems and other software that End User has actually licensed, purchased, or otherwise acquired and/or may be minimally required in the future to operate the Licensed Software.

1.28.   Tyler Confidential and Proprietary Information means all information in any form relating to, used in, or arising out of Tyler's operations and held by, owned, licensed, or otherwise possessed by Tyler (whether held by, owned, licensed, possessed, or otherwise existing in, on or about Tyler's premises or End User's offices, residence(s), or facilities and regardless of how such information came into being, as well as regardless of who created, generated or gathered the information), including, without limitation, all information contained in, embodied in (in any media whatsoever) or relating to Tyler's inventions, ideas, creations, works of authorship, business documents, licenses, correspondence, operations, manuals, performance manuals, operating data, projections, bulletins, customer lists and data, sales data, cost data, profit data, financial statements, strategic planning data, financial planning data, designs, logos, proposed trademarks or service marks, test results, product or service literature, product or service concepts, process data, specification data, know how, software, databases, database layouts, design documents, release notes, algorithms, source code, screen shots, and other research and development information and data. Notwithstanding the foregoing,

Tyler Confidential and Proprietary Information does not include information that: (a) becomes public other than as a result of a disclosure by End User in breach hereof; (b) becomes available to End User on a non-confidential basis from a source other than Tyler, which is not prohibited from disclosing such information by obligation to Tyler; (c) is known by End User prior to its receipt from Tyler without any obligation of confidentiality with respect thereto; or (d) is developed by End User independently of any disclosures made by Tyler.

2. IMPLEMENTATION PLAN; NOTICE TO PROCEED

2.1. <u>Project Framework</u>. This Agreement sets forth the terms whereby Tyler shall provide to the End User, and the End User shall acquire from the Tyler, the following (and each on the terms and subject to the conditions of this Agreement): (a) a license for the Licensed Property for the License Fee; (b) certain implementation, installation, testing, and training services related to the Licensed Software for the fees set forth in the Investment Summary; and (c) certain maintenance and support services.

2.2. <u>Implementation Plan</u>.

(a) Within ninety (90) days of the Effective Date (or upon such other schedule as the Parties may mutually agree), Tyler shall devote sufficient resources to develop an Implementation Plan. The Implementation Plan shall provide for (i) timetables, (ii) the development of Local Modifications for the End User, (iii) the delivery and installation of the applicable Licensed Software for the End User, (iv) data conversion; (v) the training of End User personnel, (vi) the staffing plan for the implementation of the Project, and (vii) a scheduled timetable for periodic update reporting on the status of the project by parties to the respective End User's Commissioners Court.

(b) Tyler has agreed to provide the Implementation Plan, at no cost to the End User.

(c) In addition to the Implementation Plan, Tyler shall provide End User with a revised Investment Summary which shall, upon issuance of a Notice to Proceed by the End User, be incorporated into this End User License Agreement provided, however, that if the revised Investment Summary exceeds the Total Contract Price set forth in Schedule 1 ($5,352,325), then: (i) this Agreement shall terminate as of the date of such termination notice; (ii) End User shall have no further obligation to participate in the Project; and (iii) each party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other party prior to such termination.

(d) Within ninety (90) days of End User's receipt of the Implementation Plan by El Paso County's Chief Technology Office by certified mail, return receipt requested, or other trackable delivery method (or upon such other schedule as the Parties may mutually agree in writing), End User shall, in End User's sole discretion, either (i) issue a Notice to Proceed with the Project, subject to the terms and conditions of this Agreement or (ii) issue a Termination Notice.

(e) If End User issues a Notice to Proceed, the license fee shall be due and payable as set forth in Section 5.1.

(f) If End User issues a Termination Notice, then: (i) this Agreement shall terminate as of the date of such termination notice; (ii) End User shall have no further obligation to participate in the Project, and each party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other party prior to such termination.

3. PROJECT PERSONNEL; PROJECT MANAGER

3.1. <u>Project Personnel</u>. Tyler represents and warrants that all personnel it uses in connection with fulfilling its obligations pursuant to or arising from this Agreement (the "Project Personnel") shall be qualified to perform the tasks assigned to them consistent with industry standards. To qualify as Tyler's Project Manager, an individual must have previous experience as a Project Manager on an Odyssey implementation in a governmental entity with similar business functionality of or with comparable complexity to that of End User. Within 30 days of the issuance of a Notice to Proceed, Tyler shall assign a Project Manager to the Project.

(a) End User shall have the right to approve the Project Manager assigned to perform this Agreement, which approval shall not be unreasonably withheld.

(b) On a quarterly basis, the Project Manager's direct supervisor shall conduct a review with the End User Project Manager to assess the satisfaction with project progress and Project Manager's performance. If the performance of Tyler's Project Manager is unacceptable to End User, Tyler will, upon End User's written request, provide an equally or better qualified replacement acceptable to End User.

(c) The Project Manager may not be replaced without the written consent of the End User, which consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that Tyler's Project Manager becomes unavailable due to resignation, illness or other factors beyond Tyler's reasonable control, Tyler shall be responsible for providing an equally or better qualified replacement acceptable to End User.

3.2. <u>Termination of Project Personnel</u>.

(a) The End User may, upon written notice to Tyler's President or Chief Operating Officer, require Tyler to remove an individual immediately from the Project for the following reasons: (i) violation of the terms and conditions of this Agreement; (ii) violation of the End User's written work rules and regulations as disclosed in writing to Tyler; (iii) criminal activity; (iv) breach of confidentiality; or (v) violation of state, federal, or municipal statutes.

(b) The End User may, upon ten (10) Business Days written notice to Tyler's President or Chief Operating Officer, require Tyler to remove an individual immediately from the Project without cause. Tyler may reasonably extend any deadlines adversely affected by any delays in the Implementation Plan directly attributable to the End User's request for the removal of Tyler personnel without cause, and Tyler shall not be responsible for such delays in the Implementation Plan.

4. TITLE AND LICENSE

4.1. <u>License Grant</u>. In consideration for the License Fee, which shall be due and payable as set forth in Section 5, Tyler hereby grants to End User a non-exclusive, royalty-free, revocable license (and sublicense with respect to the Embedded Third Party Software) to use the Licensed Property for End User's internal administration, operation, and/or conduct of End User's business operations by an unlimited number of users employed by End User on an unlimited number of computers and/or computer stations, in an unlimited number of facilities, and on an unlimited number of peripheral devices utilized by End User. Upon End User's payment of the License Fee in full, the foregoing licenses shall become irrevocable, subject to the restrictions on use set forth herein.

4.2. <u>Restrictions</u>. Unless otherwise expressly set forth in this Agreement, End User shall not (a) reverse engineer, de-compile, or disassemble any portion of the Licensed Software or (b) sublicense, transfer, rent, or lease the Licensed Software or its usage. To the extent End User employs contractors, subcontractors, or other third parties to assist in the Project, End User shall obtain from such third parties an executed Tyler confidentiality agreement prior to such parties being permitted access to Tyler Confidential and Proprietary Information.

4.3. <u>Copies</u>. End User may make and maintain such copies of the Licensed Property as are reasonably appropriate for its use and for archival and backup purposes; provided, however, that End User shall retain all proprietary notices, logos, copyright notices, and similar markings on such copies.

4.4. <u>Perpetual License.</u>

(a) The Parties agree that a material inducement and consideration for End User agreeing to contract with Tyler and to pay the License Fee is Tyler's representation that the Licensed Fee Software is "perpetual." By perpetual, the Parties agree the License Fee is a one-time fee for the Licensed Software. In consideration for the payment of the License Fee in full and provided that End User maintains an active Software Maintenance Agreement as provided in this Agreement, the foregoing irrevocable software license shall entitle End User to Version

Releases to the Licensed Software as set forth in the Software Maintenance Agreement including, without limitation: (i) additional functionality; (ii) technical improvements; (iii) upgrades to the underlying technical components; (iv) improvements to the user interface; or (v) cosmetic, marketing, or other technical improvements (collectively, the "Perpetual Features"). Perpetual Features will be available to Purchaser with no additional license fees.

(b)   Provided End User maintains an active Software Maintenance Agreement, Tyler will allow Purchaser to exchange the Licensed Software for a replacement product developed by Tyler that is similar in features, functionality, performance, and price (as adjusted for inflation, based upon the US Consumer Price Index for All Urban Consumers, All Items, U.S. City Average, as published by the United States Department of Labor, Bureau of Labor Statistics) to the Licensed Software, without additional license fees. The terms of this Section 4.4 shall remain valid regardless of whether the End User maintains or terminates the Resource Sharing Addendum with CUC applicable to the Licensed Software covered by this Agreement.

(c)   The Parties further agree that the limitation set forth in this Section 4.4 is and shall be a non-extinguishable interest of End User in the technology and/or Licensed Software which shall burden Tyler, its successors and/or assigns. Notwithstanding anything contained herein to the contrary, including the provisions of Section 20.2(a)(iv), upon payment of the full License Fee, End User's rights in and to the license granted herein shall be deemed non-executory contract rights that cannot be rejected or extinguished in bankruptcy, receivership, or insolvency proceedings.

4.5.   Embedded Third Party Software. The license grant set forth in Section 4.1 includes the right to use any Embedded Third Party Software; provided, however, that such access to and use of such Embedded Third Party Software shall be according to such terms, conditions, and licenses as are imposed by the manufacturers and/or third party licensors of such Embedded Third Party Software. All such Embedded Third Party Software shall be included in the License Fee. Tyler shall pass through to End User any and all warranties granted to Tyler by the owners, licensors, and/or distributors of such Embedded Third Party Software. Tyler shall also provide End User with copies of any documentation that establish terms and conditions for the use of Embedded Third Party Software.

4.6.   Third Person Software. End User shall be responsible for procuring and paying for all Third Person Software.

4.7.   Title.

(a)   Tyler represents and warrants that it is the owner of all right, title, and interest in and to the Licensed Software (other than Embedded Third Party Software) and all components and copies thereof. Nothing in this Agreement shall be deemed to vest in End User any ownership or intellectual property rights in and to Tyler's intellectual property (including, without limitation, Tyler Confidential and Proprietary Information), any components and copies thereof, or any derivative works based thereon prepared by Tyler.

(b)   All training materials developed solely by either Party shall be the sole property of such Party. Any training materials developed jointly by the Parties shall be owned jointly by the Parties, and each Party shall be entitled to exercise all rights of ownership of such materials without any duty to account to the other, subject to Section 12.

(c)   All End User data shall remain the property of End User. Tyler shall not use End User data other than in connection with providing the services pursuant to this Agreement.

4.8.   End User Modifications. Tyler shall have no liability pursuant to this Agreement or the Software Maintenance Agreement for any damages or defects to the Licensed Software caused, directly or indirectly, by End User Modifications or other changes to the Licensed Software that are implemented without the prior written consent of Tyler. This clause shall not apply to End User Enhancements.

5. FEES AND INVOICING

5.1.   License Fee. End User shall pay to CUC the License Fee in accordance with the following payment plan:

Payment Event	% of Total License Fee Due	License Fee Payment
Issuance of a Notice to Proceed	20%	$400,900
Commencement of Operational Use of Probate	5%	$100,225
Commencement of Operational Use of Civil Courts	10%	$200,450
Commencement of Operational Use of Hot Checks	5%	$100,225
Commencement of Operational Use of JP	10%	$200,450
Commencement of Operational Use of Prosecutor	2.5%	$50,113
Commencement of Operational Use of Public Defender	2.5%	$50,113
Commencement of Operational Use of Criminal Courts	10%	$200,450
Commencement of Operational Use of Jail	10%	$200,450
Commencement of Operational Use of Probation	5%	$100,225
Final Acceptance	20%	$400,900

Tyler shall invoice End User upon each Payment Event, which shall be paid in accordance with Section 5.4.

5.2.   Professional Services Charges. T&M charges for all professional services to be performed hereunder shall be invoiced and paid by End User in accordance with Section 5.4. T&M charges may not exceed the total amount of T&M Services listed on Schedule 1, except as provided for in Section 22.8.

5.3.   Expenses. Tyler shall be responsible for travel, lodging, and food expenses whether or not actually or reasonably incurred by Tyler in performing its professional services herein in accordance with Section 5.4.

5.4.   Invoice and Payment. Tyler shall invoice End User for services and associated expenses herein on a monthly basis. Each invoice shall state the total invoiced amount and shall be accompanied by a detailed itemization of services and expenses. Following receipt of a properly submitted invoice, End User shall pay amounts owing therein thirty (30) days in arrears. All payments shall be made in U.S. currency. Any undisputed sum not paid when due shall bear interest calculated on an annual basis pursuant to Chapter 2251 of the Texas Government Code as follows. The interest rate shall be the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on Saturday or Sunday. Interest begins to accrue on the thirty-first (31) day after the undisputed amount is due. Interest on an overdue payment stops accruing on the date the County mails or electronically transmits the payment.

5.5.   Retainage. End User may withhold five-percent (5%) of the T&M charges invoiced by Tyler for deliverables rendered as part of each Implementation Phase, in accordance with Section 2252.32 of the Texas Government Code. Upon successful completion of Operational Use of each Phase, Tyler shall invoice End User for all amounts withheld under this Section 5.5, which End User shall pay within thirty (30) days.

5.6.   License Pricing. Tyler agrees End User shall receive the most favorable licensing pricing available from either the original or more recent CUC contracts or any other contract for the Licensed Software in a comparably sized integrated justice contract in existence as of the Effective Date.

5.7.   Legacy Maintenance Pricing. Tyler and End User agree that there will be a limited, support only, contract for maintenance of the Legacy products remaining in use by End User after the execution of this Agreement.

(a)   This pricing is estimated to last two (2) years, but shall actually last until Final Acceptance of the Licensed Software. The revised Legacy maintenance fee shall be at the rate of $23,400 annually, paid in annual installments.

(b)   End User will be limited to 10 calls per week for Legacy maintenance provided, however, that this limitation shall not apply to any Service Level 1 Defect or a Service Level 2 Defect, as defined in Exhibit B, in the Legacy product.

6.   PROJECT IMPLEMENTATION

6.1.   Professional Services. Attached hereto as Schedule 1 is Tyler's good faith estimate of the hours and fees associated with the services to be performed by Tyler for End User. Travel time and expenses by Tyler's personnel from Tyler's place of business to and from End User's place of business will not be billed.

6.2.   Additional Services. Additional services requested by End User after the Notice to Proceed and before Final Acceptance, which are for Local Modifications not detailed in the Implementation Plan will be billed at the same rates set forth in Schedule 1.

6.3.   Office Space. End User shall, at its sole expense, provide reasonable access to office space, telephone access, network access (including providing Tyler reasonable access to a secure virtual private network connection or other comparable connection for use by Tyler from time to time on a non-dedicated basis), Internet connections, and such other facilities as may be reasonably requested by Tyler for use by Tyler personnel for the purpose of performing this Agreement while such personnel are working on-site and engaged in Project-related services.

6.4.   Third Person Hardware and Third Person Software. End User shall be responsible to purchase, install, and configure all Third Person Hardware and Third Person Software which is not Embedded Third Party Software. Tyler shall have no liability for defects in the Third Person Hardware or Third Person Software.

6.5.   Cooperation. End User acknowledges that the implementation of the Project is a cooperative process requiring the time and resources of End User personnel. End User shall, and shall cause its personnel to, use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to timely implement the Project, including, without limitation, providing reasonable information regarding its operations and reasonable access to its facilities. Tyler shall not be liable for failure to timely implement the Project when such failure is due to Force Majeure (as identified in Section 22.15) or to the failure by End User personnel to provide such cooperation and assistance (either through action or omission).

6.6.   Participation in CUC Technical Committee. End User agrees to participate in the CUC Resource Sharing Addendum applicable to the Licensed Software and to participate in the CUC Technical Committee for a minimum of two years from the Effective Date of this Agreement.

6.7.   Solution Partner. End User agrees to serve as a post-installation product showcase site, to host site visits, and to collaborate with Tyler as a solution partner. Tyler shall be entitled to up to one such visit per calendar quarter during the existence of this contract.

6.8.   Payment Processing Services. Nothing in this Agreement shall require Tyler to collect filing fees, court costs, or other such fees on End User's behalf unless End User authorizes Tyler to do so in a separate written payment processing agreement.

7.   DELIVERY AND INSTALLATION OF THE LICENSED SOFTWARE

7.1.   Delivery; Risk of Loss. Tyler shall deliver the Licensed Software to End User's place of business. Risk of loss of the Licensed Software, and media on which such may be delivered, shall remain with Tyler at all times until completed delivery.

7.2.   Installation; Diagnostic Testing. Tyler shall install the Licensed Software at End User's place of business. Upon installation, Tyler shall conduct its standard diagnostic evaluation to determine that the Licensed Software is properly installed and shall notify the End User's Project Manager in writing after successful completion thereof.

8.   VERIFICATION OF THE LICENSED SOFTWARE

8.1.   Verification Procedure. Upon delivery, installation, and diagnostic testing of the Licensed Software, and regardless of whether or not the End User supplies any test scripts pursuant to Section 8.2, Tyler shall perform its standard test procedures using live data and shall certify to the End User that the Licensed Software, including, without limitation, Local Modifications, in each applicable Phase is operating in accordance with the Specifications for that Implementation Phase (the "Verification Procedure"). Tyler shall promptly correct any Defect revealed during the Verification Procedure. The End User, in its sole and absolute discretion, may monitor the Verification Procedure.

8.2.   Optional – End User Supplied Test Scripts for Verification Procedure. Within 90 days of the commencement of each Implementation Phase set forth in the Implementation Plan, the End User may, but is not required to, submit to Tyler functional test scripts for each function to be delivered during such Implementation Phase, which test scripts shall be consistent with any design documents approved by End User and shall be used by the End User for purposes of verification testing. To facilitate the End User's development of any such test scripts, Tyler shall provide to the End User for its internal use a test script sample set containing test scripts that End User personnel may use as examples for the development of its test scripts. End User supplied test scripts delivered more than 90 days after the commencement of any particular Implementation Phase shall not apply to the Verification Procedure, to the extent that such test scripts include new business requirements not previously disclosed to Tyler by End User. The End User supplied test scripts, if any, shall be in addition to Tyler's Verification Procedures set forth in Section 8.1.

9.   NINETY (90) DAY OPERATIONAL USE; FINAL ACCEPTANCE

9.1.   Operational Use. After the deployment of each Implementation Phase as set forth in the Implementation Plan (and promptly following the successful completion of the associated Verification Procedures set forth in Section 8), the End User shall begin an operational use period in accordance with the Implementation Plan to begin operation by the End User of the Licensed Software ("Operational Use"). Each respective Implementation Phase shall be deemed to have successfully completed Operational Use when such Implementation Phase has operated for a period of ninety (90) consecutive calendar days without a Service Level 1 Defect or Service Level 2 Defect.

(a)   If a Service Level 1 Defect or Service Level 2 Defect occurs during the initial ninety (90) day period, then the End User's Project Manager shall promptly notify Tyler's Project Manager in writing, and Tyler shall use all reasonable efforts to promptly cure such Defect. Upon Tyler's cure of any such Defect, an additional thirty (30) day timetable shall begin again with respect to such function.

(b)   At the end of the initial ninety (90) day period or additional thirty (30) day period(s), as the case may be, each of the functions for which the End User has not reported a Service Level 1 Defect or Service Level 2 Defect shall be deemed to have successfully passed Operational Use. When each of the functions for which the End User did report a Service Level 1 Defect or Service Level 2 Defect during the initial ninety (90) day period has performed for a period of an additional thirty (30) consecutive days without a further Service Level 1 Defect or Service Level 2 Defect, that function shall also be deemed to have successfully passed Operational Use.

(c)   When any Implementation Phase has successfully passed Operational Use as described in this Section 9, the Licensed Software relating to such Implementation Phase shall have completed the ninety (90) day Operational Use by the End User.

9.2.   Final Acceptance. When all of the Implementation Phases have completed the Operational Use period set forth in this Section 9, the End User shall be deemed to have "Final Acceptance" of the Licensed Software, this Agreement shall terminate (subject to Section 20.3 (Survival)), and the Licensed Software shall then become subject to the terms and conditions of the Software Maintenance Agreement.

10. TRAINING

To the extent that training services are included in Schedule 1, Tyler shall train End User in accordance with a mutually agreeable training plan. The training plan shall outline the training required for personnel to operate the Licensed Software. Tyler shall provide End User personnel with only

the number of hours of training for the respective portions of the Licensed Software as set forth in the Schedule 1. Training shall be provided at End User's principal place of business or other site(s) selected by End User. Training shall be performed according to the training plan, but in any event shall be "hands-on" using production-ready versions of the Licensed Software. The courses shall train End User's employees or agents in a manner to provide end user training on all Licensed Software. End User shall be responsible for providing an adequately equipped training facility to operate the Licensed Software.

11. MAINTENANCE SERVICES

11.1.   Maintenance and Support Agreement. Upon the commencement of Operational Use of each Implementation Phase, Tyler shall provide End User with post-implementation maintenance and support services for the Licensed Software with respect to such Implementation Phase. End User shall pay the Maintenance and Support Fees as provided in Schedule 1, the CUC Master Agreement and in accordance with the terms and timetables set forth in Section 7 of the Software Maintenance Agreement.

11.2.   Responsibilities of End User. In addition to the other responsibilities set forth herein, End User shall: (a) require training for all of its personnel who will use the Licensed Software; (b) after the successful conversion of existing data, collect, prepare, and enter all data necessary for the day-to-day operations of the Licensed Software; (c) retain separate copies of all conversion data delivered to Tyler; (d) provide the computer system on which the Licensed Software will be loaded and operated; (e) provide the requisite networks; (f) maintain an internal help desk function; (g) prior to Project completion, install all changes or updates into the Licensed Software and Third Person Software products that are furnished by Tyler for the purpose of correcting failures of the Licensed Software to conform to, and perform in accordance with, the requirements of this Agreement; and (h) maintain, as part of End User's computer system, a secure Microsoft VPN connection for use by Tyler.

12. TYLER CONFIDENTIAL AND PROPRIETARY INFORMATION

12.1.   Protection of Tyler Confidential and Proprietary Information. End User shall not disclose, disseminate, transmit, publish, distribute, make available, or otherwise convey Tyler Confidential and Proprietary Information, and End User shall not use, make, sell, or otherwise exploit any such Tyler Confidential and Proprietary Information for any purpose other than the performance of this Agreement, without Tyler's written consent, except: (a) as may be required by law, regulation, judicial, or administrative process; or (b) as required in litigation pertaining to this Agreement, provided that Tyler is given advance notice of such intended disclosure in order to permit it the opportunity to seek a protective order. End User shall ensure that all individuals assigned to perform services herein shall abide by the terms of this Section 12.1 and shall be responsible for breaches by such persons.   Notwithstanding anything contained herein to the contrary, Tyler acknowledges and agrees that all information in the possession of End User is subject to the Texas Public Information Act, and Tyler agrees to be bound by those statutory provisions and paragraph 12.3 of this Agreement.

12.2.   Judicial Proceedings. If End User is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any Tyler Confidential and Proprietary Information, End User shall provide Tyler with prompt written notice of such request or requirement so that Tyler may seek protective orders or other appropriate remedies and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by Tyler, End User nonetheless is legally compelled to disclose Tyler Confidential and Proprietary Information to any court or tribunal or else would stand liable for contempt or suffer other censure or penalty, End User may, without liability herein, disclose to such court or tribunal only that portion of Tyler Confidential and Proprietary Information which the court requires to be disclosed, provided that End User uses reasonable efforts to preserve the confidentiality of Tyler Confidential and Proprietary Information, including, without limitation, by cooperating with Tyler to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded Tyler Confidential and Proprietary Information by such court or tribunal.

12.3.   Public Information Act. End User is a political subdivision of the State of Texas and is governed by the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties acknowledge and

agree that End User shall be limited in the performance of its responsibilities under this Section 12 of this Agreement in compliance with the Public Information Act. To the extent to which some provision set forth in this Agreement is not in conformity with the requirements of the Public Information Act, End User shall be relieved of said responsibilities without penalty or further liability. In the event End User receives a request under the Public Information Act for Tyler's Confidential and Proprietary Information it shall immediately notify Tyler and confer on whether disclosure should be opposed. It is expressly agreed that the End User may request a determination from the Attorney General of the State of Texas in regard to the application of the Public Information Act to the requested information and whether the information is to be made available to the public. It is further agreed that End User, its department heads, elected officials and employees shall have the right to rely on the determinations of the Texas Attorney General, and that End User, its officers and employees shall have no liability to Tyler for disclosure to the public in reliance on a decision by the Attorney General. Nothing in this Agreement shall require Tyler or End User to violate the terms of the Public Information Act.

13. END USER ENHANCEMENTS

13.1.   Protection of End User Confidential and Proprietary Information. From time to time, End User may develop software and/or business solutions to assist government entities with their software needs, particularly Texas Counties. End User will have the right, but not the obligation, to suggest, share and/or develop software and business solutions that have value to Tyler and its customers. Tyler can implement these solutions into its Licensed Software without compensation to End User beyond what is expressed in this Agreement, and Tyler will have a non-exclusive license to use these software solutions. End User's Confidential and Proprietary Information shall not be disclosed by Tyler. Instead, Tyler will treat End User's Confidential and Proprietary Information as proprietary and protect it from public disclosure in the same manner in which Tyler protects its own intellectual property. As consideration for End User's in-kind contributions, Tyler may, from time to time, provide End User with new software and business solutions it develops for Odyssey without additional cost to End User. In such circumstances, End User will not be required to accept or use the software solutions, but if End User chooses to add the software to its suite of Odyssey products, it will treat these software contributions as proprietary and protect them from public disclosure in the same manner that Tyler protects its own intellectual property.

13.2.   Marketing of End User Enhancements by Tyler. Should Tyler choose to use and/or market End User Enhancements, Tyler agrees:

(a)   End User does not and will not warrant the business or software solution. **END USER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR ANY AND ALL END USER ENHANCEMENTS.**

(b)   End User does not waive immunity from suit or liability as a result its suggestion, sharing or development of software and business solutions. **END USER ACCEPTS NO LIABILITY TO TYLER AND ITS CUSTOMERS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY. IN NO EVENT SHALL END USER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS OR LOSS OF DATA ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.**

(c)   Tyler will exercise its independent due diligence to evaluate, test and verify the functionality of the End User Enhancement, market the End User Enhancement as Tyler's software, deliver its customers at Tyler's risk, and indemnify and hold End User harmless from any and all liability that may result from the marketing of the End User Enhancement.

(d)   Unless otherwise agreed, Tyler will market the End User Enhancement as its own business or software solution, without reference to End User.

14. ESCROW

14.1.   Escrow Agreement. Tyler has entered into an Escrow Agreement with Escrow Agent, the form of which is attached hereto as Exhibit C and pursuant to which Tyler has deposited the Licensed Property. Upon payment of the License Fee in full as provided herein, the End User shall execute a Beneficiary Enrollment Form which shall identify the End User as a beneficiary to the Escrow Agreement.

14.2.   Updates. Tyler shall update the source code and documentation of Licensed Software on the occurrence of any major version release; service pack or interim release of a substantial nature; or at least on an annual basis. As part of the service provided by Escrow Agent, End User shall receive an electronic notice upon any update to the escrow materials.

14.3.   Fees. The fees of the Escrow Agent as set forth in the Escrow Agreement shall be paid by Tyler provided that End User maintains an active, fully paid Maintenance and Support Agreement with Tyler.

14.4.   Release of Escrow. Release of the escrowed material shall be governed by the terms of the Escrow Agreement and the use thereof shall be restricted by Sections 4.2 and 12 of this Agreement. Upon a release of the escrowed materials pursuant to the Escrow Agreement, Tyler agrees to provide End User with source code for any Local Modifications then in use by End User regardless of whether such source code has been previously deposited with Escrow Agent.

15. REPRESENTATIONS AND WARRANTIES

15.1.   Project Personnel. All Tyler personnel utilized in connection with fulfilling its obligations pursuant to or arising from this Agreement shall be employees of Tyler or, if applicable, Tyler's subcontractor(s), shall be qualified to perform the tasks assigned them, and shall be in compliance with all applicable laws relating to employees generally, including, without limitation, immigration laws.

15.2.   Media Defects. The media on which the Licensed Software is provided shall, at the time of delivery and installation, be free of Defects in material and workmanship.

15.3.   Pass-Through of Warranties. Tyler hereby passes through the benefits of all third party warranties that it receives in connection with any product provided to End User.

15.4.   No Actions, Suits, or Proceedings. There are no actions, suits, or proceedings, pending or, to the knowledge of Tyler, threatened, that shall have a material adverse effect on Tyler's ability to fulfill its obligations pursuant to or arising from this Agreement.

15.5.   Compliance with Laws. In performing this Agreement, Tyler shall comply with all applicable material licenses, legal certifications, or inspections. Tyler shall also comply in all material respects with applicable federal, state, and local statutes, laws, ordinances, rules, and regulations.

15.6.   Ownership. Tyler is a Delaware corporation that is listed for trading on the New York Stock Exchange. No director, officer, or 5% or more stockholder shall, during the course of this Agreement, receive or confer improper personal benefits or gains associated with the performance of the services outlined in this Agreement.

15.7.   Certain Business Practices. Neither Tyler nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. Tyler further represents and warrants that it is not listed on any local, End User, state or federal consolidated list of debarred, suspended, and ineligible contractors and grantees. No person (other than permanent employees of Tyler) has been engaged or retained by Tyler to solicit, procure, receive, accept, arrange, or secure this Agreement for any compensation, consideration, or value.

15.8.   Illicit Code. The Licensed Software, when delivered and timer, clock, counter or other limiting routines, codes, commands, or instructions that may have the effect or be used to access, alter, delete, limit, control, damage, or disable any End User property.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 16 OR ELSEWHERE IN THIS AGREEMENT, TYLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. LIMITATION OF LIABILITY

TYLER'S LIABILITY TO END USER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO: (A) PRIOR TO OPERATIONAL USE, THE LICENSE FEES PAID BY END USER; AND (B) AFTER OPERATIONAL USE, TYLER'S OBLIGATIONS AS SET FORTH IN THE TERMS AND CONDITIONS OF THE SOFTWARE MAINTENANCE AGREEMENT. THE FOREGOING LIMITATIONS DO NOT APPLY TO THE FOLLOWING CIRCUMSTANCES: (1) FRAUD; OR (2) FOR BREACH OF SECTION 17.1 (CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE) OR SECTION 17.2 (INTELLECTUAL PROPERTY INFRINGEMENT).

IN NO EVENT SHALL TYLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS OR LOSS OF DATA ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

17. INDEMNIFICATION

17.1.   General – Bodily Injury and Property Damage. Notwithstanding any other provision of this Agreement, Tyler shall defend, indemnify, hold, and save harmless the Indemnified Parties from and against any and all Claims for bodily injury or property damage sustained by or asserted against End User arising out of, resulting from, or attributable to the negligent or willful misconduct of Tyler, its employees, subcontractors, representatives, and agents; provided, however, that Tyler shall not be liable herein to indemnify End User against liability for damages arising out of bodily injury to people or damage to property to the extent that such bodily injury or property damage is caused by or resulting from the actions, negligent or otherwise, of End User, its agents, contractors, subcontractors, or employees.

17.2.   Intellectual Property.

(a)   Notwithstanding any other provision of this Agreement, if any claim is asserted, or action or proceeding brought against End User that alleges that all or any part of the Licensed Software, in the form supplied, or modified by Tyler, or End User's use thereof, infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title, or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, End User, upon its awareness, shall give Tyler prompt written notice thereof. Tyler shall defend, and hold End User harmless against, any such claim or action with counsel of Tyler's choice and at Tyler's expense and shall indemnify End User against any liability, damages, and costs resulting from such claim. Without waiving any rights pursuant to sovereign immunity, End User shall cooperate with and may monitor Tyler in the defense of any claim, action, or proceeding and shall, if appropriate, make employees available as Tyler may reasonably request with regard to such defense. This indemnity does not apply to the extent that such a claim is attributable to modifications to the Licensed Software made by End User, or any third party pursuant to End User's directions, or upon the unauthorized use of the Licensed Software by End User.

(b)   If the Licensed Software becomes the subject of a claim of infringement or misappropriation of a copyright, patent, or trade secret or the violation of any other contractual or proprietary right of any third party, Tyler shall, at its sole cost and expense, select and provide one of the following remedies, which selection shall be in Tyler's sole discretion: (i) promptly replace the Licensed Software with a compatible, functionally equivalent, non-infringing system; or (ii) promptly modify the Licensed Software to make it non-infringing; or (iii) promptly procure the right of End User to use the Licensed Software as intended.

18. TAXES

18.1.   Tax Exempt Status. End User is a governmental tax-exempt entity and shall not be responsible for any taxes for any Licensed Property or services provided for herein, whether federal or state. The fees paid to Tyler pursuant to this Agreement are inclusive of any applicable sales, use, personal property, or other taxes attributable to periods on or after the Effective Date of this Agreement.

18.2.   Employee Tax Obligations. Each Party accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed pursuant to or arising from any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by such Party for work performed under this Agreement.

19. INSURANCE

Tyler shall provide, upon the written request of End User (which shall not be less than thirty (30) days after the Effective Date), proof of insurance for and maintain, at Tyler's sole cost and expense, the following insurance coverage issued with an insurance carrier with a Best Key rating of "A VII" or higher: (a) Industrial/Workers' Compensation Insurance protecting Tyler and End User from potential Tyler employee claims based upon job-related sickness, injury, or accident during performance of this Agreement; and (b) Comprehensive General Liability (including, without limitation, bodily injury and property damage) insurance with respect to Tyler's agents and vehicles assigned to perform the services herein with policy limits of not less than $1,000,000 combined single limit per occurrence and $2,000,000 in the aggregate. End User shall be named as an additional insured party and such notation shall appear on the certificate of insurance furnished by Tyler's insurance carrier.

20. TERM, SUSPENSION, AND TERMINATION

20.1.   Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the sooner of: (a) Final Acceptance; or (b) the Agreement is terminated for Cause pursuant to Section 20.2.

20.2.   Termination for Cause. Either Party may terminate this Agreement for Cause, provided that such Party follows the procedures set forth in this Section 20.2.

    (a)   For purposes of this Section, "Cause" means either:

        (i)   a material breach of this Agreement, which has not been cured within ninety (90) days of the date such Party receives written notice of such breach;

        (ii)   the failure by End User to timely pay when due any undisputed fees and expenses owed to Tyler pursuant to this Agreement and any delinquent amounts remain outstanding for a period of thirty (30) days after Tyler provides written notice of its intent to terminate for failure to pay;

        (iii)   breach of Section 12; or

        (iv)   if Tyler becomes insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, or institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs.

    (b)   No Party may terminate this Agreement under Section 20.2(a)(i) unless it cooperates in good faith with the alleged breaching Party during the cure period and complies in good faith with the dispute resolution procedures set forth in Section 21 following such period.

    (c)   In the event either Party terminates this Agreement pursuant to this Section 20.2, each Party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other Party prior to such termination and all revocable licenses granted herein shall terminate.

20.3.   Survival. The following provisions shall survive after the Term of this Agreement: 1; 3; 11; 12; 13; 14; 16; 17; 18; 20; 21; and 22.

21. DISPUTE RESOLUTION

Disputes arising out of, or relating to, this Agreement shall first be discussed by the Project Managers. Any dispute that cannot be resolved within five (5) Business Days at the Project Manager level (or such other date as agreed upon by the Project Managers) shall be referred to the individual reasonably designated by End User and Tyler's Vice President of Courts and Justice Systems Division assigned to End User's account ("Intermediary Dispute Level"). Any dispute that cannot be resolved in ten (10) Business Days at the Intermediary Dispute Level shall then be referred to End User's chief executive officer or other individual reasonably designated by End User and Tyler's President of Courts and Justice Systems Division ("Executive Dispute Level"), at such time and location reasonably designated by the Parties. Any negotiations pursuant to this Section 21 are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. For any dispute that the Parties are unable to resolve through informal discussions or negotiations or pursuant to the dispute resolution and escalation procedures set forth in this Agreement, the Parties will participate in non-binding mediation before resorting to other remedies they may have at law. The foregoing shall not apply to claims for equitable relief under Section 12.

22. MISCELLANEOUS

22.1.   Assignment. Neither Party may assign this Agreement or any of its respective rights or obligations herein to any third party without the express written consent of the other Party, which consent shall not be unreasonably withheld. Any consent so granted shall be subject to the limitations set forth in Section 3.

22.2.   Subcontractors. Tyler shall not utilize any subcontractor(s) without the prior written consent of End User's Project Manager, which consent shall not be unreasonably withheld. The approval by End User of Tyler's right to use subcontractor(s) shall not waive or relieve Tyler from Tyler's obligations pursuant to this Agreement.

22.3.   Cumulative Remedies. Except as specifically provided herein, no remedy made available herein is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy provided herein or available at law or in equity.

22.4.   Notices. Except as otherwise expressly specified herein, all notices, requests or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by certified or registered mail, postage prepaid, return receipt requested, to the Parties at their respective addresses set forth on the signature page hereto, or at such other addresses as may be specified in writing by either of the Parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) days following deposit in the mail. A copy of all notices sent by Tyler to End User shall also be sent to the El Paso County IT CTO, 800 E. Overland, Ste 400, El Paso, Texas 79901 and to the El Paso County Attorney, 500 E. San Antonio, Room 503, El Paso, Texas 79901.

22.5.   Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22.6.   Waiver. The performance of any obligation required of a Party herein may be waived only by a written waiver signed by the other Party, which waiver shall be effective only with respect to the specific obligation described therein.

22.7.   Entire Agreement. This Agreement constitutes the entire understanding and contract between the Parties and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof.

22.8.   Amendment. This Agreement shall not be modified, amended, or in any way altered except by an instrument in writing signed by the properly delegated authority of each Party. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration.

22.9.   Severability of Provisions. In the event any provision hereof is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms.

22.10.   Relationship of Parties. The Parties intend that the relationship between the Parties created pursuant to or arising from this Agreement is that of an independent contractor only. Neither Party shall be considered an agent, representative, or employee of the other Party for any purpose.

22.11.   Governing Law. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the laws of the state of the domicile of End User, without regard to or application of choice of law rules or principles.

22.12.   Audit. Tyler shall maintain complete and accurate records of all work performed pursuant to and arising out of this Agreement. End User may, upon the written request of the End User's Project Manager, audit any and all work or expense records of Tyler relating to materials and/or services provided herein. End User shall provide Tyler a minimum twenty-four hour notice of such audit or inspection. Tyler shall have the right to exclude from such inspection any Tyler Confidential and Proprietary Information not otherwise required to be provided to End User as a part of this Agreement. Tyler shall make such books and records available to End User during normal business hours. Any such audit shall be conducted at Tyler's principal place of business during Tyler's normal business hours and at End User's sole expense.

22.13.   No Third Party Beneficiaries. Nothing in this Agreement is intended to benefit, create any rights in, or otherwise vest any rights upon any third party.

22.14.   Contra Proferentem. The doctrine of *contra proferentem* shall not apply to this Agreement. If an ambiguity exists in this Agreement, or in a specific provision, neither the Agreement nor the provision shall be construed against the Party who drafted the Agreement or provision.

22.15.   Force Majeure. No Party to this Agreement shall be liable for delay or failure in the performance of its contractual obligations arising from any one or more events that are beyond its reasonable control, including, without limitation, acts of God, war, terrorism, and riot. Upon such delay or failure affecting one Party, that Party shall notify the other Party and use all reasonable efforts to cure or alleviate the cause of such delay or failure with a view to resuming performance of its contractual obligations as soon as practicable. Notwithstanding the foregoing, in every case the delay or failure to perform must be beyond the control and without the fault or negligence of the Party claiming excusable delay. Any performance times pursuant to or arising from this Agreement shall be considered extended for a period of time equivalent to the time lost because of any delay that is excusable herein.

22.16.   Equitable Relief. Each Party covenants, represents, and warrants that any violation of this Agreement by such Party with respect to its respective obligations set forth in Sections 4.2 and 12 shall cause irreparable injury to the other Party and shall entitle the other Party to extraordinary and equitable relief by a court of competent jurisdiction, including, without limitation, temporary restraining orders and preliminary and permanent injunctions, without the necessity of posting bond or security.

22.17.   Attorneys' Fees and Costs. If attorneys' fees or other costs are incurred by either Party to secure the performance of any obligations under this Agreement, or to establish damages for the breach thereof or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and costs incurred in connection therewith.

[Remainder of this page intentionally left blank]

Maintenance and Support Services Agreement

This Maintenance and Support Services Agreement (this "M&S Agreement") is made and entered into by and between Tyler Technologies, Inc., a Delaware corporation ("Tyler"), and the entity set forth on the signature page hereto (the "End User") and shall be effective upon the commencement of Operational Use of the Licensed Software as set forth in the Implementation Plan (the "Effective Date").

WHEREAS, the End User has acquired a license to Tyler's court management software as more specifically identified on Schedule 1 to this M&S Agreement (the "Licensed Software"); and

WHEREAS, the End User desires Tyler to perform, and Tyler desires to perform, certain maintenance and support services related to the Licensed Software.

NOW, THEREFORE, in consideration of the promises contained herein, along with other good and valuable consideration, the receipt and sufficiency of which all parties acknowledge, the parties agree as follows:

1. CERTAIN DEFINITIONS

1.1.   Business Day means Monday through Friday, excluding Tyler Holidays.

1.2.   Business Hours means 7:00 a.m. to 7:00 p.m., Central Time during Business Days.

1.3.   Circumvention or Circumvention Procedures means, as applied to a Documented Defect, a change in operating procedures whereby the End User can reasonably avoid any deleterious effects of such Documented Defect. If a Circumvention Procedure is not acceptable to End User, End User may escalate the Defect as set forth in Section 3.

1.4.   Defect means any bug, error, contaminant, malfunction, failure to function or other defect in the Licensed Software caused by, arising from, or emanating from the reasonable control of Tyler that renders the Licensed Software in non-conformance with Tyler's then current published specifications.

1.5.   Documented Defect means a Defect that the County documents for Tyler pursuant to Section 2.1.

1.6.   Essential Functionality means any operational aspect of the Licensed Software that is required for immediate and ongoing business continuity by one or more users or which adversely impacts business in a crucial or critical manner.

1.7.   Legislative Change means a refinement, enhancement, or other modification to the Licensed Software necessary to comply with enacted or promulgated, statewide or national legislation or administrative regulation affecting all clients in End User's state and pertaining to: (a) existing reports, exports, or data exchanges; (b) new reports; (c) new data entry fields for required reporting; (d) new fee calculations; (e) new disposition templates; (f) new sentence templates; or (g) new citation templates. Legislative Changes do not include the expansion of End User's constitutional or operational responsibilities beyond those that exist as of the Effective Date.

1.8.   Non-essential Functionality means any operational aspect of the Licensed Software that will not interrupt business continuity or which will not adversely impact business in a crucial or critical manner.

1.9.   Service Level 1 Defect means (a) a complete application failure, (b) application unavailability or (c) a Circumvention Procedure for a Level 1 Defect which is not functioning as designed.

1.10.   Service Level 2 Defect means a Documented Defect that causes (a) repeated, consistent failure of Essential Functionality or (b) loss or corruption of data or (c) a Circumvention Procedure for a Level 2 Defect which is not functioning as designed.

1.11.   Service Level 3 Defect means a Service Level 1 Defect or Level 2 Defect for which there is an existing Circumvention Procedure.

1.12.   Service Level 4 Defect means a Documented Defect that causes failure of Non-essential Functionality of Licensed Software or a cosmetic or other Documented Defect that does not qualify as any other Service Level Defect.

1.13.   Third Person Software and Embedded Third Party Software shall have the meanings set forth in Exhibit A.

1.14.   Version Release means new versions of the Licensed Software that contain technical improvements, functional enhancements, updates, extensions, and/or maintenance changes to the Licensed Software.

1.15.   Tyler Holidays means one (1) day for a New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, and Christmas day and up to two rolling holidays. The exact date for any rolling holiday will be published on the Tyler website a minimum of thirty (30) days in advance of the date.

2. END USER RESPONSIBILITIES

2.1.   Documenting Defects. The End User must document all Defects in writing with sufficient information to recreate the Defect or otherwise clearly and convincingly document or evidence its occurrence, including, but not limited to, the operating environment, data set, user, or any other such information that Tyler may reasonably request. The End User shall deliver such information to Tyler concurrently with its notification to Tyler of a Defect. The End User shall use all reasonable efforts to eliminate any non-application related issues prior to its notification to Tyler of such Defect, including, but not limited to, issues related to the network, user training, End User-produced extensions, and data problems not caused by the Licensed Software. Notwithstanding anything contained herein to the contrary, End User Enhancements created and used by End User shall be maintained and supported solely by End User provided, however, Tyler shall correct Defects, as provided for in Section 3.1, in any Integration Toolkit feature utilized by such End User Enhancements. Integration Toolkit features that do not continue to function in accordance with their specifications upon any Version Release shall be considered a Defect.

2.2.   Any technical or other issue for which the End User requests services, but which is not a Documented Defect, shall be treated as a Service Request and governed by Section 4.

2.3.   Other End User Responsibilities. The End User shall:

(a)   maintain all required Third Person Software to the release level compatible with the installed version(s) of the Licensed Software; However, Tyler will make every reasonable business effort to certify the Licensed Software on the most recent version of the Third Person Software.

(b)   establish and maintain an internal help desk to be the central point of contact and communication between the end users and Tyler's support staff. In addition to the End User Help Desk, the End User may select up to twenty (20) "super users" who may contact Tyler's help desk.

(c)   provide training on the Licensed Software to its employees;

(d)   allow Tyler to install patches and other maintenance releases provided by Tyler on a mutually agreed time and date;

(e)   allow remote access by Tyler to End User's servers via a End User approved remote access or other mutually agreeable protocol, provided, however, that End User acknowledges that failure to provide a timely and practical remote access method may negatively impact Tyler's ability to perform its responsibilities under this M&S Agreement;

(f)   implement and perform appropriate data backup and data recovery procedures related to the Licensed Software. In no event shall Tyler be held liable for any loss or other damage associated with the loss or destruction of any data related to the Licensed Software that is

attributable to the End User's failure to implement and perform such procedures on a timely and regular basis; and

(g) provide onsite assistance with installation, new integration, training, and other responsibilities with respect to Version Releases as set forth in Section 5.

3. TYLER RESPONSIBILITIES – SUPPORT SERVICES

3.1. General Services for Reporting Production Documented Defects.

(a) Tyler shall provide the End User with procedures for contacting support staff during normal business hours (7:00 a.m. to 7:00 p.m., Central Time, Monday through Friday, excluding Tyler Holidays) for reporting Documented Defects. Tyler shall assist the End User in the diagnosis of any Documented Defect, including the assigned Service Level and Tyler's tracking number.

(b) For each reported Documented Defect, Tyler shall assign appropriate personnel to diagnose and correct the Documented Defect, and where appropriate, identify Circumvention Procedures. Tyler's initial response shall include an acknowledgement of notice of the Documented Defect, confirmation that Tyler has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect and avoiding further deleterious consequences of the Documented Defect.

(c) Circumvention Procedures are to be documented by Tyler, and Tyler will include the Circumvention Procedures or the appropriate repair to the defect in the Licensed Software with the next Version Release.

3.2. Service Level 1 Defects. Tyler shall provide an initial response to Service Level 1 Defects within one (1) Business Hour of receipt of the Documented Defect. Tyler shall use commercially reasonable efforts to resolve such Documented Defects or provide a Circumvention Procedure within one (1) Business Day. Tyler's responsibility for loss or corrupted data is limited to assisting the End User in restoring its database to a known, accurate state.

3.3. Service Level 2 Defects. Tyler shall provide an initial response to Service Level 2 Defects within one (1) Business Hours of receipt of the Documented Defect. Tyler shall use commercially reasonable efforts to resolve such Documented Defects or provide a Circumvention Procedure within five (5) Business Days. Tyler's responsibility for loss or corrupted data is limited to assisting the End User in restoring its database to a known, accurate state.

3.4. Service Level 3 Defects. Tyler shall provide an initial response to Service Level 3 Defects within one (1) Business Day of receipt of the Documented Defect. Tyler shall use commercially reasonable efforts to resolve such Documented Defect without the need for a Circumvention Procedure with a next Version Release. Tyler's responsibility for lost or corrupted data is limited to assisting the End User in restoring its database to a known, accurate state.

3.5. Service Level 4 Defects. Tyler shall provide an initial response to Service Level 4 Defects within two(2) Business Days. Tyler shall use commercially reasonable efforts to resolve a Documented Defect of a Non-essential nature within the next two (2) Version Releases and to resolve a Documented Defect of a cosmetic nature with a future Version Release.

3.6. Help Desk & Desktop Support. Tyler shall provide the End User with procedures for contacting support staff during normal business hours (7:00 a.m. to 7:00 p.m., Central Time, Monday through Friday, excluding Tyler Holidays) for reporting Documented Defects or obtaining helpdesk support on general application functionality. Tyler shall not be required under this M&S Agreement to provide extensive over-the-phone training to End User employees in lieu of such employees attending appropriate training classes. Tyler and End User will use good faith reasonable efforts to agree upon a resolution plan for End User's employees who require additional training.

3.7. Technical Server & Systems Support. Tyler shall use commercially reasonable efforts to provide the End User with technical support to assist the End User with troubleshooting the loss of functionality of Licensed Software for reasons other than a Documented Defect. Tyler technical support shall be limited to:

(a) assisting the End User with isolating the source of Licensed Software failure due to systems-level hardware, Third Party Software, network, client-level hardware or peripherals;

(b) providing recommendations to the End User regarding resolution of said non-defect failure(s); and

(c) providing the End User with assistance on basic maintenance and administration of the Licensed Software environment, including basic data backup and restore procedures, deployment of Version Releases, and setup of supported peripheral devices for use with the Licensed Software

3.8. 24 X 7 X 365 Emergency Support. Tyler shall provide the End User with procedures for contacting support staff outside of normal business hours for the limited purpose of reporting emergency application unavailability issues (such as a Level 1 or 2 Defect) within the Licensed Software. Tyler shall use commercially reasonable efforts to provide the End User with the assigned Service Level and Tyler's tracking number.

3.9. Saturday Technical Support. Tyler shall use commercially reasonable efforts to be available for one pre-scheduled Saturday of each month and one Sunday each calendar quarter to allow assistance to End User IT staff. This option is available for the application of patches and full release upgrades as well as consulting with End User IT staff for server maintenance and configuration for the Licensed Software environment.

3.10. Base Version Level for Correction. Tyler shall correct or otherwise cure Documented Defects to the current Version Release of Licensed Software made available to the End User and either the immediately preceding Version Release or all Version Releases released to the End User within the prior one (1) year, whichever is greater.

3.11. Escalation Procedure. If Tyler is unable to resolve any Service Level 1 or Service Level 2 Defect as provided in this Section 3 or in a manner acceptable to End User, End User may immediately escalate the issue to an IT manager or supervisor authorized by End-User and Tyler's Director of Client Services. Tyler and End User will use good faith reasonable efforts to meet, discuss, and agree upon a resolution plan for the affected Defect. If End User's IT Director and Tyler's Director of Client Services cannot agree upon an acceptable resolution plan within 24 hours of such initial escalation, or such other reasonable time as the parties may agree, End User may further escalate the issue to End User's Chief Technology Officer and Tyler's Division Chief Operating Officer or Division President who shall have final authority to negotiate an acceptable resolution plan.

3.12. Legislative Change Support. Tyler will use its commercially reasonable efforts to implement Legislative Changes within the time frames set forth in the applicable legislation or regulation. Tyler's sole liability for implementing Legislative Changes in any calendar year shall be limited to the number of hours of programming services, at Tyler's then current CUC hourly rates, equal to not more than 20% of the total Annual Maintenance Fees for the Licensed Software paid by all clients with Legislative Change Support in End User's state during such calendar year; to the extent additional programming services are required, such services shall be billed to End User at Tyler's then current hourly rates. Notwithstanding the foregoing, End User shall be responsible for the cost of any other services required to implement a Legislative Change, including, without limitation, training, configuration, project management, or data conversion. Upon the mutual determination of the need for a Legislative Change that exceeds the limitations set forth above, Tyler shall provide End User with a written statement identifying the total number of hours that Tyler is liable for Legislative Change Support as calculated above plus a good faith estimate of the additional cost to End User. Such additional costs, if any, shall be prorated as a percentage of Annual Maintenance and Support Fees among all clients in End User's state with Legislative Change Support. Legislative changes are excluded from the definition of CUC Enterprise Modifications.

4. ADDITIONAL SUPPORT SERVICES

4.1. The End User may request support services in addition to the standard maintenance offering (a "Service Request"). Such other support services may include, without limitation, services related to: (a) additional training; (b) technical assistance; (c) programming services; (d) installation of add-on components; and/or (e) business analysis.

4.2. End User will provide to Tyler a written statement stating the business need (type of services requested), the Department or Elected Official requesting the support service, the Departments and Elected Officials who are known to be affected by the outcome of the support service, and the specifications for work that the End User's IT programmers believe is necessary to achieve the stated objective.

4.3. Tyler shall provide to the End User a written response to the request which describes in detail the anticipated impact of the request on the existing Licensed Software, the time required to perform such services, an implementation plan, and a schedule of the fees related thereto. If the additional support services requested by End User include programming services or business analysis services, Tyler will provide, as part of its delivery of such services and on a T&M basis, its good-faith assessment based on information known and conveyed to Tyler of whether the proposed software change will be effective at resolving the business need described by the End User, alternative solutions, if any, that Tyler believes may be equally productive but more cost effective to the End User, and recommendations, if any, that Tyler believes will enhance the likelihood for successful resolution of the stated business need. Fees for additional support services provided by Tyler shall be billed by Tyler directly to the End User and shall be invoiced according to the terms agreed upon in writing by the Parties with respect to such services, which shall be due and payable within thirty (30) days.

4.4. Tyler shall respond to requests for additional support services within thirty (30) days of the End User's request. Such response shall include, without limitation: (a) Tyler's good faith estimate of the effort and T&M cost to complete the request; (b) an optional cost to implement the request on a fixed price basis along with a guaranteed delivery date for the fixed price; (c) the expected start date of work pending End User's approval; (d) the acceptance criteria and payment terms; and (e) the expected delivery date. If End User and Tyler cannot agree upon an acceptable cost, terms, and conditions within ten (10) days of such initial response by Tyler, or such other reasonable time as the parties may agree, End User may immediately escalate the request to End User's Chief Technology Officer and Tyler's Division Chief Operating Officer or Division President who shall have final authority to negotiate acceptable costs, terms and conditions.

4.5. Upon acceptance of the terms of Tyler's response for additional support services, as provided in paragraph 4.4, End User shall return a written authorization from End User's IT Department, along with End User's purchaser order. End User's IT Department shall be responsible for coordinating with and obtaining appropriate approvals from individual Departments and/or Elected Officials. Each separate request for support services shall be given an identification number that can be traced by both Tyler and the End User through the point of payment.

4.6. If End User has approved a fixed price project with a guaranteed delivery date, and Tyler fails to deliver the project by the date specified in End User's signed authorization, then Tyler shall issue a credit to End User equal to 15% of the fixed price previously approved for the project provided, however, that Tyler shall not be responsible for any delays in the project that result from End User's failure to provide reasonably required information, reasonable access to systems or personnel, or necessary interim approvals in a reasonably and timely manner.

5. VERSION RELEASES

Tyler shall notify the End User of the occurrence of a new Version Release and shall provide the End User with such Version Releases for the Licensed Software. The delivery of each Version Release shall include a complete, installable copy of the Licensed Software, together with release notes and other appropriate documentation. End User shall generally, at its own expense, be responsible for any configuration assistance, new integration, and training of new functionality with respect to each Version Release. The resolution of any version upgrade installation difficulties experienced by End User as the result of inadequate release documentation, defect installation software or procedures will be at no charge to End User. In such case, End User may call and ask questions and Tyler shall make available support training, such as a webex demonstration and/or staff to resolve questions. Tyler should notify the End User thirty (30) days before the general availability of any Version Release.

6. THIRD PERSON SOFTWARE AND EMBEDDED THIRD PARTY SOFTWARE

6.1. Notice of New Third Person Software or Embedded Third Party Software. Tyler shall provide the End User with advanced notice of any mandated new Third Person Software or Embedded Third Party

Software revision that shall be required to load a Version Release. Tyler shall use commercially reasonable efforts to minimize the need for the End User to rely upon updates of Third Person Software.

6.2. Tyler Certification. At Tyler's expense, Tyler shall certify the compatibility of Third Person Software or Embedded Third Party Software components used by the Licensed Software and maintain a list of supported Third Person Software and Embedded Third Party Software release levels. Version Releases shall be certified to supported versions of all required Third Person Software or Embedded Third Party Software. Tyler shall certify new releases of Third Person Software and Embedded Third Party Software within a reasonable timeframe.

6.3. Costs. The End User is responsible for all costs associated with installing and maintaining Third Person Software versions that are identified on Tyler's list of certified Third Person Software.

6.4. Maintenance. The End User is responsible for maintaining software maintenance/update agreements with Third Person Software vendors at the End User's expense. At the request of the End User, Tyler shall participate with the End User in discussions with Third Person Software providers on all software maintenance issues.

7. FEES

7.1. Annual Maintenance Fee. The End User shall pay the annual maintenance and support fees set forth on Schedule 1 (the "Maintenance and Support Fees"). Through October 1, 2015, there shall be no increase in the Annual Maintenance and Support Fees. Thereafter, any increase in the Annual Maintenance and Support Fees shall be limited to the cost of living increases according to the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average, as published by the United States Department of Labor, Bureau of Labor Statistics. Adjustments to the Annual Maintenance and Support Fees shall be calculated annually and shall be directly proportional to the percent change in the CPI index between August of the current year and August of the immediately preceding year. In no event shall the annual adjustment exceed a cap of five (5) percent or a floor of zero (0).

7.2. Invoice and Payment. Maintenance and Support Fees shall be invoiced annually in advance as set forth below:

(a) Tyler shall invoice the Texas Conference of Urban Counties (the "CUC") for Maintenance and Support Fees incurred by the End User in accordance with the terms of the CUC Master Agreement and this M&S Agreement. Tyler shall use reasonable efforts to submit such invoices to the CUC sixty (60) days prior to the initial term of the M&S Agreement or the anniversary thereof, as applicable. The CUC shall be responsible for invoicing the End User and collecting payments from the End User with respect to the Maintenance and Support Fees. The CUC shall promptly, but in any event within five (5) business days, remit to Tyler all Maintenance and Support Fees collected on behalf of the End User. In the event that the CUC fails to timely perform its invoice, collection, and remittance obligations under this section, Tyler shall have the right, in its sole discretion and upon written notice to the CUC and the End User, to invoice the End User directly for all future maintenance and support services.

(b) Any undisputed sum not paid when due shall bear interest calculated on an annual basis pursuant to Chapter 2251 of the Texas Government Code as follows. The interest rate shall be the sum of one percent that the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest begins to accrue on the thirty-first (31) day after the undisputed amount is due. Interest on an overdue payment stops accruing on the date the County mails or electronically transmits the payment.

(c) Each invoice shall include, at a minimum, the total invoiced amount and a reference to the specific items being invoiced under this M&S Agreement. Following receipt of a properly submitted invoice, the End User shall pay undisputed amounts owed within thirty (30) days. All payments shall be made in U.S. currency.

7.3. Maintenance on End User-Specific Local Enhancements. The annual Maintenance and Support Fee may be further increased by

written agreement, formally accepted in a signed writing by the Parties, with respect to maintenance and support of significant Local Modifications which are unique to End User. At such time as the Local Modification is no longer unique to End User, the additional maintenance fee shall cease for End User.

7.4.   Maintenance on Additional Software Purchased by End User. Additional software purchased by End User from Tyler subsequent to the Effective Date of this Agreement may include additional Maintenance and Support Fees. The County will have the option to accept or decline any such new optional features that would result in an increase in the Maintenance and Support Fee without affecting the County's entitlement to receive the remainder of any Version Release in which such enhancement is offered.

7.5.   Suspension of Services for Non-payment. Tyler may suspend its performance of services hereunder during any period for which Tyler does not receive payment of any undisputed Maintenance and Support Fees for a period of time exceeding sixty (60) days. Tyler shall promptly reinstate maintenance and support services upon receipt of payment of all undisputed Maintenance and Support Fees, including all such fees for the period(s) during which services were suspended.

8.   TERM AND TERMINATION

8.1.   Term. This M&S Agreement shall commence upon the Effective Date and shall continue uninterrupted until thirty (30) days after the date for the first payment of Maintenance and Support Fees, as provided in Schedule 1. After the initial payment for Maintenance and Support Fees is made, this M&S Agreement shall continue in effect for a period of one (1) year; provided, however, that at the end of such initial term, and on each subsequent anniversary of the Effective Date, the term shall automatically extend for an additional year unless End User provides, at least ninety (90) days prior to the end of the then current term, written notice that it does not wish to extend the term or otherwise terminates the agreement as provided in this Section 8.

8.2.   Termination by End User at the End of a Term. The End User may terminate this M&S Agreement effective as of the end of the initial term or any subsequent term by giving no less than ninety (90) days' notice of its intent to terminate. The End User may, at its option, reinstate maintenance by providing notice to Tyler and making payment of fifty percent (50%) of each year's Maintenance and Support Fees that would have been owed by the End User during the lapsed period plus the Maintenance and Support Fees for the then upcoming maintenance year.

8.3.   Termination by the End User for Cause. The End User may terminate this M&S Agreement for "cause" in accordance with this Section 8.3. For purposes of this Section, "cause" means a continuous or repeated failure to cure Documented Defects timely as provided in Section 3. In such event, the End User shall deliver written notice of its intent to terminate along with a description in reasonable detail of the problems for which the End User is invoking its right to terminate. Following such notice, Tyler shall have ninety (90) days to cure such problems. Following such ninety (90) day period, Tyler and the End User shall meet to discuss any outstanding issues. In the event that "cause" still exists at the end of such period, then the End User may terminate this Agreement. In the event of a termination under this subsection, Tyler shall return all monies paid to Tyler by the End User under this M&S Agreement prorated for the remainder of the then current maintenance period. In the event End User terminates this Agreement for Cause, End User reserves the right to exercise its rights as a beneficiary of the Escrow Agreement.

9.   LIMITATION OF LIABILITY

TYLER'S LIABILITY TO END USER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS M&S AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO FIXING DEFECTS IN ACCORDANCE WITH SECTION 3 OR AS OTHERWISE SET FORTH IN SECTION 8.3.

IN NO EVENT SHALL TYLER BE LIABLE TO END USER FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS OR LOSS OF DATA ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

IN NO EVENT SHALL ANY PROVISION LIMITING TYLER'S LIABILITY INTERFERE WITH END USER'S RIGHTS AS A BENEFICIARY OF THE ESCROW AGREEMENT.

10.   DISPUTE RESOLUTION

The Parties agree to use good faith, reasonable efforts to meet, discuss, and try to resolve any disputes arising out of, or relating to, this M&S Agreement for a period of sixty (60) days. The parties shall include in any such informal meetings persons with appropriate knowledge and authority, including, without limitation, the End User's Information Technology Manager and Tyler's Support Manager. Any negotiations pursuant to this Section 10 are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. For any dispute that the Parties are unable to resolve through informal discussions or negotiations, the Parties shall participate in non-binding mediation before resorting to other remedies they may have at law.

11.   MISCELLANEOUS

11.1.   Assignment. Neither party may assign this M&S Agreement or any of its respective rights or obligations herein to any third party without the express written consent of the other party.

11.2.   Notices. Except as otherwise expressly specified herein, all notices, requests or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by certified or registered mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth on the signature page, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) days following deposit in the mail.   A copy of all notices sent by Tyler to End User shall to the El Paso County IT CEO, 800 E. Overland, Ste 400, El Paso, Texas 79901 and to the El Paso County Attorney, 500 E. San Antonio, Room 503, El Paso, Texas 79901.

11.3.   Counterparts. This M&S Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.4.   Waiver. The performance of any obligation required of a party herein may be waived only by a written waiver signed by the other Parties, which waiver shall be effective only with respect to the specific obligation described therein.

11.5.   Entire Agreement. This M&S Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof.

11.6.   Amendment. This M&S Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by the properly delegated authority of each party. All amendments or modifications of this M&S Agreement shall be binding upon the parties despite any lack of consideration.

11.7.   Governing Law. Any dispute arising out of or relating to this M&S Agreement or the breach thereof shall be governed by the laws of the state of the domicile of the End User, without regard to or application of choice of law rules or principles.

11.8.   No Third Party Beneficiaries. Nothing in this M&S Agreement is intended to benefit, create any rights in, or otherwise vest any rights upon any third party.

11.9.   Contra Proferentem. The doctrine of *contra proferentem* shall not apply to this M&S Agreement. If an ambiguity exists in this M&S Agreement, or in a specific provision, neither the M&S Agreement nor the provision shall be construed against the party who drafted the M&S Agreement or provision.

11.10.   Incorporation of Other Agreements. Unless specifically excluded, all provisions of the Software License and Professional Services Agreement, the Investment Summary, and the Master Escrow Service Agreement, subject to the survival provisions in each respective agreement, survive as a part of this M&S Agreement and are incorporated in by reference.