Systems Agreement
Local Government Division

Agreement between:

Tyler Technologies, Inc
5519 53rd Street
Lubbock, Texas 79414
(800) 646-2633
(806) 797-4849 Fax

And

Mountain House CSD, CA
230 S Sterling Drive, Suite 100
Mountain House, CA 95391
(209) 831-5643

Issued date: February 1, 2011

A

AGREEMENT

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5519 53rd Street, Lubbock, Texas 79414; and; **Mountain House CSD, CA** , hereinafter referred to as CLIENT on, _____,2011.

COMPANY and CLIENT agree as follows:

1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.

2. This Agreement consists of this Cover and the following Attachments and Exhibits:

    Section A   Investment Summary (A-G)
    Section B   COMPANY Agreement Terms and Conditions
    Section C   Data Conversion Process Document

3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: Mountain House CSD, CA

By: _____
Signature
Paul M. Sensibaugh
Printed Name
General Manager - MHCSD
Title

_____
Date

_____
Sales Tax Certificate Number

Tyler Technologies, Inc.:

By: _____
Signature
Dane Womble
Printed Name
COO, LGD
Title

2/1/11
Issue Date

Investment Summary
Gay Giles
Mountain House CSD, CA

tyler

Prepared for:	Mountain House CSD, CA	Contract ID # :	2011-0020
Contact Person: Address:	Gay Giles 230 S Sterling Drive, Suite 100	Issue Date:	2/1/11
	Mountain House, CA 95391	Salesman:	J. Rowe
Phone: Fax: Email:	(209) 831-5643 (209) 831-5610 ggiles@sjgov.org	Tax Exempt:	Yes / No

Product, Service & Equipment	Milestone # 1 On Execution	Milestone # 2 On Delivery	Milestone # 3 As Verified	As Progress Occurs	Totals
Total Applications Software	4,875.00	11,700.00			
License Fees - INCODE Financial Suite			2,677.50		17,850.00
License Fees - INCODE Document Management Suite			247.50		1,850.00
Total Professional Services					
On-Site Services				17,500.00	17,500.00
Project Management			5,000.00		5,000.00
Data Conversion & Assistance			4,539.00	3,000.00	7,539.00
Totals	**4,875.00**	**11,700.00**	**12,464.00**	**20,500.00**	**49,539.00**

Please Note: Travel expenses will be billed as incurred.

c

General Payment Terms: The fees and other charges set forth on the Investment Summary - Page C shall be due and payable as follows:

(a) **License Fees:** CLIENT agrees to pay COMPANY the software license fees based on the following milestones: (i) 25% of the entire software order (all suites/all products) upon execution of this Agreement; (ii) 60% of the entire software order (all suites/all products) upon delivery of the software; and (iii) 15% upon the earlier of: (A) COMPANY's verification of the software products; (B) CLIENT's completion of its own validation process; or (C) CLIENT's live processing (each as set forth   in Section 2.3 of the Software License Agreement) per implemented product suite. In no case, shall this period exceed one hundred-eighty (180) days from delivery of the software.

(b) **Project Management Services**: Project management will be billed upon verification of software. In no case, shall this period exceed one hundred-eighty (180) days from delivery of the software.

(c) **Data Conversion Services:** Conversion Programming Fee will be billed upon verification of software. Associated service fees will be billed as incurred.

(d) **Professional Services:** All other professional service fees and expenses shall be billed as delivered and incurred and shall be due and payable net 30 days.

(e) The fees and other charges set forth on the Investment Summary - Page C do not include any tax or other governmental imposition including, without limitation, sales, use or excise tax. All applicable sales tax, use tax, or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

D

Software Licenses
Gay Giles
Mountain House CSD, CA
February 1, 2011

Application Software	QTY	License Fee
Incode Financial Management Suite	1	17,850
Incode Financial Applications Core Financials *(General Ledger, Budget Prep, Bank Recon, Accounts Payable, Report Editor)* Purchasing		
Incode Content/Document Management Suite	1	1,650
Incode Printing and Reporting Solutions Standard Forms Package		
Professional Services	1	
Professional Services Network Support		
Incode Application Subtotal		19,500
Application and System Software Total		19,500

E

Professional Services
Gay Giles
Mountain House CSD, CA
February 1, 2011

tyler

Application Professional Services Summary	Estimated Hours	Estimated Services
Implementation Services		
Financial Suite	132	16,500
Content Management Suite	8	1,000
Conversion Services		
Financial Suite	24	7,539
INCODE Professional Services		
Project Management		5,000
Professional Services Total	164	30,039

Implementation Services Breakdown	QTY	Estimated Hours	Estimated Services
Incode Financial Suite			
Incode Financial Applications			
Core Financials	1	100	12,500
(General Ledger, Budget Prep, Bank Recon, Journal Entry Import, Exporter, Accounts Payable, Report Writer Viewer)			
Purchasing	1	24	3,000
Financial Consulting Services		8	1,000
Financial Suite Subtotal		132	16,500
Incode Content Management Suite			
Incode Printing and Reporting Solutions			
Standard Forms Package	1		N/A
Report Editor training	1	8	1,000
Content Management Suite Subtotal		8	1,000
Professional Services			
Professional Services			
Project Management			5,000
Professional Services Subtotal			5,000

F

Professional Services
Gay Giles
Mountain House CSD, CA
February 1, 2011

Conversion Services	QTY	Conversion Programming Fee	Estimated Hours	Estimated Services	Conversion Services
Financial Applications					
General Ledger					
Chart of Accounts		513	8	1,000	1,513
Budgets		908	4	500	1,408
Detail History		1,000	4	500	1,500
Accounts Payable					
Vendor File		1,000	4	500	1,500
Detail History		1,118	4	500	1,618
Conversion Services Subtotal		4,539	24	3,000	7,539
Conversion Services Total		4,539	24	3,000	7,539

COMPANY AGREEMENT
TERMS AND CONDITIONS

1. **General Terms.** The following terms set forth in this Section 1 apply to each of the Software License Agreement (Section 2), Professional Services Agreement (Section 3), Annual Maintenance Agreement (Section 4), Hardware and System Software Agreement (Section 5), Annual Hardware Maintenance Agreement (Section 6), Third Party Product Agreement (Section 7), and RMA Policy (Section 8), as if fully set forth therein.

1.1 **General Payment Terms.** See page D of the Investment Summary.

1.2 **Invoicing.** The COMPANY shall invoice the CLIENT in accordance with Section 1.1. In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) days. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice. Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under this Agreement.

1.3 **Cooperative Nature of Implementations.** CLIENT acknowledges that the implementation of the products identified on the Investment Summary is a cooperative process requiring the time and resources of CLIENT personnel. CLIENT shall, and shall cause CLIENT personnel to, use all reasonable efforts to cooperate with and assist the COMPANY as may be reasonably required to timely implement the systems. The COMPANY shall not be liable for failures to timely and effectively implement the systems when such failure is due to Force Majeure (as identified within) or to the failure by CLIENT personnel to provide such cooperation and assistance (either through action or omission).

1.4 **No Intended Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

1.5 **Governing Law. This Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.**

1.6 **Entire Agreement.**

  (a) This Agreement, including the functional description of the software products found in COMPANY's written proposal and/or RFP Response to CLIENT, represents the entire agreement of CLIENT and COMPANY with respect to the items listed within the Investment Summary and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in this Agreement and the functional description of the software products found in COMPANY's written proposal and/or RFP Response to CLIENT.

  (b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

  (c) This Agreement may only be amended, modified, or changed by written instrument signed by both parties.

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COMPANY AGREEMENT
TERMS AND CONDITIONS

    (d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

1.7   **Cancellation or Termination.** In the event of cancellation or termination of this Agreement, CLIENT will make payment to COMPANY for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Agreement.

1.8   **General Limitation of Liability. In no event shall CLIENT or COMPANY be liable to the other party for incidental, consequential, exemplary, indirect, or special damages of any kind or nature, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this Agreement, irrespective of whether the parties have advance notice of the possibility of such damage.**

1.9   **Approval of Governing Body.** CLIENT represents and warrants to COMPANY that this Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier. Both parties represent that this Agreement has been executed by an authorized representative.

1.10   **Non-Assignability.** The CLIENT shall not have the right to assign or transfer its rights hereunder to any party.

1.11   **Force Majeure.** COMPANY shall not be responsible for delays in performing its obligations hereunder to the extent that such delays are caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.

1.12   **Dispute Resolution.**
The parties agree that they will promptly attempt to resolve any dispute that arises between them. If COMPANY and CLIENT cannot resolve their dispute within thirty (30) calendar days of receipt of written notice of the existence of a dispute, the parties agree to submit the dispute to non-binding mediation. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction. Nothing in this section will prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

1.13   **Indemnification.** COMPANY shall indemnify and hold harmless CLIENT and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from COMPANY's negligence or willful misconduct. COMPANY's obligation to indemnify CLIENT in accordance with this Section 1.13 shall not be limited by the restrictions on the amount of damages, as set forth in this Agreement, but in no event shall COMPANY be liable to CLIENT for incidental, consequential, exemplary, indirect, or special damages of any kind or nature, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this Agreement.

1.14   **Insurance.** COMPANY shall maintain the following insurance policies and amounts for the duration of this Agreement:
a) Commercial general liability of at least $1,000,000;
b) Automobile liability of at least $1,000,000;
c) Professional liability of at least $1,000,000; and
d) Workers compensation complying with statutory requirements.

2.   **Software License Agreement**

2.1   **Software Product License.**
(a) Upon CLIENT's timely payment in full of the software products license fees set forth in the Investment Summary of this Agreement, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY, a non-exclusive, nontransferable, non-assignable license to use the software products and accompanying documentation for the internal business purposes of CLIENT only, subject to the conditions and limitations in this Software License Agreement.

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COMPANY AGREEMENT
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(b) CLIENT shall not (i) reverse engineer, de-compile, or disassemble any portion of the software products or (ii) sublicense, transfer, rent, or lease the software products.

(c) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with COMPANY.

(d) The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by COMPANY at the time COMPANY issued this Agreement.

(e) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.

(f) CLIENT agrees that the software products, any modifications and enhancements, and any related interfaces are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

(g) If CLIENT has made modifications to the software products, COMPANY will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by COMPANY.

(h) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

(i) The term of the license granted by this Section shall be perpetual.

(j) COMPANY maintains an escrow agreement with an Escrow Services Company under which COMPANY places the source code of each major release. At CLIENT's request, COMPANY will add CLIENT as a beneficiary on its escrow account. CLIENT will be invoiced the annual beneficiary fee by COMPANY and is solely responsible for maintaining its status as a beneficiary.

2.2 **License Fees.** CLIENT agrees to pay COMPANY, and COMPANY agrees to accept from CLIENT as payment in full for the license herein, the total sum of the COMPANY license fees set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.

2.3 **Verification of the Software Products.**

(a) At the CLIENT's request, within thirty (30) days after the software products have been installed on CLIENT's system, COMPANY will test the software products in accordance with COMPANY's standard verification test procedure. Demonstration shall constitute CLIENT's verification that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT.

(b) At its option, CLIENT may perform CLIENT's own defined internal validation process to test the software to substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Such validation test shall constitute CLIENT's verification.

(c) Notwithstanding anything contrary herein, CLIENT's use of the software products for its intended purpose shall constitute CLIENT's verification of the software products, without exception and for all purposes.

(d) Verification or validation, by CLIENT, that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT shall be final and conclusive, except for latent defect, fraud, and such gross mistakes that amount to fraud. In the event said verification becomes other than final, or becomes

inconclusive, pursuant to this paragraph, CLIENT's sole right and remedy against COMPANY shall be to require COMPANY to correct the cause thereof.

(e) COMPANY shall correct any functions of the software products which failed the standard verification testing or failed to comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. If CLIENT has made modifications to the software programs, COMPANY will not make such corrections, unless such modifications were specifically authorized in writing by COMPANY.

2.4 **Schedule of Verification.** COMPANY will install the software products and cause the same to be verified within sixty (60) days after CLIENT makes available to COMPANY the equipment into which the software product is to be loaded. COMPANY shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but COMPANY shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

2.5 **Limited Warranty.** COMPANY warrants that the then current, unmodified version of the COMPANY Software Products will substantially conform to the then current version of its published current specifications. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.6 **Intellectual Property Indemnity.**
In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, COMPANY shall defend and hold harmless CLIENT and its officers, agents and employees from any claim or proceedings brought against CLIENT and from any cost damages and expenses finally awarded against CLIENT which arise as a result of any claim that is based on an assertion that CLIENT's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright or trademark provided that CLIENT notifies COMPANY promptly of any such claim or proceeding and gives COMPANY full and complete authority, information and assistance to defend such claim or proceeding and further provided that COMPANY shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that COMPANY shall consult with CLIENT regarding such defense. In the event that the software products are finally held to be infringing and its use by CLIENT is enjoined, COMPANY shall, at its election; (1) procure for CLIENT the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or modification or replacement cannot be completed by COMPANY, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of this Agreement. COMPANY shall have no liability hereunder if CLIENT modified the software products in any manner without the prior written consent of COMPANY and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by CLIENT's use of the most current revision of the software products. The foregoing states COMPANY's entire liability and CLIENT's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

2.7 **Limitation of Liability.**
If the Software Products do not perform as warranted prior to the initiation of paid annual maintenance, COMPANY's sole obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should COMPANY be unable to cure the defect or provide a TYLER replacement product in a timely fashion, CLIENT shall be entitled to a

COMPANY AGREEMENT
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refund of the license fee paid for application, which shall be CLIENT'S sole and exclusive remedy for damages hereunder, whether based on a theory of contract or tort. The license fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Software License Agreement. Upon the initiation of paid annual software maintenance, COMPANY'S obligations and liabilities shall be as set forth in Section 4, Annual Software Maintenance Agreement.

3.   **Professional Services Agreement**

3.1   **Services Provided.** COMPANY shall provide some or all of the following services to CLIENT, as evidenced in the attached Investment Summary:

(a) Installation as described in the Investment Summary;

(b) Conversion of CLIENT's existing data as set forth in the Investment Summary. CLIENT is responsible for reading and complying with COMPANY's Data Conversion Process Statement.

(c) Training/Implementation as set forth in the Investment Summary;

(d) Consulting/Analysis as set forth in the Investment Summary; and

(e) Verification Testing as described in the Software License Agreement.

3.2   **Professional Services Fees.**

(a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% travel processing fee. CLIENT agrees to pay COMPANY for the actual amount of training provided. CLIENT acknowledges that the Investment Summary represents only an estimate of time required to complete all phases of this Agreement.

(b) Upon the completion of each service day, or group of days, COMPANY will present a Daily Log. CLIENT will sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for CLIENT's non-acceptance of such. This acceptance is final.

(c) CLIENT is not charged for travel time to and from the CLIENT's site. Only time spent on-site is billed as training time, with the exception of those cases in which the CLIENT requires the COMPANY trainer(s) to travel on the weekend, in which case CLIENT will be billed for weekend travel time at a rate of $500 per weekend day.

(d) If CLIENT travels to COMPANY location for training, then CLIENT agrees to pay all expenses related to transportation of CLIENT's employees.

(e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Such documentation will consist of quoted internet rates within 7 days from the date the request is received by the COMPANY and not actual receipts. Such quotes will be deemed acceptable documentation if price is within 25% of actual amounts charged to CLIENT, adjusted by unusual or seasonal travel circumstances.

(f) The rates for Verification Testing shall be the same as the Training/Implementation rates set forth in the Investment Summary.

3.3   **Training Environment.** If training is being conducted at the CLIENT's site, the CLIENT is responsible for providing a productive environment to conduct training. COMPANY is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of CLIENT personnel to be trained. Time spent on-site by COMPANY that results in non-productive training time beyond COMPANY's control will be billed as training time. COMPANY will make reasonable efforts to schedule training on dates requested by the CLIENT. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the CLIENT's site.

3.4   **Project Management.** CLIENT agrees to designate in writing a primary contact (the "Project Manager") to represent CLIENT and help coordinate CLIENT's personnel during the design, development, installation, training and maintenance of the system. The Project Manager shall have the authority to amend delivery schedules, seek additional services hours, and authorize other changes to this Agreement.

3.5   **Additional Services.** Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at COMPANY's

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COMPANY AGREEMENT
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then current market rate for the service as they are incurred. Travel and other expenses, plus a 10% travel processing fee, will be billed as delivered.

3.6 **Limitation of Liability. COMPANY shall not be liable for inaccurate data in COMPANY's application software which is the result of conversion of inaccurate data from the previous system. COMPANY's and CLIENT's liability for damages arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the professional service fees identified in the Investment Summary.**

4. **Hardware and System Software Agreement**

4.1 **Agreement to License or Sell Hardware.** For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY, the hardware and system software products set forth in the Investment Summary.

4.2 **License of Hardware.**
Upon CLIENT's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.

4.3 **Price and Costs.**
(a) CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the hardware and system software products the price set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.
(b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to CLIENT's site.

4.4 **F.O.B. Point.** Delivery of each hardware and system software product shall be F.O.B. CLIENT's site.

4.5 **Schedule of Delivery.** Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

4.6 **CLIENT Delays.** If any act or failure to act by the CLIENT delays COMPANY's performance, COMPANY shall be excused from performance for an amount of time commensurate with the delay caused by CLIENT. CLIENT acknowledges that its delay may excuse COMPANY from performance for an amount of time greater than the delay caused by CLIENT. Such delays by CLIENT that may cause COMPANY to delay performance include, but are not limited to, failure to have prepared any data in the form and format requested by COMPANY, on or before the date specified by COMPANY or to have verified such data for accuracy, submission of erroneous data to COMPANY or CLIENT's failure to have completely prepared the Hardware's installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.

4.7 **Installation and Verification.** If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.

4.8 **Site Requirements.** CLIENT shall prepare the installation site prior to the delivery of the hardware and system software. CLIENT is solely responsible for and will furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. CLIENT is responsible for installing all required cables.

4.9 **Warranties.**

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ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

4.10   **Maintenance.** There is no hardware maintenance provided pursuant to this Agreement. Hardware warranty and/or maintenance are typically provided by the manufacturer or a Third Party. In situations where COMPANY and the CLIENT agree that COMPANY will provide hardware maintenance, such hardware maintenance shall be governed by the terms of COMPANY's Annual Hardware Maintenance Agreement.

4.11   **Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the hardware and system software. COMPANY's and CLIENT's liability for damages arising out of this Hardware and System Software Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the hardware and system software products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Hardware and System Software Agreement.**

5.   Annual Hardware Maintenance Agreement

5.1   **Scope of Agreement.** For the prices set forth in the Investment Summary, CLIENT agrees to purchase, and COMPANY agrees to provide, services for the equipment specified therein in accordance with the following terms and conditions. COMPANY requires all like-kind hardware to be covered (i.e. ALL cash drawers, ALL receipt printers, etc.).

5.2   **Price and Payment.** The CLIENT agrees to pay the Annual Hardware Maintenance fee specified in the Investment Summary. COMPANY guarantees this fee for the then current term of the Annual Hardware Maintenance Agreement; however, fees for subsequent years are subject to change. CLIENT shall pay the annual hardware maintenance fees in accordance with the payment provisions set forth in Section 1.1.

5.3   **Equipment Maintenance Program Terms.** COMPANY agrees to provide the maintenance on the equipment specified under this Annual Hardware Maintenance Agreement in accordance to the following terms:

    (a)   In the event of equipment failure, COMPANY will repair the defective equipment and provide the CLIENT with "like or near like" equipment while the defective equipment is being repaired.

    (b)   CLIENT shall notify COMPANY of equipment failure. Upon notification, COMPANY will ship via over-night service to the CLIENT the appropriate loaner equipment. The CLIENT shall package the defective equipment in its original container and ship the equipment to COMPANY.

    (c)   Once the equipment is repaired, it will be shipped to the CLIENT. Upon receipt of the repaired equipment, the CLIENT shall ship the loaner equipment back to COMPANY. The loaner equipment should be shipped back to COMPANY within two days of receiving the repaired equipment. The CLIENT agrees to pay daily rental fees to COMPANY if the loaner equipment is not shipped back to COMPANY within the time frame specified.

    (d)   The CLIENT is responsible for shipping cost related to shipping equipment to COMPANY. COMPANY is responsible for shipping cost related to shipping equipment to the CLIENT.

5.4   **Definitions.** The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:

    (a)   Loaner Equipment: equipment loaned to the CLIENT by COMPANY for use while the CLIENT's equipment is being repaired.

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(b) Like or Near-Like Equipment: equipment compatible with the CLIENT's computer system and capable of performing the tasks performed by the equipment being repaired.

5.5 **Limitation of Liability. COMPANY's and CLIENT's liability for damages arising out of this Annual Hardware Maintenance Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the annual fees paid hereunder.**

6. **Third Party Product Agreement**

6.1 **Agreement to License or Sell Third Party Products.** For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the third party products set forth in the Investment Summary.

6.2 **License of Third Party Software Products.**
(a) Upon CLIENT's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to use the third party software products and accompanying documentation and related materials for the internal business purposes of CLIENT only, subject to the conditions and limitations in this section.
(b) Ownership of the third party software products, accompanying documentation, and related materials shall remain with the third party manufacturer or supplier.
(c) The right to transfer this license to a replacement hardware system is governed by the Third Party. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.
(d) CLIENT agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. To the extent permitted by law, CLIENT agrees to keep the third party software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.
(e) CLIENT shall not perform de-compilation, disassembly, translation or other reverse engineering on the software products.
(f) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

6.3 **Price and Payment; Costs.**
(a) CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the third party products, the price set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.
(b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the third party products from the supplier's place of manufacture to CLIENT's site.

6.4 **F.O.B. Point.** Delivery of each third party product shall be F.O.B. CLIENT's site.

6.5 **Schedule of Delivery.** Delivery of each third party product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

6.6 **Installation and Verification.**
If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.

6.7 **Site Requirements.** CLIENT shall provide:

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(a) a suitable environment, location, and space for the installation and operation of the third party products;

(b) sufficient and adequate electrical circuits for the third party products; and

(c) installation of all required cables.

6.8   **Warranties.**

(a) COMPANY is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.

(b) Unless otherwise noted in any attached addendum, COMPANY warrants that each third party product shall be new and unused, and if CLIENT fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, CLIENT's title or license to each third party product shall be free and clear of all liens and encumbrances arising through COMPANY.

(c) The parties understand and agree that COMPANY is not the manufacturer of the third party products. As such, COMPANY does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products.

(d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

6.9   **Maintenance.** It shall be the responsibility of CLIENT to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by COMPANY unless otherwise specified in this Agreement. COMPANY's responsibility is limited to delivering the Third Party Application Software and installing the software if installation services are provided in this Agreement.

6.10   **Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the Third Party Application Software. COMPANY's and CLIENT's liability for damages arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the third party products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Third Party Product Agreement.**

7.   **General Return Merchandise Authorization (RMA) Policy.**

(a) In order to return or replace any product ordered from COMPANY, CLIENT will need to request and obtain an RMA number from appropriate COMPANY personnel. RMA numbers will be issued at the discretion of COMPANY and products returned without an RMA number may be refused by COMPANY. COMPANY reserves the right to refuse the return of any product or to refuse the issuance of an RMA number.

(b) All shipping costs are the responsibility of the CLIENT. COMPANY recommends the use of a traceable and insurable shipping source. COMPANY will not be responsible for lost or damaged products as a result of the shipping process.

(c) Qualifying products must be returned unopened with original packaging and materials unless otherwise agreed upon by COMPANY. The following situations will result in the refusal of an RMA number and credit will not be issued to client:

- Opened inkjet or laser jet printers;
- Opened Third Party Software; or
- Damaged products as a result of irregular use of mishandling by customer.

(d) Products may only be returned to COMPANY for account credit after an RMA number has been issued by COMPANY. All returns are subject to a restocking fee of 20% of original purchase price. Failure to comply with this policy will result in a refusal of credit and future product placement.

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The Data Conversion Process

Purpose
One of the most difficult aspects of software transition revolves around data conversion. This process takes place in one of two ways:
1. The manual method - In the manual mode the Client enters data from the existing system into the new Tyler Technology system.
2. The automated method - In the automated mode a software program is written or coded in order to facilitate moving information from the existing system to the new Tyler Technology system.

This document is provided to aid the Client in understanding the automated conversion process and provide clear direction as to the responsibility and the scope of the process.

Who should read this document?
The obvious answer to this question is the individual at the Client site that is most responsible for the transition. Specifically it should be:
1. The individual responsible for extracting and providing data from the old system to the Tyler Technology system.
2. Any individuals responsible at a department level.
3. Any individual that would benefit from understanding the conversion process

The Conversion Process
The process itself has a predefined set of steps that must take place for a successful conversion.
1. Initial data extraction - The Client must perform the preliminary extraction and transmission of data.
2. Data Evaluation - Tyler Technologies will then be responsible for evaluating the information that has been transmitted. Upon a successful evaluation the Client will be contacted for further scheduling.
3. Conversion scheduling - Once a schedule has been decided upon, Tyler Technologies will proceed in development of the conversion programs. During the development step, the Client will be responsible for providing knowledge and insight into the information from their current system
4. On-Site Conversion - Upon Tyler Technology's arrival at the Client's site for the conversion, the Client will be responsible for a final extraction of the data. In most situations the Client will not have to transmit the final extraction to Tyler Technologies. The Tyler Technology trainer on site will assist the Client in preliminary INCODE application setup that is required for the conversion as well as execute the conversion programs and assist in the verification of the converted information's integrity.

Even though the Tyler Technology trainers possess a great deal of knowledge in the area of conversion, it is ultimately the Client's responsibility to validate any converted data. The sections that follow clearly outline and describe each of the above steps.

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Data Extraction and Transmission of Data

As stated in the contract, the Client must supply data in ASCII file format with unpacked data fields. This terminology is sometimes considered confusing. The ASCII (pronounced as AS-key) is an abbreviation that represents the American Standard Code for Information Interchange. This standard was established in 1967 and still represents one of the most important standards in the computer industry. Since that time, some vendors have deviated from this standard. An example would be IBM's has a proprietary standard format abbreviated EBCDIC (pronounced EBB-see-dik). This is their current standard on the System36 and AS400. Vendors also use compression techniques in their data structures to pack numeric fields and dates. Since these techniques are not standard and vary from vendor to vendor, we are unable to process this information. In the simplest of terms the Client's data that is transmitted to The Tyler Technology system should be legible in a standard text processing program such as Windows textpad or wordpad. The characters that you view on screen should be the same characters that are on your computer keyboard.

File Descriptions and layout

The contract further states that the Client must supply sufficient file descriptions and layout information for the data. Sometimes file descriptions will be referenced as data definitions. Normally data files have one row after another. Each row represents a record or grouping of information. As an example, a vendor file would normally have a row for each vendor in the system. The rows then have to be broken down further into columns or fields. An example of a field in the vendor file could be vendor name. The file description provides the information needed to know exactly what position each field starts and stops in each row. In all cases, file descriptions are absolutely necessary for any type of conversion.

Media Type

Also outlined in the contract is the media type that the information can be transmitted to The Tyler Technology system. Unless the Client's existing system has a unix operating system, the most desirable media to transmit the data would be a cd. In situations where a writable cd is not available the Client can submit the information on a zip disk or 4mm tape. If a 4mm tape is used then the Client should transfer the information to the tape using the standard Windows backup software. The Client may also submit the data via email when the Client has a compression utility such as winzip and a fast and reliable internet connection. When the Client's existing system has a unix operating system, the Client may use any of the methods mentioned above with the additional transmittal method of a 4mm tape with the maximum capacity of 4gb or a ¼ inch tape with the maximum capacity of 1gb. The Client should include the Data Transmission Form with the media. If the Client is using email to transmit the data please include the information from the Data Transmittal Form in the email as text or an attachment. In situation where none of the above options are available to the Client, arrangements should be made with Tyler Technologies as to viable alternatives. These alternatives may involve additional fees.

There are certain vendors that Tyler Technologies has had considerable conversion experience and has developed processes to extract the information from their proprietary data files. Other vendors store their data in Microsoft Access or Microsoft SQL Server database. It is possible in these situations that the Client can provide their existing data files in their current state without data extraction. In this scenario the Client would only be responsible for providing a backup of their current data.

The first data extraction is for the sole purpose of developing the conversion software. This extraction should contain all the tables or files that are to be converted along with the appropriate

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record layouts. An incomplete extraction can produce time delays and undesirable results during the actual conversion.

Final Data Extraction
The final data extraction will be performed on the day of or a day very close to the final conversion. This extraction will be coordinated with Tyler Technology's conversion personnel and implementation coordinator.

Data Extraction Assistance
In almost all instances the Client owns its data, but the current software provider's file descriptions will be considered proprietary information. There will be scenarios where the software provider will not provide file descriptions or will provide the descriptions for a fee. Any fees required by the vendor are the responsibility of the Client and are not included in the contract. In many situations the data will have proprietary fields with no easy solution for extraction. Tyler Technology's years of experience with data conversions has lead to many innovative techniques for data extraction. When the Client has exhausted their available options, Tyler Technologies can assist with the data extraction for additional fees. The Client will have the responsibility of contacting their sales representative for a quote for additional services. Upon receipt of a purchase order from the Client, Tyler Technologies will proceed with this assistance.

Conversion Scheduling
Once Tyler Technologies has received the data from the Client a three stage evaluation process will be implemented. Media will be evaluated as to its readability. Each data file transmitted will be reviewed as to its format, file description, and estimated complexity. When these two stages have been successfully completed, Tyler Technology's implementation coordinator will schedule with the Client a time for the data conversion, conversion assistance, and training. The third stage of the evaluation is more detailed and will follow in approximately 3 weeks. During this stage the data will be evaluated for its completeness, validity, and mandatory fields needed in the conversion. If problems arise during this process, Tyler Technologies will communicate to the Client the problems. The Client will be responsible for resolving the problems in a timely a manner as possible so that the schedule is not affected. If no problems arise then the Client can assume that Tyler Technologies is on schedule.

Timing is an important element during a data conversion. Scheduling of the conversion will revolve around the most advantageous cutoff dates. For example, if a Client bills their utility customers at the end of each month, the best time to do the conversion would be during the last two weeks of the month. Financial conversions will be easier to validate if performed after a period has been closed. All of these elements will be discussed by the implementation coordinator with the Client during scheduling.

Conversion Program Development
After Tyler Technologies receives and validates the Client's data, the development of the conversion program will begin. During the development process, questions about the Client's current data or application may be raised. The Client is responsible for providing contact information for staff member(s) that are capable of responding to questions for each module being converted.

It is important for the Client to understand that Tyler Technologies has a minimal amount of experience with the Client's current application. Questions raised by Tyler Technologies will be the

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result of analyzing data. There are a significant number of times when the data being analyzed does not correspond with the information that the Client views on the screen in their current application. Providing staff members that have an in depth knowledge of the Client's current application is a key element of a successful conversion.

Part of the development process will be testing the program with the data provided in the first extraction. This testing will take place at Tyler Technology's facilities. Any potential problem areas will be communicated to the Client.

Conversion Assistance
As part of the contract, a Tyler Technology's trainer will be at the Client location during the actual conversion. The trainer will provide conversion assistance in the areas of preliminary setup, conversion program execution and data validation. Even though the primary focus of the trainer is a successful completion of the conversion process, the trainer will be providing a limited amount of training in certain areas. In a majority of cases, the trainer responsible for the conversion assistance will also be responsible for the training that will occur either before or after the conversion.

It is important to note that the trainer will not be the programmer responsible for the creating or modifying conversion program. The trainer will be responsible for conveying to the programmer discovery of Client specific information before the final conversion and any mistakes found after the conversion. The Client will need to facilitate the trainer by providing a comfortable place to work, access to facilities before and after normal work hours and telephone communications.

Data Validation
The final step in the conversion process is the data validation. Much attention will be given to data integrity during the testing phase by the program developers. The conversion assistant will also spend time testing the integrity of the information. Balances and the output of processes will be tested after the conversion. A visual inspection of different modules will be performed by choosing different records on a random base. But Data validation is ultimately the responsibility of the Client.

Conclusion
After over 20 years and several hundred conversion experiences, Tyler Technologies has determined that there are several key factors in a successful conversion. The Client needs to have a realistic expectation of what is going to happen. The Client must understand that there are no pleasant conversions; therefore a successful conversion is one that provides the least amount of displacement and discomfort. More than likely, the Client will have to change their schedules and prepare for a heavier work load during the conversion. The Client has to realize that the data on the system being converted is exactly how the data will be on the new system. The conversion process does not clean up or correct any information during the conversion process. The old adage "garbage in, garbage out" is very relevant during the conversion process. One example would be a general ledger conversion where the current system's ledger is out of balance. After the conversion, the INCODE general ledger will be out of balance. Conversions maybe somewhat mystical but the process is not magical. And finally, to have a successful conversion, there must be a team approach by all those involved.