



re:SearchTX Participation Agreement

This Participation Agreement is made between Tyler Technologies, Inc. and Client.

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

WHEREAS, under the 2012 OCA eFile Agreement, Tyler agreed to develop a document search/retrieval portal to be made available to Users;

WHEREAS, Tyler has developed such portal, re:SearchTX, as further described herein; and,

WHEREAS, Client wishes to make available certain documents and other data to re:SearchTX.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

1. **"Agreement"** means this Participation Agreement.
2. **"Client"** means Williamson County, Texas.
3. **"Documents"** means accepted electronic filings, rulings, opinions, or any other documents that you deem appropriate for access through re:SearchTX.
4. **"Effective Date"** means the date on which your authorized representative signs the Agreement.
5. **"Metadata"** means a set of data that describes and gives information about case records and the Documents.
6. **"re:SearchTX" or "Tyler Software"** means the document search/retrieval portal envisioned by the 2012 OCA eFile Agreement, whereby Users are able to search Metadata stored in the document search/retrieval portal to direct Users to county-stored documents as authorized by the stakeholders owning the records
7. **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
8. **"Users"** means those users permitted to access re:SearchTX as authorized by the OCA.
9. **"we", "us", "our"** and similar terms mean Tyler.
10. **"you"** and similar terms mean Client.

SECTION B – ACCESS and OWNERSHIP

1. **Integrated Method.** We will use our standard APIs to integrate your case management system directly with re:SearchTX, allowing court documents and information to be exchanged between your case

management system and re:SearchTX. The APIs will allow security parameters to be exchanged, preventing unauthorized access to confidential court documents and records through re:SearchTX. Tyler will enable this integration and provide access to Users upon the Client's written notice to proceed.

2. **Portal Access.** We will host and provide re:SearchTX to allow Users to search Metadata stored within re:SearchTX that directs Users to Documents you store outside of re:SearchTX. At no cost to the Client, you will provide us with access to the Documents to the extent necessary for us to perform our obligations under this Agreement.
3. **Ownership.**
 - 3.1. You retain all ownership and intellectual property rights to the Documents and Metadata. Nothing in this Agreement shall be deemed to vest in us any ownership rights in and to your Documents and Metadata; provided, however, you grant us a nonexclusive, perpetual, irrevocable, fully paid, royalty-free, license to the Documents and Metadata, consistent with the contemplated use of re:SearchTX under the 2012 OCA eFile Agreement, including any amendments thereto.
 - 3.2. We reserve all rights not expressly granted to you in this Agreement. We own the title, copyright, and other intellectual property rights in Re:SearchTX.

SECTION C – TERM, TERMINATION and DISPUTE RESOLUTION

1. **Term.** The term of this Agreement ("Term") shall commence on the Effective Date and shall continue in accordance with the term set forth in the 2012 OCA eFile Agreement, including all renewals thereof.
2. **Termination for Cause.** Either party may terminate this Agreement for "Cause"; provided, however, that such party follows the procedures set forth in Section C(4). For purposes of this Section C(2), "Cause" means either: (a) a material breach of this Agreement, which has not been cured within thirty (30) days of the date such party receives written notice of such breach; (b) breach of Confidentiality in Section E(8); or (c) If Tyler becomes insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of 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.

No party may terminate this Agreement under this Section 2 until it follows the dispute resolution procedures set forth in Section C(4).

3. **Termination for Convenience.** Either party may terminate this Agreement at any time by providing the other party with ninety (90) days' written notice. In the event of such termination, Client will only be liable for its pro rata share of services rendered and goods actually received, if applicable. For the avoidance of doubt, any termination of this Agreement will only terminate the use of the integrated method described above in Section B(1) – the use of re:SearchTX as mandated by the 2012 OCA eFile Agreement will not be affected by any such termination.
4. **Dispute Resolution.** Subject to applicable law, including but not limited to the Texas Public Information Act, you agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. Except for the Open Meetings Act, all meetings and discussions

between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, either of us may assert our respective rights and remedies in a court of exclusive jurisdiction in Collin County, Texas. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures

SECTION D – INDEMNIFICATION AND LIMITATION OF LIABILITY

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend, indemnify and hold harmless you and your agents, officials, and employees from and against any third-party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section D(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software, and we provided notice of that requirement to you as well as a commercially reasonable timeframe within which to perform the version upgrade; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement or misappropriation, including use of the Tyler Software after we notify you to discontinue use due to such a claim.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing or non-misappropriating; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. **General Indemnification.** We will defend, indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to

the extent caused by our negligence or willful misconduct; or (b) our violation of a law applicable to our performance under this Agreement, including our violation of laws relating to the protection of non-public information regarding minors, mentally ill individuals, and expunged criminal records. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

3. **Limitation of Liability.** OUR LIABILITY TO YOU 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 THE CORRECTION OF DEFECTS IN THE PORTAL. IN NO EVENT SHALL EITHER PARTY 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 POSSIBILITIES OF SUCH DAMAGE.

SECTION E – GENERAL TERMS

1. **Compliance with Laws.** In providing the services herein, we will comply with all applicable federal, state of Texas, and local laws, ordinances, and regulations.
2. **No Warranty.** You acknowledge that all Documents are received directly from you on an “AS IS” basis, and that we do not edit, and cannot independently verify, the completeness or accuracy of the Documents or Metadata. All Documents retrieved through the re:SearchTX are provided on an “AS IS” basis. Neither party makes any representation or warranty related to the accuracy or completeness of any such Documents and shall have no liability arising from or relating to the same. WE MAKE NO REPRESENTATION OR WARRANTY RELATED TO THE PERFORMANCE OF THE PORTAL, AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
3. **Binding Effect; No Assignment.** This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Except for laws of the State of Texas, neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
4. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.
5. **Independent Contractor.** We are an independent contractor for all purposes under this Agreement.
6. **Notices.** All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) 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 other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

7. **Client Lists.** You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
8. **Confidentiality.** *Subject to applicable law, including but not limited to the Texas Public Information Act*, both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, non-public information regarding minors, mentally ill individuals, and expunged criminal records; and personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

Notwithstanding the foregoing, Tyler understands that Client is a unit of local government and therefore is subject to the Texas Public Information Act. Should Client receive a request from a third party for Confidential Information, it shall promptly notify Tyler of such request in writing, including a copy of such request, and shall thereafter assert any applicable exceptions under said Act to the Texas Attorney General for a ruling on whether the requested information must be released. Client shall not be required to institute litigation to challenge a ruling from the Texas Attorney General that the requested information must be released, however, Client shall not impair Tyler's rights to seek protection of Confidential Information in the manner allowed by applicable law. Nothing herein shall be interpreted to abrogate Client's duties under the Public Information Act.

9. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its rules on conflicts of law. The parties agree that the exclusive venue for any legal proceedings involving this Agreement shall be in Williamson County, Texas.
10. **Multiple Originals and Authorized Signatures.** This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.

11. **Expenses for Enforcement.** In the event either party hereto is required to employ an attorney to enforce the provisions of this agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

12. **No Waiver of Sovereign Immunity or Powers.** Nothing in this Agreement will be deemed to constitute a waiver of sovereign immunity or powers of licensee, the Williamson County Commissioners Court, or the Williamson County Judge.

IN WITNESS WHEREOF, a duly authorized representative of each party has executed and delivered this Agreement as of the date(s) set forth below.

TYLER TECHNOLOGIES, INC.:

WILLIAMSON COUNTY, TEXAS:

By: *Sherry Clark*

By:

Name: Sherry Clark
Title: Sr. Corporate Attorney

Name:
Title:

Date: 12/5/2019

Date:

Address
for
Notices: Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Address for
Notices: Williamson County, Texas

With copy to:
Tyler Technologies, Inc.
5101 Tennyson Parkway
Plano, TX 75024
Attention: Legal Department

Attention: _____