

Disaster Recovery Agreement

This Disaster Recovery Agreement ("Agreement") is made as of the 13th day of February 2019 by and between Tyler Technologies, Inc., a Delaware corporation with offices at One Tyler Drive, Yarmouth, Maine 04096 ("Tyler") and the Jefferson County Board of Education, a Kentucky school district doing business as the Jefferson County Public Schools, with offices at VanHoose Education Center, 3332 Newburg Road, Louisville, KY 40218 ("Client").

WHEREAS, Client desires to enroll in Tyler's Disaster Recovery Service for the Tyler software products ("Tyler Software Products") licensed by Client from Tyler, subject to the terms and conditions of this Agreement.

THEREFORE, Tyler and Client agree as follows:

1. Definitions:

Disaster. An unplanned event that is not within the reasonable control of the Client which results in the failure of the Tyler Software Products licensed by Client to perform Critical Processes. A Disaster is *not* a hardware or network failure that would have been avoided with reasonable diligence and maintenance in accord with the industry standard, a failure otherwise covered by an in-force Agreement Client has with Tyler (e.g., Tyler Annual Maintenance Agreement ("Support Agreement"), Technical Services Agreement, or Tyler Systems Management ("TSM") Agreement, or a failure that can be remedied in less than sixteen (16) Business Hours.

Disaster Recovery Plan. Defined at #2 of Exhibit 1 to this Disaster Recovery Agreement.

Critical Processes. Mutually defined in the Disaster Recovery Plan.

Critical Users. Mutually defined in the Disaster Recovery Plan.

Recovery Point Objective ("RPO"). Amount of time since last successful data transfer. With successful nightly transfer of data, RPO would be no more than twenty-four (24) hours.

Recovery Time Objective ("RTO"). Twenty-four (24) hours after receipt of a Disaster declaration for Client data not exceeding one (1) terabyte in size, for Critical Users using Critical Processes. RTO for Client data one (1) terabyte in size or greater shall be mutually agreed, specified and incorporated into the Disaster Recovery Plan.

Holiday. New Year's Day (January 1), Memorial Day (observed), Independence Day (July 4), Labor Day (observed), Thanksgiving Day, Day after Thanksgiving Day, Christmas Day (December 25).

Business Days. Monday through Friday, excluding Holidays.

Business Hours. 8 AM – 6 PM (EST) on Business Days.

Force Majeure. An event beyond the reasonable control of a party, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party.

2. Term. The initial term of this Agreement shall commence on receipt by Tyler of Client's data and shall terminate one (1) year thereafter ("Initial Term"). This Disaster Recovery Agreement shall renew automatically for additional one (1) year terms unless terminated in writing by either party at least ninety (90) days prior to the end of the then-current term. In the event the Support Agreement is terminated, this Agreement shall simultaneously terminate.
3. Disaster Recovery Services. Tyler shall provide the Disaster Recovery services ("DR Services") as described in this Agreement, including any Exhibits and associated appendices. All DR Services shall be provided remotely. In the event the Disaster results in damage to Client's server(s) and a re-installation of the Tyler Software Products licensed by Client is required as a result of such damage, Tyler shall re-install the Tyler Software Products free of charge if Client is enrolled in Tyler's TSM service (ERP, Munis, TCM)

or Technical Services Support (Incode, Eden, TCM). Otherwise, such re-installation shall be obtained from Tyler at Tyler's then-current installation services rates. Tyler Disaster Recovery staff will contact Client within twelve (12) Business Hours of Client's declaration of any such Disaster for reinstallation of such Tyler Software Products.

4. Client Requirements. In order for Tyler to provide DR Services pursuant this Agreement, Client shall:
 - a) Provide high speed internet access, including upload bandwidth sufficient for complete nightly data transfers to comply with applicable RPO
 - b) Comply with then-current minimum hardware and network requirements as specified on Tyler's support website
 - c) Maintain security and access privileges for Tyler to receive data transfer and reasonably perform activities reasonably necessary for Tyler to provide DR Services
 - d) Permit installation of software required for provision of DR Services in accord with this Agreement as reasonably determined by Tyler
 - e) Reasonably notify Tyler in advance of any changes in Client's network that impacts Tyler's ability to deliver DR Services
5. Declaration of Disaster. Client shall declare a Disaster by calling Tyler at (207) 781-2260 or (800) 772-2260 and clearly stating that CLIENT IS DECLARING A DISASTER.
6. Disaster Recovery. Client's Critical Processes will be accessible by Critical Users in accord with the applicable RTO.
7. Data. Data Transfer shall be handled in accord with Exhibit 1 to this Agreement.
8. Release Life Cycle. Tyler shall support prior releases of the Tyler Software Products in accordance with Tyler's Release Life Cycle Policy.
9. Payment & Price

In consideration of the Services provided by Tyler herein, Client shall pay to Tyler a year one (1) fee of \$30,000. Thereafter, if this Agreement is renewed as provided in Section 2, the annual fee for a renewal term will be invoiced by Tyler and will be paid by Client no later than ten (10) days prior to the commencement of the renewal term. All payments due pursuant this Agreement are due within thirty (30) days from receipt of invoice.
10. Exclusions.
 - a) Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.
 - b) Tyler's DR Services shall not be used to replace required on-site backups of Client data for Tyler Software Products licensed by Client.
 - c) The fee paid for DR Services does not include, and Client is responsible for the costs associated with:
 - i. Hardware and/or software necessary to remotely access Tyler's data center, and any and all on-site services. Client may request and purchase on-site services at Tyler's then-current rates.
 - ii. In the event Client requests Tyler to hand-deliver or courier the critical processes output (such as payroll checks), the cost of such special delivery shall be borne by Client and payable thirty (30) days from receipt of invoice.
11. License Terms. Client's use of the Tyler Software Products included in the DR Services remains subject to limitations on Client's use in the agreement by which Client licenses such Tyler Software Products from Tyler, including disclaimer of implied warranties.

12. Notices. With the exception of a declaration of a Disaster, notices or communications required or permitted as a part of this Agreement will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

- a) Actually received,
- b) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- c) Upon receipt by sender of proof of email delivery, or
- d) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

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

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: DR Manager
Email: tdrs@tylertech.com

Jefferson County Public Schools, KY
VanHoose Education Center
3332 Newburg Road
Louisville, KY 40218
Attention: Cordelia Hardin
Email: cordelia.hardin@jefferson.kyschools.us

13. Independent Contractor. Tyler shall be an independent contractor of Client for all purposes of this Agreement. Nothing in this Agreement is intended to create an employer-employee relationship, joint venture relationship, or partnership between Client and Tyler or any personnel assigned to perform services by Tyler, and the parties shall characterize their relationship as an independent contractor relationship for tax purposes and all other purposes.
14. Termination for Default. Client may, by written notice of default to Tyler, terminate the whole or any part of this Agreement, upon (a) the commission by Tyler or any personnel assigned to this project by Tyler of any act which is a violation of the provisions of Article XI of Client's Procurement Regulations entitled "Ethics and Standards of Conduct," or assisting or participating in or knowingly benefitting from any act by any employee of Client which is a violation of such provisions, (b) an occurrence of dishonest, fraudulent or illegal conduct or misappropriation of Client funds by Tyler or any personnel assigned to this project by Tyler, (c) the indictment or entry of a guilty plea or a plea of no contest to a felony offense by Tyler or any personnel assigned to this project by Tyler, or (d) a material breach of this Agreement by Tyler, provided that Client has first given written notice to Tyler describing the breach with reasonable specificity and demanding that Tyler take action to cure the breach, but Tyler has failed to cure the breach within the period of thirty (30) days after Tyler's receipt of such notice.
15. Miscellaneous. This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding. All sections of this Agreement shall be construed as read, and no limitation shall be placed on any section by virtue of its descriptive heading. Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth or referenced in this Agreement. Any changes to this Agreement by either party must be communicated at least sixty (60) days in advance, and will take effect no earlier than the commencement of the renewal term following notice of the change, unless otherwise mutually agreed. No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky and shall otherwise be subject to the terms under which Tyler licenses its software to the Client. Any action or claim arising from, under or pursuant to this Agreement shall be brought in a state or federal

court in Jefferson County, Kentucky, and the parties expressly waive the right to bring any legal action or claims in any other courts.

Tyler Technologies, Inc.

By: 

Name: Christopher P. Hepburn

Title: President, ERP & School Division

Date: 1/7/19

Jefferson County Board of Education

By: _____

Name: _____

Title: _____

Date: _____

Exhibit 1

In addition to those services described elsewhere **in** this Agreement, **DR Services** are described in the following sections.

1 Data Transfer

The electronic transfer solution provides nightly (between the hours of 8 PM and 6 AM) transfer and archiving of Client's Tyler data and is subject to the following conditions:

- Initial data transfer may require portable disk.
- Data transferred shall include only items essential to provision of service.
- Applications included in the DR Services are listed in Appendix A to this Exhibit 1. Such description shall also indicate database and file detail required for provision of DR Services. Tyler Software Products not listed in Appendix A and any non-Tyler Software Product shall not be included in data transfer or the DR Services.
- Only production databases are backed up.
- Data from the last seven (7) successful data transfers are retained by Tyler.
- Total data storage is limited to 200 gigabytes ("GB"). Storage limit may be increased in 200 GB increments by mutual agreement and at additional cost.
- Data transferred to Tyler as part of DR Services is not available for Client's data retrieval or restoration not associated with the DR Services provided by Tyler. Tyler may provide data transferred by Client on an exception basis, upon request.
- Tyler is not responsible for the integrity of the data provided by Client to Tyler. Tyler will use the most current viable data to restore Client's Critical Processes.
- Tyler may use select information from the Client database for research and analysis purposes, subject to Tyler's confidentiality obligations as described below.
- To the extent the database contains confidential information, Tyler shall keep confidential such information in accordance with the confidentiality provisions of the Agreement(s) by which Client licenses the Tyler Software Products from Tyler.
- Tyler Disaster Recovery staff will monitor status of data transfers on Business Days.
- In the event of two (2) consecutive data transfer failures, Tyler will timely provide notice to Client in order to commence troubleshooting.
- Tyler shall have no liability for failure of data transfers not solely caused by Tyler.
- Tyler will provide transfer report related to Client data transfer upon request.

2 Disaster Recovery Plan

The Disaster Recovery Plan is a mutually drafted document which details, in addition to this Disaster Recovery Agreement, the DR Services Tyler shall provide to Client. The parties' responsibilities with respect to the Disaster Recovery Plan are further defined below.

Tyler's Responsibilities:

- Coordinate activities associated with transfer of data to Tyler's data center.
- Document Disaster Recovery strategy for critical processes.
- Review the Disaster Recovery Plan with Client.
- Provide reasonable guidance for Disaster Recovery policies and procedures.
- Identify modules, databases, applications, and files required for DR Services.

Client's Responsibilities:

- Provide remote access to Client's Tyler database server for analysis and configuration of data transfer.
- Provide network support if required to enable transfer of data from Client's server to the Tyler data center.
- Provide PCs and high-speed modems for access from Client's alternate processing location, if required.
- Provide technical resources to configure remote access PCs, including Tyler supplied application software, if reasonably required to receive DR Services pursuant to this Agreement.
- Provide a chain of command document for communication during a disaster.
- Maintain the Disaster Recovery Plan and integrate the Disaster Recovery Plan made with Tyler with Client's comprehensive disaster recovery plan.

Shared Responsibilities:

- Identify Critical Users for DR Services.
- Identify Critical Processes for DR Services.
- Identify RTO for protected datasets greater than one (1) terabyte.
- Draft initial Disaster Recovery Plan within ninety (90) days of commencement of Initial Term.
- Define recovery processes for post Disaster operations (mandatory for Odyssey CM clients, optional for all others).

3 DR Services during Disaster

- A. Upon declaration of a Disaster, Tyler shall provide DR Services from one of its hosting facilities for the duration of the Disaster, not to exceed thirty (30) consecutive Business Days. Use of Tyler's data center in excess of such period shall require the parties to execute a change order detailing the duration of the extension and the additional cost associated therewith.
- B. Hosting Services During a Disaster.
- i. Hosting Services during a Disaster will be provided in accord with Tyler's then-current standard availability guarantees from its Service Level Agreement for SaaS clients. Any credits issued to Client will be based on the total Disaster Recovery fee paid for the then-current term.
 - ii. Tyler will use best efforts to include interfaces for Tyler Software Products covered under this Agreement.
 - iii. Hosting Services shall not include interfaces or interconnects with 3rd Party Products unless specifically agreed in the Disaster Recovery Plan.
- C. Processing Assistance During a Disaster includes, as necessary:
- i. Print Output:
 - a. Payroll Checks
 - b. Retirement Checks
 - c. Accounts Payable Checks.
 - ii. In the event print output is required to be sent non-electronically, Client shall bear the cost of shipment.
 - m. Transfer of Automated Clearing House ("ACH") Files to bank on Client's behalf. Transfer may require pre-notification by Client to bank.
- D. Clients receiving DR Services during a Disaster receive priority access to Tyler application support.

4 Annual Disaster Recovery Test

The parties may review and test the DR Services:

- Scheduled by parties at least thirty (30) days in advance,
- Client must provide a list of users who will partake in the test,
- Test shall not exceed 2 weeks,
- Retest within same year available if initial test not agreed by both parties to be successful.

5 Estimated Schedule

The services provided pursuant to this Agreement will be performed consistent with the estimated schedule mutually agreed to by Tyler and Client, which shall be included in the Disaster Recovery Plan. Tyler and Client agree to promptly perform their respective responsibilities according to such schedule.

6 Tyler's Other Responsibilities

Project management services are provided as part of the DR Services. Tyler will designate a Project Manager who will be Tyler's contact for all communications with Client and will have the authority to act on Tyler's behalf in matters regarding the statement of work for the project management services ("Statement of Work"). Tyler's project manager will perform the following tasks:

- Review Statement of Work with Client's project manager.
- Review current project status.
- Recommend changes or additions to the project as appropriate.
- Administer the change control procedure.
- Review and evaluate the progress of the project with Client's project manager to resolve any necessary changes.

7 Client's Other Responsibilities

Tyler's performance is predicated upon the following responsibilities being fulfilled by Client:

Prior to the start of the Statement of Work, Client will designate, in writing, a person who will be Client's Project Manager who will be Client's contact for all communications with Tyler and who has the authority to act on behalf of Client in all aspects of the Statement of Work. The Project Manager will perform the following activities:

- Interface between Tyler's Project Manager and Client's organization.
- Administer project change control with Tyler's project manager.
- Arrange reasonable access to Client's data for project personnel, as reasonably required.
- Conduct any communication through Tyler's Project Manager.
- Help resolve and escalate project issues within Client's organization as required.
- Obtain and provide project requirements, data, decisions and approvals within five (5) business days of request. If such requirements, data, decisions or approvals are delayed beyond the time specified, Client agrees to relieve Tyler of its responsibility for the affected **DR** Service until Client performs that obligation.
- Accept responsibility for the data files, selection and implementation of controls for Client's location, and security of the stored data.

Client acknowledges that it is Client's responsibility to identify and make the interpretation of any applicable federal, state and local laws, regulations and statutes.

8 Project Change Control Procedure

When Tyler and Client agree to a change in the Disaster Recovery Plan, Tyler will prepare a written description of the agreed change which both Tyler and Client must sign. The Change Order will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. When charges are necessary in order for Tyler to analyze a change, Tyler will give Client a written estimate and begin the analysis only after Client's written authorization.

Appendix A

Defined User Maximum. The maximum number of named Client users available to use DR Services is 30.

Covered Applications.

APPLICANT TRACKING
EMPLOYEE SELF SERVICE
INVENTORY
CRYSTAL REPORTS
TREASURY MANAGEMENT
TYLER FORM PROCESSING
WORK ORDERS
TCM ADVANCED OCR
TYLER CONTENT MANAGER WORKFLOW
TYLER CONTENT MANAGER SE
ROLE TAILORED DASHBOARD
MUNIS GUI SITE LICENSE
EMPLOYEE EXPENSE REIMBURSEMENT
TRANSPARENCY PORTAL
ePROCUREMENT

Product Specific Conditions.

Every effort will be made to provide functionality for Client to utilize the Time and Attendance application by either A) establishing a software SSL-VPN connection, or B) provide access to an existing import interface for the purpose of completing the Payroll process.
61776298.1

Agreement For Tyler Systems Management ("TSM")

Invoice to: Jefferson County Board of Education

Contact:

Address: 3332 Newburg Road, Louisville, Kentucky 40218

Telephone:

This Tyler Systems Management Agreement (herein "TSM Agreement") is entered into between the Board of Education of Jefferson County, Kentucky (CUSTOMER) with its principal place of business at 3332 Newburg Road, Louisville, KY 40218 and Tyler Technologies, Inc., (TYLER) with its principal place of business at One Tyler Drive, Yarmouth, Maine, 04096 on this **day** of February 2019.

The headings used in this TSM Agreement are for reference purposes only and shall not be deemed a part of this TSM Agreement.

CUSTOMER agrees to purchase and TYLER agrees to provide the services listed below in accordance with the following terms and conditions.

I. Term of Agreement; Termination:

This Agreement is effective as of February 13, 2019 and shall remain in force for a one year initial term. Upon expiration of that initial term, the Agreement will automatically renew for additional one year terms, at Tyler's then-current rates, unless terminated by either party by giving notice of non-renewal in writing at least thirty (30) days' in advance of the upcoming renewal date.

CUSTOMER may terminate this TSM Agreement in whole or In part at any time by giving written notice to TYLER of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. CUSTOMER may also, by written notice of default to TYLER, terminate the whole or any part of this TSM Agreement, (a) the commission by TYLER or any personnel assigned to this project by TYLER of any act which is a violation of the provisions of Article IX of CUSTOMER's Procurement Regulations entitled "Ethics and Standards of Conduct" or assisting or participating in or knowingly benefitting from any act by any employee of CUSTOMER which is a violation of such provisions, (b) an occurrence of dishonest, fraudulent or illegal conduct or misappropriation of CUSTOMER funds by TYLER or any personnel assigned to this project by TYLER, (c) the indictment or entry of a guilty plea or a plea of no contest to a felony offense by TYLER or any personnel assigned to this project by TYLER, or (d) a material breach of this TSM Agreement by TYLER, provided that CUSTOMER has first given written notice to TYLER describing the breach with reasonable specificity and demanding that TYLER take action to cure the breach, but TYLER has failed to cure the breach within a period of thirty (30) days after receipt of notice specifying the breach or failure. Upon the termination of this TSM Agreement under any provision above, (a) each Party shall be required to carry out any provisions which contemplate performance by or impose obligations on such Party after the effective date of termination, (b) termination shall not affect any liability or other obligation which has accrued prior to the effective date of termination, including, with limitation, any liability or loss or damage on account of a breach of this TSM Agreement, and (c) CUSTOMER shall have no obligation to pay any compensation to TYLER for periods after the effective date of termination, except the obligation to pay any compensation that accrued before the effective date of termination.

II. Scope of the Agreement:

Both parties acknowledge that this TSM Agreement covers only the services described in Section V below for the Tyler Munis software licensed to the CUSTOMER, for the internal business operations of the Jefferson County, Kentucky Public School District.

III. Payment:

1. CUSTOMER agrees to pay TYLER \$30,000 for the services described below. This payment is due and payable upon execution of this TSM Agreement. Thereafter, payments for any renewal of this TSM Agreement as provided in Section I above will be due on or before the first day of the applicable one-year renewal term. Payment terms are net thirty (30) days from invoice date.
2. Additional Charges. Any systems management services and/or related materials performed or supplied by TYLER for CUSTOMER that are not in-scope, as defined herein, will be invoiced to CUSTOMER on a time and materials basis at TYLER'S then-current rates.

IV. Covered System:

Window Servers that are required to run the Tyler Munis applications including: Munis Web servers
Munis Application servers
Munis SQL Database servers
Tyler Infrastructure server
Tyler Content Management server
Munis Dashboard server
Tyler Forms server
Munis SSAS/SSIS server
Munis SSRS server

V. Scope of Services: TYLER will provide the following services ("TSM services") for the benefit of CUSTOMER:

- a. TYLER SYSTEMS MANAGEMENT Service is available during TYLER's then-current business hours. TYLER'S current business hours are set forth at <http://www.tylertech.com/client-support>. CUSTOMER may contact a TSM technician using the contact information set forth at <http://www.tylertech.com/client-support>. Calls will be recorded and answered on a first in first out basis, except on reports that declare CUSTOMER's system down, in which case CUSTOMER's call will be moved to the head of the queue
- b. TSM services are restricted to the primary production server(s) that the Tyler Software subject to this TSM Agreement is installed on.
- c. Environments: Database administration services are restricted to three TYLER environments: one live environment, one training environment, and one test environment.

In cases where additional databases exist, each additional database will be subject to additional fees, which TYLER will quote to CUSTOMER at TYLER's then-current rates.

Application Software: In-scope TSM services include two complete sets of the Tyler Software subject to this TSM Agreement: one live set and one test/train set.

d. Required Foundation Hardware and Software

TSM services include the support and installation of all foundation software TYLER requires CUSTOMER to procure to utilize one live, one train and one test database. Required foundation software is set forth at <https://check.tylertech.com/>. TYLER does not support, and this TSM Agreement does not include support services for, any third party product that is not required foundation software. TYLER will reasonably cooperate with CUSTOMER in investigating issues within the Tyler Software that may be created by a third party product, but it is CUSTOMER's responsibility to pursue support on third party products directly from that vendor or its authorized partners.

- e. TYLER will also perform system administrative tasks on the installed operating system and database administrative tasks on the installed database engine software.
- f. TYLER will also provide a remote installation and configuration of a new or upgraded server, at CUSTOMER'S request, once every two (2) years during the period when CUSTOMER is a party to an agreement with TYLER for the provision of TSM services, inclusive of any renewal of this TSM Agreement.

VI. CUSTOMER Responsibilities:

CUSTOMER shall provide, at no charge to TYLER, full and free access to the programs covered hereunder, including working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service

- a. CUSTOMER shall install and maintain for the duration of this Agreement a stable high-speed network connection available for remote connections. CUSTOMER shall pay for installation, maintenance and use of such equipment and associated communication line use charges. TYLER, at its option, shall use this remote interface in connection with error correction. Tyler will provide CUSTOMER with servers access records (based on the submitted requests) including reason and time of access, name of the team member and description of the work performed on the server.

VI. General

- a. **Non-Assignability:** CUSTOMER shall not have the right to assign or transfer its rights hereunder to any party.
- b. **Excused Non-Performance:** TYLER shall not be responsible for delays in servicing the products covered by this Agreement caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.
- c. **Indemnification:** TYLER agrees to hold harmless, indemnify, and defend CUSTOMER and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including TYLER itself and any personnel of TYLER assigned to this project by TYLER, in connection with the performance of this TSM Agreement. TYLER also agrees to hold harmless, indemnify, and defend CUSTOMER and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to TYLER in connection with the performance of this TSM Agreement. This provision shall survive the termination of this TSM Agreement.
- d. **Governing Law:** This TSM Agreement shall be governed by, and construed in accordance with, the laws of CUSTOMER's state of domicile, Kentucky. The invalidity or unenforceability of any provisions of this agreement shall not affect the validity or enforceability of any other provision. Any action or claim arising from, under or pursuant to this TSM Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the Parties expressly waive the right to bring any legal action or claims in any other courts.

- e. **Entire Agreement; Modification of this Contract:** This TSM Agreement is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this TSM Agreement. No modifications or amendment of this Agreement shall be effective unless set forth in writing and signed by both CUSTOMER and TYLER. The foregoing notwithstanding, except as specifically indicated in this Agreement, this Agreement is subject to the applicable terms and conditions of the agreement through which the TYLER software is licensed to the CUSTOMER.
- f. **Suspension:** Support and services will be suspended whenever CUSTOMER's account is thirty (30) days overdue. Support and services will be reinstated when CUSTOMER's account is made current by paying all past due fees.
- g. **Reservation of Rights:** TYLER reserves all right, title and interest, including but not limited to intellectual property rights, in and to the Tyler Software, the TSM services, and any services or deliverables related thereto, except as expressly set forth in this TSM Agreement.
- h. **Subcontractors:** The TSM services shall be performed by TYLER, and in no event shall TYLER subcontract with any other person to aid in the completion of the TSM services without the prior written approval of CUSTOMER.
- i. **Independent Contractor:** TYLER shall be an independent contractor of CUSTOMER for all purposes of this TSM Agreement. Nothing in this TSM Agreement is intended to create an employer-employee relationship, joint venture relationship, or partnership between CUSTOMER and TYLER or any personnel of TYLER assigned to this project by TYLER, and the Parties shall characterize their relationship as an independent contractor relationship for tax purposes and all other purposes. CUSTOMER shall have the right to exercise control and direction as to the results only and not as to the methods by which TYLER performs or otherwise provides the TSM services, it being recognized that TYLER will be exercising TYLER's independent judgment. TYLER and any personnel assigned to this project by TYLER shall have no claim under this TSM Agreement or otherwise against CUSTOMER for workers' compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits, or any other benefits. CUSTOMER shall not withhold on behalf of TYLER, or in any way be responsible for the payment of, any federal, state, or local income taxes, F.I.C.A. taxes, F.U.T.A. taxes, unemployment compensation or workers' compensation contributions, Social Security, or any other payments or withholdings pursuant to any law or requirement of any governmental body or agency on behalf of TYLER, and all such withholdings, payments, or obligations shall be the sole responsibility of TYLER. CUSTOMER shall issue to TYLER a Form 1099 statement for TYLER's federal and state income tax reporting purposes. TYLER warrants that TYLER will not take a position that is inconsistent with such independent contractor status, including in any court proceeding. This provision shall survive the termination of this TSM Agreement.
- j. **Insurance:** Unless waived in writing by CUSTOMER, TYLER shall maintain during the Term of this TSM Agreement policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability ("CGL"), including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and automobile ("Auto") liability, \$1,000,000 combined single limit. TYLER shall furnish to CUSTOMER certificates of insurance evidencing this coverage and naming CUSTOMER as an additional insured for the CGL and Auto policies. Additionally, TYLER shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000 per occurrence and \$5,000,000 in the aggregate. TYLER shall furnish certificates of insurance evidencing this coverage to CUSTOMER.
- k. **Nondiscrimination:** During the Term, TYLER agrees that TYLER shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliation or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, or disability.
- l. **Proprietary Information:** At all times during the Term and thereafter, TYLER and all personnel of TYLER assigned by TYLER to this project will hold in strictest confidence and will not disclose, use, or publish any Proprietary Information, as defined below, of CUSTOMER except as such disclosure, use or publication may be required in connection with TYLER's performance of the Services, or unless CUSTOMER expressly authorizes such disclosure, use or publication in writing. The term "Proprietary Information" shall mean all information, data and records relating to CUSTOMER's business, business plans, trade secrets, financial statements, services, personnel information, student information, and any other proprietary information of CUSTOMER which CUSTOMER treats as confidential with respect to the general public. The term "Proprietary Information" shall not include information that TYLER can show by competent proof (a) was known to TYLER prior to disclosure by CUSTOMER and not subject to a duty or obligation of confidentiality or nondisclosure on the part of TYLER; (b) was generally known to the public at the time CUSTOMER disclosed the information to TYLER; (c) became generally known to the public after disclosure by CUSTOMER through no act or omission of TYLER; (d) was disclosed to TYLER by a third party having a bona fide right both to possess the information and to disclose it to TYLER; or (e) is otherwise public information under applicable law. Upon the termination of this TSM Agreement for whatever reason, TYLER will deliver to CUSTOMER, or if agreed by CUSTOMER in writing will destroy, all data, records, reports, summaries, plans, notes, memoranda and documents, together with all copies thereof (whether in tangible or intangible form), and any other material containing or disclosing any Proprietary Information of CUSTOMER. This Section shall survive the termination of this TSM Agreement.
- m. **FERPA:** If TYLER has access to student records, TYLER shall at all times (a) comply with the Family Educational Rights and Privacy Act of 1974 ("FERPA") if and only to the extent necessarily applicable to TYLER as a result of its obligations under this Agreement, and (b) limit the access to those records by TYLER's employees and other personnel assigned to this project to those persons for whom access is essential to perform this TSM Agreement. Without limitation of the preceding sentence, TYLER agrees to:

- In all respects comply with the provisions of FERPA if and only to the extent necessarily applicable to TYLER as a result of its obligations under this Agreement. For purposes of this TSM Agreement, "FERPA" includes the requirements of Chapter 99 of Title 34 of the Code of Federal Regulations.
- Use any such data for no purpose other than to fulfill the purposes of this TSM Agreement, and not share any such data with any person or entity other than TYLER and its employees, contractors and agents, without the approval of CUSTOMER.
- Require all employees, contractors and agents of TYLER to comply with all applicable provisions of FERPA with respect to any such data.
- Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of this TSM Agreement.
- Conduct TSM services in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of TYLER having a legitimate interest in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any published results of studies.
- Destroy or return to CUSTOMER any such data obtained under this TSM Agreement within thirty (30) days after the date when it is no longer needed by TYLER for the purposes of this TSM Agreement.

JEFFERSON
COUNTY BOARD OF
EDUCATION

Tyler Technologies, Inc.

Printed Name:

Signature

Date

Christopher P. Hepburn

Printed Name:



Signature

1/7/19

Date