

MONTEREY ASSESSOR/ TYLER TECHNOLOGIES

Prop 8

SOFTWARE AGREEMENT

Tyler Technologies, Inc. Software Support Agreement

The below set forth terms and conditions apply to, and will be in effect for a term of ONE YEAR from the effective date of July 01, 2017, for the County of Monterey, a political subdivision of the State of California (hereinafter "County" and "Licensee"). Upon payment of the annual support service fee by County, TYLER TECHNOLOGIES, Inc. will provide the following support services (collectively the "Services") as outlined herein in connection with the licensed software (the "Software"). Your receipt and use of any Software Updates (as defined below) to the Software is subject to the terms and conditions of a separate agreement (End User License Agreement - EULA) under which you have licensed the Software and the terms and conditions of this Software Support Agreement (the "Agreement").

1) **DEFINITIONS:**

"Support" is defined as specific user support and support of the Software, such as inquiries regarding installation and feature usage, general education and instruction about use of the Software, and support releases of the Modules and Software, as determined by TYLER TECHNOLOGIES, to fix program defects.

"Software Update": A Software Update is a New Release that improves performance or adds functionality as determined by TYLER TECHNOLOGIES, but does not add new content. Software Updates are provided to current Software Support Agreement customers at no charge.

- 2) **SUPPORT BENEFITS:** TYLER TECHNOLOGIES shall provide to the Licensee all Software Updates (including any related documentation) for the installed and registered Software. Software Updates consist of new releases of the specified version which provide error corrections, and functional enhancements as determined by TYLER TECHNOLOGIES. New products, separately priced modules, and additional custom software development are not included in this Software Support Agreement. From time to time, TYLER TECHNOLOGIES, independently, may develop enhancements and upgrades to the Software which may be made available to the County, at the price offered by TYLER TECHNOLOGIES to its current customers.
- 3) **TYLER TECHNOLOGIES SOFTWARE COVERED: AES Prop 8 Module.**
- 4) **GRANT OF LICENSE:** TYLER TECHNOLOGIES grants Licensee a license to use the Software Updates under the terms and conditions of the EULA (which are hereby incorporated by reference), and the terms and conditions set forth in this Agreement, provided that Licensee complies with all such terms and conditions.
- 5) **FEES:** Support fees for Software described in Section 3 for the period commencing on July 1, 2017 and ending on June 30, 2018 (the "Term") shall be billed at a fixed cost of Forty Two Thousand Five Hundred Forty-Two Dollars (\$42,542.00). Support renewal fees are billed 30 days prior to the anniversary date of this Agreement and shall be payable to TYLER TECHNOLOGIES by the expiration date of the previous term. Support renewal fees following the initial one year Term of this Agreement are subject to an annual cost of living increase not to exceed 5 percent year-over-year. Licensee is responsible for the payment, if any, of applicable sales and/or use taxes.
- 6) **TERM:** Subject to the terms of this Agreement and the EULA, the Licensee is entitled to receive the Services described herein for the Term. Services begin on the effective date and terminate one (1) year thereafter.
- 7) **CONDITIONS:** IF SOFTWARE IS NOT COVERED BY A TYLER TECHNOLOGIES SUPPORT PLAN AT ANY TIME AFTER THE EXPIRATION OF TYLER TECHNOLOGIES WARRANTY, TYLER TECHNOLOGIES RESERVES THE RIGHT TO REFUSE SUPPORT COVERAGE TO LICENSEE. IF TYLER TECHNOLOGIES DOES DECIDE TO PROVIDE SUPPORT COVERAGE, LICENSEE MUST PAY FOR ALL OVERDUE SUPPORT PLUS THE THEN-CURRENT ANNUAL LIST PRICE FOR SUPPORT. If the Licensee allows its support plan to expire and desires to resume coverage at a later time, the Licensee must pay for

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all overdue support, plus the then-current annual list price for support. In all cases, TYLER TECHNOLOGIES reserves the right to refuse coverage of its Support Agreement.


- 8) **LICENSEE RESPONSIBILITY:** Licensee is responsible for the support of all ancillary systems exclusive of the TYLER TECHNOLOGIES software, including but not limited to hardware, operating systems, network infrastructure, database servers, legacy systems, and system backups. Any additional analysis, reprogramming, or other corrective work required as a direct result of changes to, or failure of any of these ancillary systems is not covered by this Support Agreement. This Support Agreement excludes additional work required to restore normal operation in the event of catastrophe or other acts of God. Licensee is responsible for insuring that its personnel have sufficient training to attain and maintain competence in the operation of the TYLER TECHNOLOGIES software.
- 9) **REMOTE ACCESS:** All support work covered under this Support Agreement will be performed on Licensee's installation using VPN Remote Access. The County shall make a VPN connection available to TYLER TECHNOLOGIES to facilitate remote programming changes and decrease response time to software and program needs.
- 10) **ADDITIONAL COSTS:** This Support Agreement does not cover travel or other incidental expenses that may be incurred in the event that on-site visits are required. These expenses will be billed to the County separately. Travel expenses are subject to the Monterey County travel policy and no such expenses may be incurred without the prior written consent of the County.
- 11) **LIMITED WARRANTY:** TYLER TECHNOLOGIES warrants that the Software will be without defect(s) as long as the County has a current Support Agreement in effect. If the Software does not perform as warranted, Tyler will use all reasonable efforts, consistent with industry standards, to cure the defect.
- 12) **LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TYLER'S LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE LESSER OF (A) THE COUNTY'S DIRECT DAMAGES OR (B) THE AMOUNTS PAID BY THE COUNTY TO TYLER UNDER THIS AGREEMENT. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION SHALL NOT APPLY TO CLAIMS THAT ARE RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT OR PROPERTY DAMAGE AND PERSONAL INJURY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TYLER TECHNOLOGIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF TYLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13) **FORCE MAJEURE:** Neither party shall be liable to the other for any loss, damage, failure, delay, or breach in rendering any services or performing any obligations hereunder to the extent that such failure, delay, or breach results from any cause or event beyond the control of the party being released hereby (Force Majeure), including, but not limited to acts of God, acts or omissions of civil or military authorities (acting in their sovereign, but not in their contractual, capacity), floods, torrential rainfall, or severe or unusual weather or climatic conditions, which would exist for a substantial period of time and would have an effect so as to substantially impair the complete deadline, epidemics, quarantines, or medical restrictions or emergencies, defects or failures in equipment or materials owned or supplied by the other party, strikes or other labor actions, embargoes, wars, civil disobedience, riots, terrorism, extreme inflation (eight percent or greater per year) or of governmental rationing of fuel and/or power which would result in a severe shortage thereof, which would substantially impair the proposed completion deadline. If either party is prevented or delayed in the performance of its obligations hereunder by Force Majeure, that party shall immediately notify the other party in writing of the reason for the delay or failure to perform, describing in as much detail as possible the event of Force Majeure causing the delay or failure and discussing the likely duration of the Force Majeure and any known

prospects for overcoming or ameliorating it. Both parties agree to take any commercially reasonable measures to overcome or ameliorate the Force Majeure and its adverse effects on this Agreement, and to resume performance as completely as is reasonably possible once the Force Majeure is overcome or ameliorated.

- 14) **LAW:** The laws of the State of California govern this Agreement, without regard to the choice of law principles thereof. Any action to enforce this Agreement shall be brought exclusively in the courts of the State of California or the United States District Court for the District of California.
- 15) **ENTIRE AGREEMENT.** This Agreement is the complete and exclusive statement of the terms and conditions between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties. In the event and to the extent any terms of this Agreement are inconsistent with any terms of the EULA, the terms of this Agreement shall govern.

IN WITNESS THEREOF, Monterey County and Tyler Technologies, Inc. have executed this Support Agreement on the day and year first hereinabove set forth.


AGREED BY: Monterey County

Authorized Signature
<u>Michael R Derr</u>
Type or Print Name
CONTRACTS/PURCHASING OFFICER COUNTY OF MONTEREY
Title
<u>12-4-17</u>
Date

AGREED BY: Tyler Technologies, Inc.

Authorized Signature
<u>Abby Diaz</u>
Type or Print Name
<u>Chief Legal officer</u>
Title
<u>11/6/2017</u>
Date

Reviewed as to fiscal provisions


Auditor-Controller
County of Monterey

11-22-11

AGREED BY: Tyler Technologies, Inc.

Authorized Signature
<u>Andrea L. Fravet</u>
Type or Print Name
<u>Senior Corporate Attorney</u>
Title
<u>11/6/17</u>
Date

APPROVED AS TO FORM


DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Jerald Martin DCC
Tyler Inc & Co of Monterey Prop & Software K