

**Electronic Filing Agreement  
Between  
Tyler Technologies, Inc. and the Office of Court Administration**

This Electronic Filing Agreement ("eFile Agreement" or "Agreement") is entered into by and between Tyler Technologies, Inc. ("Tyler") and the Texas Office of Court Administration ("OCA"). This Agreement shall become effective as of the last date set forth on the signature page below (the "Effective Date").

**WHEREAS**, OCA desires to obtain a license to make Tyler's electronic filing system available to the appellate, district, county, municipal, probate, and justice courts of the State of Texas so that they may receive, transfer, maintain, and provide access to electronic documents; and

**WHEREAS**, Tyler desires to license its electronic filing system to OCA for use by the appellate, district, county, municipal, probate, and justice courts of the State of Texas, subject to the terms and conditions set forth in this eFile Agreement.

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

- A. Tyler shall furnish the services and OCA shall comply with the obligations described in this eFile Agreement.
- B. This eFile Agreement consists of this cover and signature page and the following attachments attached hereto and to be attached throughout the Term of this eFile Agreement, all of which are incorporated by reference herein:
  - Electronic Filing Agreement Terms and Conditions
  - Attachment A – Statement of Work
  - Attachment B – Use Fees
  - Attachment C – Project Timeline
  - Attachment D – Service Level Agreement

IN WITNESS WHEREOF, this eFile 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.**

**OFFICE OF COURT ADMINISTRATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Electronic Filing Agreement Terms and Conditions

## 1. LICENSE

1.1. License Grant. Tyler hereby grants to OCA a non-exclusive, revocable license (and sublicense with respect to the Embedded Third party Software) to make available the Odyssey File and Serve System for use by the State's appellate, district, county, municipal, probate, and justice courts, their clerks and other designated court staff (the "Courts") and by an unlimited number of Registered Users; provided, however, that the Courts and Registered Users may be required to accept a "click-thru" or other license that has been reviewed and approved by OCA prior to use of the eFiling System. To the extent any provision of this eFile Agreement conflicts with the terms of a "click-thru" or other license accepted by the Courts and Registered Users, this eFile Agreement shall control. The foregoing license (and right to sublicense) shall be automatically revoked upon the expiration or termination of this eFile Agreement.

1.2. Restrictions. Unless otherwise expressly set forth in this eFile Agreement or otherwise agreed in writing by Tyler, OCA shall not (a) reverse engineer, de-compile, or disassemble any portion of the eFiling System, or (b) sublicense, transfer, rent, lease, or perform any Unauthorized Use of the eFiling System.

1.3. Embedded Third party Software. The license grant set forth in Section 1.1 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. Tyler shall pass through to OCA any and all warranties granted to Tyler by the owners, licensors, and/or distributors of such Embedded Third party Software. The Courts shall be responsible for procuring and paying for all System Requirements.

## 2. SCOPE OF SERVICES

2.1. Tyler Duties. Tyler shall perform such Services and related support as set forth in the Statement of Work attached hereto as Attachment A. Not later than thirty (30) days after the execution of this eFile Agreement, Tyler shall provide for OCA's approval a detailed project timeline that includes, at a minimum, the following:

- (a) the implementation dates of the eFiling system in the Courts throughout the state with a final implementation date of not later than February 28, 2014; and
- (b) the date the Document Search/Retrieval Portal will be available to the Courts.

2.2. OCA Duties. OCA shall use reasonable efforts to assist Tyler in the performance of the Statement of Work, including:

- (a) creating broad public notice and awareness of the eFiling System within the respective attorney community; and
- (b) providing Tyler with a copy of all applicable rules governing electronic filing of Documents with the Courts, and if no such rules are in effect on the Effective Date, OCA shall use its reasonable efforts to promote the adoption of guidelines and rules and obtain any necessary legislative changes governing electronic filing of Documents with the Courts.

## 3. FEES, COSTS, AND REVENUE

3.1. Use Fees. Tyler's fees and expenses associated with the Services shall be recovered through Use Fees set forth in Attachment B.

3.2. Collection of Filing Fees. Tyler shall, on behalf of the Courts, collect through the Texas Payment Engine provided by Texas.gov all Filing Fees for Documents filed pursuant to this eFile Agreement from Registered Users of the eFiling System. Tyler shall pay the Filing Fees to the Courts within 24 hours (excluding weekends and holidays observed by Tyler, the Court, or other federal holidays). Credit card fees may not be deducted from any Filing Fees paid to the Courts. Except as provided in Attachment B for Government Filers and indigent filers, Tyler shall not accept any Court Document for filing unless the required Filing Fee accompanies it.

3.3. Additional Services. In the event OCA desires additional services (e.g., customization or modification of the eFiling System), Tyler shall provide a written estimate of such services. Tyler shall not initiate any additional services unless both parties execute a written authorization order.

3.4. Taxes. OCA and the Courts are governmental tax-exempt entities and shall not be responsible for any taxes for any software or services provided for herein, whether federal or state.

## 4. TERM AND TERMINATION

4.1. Term. This eFile Agreement shall commence as of the Effective Date and shall end no later than August 31, 2017 unless otherwise terminated as provided in this Agreement. This Agreement may be extended for up to four (4) one-year terms at the same price, terms, and conditions upon written agreement of OCA and Tyler prior to the expiration of the terms being extended. Provisions herein regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of the Agreement.

4.2. Termination for Cause. Either party may terminate this eFile Agreement for "Cause"; provided, however, that such party follows the procedures set forth in this Section 4.2. For purposes of this Section 4.2, "Cause" means either:

- (a) a material breach of this eFile Agreement, which has not been cured within sixty (60) days of the date such party receives written notice of such breach;
- (b) the failure by either party to timely pay when due any monies owed to the other party under this eFile Agreement and any delinquent amounts that remain outstanding for a period of thirty (30) days after receiving written notice of the other party's intent to terminate for failure to pay;
- (c) breach of Sections 6 or 7;
- (d) 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.

No party may terminate this eFile Agreement under this Section 4.2 until it notifies the other party in writing of the existence of such material breach, provides the alleged breaching party with time to cure such alleged breach as set forth in this Section 4.2, and cooperates with the alleged breaching party during such time period on a good faith basis to cure such alleged breach.

In the event OCA terminates this eFile Agreement under this Section 4.2, OCA shall be entitled to all remedies available under applicable law and this Agreement.

4.3. Change in Legal Requirements. Tyler must comply with all current laws, court rules, court administrative orders, regulations, requirements and guidelines applicable to Tyler providing services to the State of Texas (collectively, "Legal Requirements") as those Legal Requirements exist as of the Effective Date. If new or amended Legal Requirements materially change the obligations or rights of either party under this Agreement, then the parties shall promptly meet and negotiate in good faith the effect of such changes to this Agreement. New or amended immaterial Legal Requirements shall be incorporated into this Agreement within a reasonable time.

4.4. Effect of Termination. Upon termination or expiration of this eFile Agreement, (a) OCA's license for the Courts to use the eFiling System shall immediately terminate and OCA and the Courts shall immediately discontinue its use, (b) Tyler's right to use Documents for any purpose shall terminate, and (c) each party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other party prior to such expiration or termination. Upon expiration of the eFile Agreement or termination for any reason, Tyler will provide OCA with a copy of all data belonging to OCA and the Courts in industry standard file formats agreed upon by Tyler and OCA for use with any replacement system or by a new contractor.

Within ten calendar days of expiration of the eFile Agreement or termination for any reason, Tyler must return all searchable records to the appropriate Courts at no cost to the counties or Courts. At the end of thirty days, Tyler shall certify to OCA that no documents (or any copies) reside on its system, in any format.

## 5. COURTS SERVICE ACCESS

5.1. Courts Access. Subject to the restrictions and conditions set forth herein, Tyler shall provide Courts with access to the eFiling System solely to perform the work of the Courts at no cost and in accordance with the Statement of Work. OCA shall provide Tyler with a list of all Courts that will require access along with the appropriate access.

5.2. Minimum Access. Subject to the restrictions and conditions set forth herein, Tyler agrees to:

- (a) enable the Courts to access and use the Documents and Information available through the eFiling System via Court-owned personal computers in connection with the Courts' normal eFiling business processes;
- (b) enable the Courts to receive, copy, store, and upload the Documents and Information available through the eFiling System in connection with the Courts' normal eFiling business processes; and
- (c) enable the Courts to use the User Documentation as reasonably required in connection with the exercise of the rights granted under (a) and (b) of this Section 5.2.

5.3. Original Documents. Notwithstanding anything in this eFile Agreement to the contrary, the Courts, not Tyler, shall be responsible for internally maintaining, with appropriate safeguards, the Original Documents filed with the Courts through the eFiling System.

## 6. PROPRIETARY RIGHTS

6.1. Tyler Proprietary Rights. The eFiling System, User Documentation, Tyler's Technology and Tyler's Web Site (including the URL) constitute or otherwise involve valuable Proprietary Rights of Tyler. No title to or ownership of the eFiling System, User Documentation, Tyler's Technology or Tyler's Web Site, or any Proprietary Rights associated therewith, are transferred to OCA or any third party under this eFile Agreement.

6.2. Protection of Proprietary Rights. The OCA shall not knowingly infringe upon or violate Tyler's Proprietary Rights and agrees to take reasonable steps and precautions to protect those rights. Without limiting the generality of the foregoing, OCA shall (a) maintain reasonable access and use restrictions to prevent Unauthorized Use by its employees; and (b) not intentionally make the eFiling System or Tyler's Technology available to any third party other than the Courts without the prior written consent of Tyler.

6.3. Documents, Information Database. Subject to the rights granted to Tyler under this eFile Agreement, OCA and the Courts retain all rights they possess in and to the Original Documents, the Information, and the Information Database. Neither OCA, the Courts, nor, to their knowledge, any other party claim any copyright in any Documents, Information or the Information Database. Under the terms of this eFile Agreement, Tyler has no additional ownership rights, including any right to resell, recombine, reconfigure or retain the Documents, Information, Information Databases, or Original Documents transmitted to or from the Courts or OCA.

## 7. CONFIDENTIALITY

7.1. Protection of Confidential Information. Tyler agrees to maintain and shall execute a confidentiality agreement safeguarding the confidentiality of information received from the Courts and OCA during the performance of this eFile Agreement, including but not limited to personal information such as social security numbers. Neither party shall disclose, disseminate, transmit, publish, distribute, make available, or otherwise convey Confidential Information of the other party, without such party's prior written consent, for any purpose other than the performance of this eFile Agreement, except: (i) as may be required by law, regulation, judicial, or administrative process; or (ii) as required in litigation pertaining to this eFile Agreement. Each party shall ensure that all individuals assigned to perform services herein shall abide by the terms of this Section 7.1 and shall be responsible for breaches by such persons.

7.2. Judicial Proceedings. If either party 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 Confidential Information of the other party, then such party shall provide prompt written notice of such request or requirement so that the appropriate party may seek protective orders or other appropriate remedies and/or waive compliance with the provisions of this eFile Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the disclosing party, the receiving party nonetheless is legally compelled to disclose Confidential Information to any

court or tribunal or else would stand liable for contempt or suffer other censure or penalty, the receiving party may, without liability herein, disclose to such court or tribunal only that portion of Confidential Information which the court requires to be disclosed, provided that the receiving party uses reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the disclosing party to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded the Confidential Information by such court or tribunal.

## 8. REPRESENTATIONS AND WARRANTIES

Tyler covenants, represents, and warrants the following:

8.1. Pass-Through of Warranties. Tyler hereby passes through the benefits of all third party warranties that it receives in connection with any Embedded Third Party Software.

8.2. Governmental Consent. No consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this eFile Agreement.

8.3. Standards of Services. Tyler shall provide all of the services required by this eFile Agreement and all reasonably related services in accordance with applicable professional standards of a contractor providing systems development and related services. Tyler represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this eFile Agreement.

8.4. 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 eFile Agreement.

8.5. Free and Clear Title. Tyler has free and clear title (including all proprietary rights) to its eFiling System (other than Embedded Third Party Software) and has the right to license, transfer, or assign any and all software products that are licensed, transferred, or otherwise provided hereunder. Tyler shall not create or permit the creation of any lien, encumbrance, or security interest in any product leased or licensed hereunder. Tyler represents and warrants that, to its knowledge, as advised by counsel, the eFiling System, and all related source code and documentation, do not infringe any patent, copyright, trademark, trade secret, or any other intellectual property interest owned or controlled by any other person or third party.

8.6. Warranty of Tyler Capability. Tyler is financially capable of fulfilling all requirements of this eFile Agreement. Tyler covenants, represents, and warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this eFile Agreement.

8.7. Compliance with Laws. In providing services herein, Tyler shall comply with all material licenses, legal certifications, or inspections required for the services facilities, equipment, or materials. Tyler further represents and warrants that it shall comply in all material respects with applicable federal, state, and local statutes, laws, ordinances, rules, and regulations.

8.8. Corporate Authority. Tyler has all requisite corporate power and authority to execute and deliver this eFile Agreement, to perform its obligations herein, and to consummate the transactions contemplated hereby. The execution and delivery of this eFile Agreement and the consummation by Tyler of the transactions contemplated hereby have been duly authorized by all necessary corporate action, and no other corporate proceedings on the part of Tyler are necessary to authorize this eFile Agreement or to consummate the transactions contemplated hereby.

8.9. 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 eFile Agreement, receive or confer improper personal benefits or gains associated with the performance of the services outlined in this eFile Agreement.

8.10. 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 eFile 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 eFile Agreement for any compensation, consideration, or value.

8.11. Corporate Good Standing. Tyler: (a) is a corporation duly incorporated, validly existing, and in good standing; and (b) is duly licensed, authorized, or qualified to do business and is in good standing in every jurisdiction in which a license, authorization, or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except when the failure to be so licensed, authorized, or qualified would not have a material adverse effect on Tyler's ability to fulfill its obligations herein.

8.12. Signatory Warranty. The person or persons signing and executing this eFile Agreement on behalf of Tyler do hereby warrant and guarantee that he, she, or they have been duly authorized to execute this eFile Agreement on behalf of Tyler and to validly and legally bind Tyler to all terms, conditions, and provisions herein set forth.

8.13. Disclaimer of Certain Performance Related Potential Issues. Tyler disclaims any and all liability for any losses or damages incurred by OCA or any Registered User or the Courts for any of the following:

- (a) Problems relating to telephone lines or other transmission or receiving devices or equipment not entirely within Tyler's exclusive control;
- (b) Unavailability of telephone lines or other electronic transmission lines or equipment for connectivity to the Internet (including, but not limited to, any Tyler supplied telephone or electronic transmission lines in use) that results in the inability to reach Tyler for the purpose of document transmission or receipt;
- (c) Transmission errors and system failures, except transmission errors and system failures resulting from the gross negligence or intentional or willful misconduct of Tyler or its employees or agents;
- (d) Alteration or destruction of information on OCA's or the Court's computer service or elsewhere resulting from the transmission of computer viruses, other damaging or destructive software components, or acts of computer hackers;
- (e) The speed, access, security, or delivery of documents via the Internet;
- (f) Any failure or interruption of the Internet or data or material transmitted thereon, whether caused by hackers or otherwise; and
- (g) Any actions of any third party who is not an employee or agent of Tyler.

Notwithstanding anything in this Section 8 to the contrary, OCA acknowledges that Tyler does not edit, and cannot verify, the completeness, propriety or accuracy of any Information available through the eFiling System. Tyler has no control over the contents of any Document filed through the eFiling System and shall not be responsible for any alleged loss of privilege or other claimed injury due to disclosure of sealed, confidential or privileged information in any Document.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8 OR ELSEWHERE IN THIS EFILE AGREEMENT, TYLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES AS TO THE ACCURACY, ADEQUACY, OR COMPLETENESS OF THE INFORMATION AS MADE AVAILABLE THROUGH TYLER SERVICES.

## 9. LIMITATION OF LIABILITY

THE LIABILITY OF TYLER TO OCA FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS EFILE AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE AMOUNT OF FEES COLLECTED BY TYLER UNDER THIS EFILE AGREEMENT OVER THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE BREACH. THE FOREGOING LIMITATIONS DO NOT APPLY TO THE FOLLOWING CIRCUMSTANCES: (1) FRAUD; OR (2) FOR BREACH OF SECTION 10.1 (CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE) OR SECTION 10.2 (INTELLECTUAL PROPERTY INFRINGEMENT).

IN NO EVENT SHALL TYLER BE LIABLE TO OCA (NOR TO ANY PERSON CLAIMING ANY RIGHT, TITLE, OR INTEREST DERIVED FROM OR AS SUCCESSOR TO THE PURCHASER'S RIGHT, TITLE, AND INTEREST) 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 EFILE AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

## 10. INDEMNIFICATION

10.1 General – Bodily Injury and Property Damage. Notwithstanding any other provision of this eFile Agreement, Tyler shall defend, indemnify, hold, and save harmless OCA, and each of its personnel, agents, successors, officers, and assigns, from and against any and all Claims for bodily injury or property damage sustained by or asserted against OCA 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 OCA 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 OCA, its agents, officers, contractors, subcontractors, or employees.

### 10.2 Intellectual Property.

(a) Notwithstanding any other provision of this eFile Agreement, if any claim is asserted, or action or proceeding brought against OCA that alleges that all or any part of the eFiling System, in the form supplied, or modified by Tyler, or OCA'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, OCA, upon its awareness, shall give Tyler prompt written notice thereof. Tyler shall defend, and hold OCA harmless against, any such claim or action and shall indemnify OCA against any liability, damages, and costs resulting from such claim. Tyler shall be liable to pay all costs of defense including attorneys' fees. In an action when OCA is the named defendant, Tyler shall coordinate the defense with the Office of the Attorney General of Texas (OAG) and may not agree to any settlement without first obtaining the concurrence of the OAG, which shall not be unreasonably withheld. This indemnity does not apply to the extent that such a claim is attributable to modifications to the eFiling System made by OCA, or any third party pursuant to OCA's directions, or upon the unauthorized use of the eFiling System by OCA.

(b) If the eFiling System 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 eFiling System with a compatible, functionally equivalent, non-infringing system; or
- (ii) promptly modify the eFiling System to make it non-infringing; or
- (iii) promptly procure the right to use the eFiling System as intended.

## 11. INSURANCE

Tyler shall provide to OCA, not 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 OCA from potential Tyler employee claims based upon job-related sickness, injury, or accident during performance of this eFile Agreement endorsed with a waiver of subrogation against the State, OCA and the Courts; (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; and (c) Professional Liability (Errors and Omissions Liability) and Cyber Risk Insurance covering acts, errors, and omissions arising out of Contractor's operations or services with minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate. OCA shall be named as an additional insured party and such notation shall appear on the certificate of insurance furnished by Tyler's insurance carrier. Tyler shall not cancel any of the insurance policies without giving OCA 30 days written notice. Tyler shall maintain the above-insurance coverage during the term of this eFile Agreement.

## 12. TYLER PERSONNEL

12.1. Tyler Personnel. Within six days of the Effective Date of the eFile Agreement, OCA's Project Manager shall authorize the key personnel designated in Tyler's Offer to provide services under this eFile Agreement. Tyler may substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required, but any substituted personnel also must be approved by OCA's Project Manager. Tyler shall provide to OCA prior written notice of any proposed change in key personnel involved in providing services under this eFile Agreement. Tyler represents and warrants that all personnel it uses in connection with fulfilling its obligations pursuant to or arising from this eFile Agreement (the "Tyler Personnel") 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. Tyler shall not utilize any subcontractor(s) without the prior written consent of OCA, which consent shall not be unreasonably withheld. OCA has the right to check subcontractor's background. The approval by OCA of Tyler's right to use subcontractor(s) shall not waive or relieve Tyler from Tyler's obligations pursuant to this eFile Agreement. Subcontractors providing services under the eFile Agreement shall meet the same requirements and level of experience as required of Tyler. Tyler shall be solely responsible for the payment of all wages, benefits, disability benefits, unemployment insurance, as well as for withholding any required taxes, for all Tyler Personnel in accordance with applicable federal, state, and local law. In the event Tyler subcontracts, Tyler shall be the sole contact for OCA.

12.2. Workers Compensation. Tyler agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If Tyler fails to comply with the Workers Compensation Act and applicable rules when required to do so, this eFile Agreement may be terminated by OCA.

12.3. Equal Opportunity Compliance. Tyler agrees to abide by all federal and state laws, rules, and regulations pertaining to equal employment opportunity. In accordance with all such laws of the state of OCA's domicile, Tyler agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this eFile Agreement. If Tyler is found not to be in compliance with these requirements during the term of this eFile Agreement, Tyler agrees to take appropriate steps to correct such deficiencies.

## 13. DISPUTE RESOLUTION

Disputes arising out of, or relating to, this eFile Agreement shall first be discussed by the parties' project managers. Any dispute that cannot be resolved within five (5) Business Days by the project manager (or such other date as agreed upon by the project managers) shall be referred to a senior executive of OCA and Tyler's President of Courts and Justice Systems Division for resolution. The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by OCA and Tyler to attempt to resolve any disputes that the parties are unable to resolve through informal discussions.

## 14. PROJECT MANAGER

OCA will designate a Project Manager to serve as the point of contact between OCA and Tyler. OCA's Project Manager shall supervise OCA's review of Tyler's technical work, deliverables, draft reports, final reports, schedules, financial budget administration and similar matters. The Project Manager has no express or implied authority to vary the terms of the eFile Agreement, amend the eFile Agreement in any way or waive strict performance of the terms or conditions of the eFile Agreement.

## 15. MISCELLANEOUS

15.1. No Waiver of Sovereign Immunity. Nothing in this eFile Agreement shall be construed as a waiver of the state's sovereign immunity. The eFile Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the eFile Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. OCA does not waive any privileges, rights, defenses, or immunities

available to OCA by entering into the eFile Agreement or by its conduct prior to or subsequent to entering into this eFile Agreement.

15.2. Assignment. Neither party may assign this eFile 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. This eFile Agreement shall be binding upon and inure to the benefit of each of the parties and, except as otherwise provided herein, their respective legal successors and permitted assigns.

15.3. 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.

15.4. 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.

15.5. Counterparts. This eFile 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.

15.6. Waiver of Performance. 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.

15.7. Entire Agreement. This eFile 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.

15.8. Amendment. This eFile 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; however, any amendment of this eFile Agreement that conflicts with the laws of the State of Texas shall be void *ab initio*. All executed amendments or modifications of this eFile Agreement shall be binding upon the parties despite any lack of consideration.

15.9. Severability of Provisions. In the event any provision hereof is later determined to be invalid, void, or unenforceable, then its remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

15.10. Relationship of Parties. Tyler or Tyler's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under this eFile Agreement. Tyler or Tyler's employees, representatives, agents and any subcontractors shall not be employees or agents of the State of Texas and shall not be entitled to benefits of state employment such as retirement or leave benefits. Should Tyler subcontract any of the services required in this eFile Agreement, OCA is in no manner liable to any subcontractor(s) of Tyler. Neither party shall be considered an agent, representative, or employee of the other party for any purpose.

15.11. Governing Law; Venue. This eFile Agreement shall be governed by and construed in accordance with the laws of the State of Texas except for conflicts of laws rules. The venue of any suit arising under this eFile Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

15.12. Supporting Documents. Tyler shall maintain and retain supporting fiscal and any other documents relevant to payments and expenditures under the eFile Agreement. Tyler shall maintain all such documents and other records relating to this eFile Agreement and the OCA's and Courts' property for a period of four (4) years after the termination of the eFile Agreement or the resolution of all billing questions, whichever is later. Tyler and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Tyler must retain all work and supporting documents pertaining to this eFile Agreement for a period of four (4) years after its end date for purposes of inspecting, monitoring, auditing, or evaluation by OCA and any authorized agency of the State of Texas, including an investigation by the State Auditor.

15.13. Access to Records. Tyler shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Tyler's failure to comply with this Section shall constitute a material breach of the eFile Agreement. The acceptance of funds by Tyler or any other entity or person directly under the eFile Agreement, or indirectly through a subcontract under the eFile Agreement, shall constitute acceptance of the authority of the State Auditor, Comptroller or other agency of the State of Texas to conduct an audit or investigation in connection with those funds. Tyler shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Tyler and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit

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

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

15.16. Force Majeure. Neither Tyler nor OCA shall be liable to the other for any delay in, or failure of performance, of any requirement under this eFile Agreement caused by Force Majeure. In the event of delay or failure of performance caused by Force Majeure, the period of performance shall be extended until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Each party must inform the other in writing, with proof of receipt, within a reasonable period of time from the date of the existence of such Force Majeure, but in any event within ten (10) days, or otherwise waive this right as a defense.

15.17. Public Access to Records. Although OCA is not subject to the Texas Public Information Act, all Request for Offer (RFO) and contract documents and information related to this eFile Agreement, and any report, analysis or data generated as a result of the eFile Agreement services may be subject to public disclosure under Rule 12 of the Rules of Judicial Administration. OCA will promptly notify Tyler, but in any event prior to disclosure, of any requests received by OCA for records that Tyler has identified as confidential in its response to OCA's RFO.

15.18. Strict Compliance. Time is of the essence in the performance of the eFile Agreement. Tyler shall strictly comply with all of the eFile Agreement deadlines, requirements, and performance standards, subject to the terms of this Agreement.

15.19. Federal, State and Local Requirements. Tyler shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common-law employees. Tyler is responsible for both federal and State unemployment insurance coverage and standard worker's compensation insurance coverage. Tyler shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Tyler or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Tyler shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Tyler's omission or breach of this Section.

15.20. No Liability Upon Termination. If the eFile Agreement is terminated for any reason, OCA and the State of Texas shall not be liable to Tyler for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Tyler may be entitled to the remedies provided in Government Code Chapter 2260.

15.21. Limitation on Authority. Tyler shall have no authority to act for or on behalf of OCA or the State of Texas except as expressly provided for in this eFile Agreement; no other authority, power or use is granted or implied. Tyler may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or OCA.

15.22. Felony Criminal Convictions. Tyler shall fully advise OCA as to the facts and circumstances surrounding conviction of a felony criminal offense of Tyler or any of its employees that are assigned to or associated with this eFile Agreement.

15.23. Debts or Delinquencies to State. The Comptroller is prohibited from issuing any payment to a person or entity reported to have an indebtedness or delinquency to the State. To the extent that Tyler owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Tyler is otherwise owed under this eFile Agreement shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes is paid in full. Tyler agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

15.24. Contracts for Services. In accordance with Government Code Section 2155.4441, Tyler shall purchase products and materials produced in the State of Texas, when available at a price and time comparable to products and materials produced outside the State.

15.25. Electronic and Information Resources Accessibility Standards. Tyler must comply with 1 Texas Administrative Code Chapter 213. In addition, Tyler shall provide OCA with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). If Tyler is not listed with the "Buy Accessible Wizard" or does not supply a URL to its VPAT, Tyler must provide OCA with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

15.26. Policy Compliance. Tyler's employees and agents (including subcontractors and their employees and agents) identified by OCA management as having sufficient presence on OCA's premises shall be required to adhere to applicable OCA human resources, information services, and finance and operations policies and shall be required to attend one or more policy orientation sessions. Those employees and agents identified as having access to State of Texas information resources and information resources technologies may be subject to periodic criminal history record investigations.

15.27. No Conflicts. Tyler represents and warrants that Tyler has no actual or potential conflicts of interest in providing services to the State of Texas under the eFile Agreement and that Tyler's provision of services under this eFile Agreement would not reasonably create an appearance of impropriety.

15.28. False Statement/Breach of Representation. Any false statements by Tyler in the eFile Agreement or its Offer or violation by Tyler of any of the representations, warranties, guarantees, certifications or affirmations included in the eFile Agreement shall constitute default by Tyler, and OCA may terminate or void the eFile Agreement for cause and pursue other remedies available to OCA under the eFile Agreement or applicable law.

## 16. DEFINITIONS

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

16.2. "Confidential Information" means, with respect to Tyler, all information in any form relating to, used in, or arising out of Tyler's operations and held by, owned, licensed, possessed, or otherwise possessed by Tyler (whether held by, owned, licensed, possessed, or otherwise existing in, on or about Tyler's premises or OCA'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, works of visual art, business documents, contracts, licenses, operations, manuals, performance manuals, operating data, projections, bulletins, supplier and customer lists and data, sales data, cost data, profit data, financial statements, strategic planning data, financial planning data, designs, logos, motifs, proposed trademarks or service marks, test results, product or service literature, product or service concepts, manufacturing or sales techniques, process data, specification data, know how, show how, software, databases, research and development information and data, and other information reasonably subject of trade secret protection under applicable state statutes. With respect to OCA and the Courts, Confidential Information means any information that OCA and the Courts are required by law, rule, or court order to keep confidential. Notwithstanding the foregoing, in each case, Confidential Information does not include information that: (a)

becomes public other than as a result of a disclosure by OCA in breach hereof; (b) becomes available to OCA 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 OCA prior to its receipt from Tyler without any obligation of confidentiality with respect thereto; or (d) is developed by OCA independently of any disclosures made by Tyler.

16.3. "Documents" mean the complaints, answers, briefs, exhibits, motions, responses, subpoenas, claims of appeal, docketing statements, petitions, and any and all other legal documents filed with the Courts through Tyler's eFiling System.

16.4. "eFiling System" means Tyler's Odyssey File and Serve electronic filing system to receive, transfer, maintain, and provide access to documents for the benefit of OCA and the Courts. The eFiling System includes (i) all Confidential Information and Proprietary Rights related thereto, (ii) all User Documentation, and (iii) Embedded Third party Software.

16.5. "Electronic Link" or "Electronic Window" means the secure electronic connection (via the Internet) between OCA's, the Courts' and Tyler's computer systems.

16.6. "Embedded Third party Software" means any software acquired or licensed by Tyler from a third party that is utilized as part of the eFiling System.

16.7. "Enhancement" means any correction, modification, customization, revision, enhancement, improvement, update, upgrade, new release or other change that is released generally by Tyler for users of the eFiling System.

16.8. "Filing Fees" mean the statutory filing or other fees (but not including the Use Fee) associated with filing Documents through the Electronic Link or Electronic Window.

16.9. "Force Majeure" means acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

16.10. "Government Filer" means any Registered User who by law, rule, or court order is not required to pay Filing Fees.

16.11. "Information" means any electronic record or electronic representation or electronic data of any Document, as part of the record in a Court case that is transmitted using the eFiling system.

16.12. "Information Database" means any portion of a Court's case management electronic database, which the Court designates for information exchange in a Court's case.

16.13. "Original Documents" mean the official versions of Documents that are filed with the Courts through the eFiling System and are maintained on the Courts' computer systems.

16.14. "Proprietary Rights" mean any patent, copyright, trademark, service mark, trade secret or other intellectual property right.

16.15. "Registered User(s)" means an individual or entities with access, as defined or restricted by the Courts or OCA, to view or file Documents under the eFiling System. Registered Users may be required to agree to a "click license" prior to using the eFiling System.

16.16. "Services" mean the implementation, training, system configuration, customization, consulting or other services performed and to be performed by Tyler to make the eFiling System operational for OCA, the Courts, and Registered Users, as set forth in Attachment A, Statement of Work.

16.17. "Stakeholder(s)" means OCA, Courts, clerks, court coordinators, Registered Users, and EFSPs.

16.18. "Statement of Work" means the plan set forth in Attachment A (which may be amended from time to time by agreement of the Parties), which provides for the Services, timetables, and fees and expenses associated with the implementation, training, system configuration, customization, consulting, and other services required for Tyler to make the eFiling System operational for OCA and the Courts.

16.19. "System Requirements" mean the minimum system requirements necessary for access to and use of the eFiling System, as such may be amended from time to time by Tyler in its sole discretion.

16.20. "Term" has the meaning set forth in Section 4 of this eFile Agreement.

16.21. "Transaction" means the filing of one or more documents in a case at the same time.

16.22. "Tyler's Technology" means any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, computer programs, products or other technology of any kind, or any Enhancement thereto, that are proprietary to and used by Tyler in connection with the operation and performance of the eFiling System or made available by Tyler to OCA and the Courts, or any third party through the eFiling System.

16.23. "Unauthorized Use" means any use, reproduction, distribution, disposition, possession, disclosure or other activity involving Tyler's eFiling System or Confidential Information that is unlawful or otherwise not expressly authorized under this eFile Agreement or in writing by Tyler. Unauthorized Use does not include any use of any Documents by OCA, the Courts or their employees, consultants, and contractors in the performance of their respective duties, including, without limitation, providing access to Documents to the general public as permitted or required by federal or state statute or rule.

16.24. "Use Fee" means all amounts (other than Filing Fees charged by the Courts) received by Tyler as set forth on Attachment B, whether on a transactional or flat-rate basis, for transactions executed through the eFiling System.

16.25. "User Documentation" means the user manuals, online documentation, and other materials relating to the eFiling System provided by Tyler to users of the eFiling System.

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Attachment A  
**Statement of Work**

**1. Definitions**

- 1.1. "EFSP" or "Electronic Filing Service Provider" means any entity that has production access to the eFiling Direct Connector. The term includes (but is not limited to) a standalone company, government entity or large law firm.
- 1.2. "EFM" or "Electronic Filing Manager" means the Odyssey File and Serve System.
- 1.3. Unless otherwise defined herein, the definitions provided in the eFile Agreement Terms and Conditions shall apply.

**2. Functional Components**

Tyler shall provide an eFiling System containing each of the components below by the times specified in Attachment C. Each component must be available in both a production and test environment. Each component of the system must comply with Texas Administrative Code, Title 1, Part 10, Chapters 202 and 206.

**2.1. eFiling Direct Connector**

The eFiling Direct Connector must be a XML based, secured, access controlled web service that will allow EFSPs to submit filings to the EFM and to manage filer user accounts. The eFiling Direct Connector must employ security so that the transmissions are encrypted and initiated from known sources.

Upon a successful submission, the eFiling Direct Connector must provide a success code and a confirmation number back to the EFSP. The eFiling Direct Connector must then insert the filing and metadata into the EFM for further processing by the clerk's office.

If the filing is unsuccessful, the eFiling Direct Connector must return an error code that can be deciphered by the EFSP for further action by the filer.

The eFiling Direct Connector must provide standard interface messaging in order for the EFSPs to determine the current status of submitted filings. The system must provide back to the EFSPs the following information:

- unique trace number of the filing
- the outcome of the filing (accepted, rejected or error)
- the date/time the outcome was determined
- access to the file-stamped copy of the document

The web services must be implemented in compliance with the Electronic Case File 4.0 standard and any future revisions. Tyler shall support the following services:

- FilingAssembly – submits the assembled filing document(s) and metadata and makes them available for court review
- GetPolicy – retrieves the policy information of a specific court in an XML format
- GetFeesCalculation – retrieves the fees applicable for the given filing
- GetFilingList – retrieves the list of filings that match the given parameters (filer, case, or date range)
- GetFilingStatus – retrieves the current status of a filing

Tyler shall provide the following identification management web services:

- Authenticate a user by user name and password
- Register a new user account
- Deactivate a user account
- Update the email address on the account
- Retrieve the security question for a user by user name (to support password reset)
- Reset the password of a user by user name, given the matching response to the security question

Tyler must provide to EFSPs the service interface documentation to the eFiling Direct Connector web services.

**2.2. Direct eFiling Portal**

Tyler must provide a dedicated portal to allow filers to submit filings to the EFM (Direct eFiling Portal).

The Direct eFiling Portal must:

- Provide filers with a means to upload documents, assemble filings, submit the necessary fees and submit the filing.
- Provide filers with access to a file-stamped copy of a document successfully filed.



- Provide Government Filers and indigent filers, who are not otherwise required to pay statutory filing fees, with a means to upload documents, assemble filings and submit the filings in a case without charge.
- Process email confirmations back to the filer at appropriate times to provide notifications of filing status.
- Interface into the eFiling Direct Connector to submit the electronic filings to the EFM.
- Ensure that filings that are submitted are in a PDF format that complies with the Judicial Committee on Information Technology (JCIT) Technology Standards.
- Allow filing without charging a Use Fee through a PC provided by a clerk's office.

### **2.3. Electronic Filing Manager (EFM)**

Tyler must provide an electronic filing manager that will be able to support the receipt and distribution of electronic filings. The system architecture must scale as volume rises as well as for spikes in daily traffic volumes.

Tyler guarantees that:

- The EFM transmits XML and documents to each court and clerk that implements the Electronic Case File standard version 4.0 (ECF 4). OCA will engage in Tyler's established processes for suggesting enhancements to the product.
- The EFM provides a portal for clerks to:
  - View a listing of filings along with the name of the clerk/deputy clerk that is working the filing. If no one is working the filing, it must indicate that the filing is awaiting action from the clerk.
  - Assign electronic filings by court, filing type, filing status, new suits/additional filings to defined review queues.
  - View the following reports:
    - Daily and Monthly Court Payments Report for a given date/month.
    - Itemized Court Payments listing for a given date range.
    - Batch summary deposit listing.
    - Breakout report detailing the collected amount and breakout between different fees.
    - Itemized envelope and filing listing for a given date range.
  - Submit the acceptance of an electronic filing (and then complete the appropriate charge to the method of payment).
  - Submit the rejection of an electronic filing.
- At the Courts' discretion, the EFM will also transmit accepted filings to the court by providing web services to be used by the court or by sending them via Secure File Transfer Protocol.
- Once a clerk has accepted an electronic filing and the filer has elected to serve documents electronically, the EFM must email appropriate documents and notifications to the parties to be served. It must also provide confirmations to the original filer that the documents have been served electronically. The system must also keep appropriate log information so that the service of the documents can be confirmed.

### **2.4. Online Payments**

Tyler will use the Texas Payment Engine (provided by Texas.gov) for the acceptance of online electronic payments.

### **2.5. Document Search/Retrieval and Storage**

Tyler must provide electronic document storage that can scale to the number of documents being stored.

#### **2.5.1. Document Search/Retrieval Portal**

Tyler shall create a portal that will allow the general public to:

- Search documents that have been stored in the document storage system (Document Search/Retrieval Portal) as authorized by the Stakeholders owning the records.
- Search meta information provided by counties to direct users to a county stored document.

Documents may include accepted electronic filings, rulings, opinions or any other document that the clerk deems appropriate for the system.

The results obtained from the search must be presented to the user in a way that guides them to the appropriate resource for obtaining a copy (either from the document storage system, or from the originating county).

#### **2.5.2. Inbound Document Connector**

Tyler shall provide a XML based, secured, access controlled web service that will allow clerks to upload documents and or meta information into the document storage system (Inbound Document Connector).

Upon a successful submission, the Inbound Document Connector must provide a success code and a confirmation number back to the clerk. If the submission is unsuccessful, the Inbound Document Connector must return an error to the clerk's office.

Direct access to the Inbound Document Connector must be available to courts and clerks in the event they have sufficient technology resources to support it.

### **2.5.3. External Search Service**

In the event a particular county does not opt into the document storage system, an external search service must be provided to accept and search through a county's document meta data.

Tyler may work with the counties to get direct access to a web service to receive index information (and then point results back to the county).

Tyler may also work with the major vendors to determine the most efficient process for searching their case/document management systems using the publicly facing search page.

Tyler shall coordinate with OCA such work involving counties and major vendors.

### **2.5.4. Document Loading Portal**

Tyler shall create a portal that allows the Courts and clerks to upload documents into the document storage system (Document Loading Portal). The portal must collect the document meta information and index the document and meta information. Documents uploaded to the portal must conform to Technology Standards promulgated by JCIT. Tyler may work with the clerks to upload rulings, orders, and any other valued documents into the document storage system.

## **2.6. System Access**

Tyler shall provide Courts with the ability to submit filings on behalf of the internal court operations and the ability to review submitted filings. OCA shall provide Tyler with a list of all Courts that will require access.

## **3. Transition Services**

Tyler shall provide a structured program for clerks that are interested in using the eFiling System. The program shall be called a "Transition Flight" and will cover the end to end process of on-boarding the eFiling System. Tyler shall publish a schedule of available flights to allow a clerk to schedule the appropriate time to participate in a planned Transition Flight. A Transition Flight will be comprised of the clerks that participate in the on-boarding program on the same schedule.

A clerk will be required to participate in the Transition Flight program to establish their entry into the eFiling System. Integration between the EFM and the clerk's case management system shall not be required. A clerk may use the eFiling System for a subset of their case categories and case types, and subsequently expand the case categories and case types outside of the transition service program.

### **3.1. Transition Flight**

A Transition Flight shall be made up of the following activities:

#### **3.1.1. eFiling Program Information Overview**

The overview will include a two day session to review the program activities, enter criteria, schedule events, and avenues to obtain assistance for participating in the transitional program.

#### **3.1.2. Implementation Certification Self-Assessment**

The self-assessment allows a clerk to review the business and technical requirements to determine if they are ready to participate in a Transition Flight.

#### **3.1.3. Court Training**

The training of the court participants shall include a review of common practices and procedures associated with clerk review functions.

#### **3.1.4. Certification Flight Execution**

The execution of the flight allows the clerks to participate in end to end business scenarios associated with electronic filing from both the firm/filer perspective, as well as from the clerk reviewer perspective. The certification will include the execution of a standard set of filing scenarios that encompass the core business functions.

## **3.2. Training**

### **3.2.1. Filer Training**

Tyler shall provide on-line web based training via web conferencing. These are regularly scheduled instructor-led training sessions that users can sign-up for in advance – these will coincide with the Transition Flight schedule. Users are instructed to sign up for web training at their convenience by going to Tyler's training web site.

### **3.2.2. Court Training**

Tyler shall provide the initial training to all personnel and system administrators designated by Courts and continuous training of new personnel via Tyler's web training classes. Training must consist of hands-on instruction that enables the court personnel to confidently operate all functions of the systems. System Administrator Training must include advanced level access instructions, administrator privileges and rights inclusive of all administrator functionality. Tyler shall provide training to judges, clerks, and court coordinators as part of the on-boarding process to the eFiling System.

## **3.3. Data Conversion**

Tyler shall conduct a data conversion to allow those filers that are currently using the NIC electronic filing system to transition to the new eFiling System without impacting their ongoing business processes. Tyler shall provide data extract definition of the entities that will be loaded into the new eFiling System and service repository. The entity definitions must include: Firm, Filer, Case, Firm Service Contacts, and Case Service Contacts.

## **3.4 Electronic Filing Service Provider (EFSP) Certification**

### **3.4.1 EFSP Certification Process**

In order to gain access to the production direct connect web services, an EFSP must be certified. Tyler must provide access to a test environment that mirrors the web services available in the production environment. In order to become certified, an EFSP must complete a standard set of scenario executions to the satisfaction of OCA and Tyler.

### **3.4.2 EFSP Certification Removal**

If an EFSP once certified can no longer support the standard direct connect web services, Tyler, with approval from OCA, may terminate the EFSP's access to the production web services. The EFSP may re-certify once any issues are corrected to the satisfaction of OCA and Tyler.

## **4 Support**

### **4.1 Support Options**

Tyler must provide each of the following support options:

- Stakeholders and Filer helpdesk support via telephone, email, and chat from 7 a.m. to 7 p.m. Central, Monday through Friday, excluding Tyler Holidays.
- 24X7 Emergency Down Support - Tyler shall provide the Stakeholders with procedures for contacting support staff after normal business hours for the limited purpose of reporting emergency application unavailability issues (such as a Level 1 Defect)
- Issue reporting via the Tyler Web site 24x7 for Stakeholders
- A Support Account Manager (SAM) shall be assigned to OCA to serve as a primary point of contact for issue resolution. Tyler shall have backup personnel available in the event the SAM is unavailable. The Support Account Manager shall have a team responsible for assisting with various activities including data center hardware failures.

### **4.2 Maintenance Windows**

Tyler's standard maintenance window shall be Saturday from 1:00 AM to 6:00 AM. Tyler must perform all standard maintenance during this window. Tyler must not upgrade any hardware or software components of the eFiling System without notification to OCA. Tyler shall provide a 2 week notice before any regularly scheduled maintenance. Tyler shall schedule emergency maintenance so as to cause the least impact to Stakeholders. Notifications shall include:

- Start Date/Time
- Completion Date/Time
- Brief Description of the purpose of the window
- Communications plan for impacted Stakeholders
- Rollback plan

Tyler shall make commercially reasonable efforts to re-schedule a maintenance event if OCA provides a written request two (2) business days prior to scheduled event.

### **4.3 Reporting**

Tyler must report monthly to OCA the following metrics:

- A list of the courts (by county, by court type) along with the number of electronic filings processed into the courts disaggregated by the filing origination type (Commercial EFSP, Direct Filing Portal, Inbound EFM Connector).
- The number of calls to the Tyler customer service desk.
- The number of calls dropped while waiting to speak to Tyler customer service.
- The number of incident tickets raised, the number of tickets resolved, and the average time to resolution. These numbers must be grouped by Service Level Defect type.
- System outages (both planned and unplanned) along with the amount of time the system was unavailable.
- Copies of any root cause analysis (due to an unplanned outage) from the past month.
- Provide the number of transactions along with the number of corrupted transactions or transactions with corrupted documents inside that have been through the system.
- Any security incidents and responses to them.
- Statistical information that indicates the Performance Standards are being met. If any Performance Standard is not met, Tyler must provide a written plan (and must execute the plan) to resolve the issue(s) that contribute to the failure to meet the Performance Standard.
- Amount in User Fees collected for Tyler to the date of the report.
- Service Availability, Downtime, any remedial actions that have been/will be taken, and any fees that have been or may be paid.

#### **4.4 Service Levels**

Tyler shall provide support in accordance with the service levels defined in Attachment D, Service Level Agreement.

### **5 System Changes**

For all changes to the eFiling System proposed by Tyler, Tyler must hold a “go/no go” meeting with OCA to determine the readiness of the Stakeholders for the proposed change. If either party votes “no go,” the change may not be implemented. Tyler must also submit to OCA for approval a communication plan describing the Stakeholder and timing and text of communication being sent with regards to each change.

#### **5.1 Changes impacting EFSPs**

Tyler must send notification and complete technical documentation regarding changes to the eFiling Direct Connector to OCA, all certified EFSPs and EFSPs awaiting certification at least 90 days prior to going live with the change.

Tyler must put a test environment demonstrating the changes in place and make it available to all EFSPs at least 60 days prior to the change being made in the production environment.

Tyler must provide a technical rollback plan to be executed in the event of a failed change at least 30 days prior to the change being made in the production environment.

#### **5.2 Changes impacting Courts and Clerks**

Tyler must provide notification to OCA, Courts, and Clerks regarding changes to the EFM or the Document Loading Portal at least 60 days prior to the change being made in the production environment.

For Courts/Clerks receiving documents via web services or Secure File Transfer Protocol, Tyler must send complete technical documentation regarding changes to those services at least 90 days prior to the change being made in the production environment.

#### **5.3 Changes impacting Filers and/or Document Searchers**

Tyler must provide notification to the Filers, via OCA, the Direct Filing Portal, EFSPs, and Courts/Clerks regarding any change that will impact the availability of the eFiling System at least two weeks prior to the change being made in the production environment, except for emergency changes as described below.

#### **5.4 Emergency Changes**

Tyler may submit to OCA a request to make an application change on an emergency basis. Tyler’s request must be accompanied by a proposed communication regarding the emergency change.

#### **5.5 Hardware/Networks**

Any changes made to systems, hardware, software, policies, or controls affecting system hardware and/or networks shall be done in accordance with Tyler’s internal change management policy.

**Attachment B  
USE FEES**

The Use Fees charged under this Agreement for transactions executed by Registered Users through the eFiling System shall be determined according to the following chart and procedures:

<b>Cost Component</b>	<b>Agreement Commencement / Less than 1.0 Million Transactions Annually</b>	<b>1.0 Million Transactions Annually</b>	<b>1.5 Million Transactions Annually</b>	<b>2.0 Million Transactions Annually</b>	<b>4.5 Million Transactions Annually</b>	<b>6 Million Transactions Annually</b>
EFM Inbound Connector	\$6.00	\$5.00	\$4.50	\$4.00	\$3.75	\$3.50
EFM Electronic Service	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Direct Filing Portal (Full Service) (if applicable)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00

The above fees are per Transaction. A Transaction may include one or more documents filed in the same case at the same time (for example, an Original Petition that also includes three motions would be counted as a single Transaction and would be assessed a single Use Fee). Electronic service shall be provided for an unlimited number of recipients on that filing.

- a) Beginning in the second year of this eFile Agreement, Tyler and OCA will review on a quarterly basis the volume of eFiling transactions completed in the four quarters immediately preceding the review to determine the Use Fees from the above chart to be charged in the following quarter. In no event shall a Use Fee determined as a result of four consecutive reviews be increased during the term of this eFile Agreement or any renewal.
- b) In the event the Supreme Court of Texas promulgates a rule or adopts an order requiring statewide mandatory eFiling by attorneys in civil cases in county, district, and appellate courts, the Use Fees provided for 6.0 Million Transactions above will automatically apply within 30 days of the effective date of the rule or order. For purposes of this eFile Agreement, a statewide mandatory eFiling rule or order may provide for the exemption of Courts; however, in the event that the new civil case filings of the exempted Courts exceeds 5% of the State's total new civil case filings as reported for the most recent completed State fiscal year in the statistical reports required by Section 71.035, Texas Government Code, the Use Fees shall be based on the volume of eFiling transactions determined pursuant to subsection a above.
- c) In the event OCA receives a legislative appropriation or authorized fee to fund the eFiling system, Tyler and OCA agree to negotiate in good faith the reduction of the Use Fees and the method in which the Use Fees will be paid.
- d) Courts may use eFile and eServe features (e.g. to publish Orders) without charge.
- e) Government Filers and indigent filers, who are not otherwise required to pay statutory filing fees, may use eFile features without charge.

Attachment C  
**PROJECT TIMELINE**

The table below shows the completion date for the functional components defined in Attachment A, Statement of Work. The completion dates are shown in relation to the number of days from executing the eFile Agreement (EA). Tyler will provide a detailed project plan as required by Section 2.1 of the eFile Agreement.

Deliverable	Completion Date
eFiling Direct Connector <ul style="list-style-type: none"> <li>• Test environment</li> <li>• Production environment</li> </ul>	EA + 180 Days EA + 210 Days
Direct eFiling Portal <ul style="list-style-type: none"> <li>• Test environment</li> <li>• Production environment</li> </ul>	EA + 210 Days EA + 240 Days
EFM <ul style="list-style-type: none"> <li>• Test environment</li> <li>• Production environment</li> </ul>	EA + 180 Days EA + 210 Days
Online Payments <ul style="list-style-type: none"> <li>• Test environment</li> <li>• Production environment</li> </ul>	EA + 180 Days EA + 210 Days
Document Search/Retrieval and Storage <ul style="list-style-type: none"> <li>• Document search/retrieval portal</li> <li>• Inbound document connector</li> <li>• External search service</li> <li>• Document loading portal</li> </ul>	Not later than August 2014
*EA = Executed Agreement.	

Attachment D  
**SERVICE LEVEL AGREEMENT**

This Service Level Agreement (SLA) operates in conjunction with, and does not supersede or replace any part of, the eFile Agreement between Tyler Technologies, Inc. (Tyler) and the Texas Office of Court Administration (OCA).

This SLA outlines the information technology services that Tyler will provide for use by Stakeholders to ensure the availability of the application services that OCA has requested Tyler to provide. All other support services are documented in Attachment A, Statement of Work.

**1. Definitions**

- 1.1. *Attainment*: The percentage of time a service is available during a monthly reporting cycle, with percentages rounded to the nearest whole number.
- 1.2. *Business Day*: Monday through Friday, excluding Tyler Holidays.
- 1.3. *Business Hours*: Monday through Friday, 8 a.m. to 5 p.m., local court time.
- 1.4. *Circumvention Procedure*: As applied to a Documented Defect, a change in operating procedures whereby a Stakeholder can reasonably avoid any deleterious effects of such Documented Defect.
- 1.5. *Defect*: Any bug, error, malfunction, adverse data condition, or other performance interruption that causes the licensed software to fail to operate in conformance with Tyler's then-current published specifications, but that does not cause a complete application outage.
- 1.6. *Documented Defect*: A Defect submitted 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. Stakeholder or Registered User shall deliver such information to Tyler concurrently with notification to Tyler of a Defect. All reasonable efforts must be used to eliminate any non-application related issues prior to notification to Tyler of such Defect, including, but not limited to, issues related to the network, user training, extensions produced by Stakeholder or Registered User, and data problems not caused by the eFiling System.
- 1.7. *Downtime*: Those minutes during which the software products set forth in the eFiling Agreement Terms and Conditions are not available for any type of Customer use. Downtime does not include those instances in which only a Defect is present. Downtime does include those instances in which Tyler's maintenance operations exceed the standard maintenance window defined in the Statement of Work.
- 1.8. *Error Incident*: Any service unavailability resulting from Stakeholder's or Registered User's applications, content or equipment, or the acts or omissions of any of Stakeholder's service users or Stakeholder/Registered User's third-party providers over whom Tyler exercises no control.
- 1.9. *Essential Functionality*: Any operational aspect of the Odyssey File and Serve System that is required for immediate and ongoing business continuity by one or more users and which adversely impacts business in a crucial or critical manner.
- 1.10. *Non-Essential Functionality*: All existing system functionality that is not included in Essential Functionality.
- 1.11. *Service Availability*: The total number of minutes in a monthly reporting cycle that a given service is capable of receiving, processing, and responding to requests, excluding maintenance windows, Customer Error Incidents and Force Majeure.
- 1.12. Unless otherwise defined herein, the definitions in the eFile Agreement Terms and Conditions shall apply.

**2 Tyler Support Service Levels**

Tyler shall provide support in accordance with the following.

**2.1 Incident Levels**

- 2.1.1 Service Level 1 Defect means a Documented Defect that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of Stakeholders locations; or (c) systemic loss of multiple essential system functions.

- 2.1.2 Service Level 2 Defect means a Documented Defect that causes (a) repeated, consistent failure of Essential Functionality affecting more than one user or (b) loss or corruption of data.
- 2.1.3 Service Level 3 Defect means a Service Level 1 Defect with an existing Circumvention Procedure, or a Service Level 2 Defect that affects only one user or for which there is an existing Circumvention Procedure.
- 2.1.4 Service Level 4 Defect means a Documented Defect that causes failure of Non-Essential Functionality or a cosmetic or other Documented Defect that does not qualify as any other service level defect.

## **2.2 Service Level Response**

- 2.2.1 Service Level 1 Response: 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.
- 2.2.2 Service Level 2 Response: Tyler shall provide an initial response to Service Level 2 Defects within four (4) Business Hours of receipt of the Documented Defect. Tyler shall use commercially reasonable efforts to resolve such Documented Defects or provide a Circumvention Procedures within five (5) Business Days.
- 2.2.3 Service Level 3 Response: 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 the next published maintenance update or service pack, which shall occur at least quarterly.
- 2.2.4 Service Level 4 Response: Tyler shall provide an initial response to Service Level 4 Defects within two (2) Business Days. Tyler shall use commercially reasonable efforts to resolve such defect within two version release cycles and a cosmetic or other Documented Defect that does not qualify as any other Service Level Defect with a future version or release.

## **3 Service Availability**

The Service Availability of Tyler's applications shall be 24/7/365. Tyler sets Service Availability goals and measures whether it has met such goals by tracking Attainment.

### **3.1 Customer Responsibilities**

Whenever a Stakeholder or Registered User experiences Downtime, it must make a support call according to the procedures outlined in the Statement of Work. Stakeholder/Registered User will receive a support incident number.

So that Tyler can track Attainment, Stakeholder/Registered User must document, in writing, all Downtime that it has experienced during a monthly reporting cycle and deliver such documentation to Tyler within 30 days of a monthly reporting cycle's end.

The documentation provided must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

### **3.2 Tyler Responsibilities**

When Tyler's support team receives a call from a Stakeholder or Registered User that a Downtime has occurred or is occurring, it shall work with the Stakeholder or Registered User to identify the cause of the Downtime (including whether it may be the result of an Error Incident or Force Majeure) and also to resume normal operations.

Upon timely receipt of a Downtime report, Tyler must compare that report to Tyler's own outage logs and support tickets to confirm that a Downtime for which Tyler was responsible indeed occurred.

Tyler shall respond to the Downtime report within 30 day(s) of receipt. To the extent Tyler has confirmed Downtime for which Tyler is responsible, Tyler will provide OCA with the relief set forth below.

## **4 Relief Schedule**

When a Service Availability goal is not met due to confirmed Downtime, Tyler shall provide OCA with the Relief that corresponds to the Attainment, as set forth in the Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA will not exceed 5% of the reported revenue for any one monthly reporting cycle. Issuing of such relief does not relieve Tyler of its obligations under the eFile Agreement to correct the problem which created the service interruption.

Every monthly reporting cycle, Tyler shall compare confirmed Downtime to Service Availability. In the event that Attainment does not meet the goal, the following relief will apply:



Goal	Attainment	Relief
100%	98-99%	Remedial action will be taken.
100%	95-97%	A fee will be remitted to OCA in the amount of 50% of the average revenue per hour for every hour that there is documented Downtime.
100%	Less than 95%	A fee will be remitted to OCA in the amount of 100% of the average revenue per hour for every hour that there is documented Downtime.

The average revenue per hour will be based on the revenue generated during the month preceding a documented Downtime incident divided by the number hours in that same monthly reporting cycle.

**5 Applicability**

The commitments set forth in this SLA do not apply during maintenance windows, Error Incidents, and Force Majeure.

**5.1 Maintenance Window**

Tyler performs maintenance during limited windows, defined in the Statement of Work. Commitments set forth in the SLA do apply to those instances in which Tyler’s maintenance operations exceed the standard maintenance window defined in the Statement of Work

**5.2 Force Majeure**

OCA will not hold Tyler responsible for meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, Tyler will file with OCA a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting Tyler’s request for relief pursuant to this Section. OCA will not unreasonably withhold its acceptance of such a request.