



## AMENDMENT

This amendment ("Amendment") is effective as of the date of signature of the last party to sign as indicated below ("Amendment Effective Date"), by and between Tyler Technologies, Inc. with offices at One Tyler Drive, Yarmouth, Maine 04096 ("Tyler") and the City of San Mateo, California, with offices at 330 W. 20<sup>th</sup> Avenue, San Mateo, California 94403 ("Client").

WHEREAS, Tyler and Client are parties to an agreement dated June 27, 2013 ("Agreement"); and

WHEREAS, Tyler and Client desire to amend the terms of the Agreement as provided herein.

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and Client agree as follows:

1. The items set forth in the sales quotation attached as Exhibit 1 to this Amendment are hereby added to the Agreement as of the Amendment Effective Date. Payment of fees and costs for such items shall conform to the following terms:
  - a. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.
2. Your use of Payments and any related items included in this Amendment is subject to the terms attached hereto as Exhibit 2. By signing this Amendment, you agree you have read, understand, and agree to such terms. Please see attached Payments fee schedule.
3. This Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.
4. Except as expressly indicated in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below.

Tyler Technologies, Inc.

City of San Mateo, California

By: Tina Mize

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

Name: Tina Mize

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

Title: Group General Counsel

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

Date: May 8, 2024

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





## **Exhibit 1**

### **Investment Summary**

The following Investment Summary details the software, products, and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement. In the event of conflict between the Agreement and terms in the Comments section of this Investment Summary, the language in the Agreement will prevail.

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Quoted By:  
Quote Expiration:  
Quote Name:

Andrew Meyer  
6/30/24  
Tyler Payments

**Sales Quotation For:**

City of San Mateo  
330 W 20th Ave  
San Mateo CA 94403-1338  
Phone: +1 (650) 522-7000

**Payments**

	Use Case	List Price	Service %	Min	Basis Points	Rate	Cap	POS	Online	IVR
Payments - Payer Card Cost - Service Fees										
Enterprise Permitting & Licensing										
Enterprise Permitting & Licensing Payments	Planning		3.65%	\$ 2.50				X	X	
Enterprise Permitting & Licensing Payments	Permits		3.65%	\$ 2.50				X	X	
Payments - Other Fees										
Enterprise Permitting & Licensing										
Client eCheck Cost		\$ 1.95								

eCheck Rejects	\$ 5.00
Credit Card Chargebacks	\$ 15.00

<b>Payer Card Cost</b>	Per card transaction with Visa, MasterCard, Discover, and American Express.
<b>Client eCheck Cost</b>	Per electronic check transaction.
<b>eCheck Rejects</b>	When an eCheck Transaction comes back as declined (e.g bounced check)
<b>Credit Card Chargebacks</b>	If a card payer disputes a transaction at the card issuing bank (e.g. stolen card)

Third-Party Hardware, Software and Services

Description	Qty	Unit Price	Unit Discount	Total Price	Unit Maint /SaaS	Unit Maint/SaaS Discount	Total Maint / SaaS
Third Party							
Payments PCI Service Fee (Per Device)	6	\$ 0	\$ 0	\$ 0	\$ 180	\$ 0	\$ 1,080
Hardware							
Payments Lane 7000 Terminal Purchase	6	\$ 630	\$ 0	\$ 3,780	\$ 0	\$ 0	\$ 0
TOTAL				\$ 3,780	\$ 1,080		

Summary	One Time Fees	Recurring Fees
Total Services	\$ 0	\$ 0
Total Third-Party Hardware, Software, Services	\$ 3,780	\$ 1,080
<b>Summary Total</b>	<b>\$ 3,780</b>	<b>\$ 1,080</b>
<b>Contract Total</b>	<b>\$ 4,860</b>	

## Comments

SaaS Monthly Fees are rounded to the nearest dollar. The Annual Fee value represents the cost to the customer.

Fees for year one of hardware maintenance are invoiced upon delivery of the hardware, with subsequent years' fees billed annually, in advance.

Your use of Payments and any related items included on this order is subject to the terms found at: <https://www.tylertech.com/terms/payment-card-processing-agreement>. By signing this order or the agreement in which it is included, you agree you have read, understand, and agree to such terms. Please see attached Payments fee schedule.



**Exhibit 2**  
**Payment Processing Agreement**

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# Payment Processing Agreement

This Payment Processing Agreement (this “Processing Agreement”) is made and entered into by and between Tyler Technologies, Inc., a Delaware corporation (“Tyler”), and Client (the “Merchant”).

## 1. ACKNOWLEDGEMENTS

- a. By executing this Processing Agreement or an accompanying Order Form, Merchant is contracting with Tyler to obtain Card processing services on Merchant’s behalf.
- b. Merchant acknowledges that Tyler contracts with a payment processor (a “Processor”), Members, and other third party providers to provide services under this Processing Agreement, and Merchant hereby consents to the use of such Processor, Members, and others to provide such services.
- c. To the extent elected in the Order Form, Tyler will provide Merchant with eCheck/ACH payment processing services for any eligible account as a turn-key solution or by presenting ACH Transactions in a NACHA Standard file submission to Merchant’s Originating Depository Financial Institution (ODFI) as agreed to in the Order Form. ACH Transactions and Card Transactions may collectively be referred to as “Transactions.”

## 2. MEMBER BANK AGREEMENT REQUIRED

- a. When Merchant’s customers pay Merchant through Tyler, Merchant may be the recipient of a Card funded payment. The organizations that operate these Card systems (such as Visa U.S.A., Inc. and MasterCard International Incorporated; collectively, the “Associations”) require that Merchant (i) enter into a direct contractual relationship with an entity that is a member of the Association and (ii) agree to comply with Association Rules as they pertain to applicable Card Transactions that Merchant submits through Tyler. If Merchant accepts American Express, then Merchant agrees that the terms of Exhibit A shall apply.
- b. Merchant shall complete an application with the Member with which Tyler has contracted and execute an agreement with such Member (the “Member Bank Agreement”). By executing a Member Bank Agreement, Merchant is fulfilling the Association Rule of entering into a direct contractual relationship with a Member, and Merchant agrees to comply with Association Rules as they pertain to Card Transactions Merchant submits for processing through the Tyler service.
- c. Merchant acknowledges that Tyler may have agreed to be responsible for some of Merchant’s obligations to a Member for such Transactions as set forth in the Member Bank Agreement. Member may debit the Merchant Bank Account for

chargebacks, returns, refunds and other fees, however, in the event Member assesses any such chargeback, returns, refunds, or other fees to Tyler, Tyler may invoice the same to Merchant.

### 3. SETTLEMENT AND CHARGEBACKS

- a. Merchants Bank Account. In order to receive funds, Merchant must maintain a bank account (the “Merchant Bank Account”) at a bank that is a member of the Automated Clearing House (“ACH”) system and the Federal Reserve wire system. Merchant agrees not to close the Merchant Bank Account without giving Tyler at least thirty (30) days’ prior written notice and substituting another bank account. Merchant is solely liable for all fees and costs associated with Merchant Bank Account and for all overdrafts. Tyler shall not be liable for any delays in receipt of funds or errors in bank account entries caused by third parties, including but not limited to delays or errors by the Member Bank or payment processor to Merchant Bank Account.
- b. Settlement. Transactions shall be settled according to the terms of the Member Bank Agreement using the account(s) which are designated by Merchant.
- c. Chargebacks, Returns and Refunds. Chargebacks, returns and refunds paid for ACH Transactions shall be paid by Merchant in accordance with the Member Bank Agreement.
- d. Retrieval Requests. Merchant is required by the Associations to store original documentation, and to timely respond to Retrieval Requests, of each Transaction for at least six months from the date of the respective Transaction, and to retain copies of all such data for at least 18 months from the date of the respective Transaction. Merchant is responsible for any Chargebacks that result from Merchant’s failure to timely respond to Retrieval Requests for documentation relating to a Transaction.

### 4. FEES AND INVOICING

- a. Order Form. Merchant agrees to pay Tyler the fees set forth in or attached to the Order Form for services provided by Tyler and to which this Agreement is hyperlinked or attached. This may include fees for Payment Service Devices or other Equipment that Merchant has elected to purchase or rent as set forth on the Order Form. Fees for purchase will be invoiced upon shipment and Fees for rental will be invoiced annually in advance. All Fees due hereunder are due within 45 days of invoice. The terms and conditions of such purchase or rental are set forth on Exhibit B attached hereto and incorporated herein.
- b. Adjustments to Pricing. By giving written notice to Merchant, Tyler may change Merchant’s fees, charges and discounts resulting from (i) changes in Association fees (such as interchange, assessments and other charges); (ii) changes in pricing by any third party provider of a product or service used by Merchant; or (iii) other market adjustment. Such new prices shall be applicable as of the effective date established by the Association or third party provider, or as of any later date specified in Tyler’s notice to Merchant. In addition, Tyler may update pricing for rental of Equipment by giving written notice to Merchant at the end of any initial rental term or when such Equipment is upgraded to a newer model or



replaced in accordance with the pricing set forth on Tyler's then-current Order Form.

c. Payment of Fees.

- i. Online Payments. For payments that are initiated online, a convenience fee or service fee may be assessed to the Cardholder for each payment transaction that is paid electronically using a credit or debit card. Such convenience fee or service fee is set forth in the Order Form and will be charged at the time of the transaction to be deposited directly into a Tyler bank account from which all fees associated with processing and settling the Card Transactions will be paid.
- ii. Over the Counter Payments. For payments that are initiated in your offices, a service fee may be assessed to the Cardholder for each payment transaction as set forth in the Order Form, and such fees will be charged at the time of the transaction to be deposited directly into a Tyler bank account from which all fees associated with processing and settling the transactions will be paid. For all other fees, Tyler shall invoice Merchant for services and service fees on a monthly basis, unless otherwise set forth in the Order Form. Each invoice shall state the total invoiced amount and shall be accompanied by a reasonably detailed itemization of services and service fees. Following receipt of a properly submitted invoice, the Merchant shall pay amounts owing therein thirty (30) days in arrears.
- iii. Absorbed Payments. For payments that are initiated online and/or in-person, the Merchant may elect to pay for all fees related to the transaction including, without limitation, interchange fees, dues, assessments, card brand fees, and Tyler fees.
- iv. eCheck/ACH Payments. In addition, Tyler shall be authorized to charge eCheck/ACH fees and other fees specified in an Order Form to the end user. Unless otherwise set forth in the Order Form, fees will be charged at the time of the transaction to be deposited directly into a Tyler bank account.

## 5. LICENSE

Tyler hereby grants Merchant a non-exclusive, revocable license to use the Tyler Intellectual Property (as defined in Section 1.c) for the limited purpose of performing under this Processing Agreement. Merchant shall at all times be responsible for compliance with applicable law and Association Rules. Unless otherwise provided in a separate agreement between Tyler and Merchant, any Intellectual Property or machinery provided by Tyler, but not developed by Tyler, is being licensed or purchased by Merchant directly from the manufacturer or developer of such machinery or Intellectual Property. Merchant acknowledges that the license granted herein is limited to Merchant's use exclusively and that Merchant does not have the right to sub-license any of the Intellectual Property in either their original or modified form. Merchant agrees that it shall not reverse-engineer, disassemble or decompile the Intellectual Property.

Merchant shall not give any third party, except Merchant's employees, access to the Intellectual Property without Tyler's prior written consent.

## 6. THIRD PARTY PROVIDERS

Tyler may, in its sole discretion, contract with alternate Members, payment processors or other third party providers to provide services under this Processing Agreement. In such event, Merchant shall reasonably cooperate with Tyler, including the execution of a new Member Bank Agreement by Merchant; provided, however, that if the terms and conditions of the new Member Bank Agreement are substantially different than Merchant's existing Member Bank Agreement, then Merchant shall have the right to terminate this Processing Agreement.

## 7. CONFIDENTIAL AND PROPRIETARY INFORMATION

- a. Protection of Tyler Confidential and Proprietary Information. Merchant shall not disclose, disseminate, transmit, publish, distribute, make available, or otherwise convey Tyler Confidential and Proprietary Information, and Merchant shall not use, make, sell, or otherwise exploit any such Tyler Confidential and Proprietary Information for any purpose other than the performance of this Processing Agreement, without Tyler's written consent, except: (a) as may be required by law, regulation, judicial, or administrative process; or (b) as required in litigation pertaining to this Processing Agreement, provided that Tyler is given advance notice of such intended disclosure in order to permit it the opportunity to seek a protective order. Merchant shall ensure that all individuals assigned to perform services herein shall abide by the terms of this Section 7(a) and shall be responsible for breaches by such persons.
- b. Judicial Proceedings. If Merchant 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 Tyler Confidential and Proprietary Information, Merchant shall provide Tyler with prompt written notice of such request or requirement so that Tyler may seek protective orders or other appropriate remedies and/or waive compliance with the provisions of this Processing Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by Tyler, Merchant nonetheless is legally compelled to disclose Tyler Confidential and Proprietary Information to any court or tribunal or else would stand liable for contempt or suffer other censure or penalty, Merchant may, without liability herein, disclose to such court or tribunal only that portion of Tyler Confidential and Proprietary Information which the court requires to be disclosed, provided that Merchant uses reasonable efforts to preserve the confidentiality of Tyler Confidential and Proprietary Information, including, without limitation, by cooperating with Tyler to obtain an

appropriate protective order or other reliable assurance that confidential treatment shall be accorded Tyler Confidential and Proprietary Information.

- c. Security of User IDs and Passwords. Merchant is solely responsible for maintaining the confidentiality of its user IDs and passwords and all activities that occur under Merchant's user IDs, even if fraudulent or not authorized by Merchant. Merchant acknowledges the heightened risk associated with access to its User IDs, passwords, transaction and account information (collectively, "Account Information"). Merchant represents and warrants that (i) Merchant will comply with applicable Association Rules and applicable law, (ii) Merchant will establish policies and procedures to protect such information in conformity with Association Rules and applicable law, including the storage and disclosure of such Account Information, (iii) Merchant will exercise reasonable care to prevent use or disclosure of Account Information. Merchant, and not Tyler, will be solely responsible for all activity, including all approvals, Transactions, chargebacks, returns and refunds processed, using Merchant's user IDs and passwords. If a forensic investigation is initiated by a Card Network, Member, Tyler or Tyler's Processor, then Merchant agrees to cooperate with such investigation until it is complete, including, without limitation, by providing logs related to its User IDs and passwords and Merchant's compliance with Association Rules and applicable law.

## 8. REPRESENTATIONS AND WARRANTIES

- a. 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 Processing Agreement.
- b. Compliance with Laws and PCI DSS. Tyler and Merchant shall comply in all material respects with applicable federal, state, and local statutes, laws, ordinances, rules, and regulations. Merchant shall comply with PCI DSS version 4.0 and any more current versions or amendments thereto, including, without limitation, any relevant maintenance, inspection, scanning, remediation and training obligations set forth therein.
- c. Ownership. Tyler is a Delaware corporation that is listed for trading on the New York Stock Exchange.
- d. 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 Processing 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.
- e. Equipment Manufacturer Warranties. Tyler will pass through to Merchant any applicable manufacturer warranties that apply to Equipment purchased by Merchant through this Agreement.

- f. Disclaimer of Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS PROCESSING AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TYLER HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 9. LIMITATION OF LIABILITY

TYLER'S LIABILITY TO MERCHANT FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS PROCESSING AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE TOTAL FEES PAID TO TYLER UNDER THIS PROCESSING AGREEMENT (NET OF ASSOCIATION INTERCHANGE, ASSESSMENTS AND FINES) FOR THE SIX MONTHS PRIOR TO THE TIME THE LIABILITY AROSE.

WHILE BOTH PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY, IN NO EVENT SHALL TYLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS OR LOSS OF DATA ARISING OUT OF THIS PROCESSING AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

## 10. INDEMNIFICATION

- a. Chargebacks and Refunds. Merchant acknowledges that Tyler has agreed to be responsible for some of Merchant's obligations to a Member for Transactions and Association Rules as set forth in the Member Bank Agreement. Member should debit the Merchant Account for chargebacks, returns, refunds, assessments, penalties and fines, and in the event Member assesses any such amounts to Tyler, including any amounts in excess of the balance of the Merchant Account, Tyler shall invoice the same to Merchant.
- b. Applicable Law and Interpretations: Merchant shall indemnify and hold harmless Tyler from and against any claim or action related to Merchant's violation of applicable law and/or Association Rules including without limitation any election to apply custom fee structures or customer surcharges.
- c. Intellectual Property.
  - i. Tyler retains all ownership and copyright interest in and to any and all intellectual property, computer programs, related documentation, technology, know how and processes developed by Tyler and provided in connection with this Processing Agreement (collectively, the "Intellectual Property"),

- ii. Notwithstanding any other provision of this Processing Agreement, if any claim is asserted, or action or proceeding brought against Merchant that alleges that all or any part of the Intellectual Property, in the form supplied, or modified by Tyler, or Merchant'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, Merchant, upon its awareness, shall give Tyler prompt written notice thereof. Tyler shall defend, and hold Merchant harmless against, any such claim or action with counsel of Tyler's choice and at Tyler's expense and shall indemnify Merchant against any liability, damages, and costs resulting from such claim. Without waiving any rights pursuant to sovereign immunity, Merchant shall cooperate with and may monitor Tyler in the defense of any claim, action, or proceeding and shall, if appropriate, make employees available as Tyler may reasonably request with regard to such defense. This indemnity does not apply to the extent that such a claim is attributable to modifications to the Intellectual Property made by Merchant, or any third party pursuant to Merchant's directions, or upon the unauthorized use of the Intellectual Property by Merchant.
- d. If the Intellectual Property 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: (a) promptly replace the Intellectual Property with a compatible, functionally equivalent, non-infringing system; or (b) promptly modify the Intellectual Property to make it non-infringing; or (c) promptly procure the right of Merchant to use the Intellectual Property as intended.

## 11. TAXES

- a. Tax Exempt Status. Merchant is a governmental tax-exempt entity and shall not be responsible for any taxes for any Licensed Property or services provided for herein, whether federal or state. The fees paid to Tyler pursuant to this Processing Agreement are inclusive of any applicable sales, use, personal property, or other taxes attributable to periods on or after the Effective Date of this Processing Agreement.
- b. Employee Tax Obligations. Each party accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed pursuant to or arising from any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by such party for work performed under this Processing Agreement.

## 12. TERM, SUSPENSION, AND TERMINATION

- a. Term. The term of this Processing Agreement (the “Term”) shall commence on the Effective Date and shall continue in effect for three years unless otherwise set forth on an Order Form; provided, however, that at the end of such initial term, and on each subsequent anniversary of the Effective Date, the term shall automatically extend for an additional year unless either party provides, at least ninety (90) days prior to the end of the then current term, written notice that it does not wish to extend the term or otherwise terminates the agreement for Cause pursuant to Section 12(b). Notwithstanding the foregoing, Tyler may elect to cease providing payment processing services upon the termination or expiration of Tyler’s other agreement with Merchant to provide Tyler software or services.
- b. Termination for Cause. Either party may terminate this Processing Agreement for Cause, provided that such party follows the procedures set forth in this Section (b).
  - i. For purposes of this Section, “Cause” means either:
    - A. a material breach of this Processing Agreement, which has not been cured within ninety (90) days of the date such party receives written notice of such breach;
    - B. the failure by Merchant to timely pay when due any fees owed to Tyler pursuant to this Processing Agreement and any delinquent amounts remain outstanding for a period of thirty (30) days after Tyler provides written notice of its intent to terminate for failure to pay;
    - C. breach of Section 7; or
    - D. if 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.
  - ii. No party may terminate this Processing Agreement under Section 12 b(i)(A) unless it cooperates in good faith with the alleged breaching party during the cure period and complies in good faith with the dispute resolution procedures set forth in Section 13 following such period.
  - iii. In the event either party terminates this Processing Agreement pursuant to this Section (b), each party shall return all products, documentation, confidential information, and other information disclosed or otherwise delivered to the other party prior to such termination, all revocable licenses shall terminate.



- c. Survival. The following provisions shall survive after the Term of this Processing Agreement: 2(c); 3; 4(c); 7; 10; 11; 12; 13; 14; and 15.

## 13. DISPUTE RESOLUTION

Any dispute arising out of, or relating to, this Processing Agreement that cannot be resolved within five (5) Business Days shall be referred to the individual reasonably designated by Merchant and Tyler's representative assigned to Merchant's account ("Intermediary Dispute Level"). Any dispute that cannot be resolved in ten (10) Business Days at the Intermediary Dispute Level shall then be referred to Merchant's chief executive officer or other individual reasonably designated by Merchant and Tyler's applicable division President ("Executive Dispute Level"), at such time and location reasonably designated by the parties. Any negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. For any dispute that the parties are unable to resolve through informal discussions or negotiations or pursuant to the dispute resolution and escalation procedures set forth in this Processing Agreement, the parties shall submit the matter to non-binding mediation prior to the commencement of any legal proceeding. The foregoing shall not apply to claims for equitable relief under Section 7.

## 14. MISCELLANEOUS

- a. Assignment. Neither party may assign this Processing 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.
- b. 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.
- c. 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. Notwithstanding the foregoing, notice shall be deemed delivered when provided in connection with billing or invoicing.
- d. Counterparts. This Processing 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.
- e. Waiver. 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.

- f. Entire Agreement. This Processing Agreement constitutes the entire understanding and contract between Tyler and Merchant for payment processing services (as detailed in an Order Form) and supersedes any and all prior or contemporaneous oral or written representations, contracts or communications with respect to the subject matter hereof.
- g. Amendment. This Processing 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. All amendments or modifications of this Processing Agreement shall be binding upon the parties despite any lack of consideration.
- h. Severability of Provisions. In the event any provision hereof is found invalid or unenforceable pursuant to judicial decree, the remainder of this Processing Agreement shall remain valid and enforceable according to its terms.
- i. Relationship of Parties. The parties intend that the relationship between the parties created pursuant to or arising from this Processing Agreement is that of an independent contractor only. Neither party shall be considered an agent, representative, or employee of the other party for any purpose.
- j. Governing Law. Any dispute arising out of or relating to this Processing Agreement or the breach thereof shall be governed by the laws of the state of Merchant's domicile, without regard to or application of choice of law rules or principles.
- k. Audit. Tyler shall maintain complete and accurate records of all work performed pursuant to and arising out of this Processing Agreement. Merchant may, upon the written request, audit any and all records of Tyler relating to services provided herein. Merchant shall provide Tyler twenty-four hour notice of such audit or inspection. Tyler shall have the right to exclude from such inspection any Tyler Confidential and Proprietary Information not otherwise required to be provided to Merchant as a part of this Processing Agreement. Any such audit shall be conducted at Tyler's principal place of business during Tyler's normal business hours and at Merchant's sole expense.
- l. No Third Party Beneficiaries. Nothing in this Processing Agreement is intended to benefit, create any rights in, or otherwise vest any rights upon any third party.
- m. Contra Proferentem. The doctrine of contra proferentem shall not apply to this Processing Agreement. If an ambiguity exists in this Processing Agreement, or in a specific provision, neither the Agreement nor the provision shall be construed against the party who drafted the Agreement or provision.
- n. Force Majeure. No party to this Processing Agreement shall be liable for delay or failure in the performance of its contractual obligations arising from any one or more events that are beyond its reasonable control, including, without limitation, acts of God, war, terrorism, and riot. Upon such delay or failure affecting one party, that party shall notify the other party and use all reasonable efforts to cure or alleviate the cause of such delay or failure with a view to resuming performance of its contractual obligations as soon as practicable. Notwithstanding the foregoing, in every case the delay or failure to perform must be beyond the control and without the fault or negligence of the party claiming excusable delay. Any performance times pursuant to or arising from this



Processing Agreement shall be considered extended for a period of time equivalent to the time lost because of any delay that is excusable herein. This section does not excuse any party from payment obligations under this Processing Agreement.

- o. Equitable Relief. Each party covenants, represents, and warrants that any violation of this Processing Agreement by such party with respect to its respective obligations set forth in Section 7 shall cause irreparable injury to the other party and shall entitle the other party to extraordinary and equitable relief by a court of competent jurisdiction, including, without limitation, temporary restraining orders and preliminary and permanent injunctions, without the necessity of posting bond or security.

## 15. CERTAIN DEFINITIONS

- a. Association means a group of Card issuer banks or debit networks that facilitates the use of payment cards accepted under this Processing Agreement for processing, including, without limitation, Visa, U.S.A., Inc., MasterCard International, Inc., Discover Financial Services, LLC and other credit and debit card providers, debit network providers, gift card and other stored value and loyalty program providers. Associations also includes the Payment Card Industry Security Standards Council and the National Automated Clearinghouse Association.
- b. Association Rules means the bylaws, rules, and regulations, as they exist from time to time, of the Associations.
- c. Card or Payment Card means an account, or evidence of an account, authorized and established between a Cardholder and an Association, or representatives or members of an Association that Merchant accepts from Cardholders as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates and credit accounts.
- d. Cardholder means the person to whom a Card is issued or who is otherwise entitled to use a Card.
- e. Chargeback means a reversal of a Card sale Merchant previously presented pursuant to Association Rules.
- f. Member or Member Bank means an entity that is a member of the Associations.
- g. Order Form means a document listing the pricing associated with this Processing Agreement.
- h. Processing Agreement means this Payment Card Processing Agreement, including all exhibits attached hereto and to be attached throughout the Term of this Processing Agreement, all of which are incorporated by reference herein.
- i. Retrieval Request means a request for information by a Cardholder or Card issuer relating to a claim or complaint concerning a Card sale Merchant has made.
- j. Transaction means the evidence and electronic record of a sale or lease transaction representing payment by use of a Card, echeck/ACH, digital payment or of a return/refund/credit to a Cardholder or any other payor.

- k. Tyler Confidential and Proprietary Information means all information in any form relating to, used in, or arising out of Tyler's operations and held by, owned, licensed, or otherwise possessed by Tyler (whether held by, owned, licensed, possessed, or otherwise existing in, on or about Tyler's premises or Merchant'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, business documents, licenses, correspondence, operations, manuals, performance manuals, operating data, projections, bulletins, customer lists and data, sales data, cost data, profit data, financial statements, strategic planning data, financial planning data, designs, logos, proposed trademarks or service marks, test results, product or service literature, product or service concepts, process data, specification data, know how, software, databases, database layouts, design documents, release notes, algorithms, source code, screen shots, other research and development information and data, and Intellectual Property. Notwithstanding the foregoing, Tyler Confidential and Proprietary Information does not include information that: (a) becomes public other than as a result of a disclosure by Merchant in breach hereof; (b) becomes available to Merchant 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 Merchant prior to its receipt from Tyler without any obligation of confidentiality with respect thereto; or (d) is developed by Merchant independently of any disclosures made by Tyler.

## Exhibit A

### American Express Sponsored Merchant Terms ("SMT")

1. **Compliance.** If Merchant, also referred to herein as "Sponsored Merchant," accepts American Express cards as a form of payment processed through Tyler's electronic filing or electronic payment systems, Client agrees to do so in accordance with the terms and conditions of this SMT.
2. **Merchant Operating Guide.** Merchant agrees to comply with the terms and conditions of the American Express Merchant Operating Guide found at: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide). Such terms and conditions shall include, without limitation, provisions relating to: (i) trademarks and brand requirements; (ii) applicable laws; (iii) binding arbitration; and (iv), website display requirements.
3. **Re-directing Prohibited.** Merchant agrees it shall not process Transactions, or receive any payments, on behalf of (unless otherwise required by law) any other party.
4. **American Express Liability.** SPONSORED MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO

SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THIS SMT.

5. Third-Party Beneficiaries. Sponsored Merchant acknowledges and agrees that American Express has the right, but not the obligation, to the benefits of this SMT that will provide American Express the ability to enforce the terms of this SMT against the Sponsored Merchant. The Sponsored Merchant further acknowledges and agrees that it will not be deemed a beneficiary under any agreement between American Express and Tyler, and will not have the ability to make any claim or assert any right under such agreement between Tyler and American Express.
6. Definitions. Except as defined herein or otherwise required by the context herein, all defined terms used herein have the meaning ascribed to such terms as set forth in the Agreement between Tyler and Merchant or the American Express Merchant Operating Guide.

## Exhibit B

### Payment Service Devices/Equipment – Rental and Purchase

This Exhibit A is incorporated into that certain Payment Processing Agreement between Tyler and Merchant (the “Processing Agreement”).

1. TERMS APPLICABLE TO BOTH PURCHASE AND RENTAL OF EQUIPMENT
  - a. Generally. Tyler will provide PCI-compliant Payment Service Devices as elected by Merchant and described in the Order Form and related equipment for rent or purchase during the term of this Agreement for the fees set forth in the Order Form.
  - b. Shipping Timelines. Tyler shall ship newly-requested Payment Service Devices (and associated supplies, such as printers, cables, power supplies, mounting hardware or other equipment identified in an Order Form) (“Equipment”) to Merchants within (a) 14 calendar days of the request or (b) 14 calendar days prior to payment service commencement/go-live, whichever is later. Tyler shall ship failure-related replacement Equipment to Merchants within two (2) Business Days of a written request. Shipping timelines are subject to Payment Service Device availability by the applicable manufacturer or supplier and shall be extended until such devices become available.
  - c. Delivery and Acceptance. Tyler will deliver the Equipment to the location designated by Merchant in the Order Form. If an address for delivery is not expressly designated in the Order Form, such

Equipment will be delivered to Merchant's address otherwise set forth in the Order Form. Merchant will be deemed to have accepted each piece of Equipment on the earlier of (i) when Merchant acknowledges receipt, and (ii) seven days after shipment of each such piece of Equipment, unless Tyler is notified earlier in writing by Merchant that the Equipment has not been received or is not functional.

- d. Rights and Restrictions. Tyler shall process payments received from Merchant's Payment Service Devices provided by Tyler. Merchant acknowledges that the Payment Service Devices are embedded with proprietary encryption technology that will be injected by Tyler's designee into the Payment Services Devices. Merchant agrees that all of Merchant's over-the-counter transactions processed through a Tyler application will be required to use Payment Service Devices provided by Tyler. Merchant will maintain each Payment Service Device in its possession and will not permit any physical alteration or modification of any piece of Equipment. Each piece of Equipment will be used only in the ordinary course of Merchant's business in connection with Tyler applications. The Equipment is not being sold or rented to the Merchant for home or personal use. Merchant acknowledges that the Equipment rented or purchased through this Exhibit may not be compatible with another processor's systems. Merchant hereby grants Tyler a security interest in (i) all Equipment to secure payment of the purchase price, and (ii) all Equipment to secure payment of the monthly rental payments. Merchant authorizes Tyler to file financing statements with respect to the Equipment in accordance with the Uniform Commercial Code, signed by Tyler directly or as Merchant's attorney-in-fact.
- e. Change Notice. Tyler shall provide thirty (30) calendar days written notice for Equipment changes that affect Merchants, which includes, without limitation, when Tyler will no longer support a Payment Service Device. Tyler will only be obligated to replace Equipment when a Payment Service Device is no longer capable of functioning or Tyler ends support of the specific make and model of the Equipment.

## 2. TERMS APPLICABLE ONLY TO EQUIPMENT PURCHASED

Tyler will sell to Merchant the Equipment identified in the Order Form, free and clear of all liens and encumbrances, except that any proprietary encryption technology included within the Payment Service Devices or any other Tyler Intellectual Property will be provided to you pursuant to the License set forth in Section 5 of the Agreement. Maintenance and repair of Merchant-purchased Equipment is the responsibility of Merchant, unless Merchant has purchased Tyler's maintenance services for Payment Service Devices.

## 3. TERMS APPLICABLE ONLY TO EQUIPMENT RENTAL

- a. Tyler will rent to Merchant the Equipment identified in the Order Form, as set forth herein. The rental period will commence when the Equipment is deemed accepted. At the end of the rental term

identified in an Order Form or when the Agreement is terminated, Merchant will promptly return each piece of Equipment to Tyler at Merchant's cost, in the same condition as when received, ordinary wear and tear excepted, unless otherwise directed by Tyler. The rental period will terminate when Equipment is returned to Tyler at 840 West Long Lake Road, Detroit, Michigan 48098, Attention: Tyler Payments, or at an earlier date specified by Tyler in writing. The following information must be included within the shipping box: (i) Merchant name, complete address and phone number; (ii) name of person to contact if there are any questions; (iii) your Merchant account number; and (iv) serial number of the Equipment. Merchant will retain proof of delivery documents and the applicable serial number. For any piece of Equipment that is not returned to Tyler in accordance with this paragraph, Merchant will pay Tyler the greater of \$250.00 or the fair market value of such piece of Equipment as if it were in the condition described herein.

- b. Merchant will not assign its rights or obligations under this Exhibit, or pledge, lend, create a security interest in, incur any liens or encumbrances on, or sublease the Equipment to any other person or entity without Tyler's prior written consent. Any such assignment, delegation, sublease, pledge, security interest or lien in the absence of consent shall be void.
- c. The provisions of this Exhibit will survive the termination or expiration of the Agreement and continue until all rented Equipment is returned to Tyler or paid for.







# San Mateo, CA Amend 050824

Final Audit Report

2024-05-08

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