



**Court Payment Card Processing Participation Agreement**

This Payment Card Processing Participation Agreement ("Processing Agreement") is made and entered into by and between Tyler Technologies, Inc., a Delaware corporation ("Tyler"), and Brown County (the "Court").

**WHEREAS**, Tyler and the Texas Office of Court Administration ("OCA") have entered into a certain Electronic Filing Agreement dated November 8, 2012 (the "eFile Agreement") whereby Tyler has made available to Court Tyler's electronic filing system, and

**WHEREAS**, through the said electronic filing system, certain Registered Users may submit payment for statutory courts costs and fees through the eFile System provided Court is enrolled in a Court Payment Card Processing Participation Agreement, and

**WHEREAS**, Tyler has contracted with a national banking association ("Member"), a payment processor ("Processor"), and others, to provide services under this Processing Agreement, and

**WHEREAS**, Member is a member of several Associations, including but not limited to Visa and MasterCard, and

**WHEREAS**, through Member, Tyler is authorized to process the Card Transactions listed on Schedule 1, and

**WHEREAS**, Tyler shall submit Transactions on behalf of Court in accordance with Association Rules.

**NOW, THEREFORE**, in consideration of the mutual promises made and the mutual benefits to be derived from this Processing Agreement, Tyler and Court agree as follows:

A Tyler shall furnish the services described in this Processing Agreement.

B. This Processing 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 Processing Agreement, all of which are incorporated by reference herein:

- Merchant Payment Card Processing Agreement Terms and Conditions
- Schedule 1. – Merchant Payment Card Processing Fees

IN WITNESS WHEREOF, this Processing 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	Court:
By: <u>[Signature]</u>	By: <u>E Ray West III</u>
Name: <u>JEFF PUCKETT</u>	Name: <u>E. Ray West III</u>
Title: <u>VP-SALES, C&amp;J</u>	Title: <u>Brown County Judge</u>
Date: <u>7.14.14</u>	Date: <u>July 7, 2014</u>

July 7, 2014  
(Exhibit # 21)

## Merchant Payment Card Processing Agreement Terms and Conditions

### 1. ACKNOWLEDGEMENTS

1.1 By executing this Processing Agreement, Court is contracting with Tyler to obtain Card processing services on Court's behalf.

1.2 Court acknowledges that Tyler contracts with a payment processor (a "Processor"), Members, and other third party providers to provide services under this Processing Agreement, and Court hereby consents to the use of such Processor, Members, and others to provide such services.

1.3 Any terms not otherwise defined herein shall have the same meaning as provided in the eFile Agreement which is incorporated herein by reference.

1.4 Court shall complete an application with the Member with which Tyler has contracted, and execute an agreement with such Member (the "Member Bank Agreement"). By executing the Member Bank Agreement, Court is fulfilling the Association Rule of entering into a direct contractual relationship with a Member, and Court agrees to comply with Association Rules as they pertain to Transactions submitted for processing through the Tyler service. For purposes of processing Transaction hereunder, it is understood and agreed that references to "Merchant" herein and/or in the Member Bank Agreement are intended to mean the Court.

1.5 Court acknowledges that Tyler may have agreed to be responsible for Court's obligations to a Member for such Transactions as set forth in the Member Bank Agreement. Tyler shall be entitled to invoice Court for any fees, charges, debits or costs actually paid by Tyler arising out of any claim, complaint, or Chargeback made or claimed by a Cardholder with respect to any Transactions submitted by Court.

### 2. SETTLEMENT AND CHARGEBACKS

2.1 Merchant Bank Account. In order to receive funds, Court must maintain a bank account (the "Merchant Bank Account") at a bank that is a member of the Automated Clearing House ("ACH") system and the Federal Reserve wire system. Court agrees not to close the Merchant Bank Account without giving Tyler at least thirty (30) days' prior written notice and substituting another bank account. Court is solely liable for all fees and costs associated with Merchant Bank Account and for all overdrafts. Tyler shall not be liable for any delays in receipt of funds or errors in bank account entries caused by third parties, including but not limited to delays or errors by the Member Bank or payment processor to Merchant Bank Account.

2.2 Settlement. Transactions shall be settled according to the terms of the Member Bank Agreement using the account(s) which are designated by Court.

2.3 Retrieval Requests. Court is required by the Associations to store original documentation, and to timely respond to Retrieval Requests, of each Transaction for at least six months from the date of the respective Transaction, and to retain copies of all such data for at least 18 months from the date of the respective Transaction. Court is responsible for any Chargebacks that result from Court's failure to timely respond to Retrieval Requests for documentation relating to a Transaction.

### 3. FEES AND INVOICING

3.1 Processing Fees. Court agrees that Tyler may assess the Processing Fees set forth in Schedule 1 for services provided by Tyler in accordance with this Agreement. For payments that are initiated through the eFiling System, a convenience fee will be assessed to the consumer for each payment transaction that is paid electronically using a credit or debit card. The convenience fee will be charged at the time of the transaction and will be deposited directly into a Tyler Technologies bank account from which all fees associated with processing and settling the transactions, except Other Fees as provided herein, will be paid.

3.2 Adjustments to Pricing. Tyler may modify the pricing on Schedule 1 with thirty (30) days' prior written notice. In addition, by giving written notice to Court, Tyler may change Court's fees, charges and discounts resulting from (i) changes in Association fees (such as interchange, assessments and other charges) or (ii) changes in pricing by any third party provider of a product or service used by Court. Such new prices shall be applicable as of the effective date established by the Association or third party provider, or as of any later date specified in Tyler's notice to Court.

3.3 Other Fees. In the event of a Chargeback by a consumer, the amount of any disputed charge may be deducted by the Member Bank from Court's Member Bank Account pursuant to the Member Bank Agreement. In such event, Tyler may additionally assess to the Court the chargeback fee listed in Schedule 1. If instead of deducting funds from Court's Merchant Account, the Member assess chargebacks, claims or disputed sums to Tyler, Tyler shall invoice the same to the Court as Other Fees hereunder.

### 4. THIRD PARTY PROVIDERS

Tyler may, in its sole discretion, contract with alternate Members, payment processors or other third party providers to provide services under this Processing Agreement. In such event, Court shall reasonably cooperate with Tyler, including the execution of a new Member Bank Agreement by Court; provided, however, that if the terms and conditions of the new Member Bank Agreement are substantially different than Court's existing Member Bank Agreement, then Court shall have the right to terminate this Processing Agreement.

### 5. TYLER CONFIDENTIAL AND PROPRIETARY INFORMATION

5.1 Protection of Tyler Confidential and Proprietary Information. Court shall not disclose, disseminate, transmit, publish, distribute, make available, or otherwise convey Tyler Confidential and Proprietary Information, and Court shall not use, make, sell, or otherwise exploit any such Tyler Confidential and Proprietary Information for any purpose other than the performance of this Processing 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 Processing Agreement, provided that Tyler is given advance notice of such intended disclosure in order to permit it the opportunity to seek a protective order. Court shall ensure that all individuals assigned to perform services herein shall abide by the terms of this Section 5.1 and shall be responsible for breaches by such persons.

5.2 Judicial Proceedings. If Court 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, Court 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 Processing Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by Tyler, Court 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, Court 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 Court 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.

### 6. REPRESENTATIONS AND WARRANTIES

6.1 Compliance with Laws. In performing this Processing 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.

6.2 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 Processing Agreement by any federal department or agency. Tyler further represents and warrants that it is not listed on any local, 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 Processing Agreement for any compensation, consideration, or value.

## 7. LIMITATION OF LIABILITY

TYLER'S LIABILITY TO COURT FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS PROCESSING AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE TOTAL FEES PAID TO TYLER UNDER THIS PROCESSING AGREEMENT (NET OF ASSOCIATION INTERCHANGE, ASSESSMENTS AND FINES) FOR THE SIX MONTHS PRIOR TO THE TIME THE LIABILITY AROSE.

WHILE BOTH PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY, 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 PROCESSING AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

## 8. TAXES

8.1. Tax Exempt Status. Court 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 Processing Agreement are inclusive of any applicable sales, use, personal property, or other taxes attributable to periods on or after the Effective Date of this Processing Agreement.

8.2. 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 Processing Agreement.

## 9. TERM, SUSPENSION, AND TERMINATION

9.1. Term. The term of this Processing Agreement (the "Term") shall commence on the Effective Date hereof and shall continue in effect for three years; 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 either party 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 for Cause pursuant to Section 9.2.

9.2. Termination for Cause. Either party may terminate this Processing Agreement for Cause, provided that such party follows the procedures set forth in this Section 9.2.

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

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

(ii) if Tyler services provided under this Processing Agreement fail to conform to generally accepted standards for such services in the Card processing industry and, after ninety (90) days written notice, Tyler does not rectify its failure of performance;

(iii) the failure by Court to timely pay when due any fees owed to Tyler pursuant to this Processing 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;

(iv) breach of Section 5; or

(v) 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 Processing Agreement under Section 9.2(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 10 following such period.

(c) In the event either party terminates this Processing Agreement pursuant to this Section 9.2, each party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other party prior to such termination, all revocable licenses shall terminate.

9.3. Survival. The following provisions shall survive after the Term of this Processing Agreement: 5, 7, 8, Error! Reference source not found, 10, 11 and 12.

## 10. DISPUTE RESOLUTION

Any dispute arising out of, or relating to, this Processing Agreement that cannot be resolved within five (5) Business Days shall be referred to the individual reasonably designated by Court and Tyler's Vice President of Courts and Justice Systems Division assigned to Court'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 Court's chief executive officer or other individual reasonably designated by Court 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 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 Processing Agreement, the parties shall submit the matter to non-binding mediation. The foregoing shall not apply to claims for equitable relief under Section 7.

## 11. MISCELLANEOUS

11.1. Assignment. Neither party may assign this Processing 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.

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 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.

11.3. 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.

11.4. Entire Agreement. This Processing Agreement constitutes the entire understanding and contract between the parties and supercedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof.

11.5. Amendment. This Processing 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 Processing Agreement shall be binding upon the parties despite any lack of consideration.

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

11.7. Relationship of Parties. The parties intend that the relationship between the parties created pursuant to or arising from this Processing 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.

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

11.9. Audit. Tyler shall maintain complete and accurate records of all work performed pursuant to and arising out of this Processing Agreement.

Court may, upon the written request, audit any and all records of Tyler relating to services provided herein. Court shall provide Tyler 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 Court as a part of this Processing Agreement. Tyler shall make such books and records available to Court 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 Court's sole expense.

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

11.11 Force Majeure. No party to this Processing 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 Processing Agreement shall be considered extended for a period of time equivalent to the time lost because of any delay that is excusable herein.

11.12 Equitable Relief. Each party covenants, represents, and warrants that any violation of this Processing Agreement by such party with respect to its respective obligations set forth in Section 5 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.

## 12. CERTAIN DEFINITIONS

12.1. Retrieval Request means a request for information by a Cardholder or Card issuer relating to a claim or complaint concerning a Card sale Court has made.

12.2. Transaction means the evidence and electronic record of a sale or lease transaction representing payment by use of a Card or of a refund/credit to a Cardholder.

12.3. 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 Court'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, other research and development information and data, and Intellectual Property. 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 Court in breach hereof; (b) becomes available to Court 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 Court prior to its receipt from Tyler without any obligation of confidentiality with respect thereto, or (d) is developed by Court independently of any disclosures made by Tyler.

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(Schedule 1)  
**Merchant Payment Card Processing Fees**

**MERCHANT:**

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**PROCESSING FEES**

A convenience fee of 2.89% will be assessed to consumers for each electronic payment transaction initiated that flows through the eFiling System when using a credit or debit card.

**ACCEPTED CARD TYPES**

Visa, MasterCard, Discover and AMEX will be accepted.

**OTHER FEES**

A \$20.00 fee shall be assessed for each chargeback transaction received.

Court shall be responsible for any claims, disputed sums, returns or Chargebacks made by a consumer. Chargebacks and returns may be withdrawn from the Merchant Bank Account by the Member pursuant to the Member Bank Agreement.