

RESOLUTION NO. 2016-R-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE INTERIM CITY MANAGER AND INTERIM CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND TYLER TECHNOLOGIES, INC., TO INCLUDE A DIGITAL PAYROLL AND BIOMETRIC TIME ATTENDANCE SYSTEM, AT A COST NOT TO EXCEED SIXTY-NINE THOUSAND DOLLARS (\$69,000.00) FOR THE CURRENT FISCAL YEAR; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on September 29, 2006, the City of North Miami (“City”) entered into an agreement with Tyler Technologies, Inc. (“Tyler”), to provide the City with the Enterprise Wide Software Application System, including the City’s Enterprise Resource Planning Software System (generally referred to as “EDEN”), software licenses, software products, warranties, user manuals, maintenance, installation and training (“Agreement”); and

WHEREAS, the City desires to amend the Agreement to include the implementation of a digital payroll and biometric time attendance system (“Additional Services”) to eliminate the current manual time-attendance and payroll system; and

WHEREAS, the Additional Services can be obtained by amending the Agreement at a cost not to exceed Sixty-Nine Thousand Dollars (\$69,000.00) for the current fiscal year; and

WHEREAS, the attainment of Additional Services will improve accountability, accuracy and record-keeping efficiencies, saving the City an estimated Three Hundred Twenty-Three Thousand Dollars (\$323,000.00) annually; and

WHEREAS, the City Administration respectfully requests that the Mayor and City Council authorize an amendment to the Agreement to attain Additional Services for the aforementioned reasons, benefiting the City.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority of Interim City Manager and Interim City Attorney. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the Interim City

Manager and Interim City Attorney to negotiate and execute an amendment to the agreement between the City of North Miami and Tyler Technologies, Inc., to include a digital payroll and biometric time attendance system, at a cost not to exceed Sixty-Nine Thousand Dollars (\$69,000.00) for the current fiscal year.

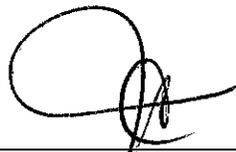
Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5 - 0 vote of the Mayor and City Council of the City of North Miami, Florida, this 26th day of January, 2016.

DR. SMITH JOSEPH
MAYOR

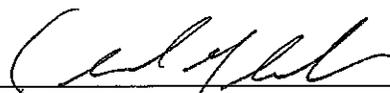


ATTEST:



MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilwoman Keys

Seconded by: Councilman Galvin

Vote:

Mayor Smith Joseph, D.O., Pharm. D.
Vice Mayor Alix Desulme
Councilman Scott Galvin
Councilwoman Carol Keys, Esq.
Councilman Philippe Bien-Aime

X (Yes) (No)
 X (Yes) (No)
 X (Yes) (No)
 X (Yes) (No)
 X (Yes) (No)

AMENDMENT

This amendment ("Amendment") is made this _____ day of January, 2016 ("Amendment Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 840 West Long Lake Road, Troy, MI 48098 ("Tyler") and the City of North Miami, FL, with offices at 776 N.E. 125th Street, North Miami, FL 33161 ("Client").

WHEREAS, Tyler and Client are parties to a software and services agreement dated September 29, 2006 (the "Agreement"); and

WHEREAS, Client desires to add third-party software and related services to the scope of the Agreement;

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

1. Upon payment of the fees set forth in Exhibit 1, Client shall be granted a license to the third-party software itemized therein (the "ExecuTime Software"). Client's license to the ExecuTime Software shall be as set forth in the Agreement and in the ExecuTime End User License Agreement provided at Exhibit 2. In the event of conflict between the Agreement and Exhibit 2, Exhibit 2 shall control.
2. All professional services and maintenance and support services relating to the ExecuTime Software will be provided directly by ExecuTime to Client according to the terms of Exhibit 2 or as otherwise agreed by ExecuTime and Client. ExecuTime hardware identified in Exhibit 1 will be delivered and installed by ExecuTime.
3. Client acknowledges that Tyler is not the manufacturer of any ExecuTime Software or hardware subject to this Amendment. Tyler does not warrant or guarantee the performance of ExecuTime Software or hardware, nor the delivery of any ExecuTime services. Client's rights arising out of or relating to any aspect of ExecuTime's Software, hardware or services, including but not limited to maintenance and support, are as set forth in Exhibits 1 and 2 or as otherwise agreed to by Client and ExecuTime directly. To the extent Client encounters any defect or nonconformance in the ExecuTime Software, that issue must be reported by Client to ExecuTime for so long as Client has a maintenance and support agreement in effect with ExecuTime.
4. Payment for the third-party products and services subject to this agreement shall be made as follows:
 - a. Upon the Amendment Effective Date, Tyler will invoice Client \$69,000, which represents 100% of the ExecuTime Software startup fees (\$29,757), approximately 91% of Year 1 monthly access fees (\$20,917), and 20% of ExecuTime hardware fees (\$18,326).
 - b. On October 1, 2016, Tyler will invoice Client \$81,023.28, which represents the remaining balance of ExecuTime Software Year 1 monthly access fees (\$2,063) and the remaining balance of ExecuTime hardware fees (\$73,304) as well as hardware shipping fees (\$525) and 7% interest fees on the remaining ExecuTime hardware fees (\$5,131.28).
 - c. The fees set forth in Exhibit 1 do not include travel, which ExecuTime has separately estimated. Any actual travel expenses will be invoiced to Client directly by ExecuTime.
 - d. On March 1, 2017 and March 1, 2018, and on that anniversary for any renewal(s) thereafter, ExecuTime will invoice Client directly for the monthly fees owed annually in advance, at ExecuTime's then-current rates.
5. This Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.
6. All other terms and conditions of the Agreement shall remain in full force and effect.

SIGNATURE BLOCK FOLLOWS

IN WITNESS WHEREOF, the parties hereto, through their duly authorized signatories, have executed this Amendment as of the dates set forth below.

Tyler Technologies, Inc.

City of North Miami, FL

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



North Miami, FL Proposal for ExecuTime Workforce Management

Prepared by:
Christa Maguire
12/03/2015
ExecuTime Software, LLC.
Phone: 888-832-3932 x530

Pricing valid for 90 days

Startup				
<i>Item</i>	<i>Description</i>	<i>Qty.</i>	<i>Cost</i>	<i>Total</i>
<i>Cloud Time & Attendance Startup Fee</i>	Up to 500 employees	1	\$16,500	\$16,500
<i>Cloud Time & Attendance Mobile Access Module Startup Fee</i>	Up to 500 employees	1	\$3,257	\$3,257
<i>Cloud Advanced Scheduling Startup Fee</i>	Up to 150 employees	1	\$9,000	\$9,000
<i>Cloud Time & Attendance VPN Startup Fee</i>	Up to 500 employees	1	\$1,000	\$1,000
Sub Total:				\$29,757.00

Monthly Access Fee				
<i>Item</i>	<i>Description</i>	<i>Qty.</i>	<i>Cost</i>	<i>Total</i>
<i>Cloud Time & Attendance Monthly Access Fee</i>	Up to 500 employees	12	\$1,040	\$12,480
<i>Cloud Time & Attendance Mobile Access Module Monthly Access Fee</i>	Up to 500 employees	12	\$100	\$1,200
<i>Cloud Advanced Scheduling Monthly Access Fee</i>	Up to 150 employees	12	\$600	\$7,200
<i>Cloud Advanced Scheduling Mobile Access Module Monthly Access Fee</i>	Up to 150 employees	12	\$150	\$1,800
<i>Cloud Time & Attendance VPN Monthly Access Fee</i>	Up to 500 employees	12	\$25	\$300
Sub Total:				\$22,980.00

Clocks				
<i>Item</i>	<i>Description</i>	<i>Qty.</i>	<i>Cost</i>	<i>Total</i>
<i>Touchscreen : Biometric Reader</i>	Touchscreen Clock with Biometric Reader	34	\$2,695	\$91,630
Sub Total:				\$91,630.00

Discount				
<i>Item</i>	<i>Description</i>	<i>Qty.</i>	<i>Cost</i>	<i>Total</i>
<i>Touchscreen : Biometric Reader</i>	Discount (1 clock @ no cost with the purchase of 34 clocks)	1	\$0	\$0
Sub Total:				\$0.00

<i>Item</i>	<i>Total</i>
Sub Total: Clocks	\$91,630
Sub Total: Monthly Access Fee	\$22,980
Sub Total: Startup	\$29,757
Shipping fee for Clocks	\$525
Total:	\$144,892.00

<i>Other Expense Items</i>	<i>Total</i>
Estimated Travel Expenses (based on 3 visits, by one ExecuTime representative)	\$ 7,000.00
Interest for Clocks (based on Alternate payment terms)	\$5,131.28

Notes:

Travel expenses, custom modules and time collection devices are invoiced separately for ExecuTime.

Employee totals in addition to the amounts shown will be subject to additional charges.

This quote includes one VPN Router w/ internal modem (out of band access) device to reside a client site. The Customer will be responsible for the following items related to the VPN connection:

- Provide pre-configuration information
- Obtain Static IP address for router, if static IP is not already in place
- Provide a dedicated block of time with a Technical resource during the VPN turn-up.
- Perform any necessary firewall configurations, Connect hardware to LAN, Connect remote sites back to main hub
- Provide LAN routing to the hosting vendor TCP/IP address space if applicable, and Test application access, Go-live

This quote does not include any conversion from existing time & attendance or scheduling software.

Timekeeping interface required – Please contact your Payroll vendor representative directly for ordering information.

Time Collection Devices (Clocks) are to be purchased by the customer. Please see next page for options.

ExecuTime Cloud solution is hosted by a third party data center with access to multiple Tier 3 & 4 data center facilities with SSAE16, IS27001, network security, high availability, scheduled backups.

Standard CLOUD Payment Terms:

- Start-up Fee is due at contract execution, the Monthly Access Fee is invoiced annually, and due 30 days prior to start date.
- Travel and related expenses of the trainers, installers, or project managers are in addition to the above costs and they are billed separately.
- Customer will be contacted by the ExecuTime Software Project Manager to begin the implementation process of this project upon receipt of startup fees.
- 36 month contract is required.

Alternate Scenario of Payment terms for City of North Miami

January 2016 (Due upon contract execution): \$69,000.00

\$50,674 (\$29,757 Startup and \$20,917 towards 1st year of Access fees)

\$18,326 (20% of Clocks)

January – October, 2016: Estimated \$7,000.00 in Travel expenses (invoiced once trip is completed)

October 1 2016: \$81,023.28

\$2,063 (remaining balance of 1st year of Access fees)

\$73,304.00 (remaining balance of clocks)

\$5,131.28 (7% interest of the remaining clock balance)

\$ 525 (shipping fees for clocks)

Total \$157,023.28 First year

March 2017: \$22,980 Second year of Access fees

March 2018: \$22,980 Third year of Access fees

Time Collection Devices are an effective option to electronically collect employee time. In fact two types of devices are available and both can be used in your ExecuTime Software system. They can be configured to identify the employee by reading Proximity, Magnetic Stripe, Barcode and/or Biometric (fingerprints), and are equipped with a key pad so simple entry of a badge number is also an option for identification. All devices include a one year warranty and an extended warranty plan is optional. They require an electrical outlet (with surge protection) and Ethernet connection (to be provided by the customer). If your organization is interested in using an existing badge with the following time collection devices, we recommend providing us with a sample badge to insure compatibility.

Basic Functionality Devices

These devices allow employees to clock in/out, view time summary, view benefit accruals and approve time.



KeyPad Device - employees manually keys in identification	\$1,335.00
Barcode/Mag Devices - reads magstripe <u>or</u> barcode badge (one reader)	\$1,395.00
Proximity Devices - reads proximity enabled badges/tags	\$1,495.00
Biometric Devices - reads employees fingerprints	\$1,995.00
Biometric/Proximity Device - reads employee fingerprints as well as proximity enabled badges/tags	\$2,279.00

Advanced Functionality Devices

These devices allow employees to clock in/out, view time summary, view benefit accruals and approve time, request time off and some job costing.



Keypad Device - employees manually keys in identification	\$1,795.00
Mag/Barcode Device - reads magstripe <u>or</u> barcode badge (one reader)	\$1,895.00
Proximity Device - reads proximity enabled badges/tags	\$2,095.00
Biometric Device - reads employees fingerprints	\$2,395.00
Biometric/Mag/Barcode Device - reads employees fingerprints, as well as magstripe or barcode badge	\$2,595.00
Biometric/Proximity Device - reads employee fingerprints as well as proximity enabled badges/tags	\$2,795.00

Touchscreen/Advanced Functionality Devices

These devices allow employees to clock in/out, view time summary, view benefit accruals and approve time, request time off and some job costing. Wireless (WiFi (802.11a/b/g/n), POE, up to 6 hours of battery back-up and screen protector included.



Keypad Device - employees manually keys in identification	\$2,195.00
Mag/Barcode Device - reads magstripe <u>or</u> barcode badge (one reader)	\$2,495.00

(Continue)

Proximity Device - reads proximity enabled badges/tags	\$2,395.00
Biometric Device - reads employees fingerprints	\$2,695.00
Biometric/Proximity Device - reads employee fingerprints as as well as proximity enabled badges/tags	\$2,995.00

Additional Options for Basic & Advanced Devices

Uninterrupted Power Source (battery back-up)*	\$150.00
Wireless*	\$870.00
POE Splitter*	\$120.00
POE Injector	\$160.00
Extended Warranty (12 months)	13% of device price

* Additional Options are for all clocks except for *Touchscreen/Advanced Functionality Devices*, as these features are already included.)

Pricing does not include tax (if applicable) and shipping fees. Pricing and server requirements are subject to change.

**** Additional PC or Server requirements required and can be provided by your Account Manager upon request.***

Exhibit 2
ExecuTime End User License Agreement

EXECUTIME APPLICATION SERVICES AGREEMENT

This Agreement is made between ExecuTime Software, LLC, an Oklahoma limited liability company ("ExecuTime"), with a business address at 636 E Third Street, Tulsa OK 74120, and City of North Miami, with a business address of 776 NE 125 Street North Miami, FL 33161 ("Customer"), as of the Execution Date.

Customer desires to engage ExecuTime to provide Customer with access to and use of certain Software owned by ExecuTime on an application services basis. Accordingly, the parties agree as follows:

1. Defined Terms.

"Additional Functionality" means changes that ExecuTime makes for inclusion in a General Release Module to increase the functionality of the General Release Module.

"Application Services" means the services and Software utilization to be provided to Customer by ExecuTime under this Agreement.

"Application Services Term" means the period identified in Section 6 of this agreement as "Term and Termination," and during which Customer will have the right to use the Software.

"Appendix" means each schedule that is attached to this Agreement that is marked as an "Appendix." Appendices are lettered sequentially, beginning with "Appendix A" and continuing thereafter.

"Concurrent User" means each open session in any of the Modules listed in Appendix A. Concurrent Users are determined for each Module on a Module-by-Module basis; for instance, two open sessions in Module "X" constitutes two Concurrent Users for Module "X" only.

"Customer Employees" means: (i) Customer's employees with a need to know; and (ii) third party consultants engaged by Customer who have a need to know, who have been pre-approved by ExecuTime, and who, prior to obtaining access to the Software, have executed a ExecuTime-approved non-disclosure agreement.

"Commencement Date" is defined in Appendix A, and is the date on which the Term commences and the date upon which Customer will begin to pay Application Services fees to ExecuTime.

"Confidential Information" means non-public information of a party to this Agreement. Confidential Information of ExecuTime includes the Software and algorithms, methods, techniques and processes revealed by the Software. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

"Disclosing Party" means the party providing its Confidential Information to the Receiving Party.

"Documented Defect" means a material deviation between the General Release Module and its documentation, for which Documented Defect ExecuTime has confirmed that Customer has given ExecuTime enough information for ExecuTime to replicate the deviation on a computer configuration which is both comparable to the Hardware and is under ExecuTime's control.

"Execution Date" means the latest date shown on the signature page of this Agreement.

"Expiration Date" means the date the Application Services Term expires, as provided for in Section 6 of this Agreement.

"General Release" means the general release version of a Module as updated by Upgrades, but without any other modification whatsoever.

"IP Rights" means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.

"Maintenance" means ExecuTime's efforts to provide Customer with avoidance procedures for or corrections of Documented Defects.

"Module" means any one of the computer software programs that is identified in Appendix A as a "Module," including all code and related specifications, documentation, technical information and all IP Rights for such Module.

"New Releases" means new editions of a General Release Module.

"Object Code" means computer programs assembled, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment.

"Software" means the Modules listed in Appendix A.

"Receiving Party" means the party receiving Confidential Information of the Disclosing Party. "Upgrades" means, collectively, Maintenance, Additional Functionality and New Releases.

2. Application Services, Generally. During the Application Services Term, ExecuTime will provide Customer with the Application Services. Application Services include the grant by ExecuTime to Customer of a non-exclusive, non-transferable license to access and use the Software in Object Code form within the United States of America for Customer's own, non-commercial computing operations (subject to any Concurrent User limitations provided for in Appendix A), while such Object Code resides in and is executed from a ExecuTime datacenter. ExecuTime hereby represents and warrants that it has a right to provide Application Services and

also to grant the license that is being provided to Customer hereunder. Any rights not expressly granted in this Agreement are expressly reserved.

(a) Documentation. Customer can make a reasonable number of copies of the documentation for each Module for its use in accordance with the terms of this Agreement.

(b) Restrictions on Use of the Software. Customer is prohibited from causing or permitting the reverse engineering, disassembly or decompilation of the Software. Customer is prohibited from using the Software to provide service bureau data processing services or to otherwise provide data processing services to third parties. Customer will not allow the Software to be used by, or disclose all or any part of the Software to, any person except Customer Employees. Without limiting the foregoing, Customer is permitted to allow use of the input and/or output sensory displays of or from the Software by third parties on a strict "need to know" basis, and such use will not be deemed a non-permitted disclosure of the Software.

This Agreement is expressly made subject to any United States government and other applicable laws, regulations, orders or other restrictions regarding export from the United States or another country, and import into any country, of computer hardware, software, technical data or other items, or derivatives of such hardware, software, technical data or other items. Customer will not allow the Software, in whole or in part, to be exported outside of the United States of America, in any manner or by any means. Customer is prohibited from removing or altering any of the IP Rights notice(s) embedded in or that ExecuTime otherwise provides with the Software. Customer must reproduce the unaltered IP Rights notice(s) in any full or partial copies that Customer makes of the Software.

(c) Application Software Maintenance and Support Services. Maintenance is available during the ExecuTime hours outlined in Appendix B.

3. **Implementation Services**. ExecuTime will provide Customer with the information services identified in Appendix A, for the fees provided in Appendix A.

4. **Fees, Payment and Taxes.**

(a) Payment.

(i) **Application Services Fees**. Startup and first 12 months of fees will be invoiced by Tyler Technologies. During the Application Services Term, Customer will pay ExecuTime the Application Services fees specified in Appendix A, as otherwise provided for in Appendix A. Time is of the essence with regard to Customer's payment obligations pursuant to this Agreement.

(ii) **Consulting Services Fees**. Except as otherwise provided in Appendix A, fees for consulting services will be invoiced on a monthly basis in arrears and will be due within thirty (30) days from the date of invoice. Customer will reimburse ExecuTime for actual and reasonable, out-of-pocket travel and living expenses that ExecuTime incurs in providing Customer with consulting services under this Agreement.

Such travel and living expenses will be invoiced on a monthly basis in arrears and will be due within thirty (30) days from the date of invoice.

(iii) **Late Charge.** ExecuTime will have the right to charge a late fee to the extent that any payment is received later than thirty (30) days from the date of invoice. Late fees will be calculated based on a per annum rate equal to the lesser of: (i) the prime lending rate established from time to time by Citizens Bank, Philadelphia, Pennsylvania Bank, plus three percent (3%); and (ii) the highest rate permitted by applicable law, and will be payable to ExecuTime on demand.

(b) **Taxes.** Customer is responsible for paying all taxes (except for taxes based on ExecuTime's net income or capital stock) relating to this Agreement, the application services, the Software, and any other services provided or payments made under this Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide ExecuTime with a valid tax exemption certificate; otherwise, absent proof of Customer's direct payment of such tax amounts to the applicable taxing authority, ExecuTime will invoice Customer for and Customer will pay to ExecuTime all such tax amounts.

(c) **Suspension of Service.** If in any instance, Customer fails to pay to ExecuTime within thirty (30) days after ExecuTime makes written demand therefor, and payment of the amount in question is not the subject of a bona fide dispute, then, in addition to preserving its rights to collect payment of the past-due amount and all accompanying late fees, and all other rights and remedies that ExecuTime may have at law or in equity, ExecuTime may, in its sole discretion and without further notice to Customer, suspend or reduce its performance of the Application Services.

5. **Confidential information.** Except as otherwise permitted under this Agreement, the Receiving Party will not knowingly disclose to any third party, or make any use of the Disclosing Party's Confidential Information. The Receiving Party will use at least the same standard of care to maintain the confidentiality of the Disclosing Party's Confidential information that it uses to maintain the confidentiality of its own Confidential Information of equal importance. Except in connection with the Software and any software provided with the Software, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Receiving Party's receipt of that item. However, Customer's obligations to maintain the Software as confidential will survive in perpetuity.

6. **Term and Termination.**

(a) **Application Services Term.** The initial Application Services Term is for a period of thirty-six (36) months commencing on April 1, 2016 and ending March 31, 2019. Thereafter the term may be renewed for consecutive one (1) year periods upon execution of extension agreements in writing by the parties.

(b) Right of Termination. A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to ExecuTime of a suspected Documented Defect will not constitute a notice of termination of this Agreement.

(c) Effect of Expiration of Application Services Term or Termination of Agreement. Upon the expiration of the Application Services Term, or upon any earlier termination of this Agreement by either party, Customer's right to receive the Application Services and to use the Software as otherwise provided for in this Agreement terminates. Any use of the Software after the Application Services Term or after the termination of this Agreement is a violation of this Agreement, and further, may subject the user to additional claims under applicable law, including without limitation claims for violation of ExecuTime's copyright interest in and to the Software.

(d) Survival of Obligations. All obligations relating to non-use and non-disclosure of Confidential information will survive termination of this Agreement.

(e) Termination Without Prejudice to Other Rights and Remedies. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

7. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile confirmed by United States first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the first page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices,

8. **Force Majeure.** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

9. **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" will include use of the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Customer, including any new or surviving entity that results from such merger, acquisition and/or other consolidation. However, the following will not be considered "assignments" for purposes of this Agreement: ExecuTime's assignment of this Agreement or of any ExecuTime rights under

this Agreement to ExecuTime's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and ExecuTime's assignment of this Agreement to any person or entity to which ExecuTime transfers any of its rights in the Software.

10. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

11. **Choice of Law; Consent to Jurisdiction; Severability.** This Agreement will be governed by and construed under the laws of the State of Oklahoma, without reference to the choice of law provisions thereof. Any action or proceeding seeking to enforce, or to construe or determine the validity of, any term or provision of this Agreement, or based on any right arising out of this Agreement, shall be brought by or against a party exclusively in the District Court in and for the County of Tulsa, State of Oklahoma. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

12. **Limitations of Liability; Disclaimer of Warranties.**

(a) **LIMITED LIABILITY OF EXECUTIME.** EXECUTIME'S LIABILITY IN CONNECTION WITH THE APPLICATION SERVICES, THE SOFTWARE, ANY CONSULTING SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE APPLICATION SERVICES FEES THAT CUSTOMER ACTUALLY PAID TO EXECUTIME IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

(b) **EXCLUSION OF DAMAGES.** REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EXECUTIME BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT EXECUTIME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(c) **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, EXECUTIME MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE APPLICATION SERVICES AND/OR THE SOFTWARE, IN WHOLE OR IN PART. EXECUTIME EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

(d) **BASIS OF THE BARGAIN.** CUSTOMER ACKNOWLEDGES THAT EXECUTIME HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES

AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

13. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. The individual executing this Agreement on behalf of its party represents and warrants that he/she has full authority to bind such party to all terms, conditions and obligations of this Agreement.

The terms and conditions contained in this Agreement, including the prices, will be honored as set forth herein, provided this Agreement is fully executed and delivered on or before _____.

Customer:

ExecuTime:

BY: _____
PRINTED NAME: _____
PRINTED TITLE: _____
DATED SIGNED: _____

BY: _____
PRINTED NAME: _____
PRINTED TITLE: _____
DATE SIGNED: _____

APPENDIX A

Monthly Processing Services & Implementation Services

Term: Initial term begins April 1, 2016 ("Commencement Date") and ends March 31, 2019. Following the expiration of the initial term, Application Services will be provided on a year-to-year basis provided the Customer exercises the option and pays the then current Monthly Access Fee.

Total Costs**

Item Description	Cost
ExecuTime – Time & Attendance - Monthly Access Fee Up to 50 employees	\$ 1,915.00
Startup Fee – Time & Attendance - Implementation Services & Training	\$ 29,757.00
1. Server Configuration	
2. Design/Scope of Work	
3. Implementation Services	
4. Training Services	
5. Integration with New World Systems Interface files	
6. VPN Router	

***Not included:**

1. Conversion Services - converting data from another T/A system to ExecuTime Software.
2. Reasonable and customary travel-related expenses
3. Cost of clock devices.
4. Custom programming and modifications to ExecuTime Software and standard payroll export.
5. Payroll interface files from Tyler Technologies is not included.

Additionally:

1. Public Static IP address is required for the VPN router.
2. SAAS Hosting is provided and invoiced by ExecuTime.

Payment Terms:

- Start-Up Fee:** Due upon execution of this Order Form. This is a one-time fee.
- Monthly Access Fee:** The first twelve (12) Monthly Access Fees is \$22,980.00. \$20,917 of this amount shall be due upon execution of this Order Form, and the remaining balance of \$2,063 shall be due October 1, 2016. Subsequent Monthly Access Fees will be invoiced in advance on an annual basis.

Following the expiration of the Initial Term, ExecuTime reserves the right to increase the Application Service Monthly Fees on an annual basis, on each anniversary of the Execution Date. ExecuTime will notify Customer of the increase at least ninety (90) days prior to the effective date of such increase.

APPLICABLE TAXES ARE NOT INCLUDED IN THE SCHEDULE LISTED ABOVE, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT OF PAYMENT INVOICE(S) BEING SENT SEPARATELY TO THE CUSTOMER.

Travel and Living Expenses: Travel and living expenses are in addition to the prices quoted above and will be invoiced as incurred. Travel and living expenses actually incurred in prior months for which ExecuTime is seeking reimbursement, shall also be invoiced monthly.

APPENDIX B

Application Software Maintenance and Support Services

A. Services Provided:

1. Provide standard product enhancements for those modules of proprietary Software listed in Appendix A when and as the same are developed by ExecuTime.
2. Modifications and updates will be provided and are limited to those which use data supported within the baseline application Software and are required by regulatory changes.
3. Provide assistance to Customer in the use of the Software via telephone inquiries to ExecuTime designated Software support offices up to the maximum number of hours per application as listed in Appendix A. Telephone support services are available weekdays, excluding ExecuTime's honored holidays and weekends, during normal business hours.
4. Investigate errors in the intended capabilities of the Software upon receipt of notification from Customer and provide Customer with an alternate procedure or programming modifications to correct errors.
5. ExecuTime shall have no obligation to provide services under this Agreement to support errors or problems in the Software caused by negligence, abuse, or misapplication of the Software, or by failure to adhere to use the Software as specified in the user documentation.

- B. Maintenance Hours.** Maintenance is available during ExecuTime's normal business hours, Monday through Friday (currently 7 AM through 6 PM Central time), excluding ExecuTime-observed holidays (currently New Year's Day, Martin Luther King, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Day after Thanksgiving and Christmas Day and Day after Christmas. Holidays are subject to change).