SUPERION

A CENTRALSQUARE COMPANY

Solutions Agreement

This Solutions Agreement (the "**Agreement**"), effective as of April 1, 2019 (the "**Effective Date**"), is entered into between Superion LLC, a Delaware Limited Liability Company ("**Superion**") and **City of Fresno, CA** ("**Customer**"), together with Superion, the "**Parties**", and each, a "**Party**".

WHEREAS, Superion licenses and provides access to software applications ("**Solutions**") for its customers and also provides maintenance, support, migration, installation and other professional services; and

WHEREAS, Customer desires to license and/or gain access to certain Solutions and/or receive professional services described herein, and Superion desires to grant and provide Customer license and access to such offerings as well as to support them with professional services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by the signatures of their duly authorized representative below, the Parties intending to be legally bound, agree to all of the following provisions and exhibits of this Agreement:

SUPERION, LLC.	CITY OF FRESNO
1000 Business Center Dr. Lake Mary, FL 32746	2600 Fresno Street Fresno, CA 93721-3608
By:	By:
Print Name: Brad Surminsky	Print Name: Bryon Horn
Print Title: CFO	Print Title: CIO
Date Signed: June 19, 2019	Date Signed: 6-21-2019

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: _____
DEP CITY ATTORNEY
John Hustrup

1. **Solution: Public Administration**

2. **Term.**

   2.1. Initial Term. The Initial Term of this Agreement commences April 1, 2019 and will continue in effect for per the Project Cost Summary (Exhibit 1) unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").

   2.2. Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement's provisions (a "**Renewal Term**" and, collectively, with the Initial Term, the "**Term**").

   2.3. Non-Renewal. Either party may elect to end renewal of the contract by issuing a notice of non-renewal, in writing, to the other party ninety (90) days prior to the expiration of the current contract term.

3. **Fees**. In consideration of the rights and services granted by Superion to Customer under this Agreement, Customer shall make payments to Superion pursuant to the amounts and payment terms outlined in Exhibit 1 (the "**Project Cost Summary**").

4. **Definitions**. Capitalized terms not otherwise defined in this Agreement have the meanings set forth below:

   4.1. "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.

   4.2. "**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

   4.3. "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Solutions under the rights granted to Customer pursuant to this Agreement, and for whom access to the Solutions has been purchased.

   4.4. "**Baseline**" means the version of a Solution updated to the particular time in question through Superion's warranty services and maintenance, but without any other modification whatsoever.

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK

By Marco Martinez
Deputy

Marco Martinez
7/1/19

4.5. "**Component System**" means any one of the Solutions identified in Exhibit 1, including all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, development work, improvements and enhancements to and all Intellectual Property Rights for such Component System.

4.6. "**Customer Data**" means information, data, and content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly from Customer, an Authorized User or end-users by or through the Solutions, provided the data is not personally identifiable and not identifiable to Customer.

4.7. "**Custom Modification**" means a change that Superion has made at Customer's request to any Component System in accordance with a Superion-generated specification, but without any other changes whatsoever by any Person.

4.8. "**Customer Systems**" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated by Customer or through the use of third-party services.

4.9. "**Defect**" means a material deviation between the Baseline Solution and its Documentation, for which Defect Customer has given Superion enough information to enable Superion to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under Superion's control. Further, with regard to each Custom Modification, Defect means a material deviation between the Custom Modification and the Superion-generated specification and documentation for such Custom Modification, and for which Defect Customer has given Superion enough information to enable Superion to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under Superion's control.

4.10. "**Documentation**" means any manuals, instructions, or other documents or materials that Superion provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Solutions, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

4.11. "**Enhancements**" means general release (as opposed to custom) changes to a Baseline Component System or Custom Modification which increase the functionality of the Baseline Component System or Custom Modification in question.

4.12. "**Harmful Code**" means any software, hardware, device or other technology, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Solutions as intended by this Agreement.

4.13. "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

4.14. "**Maintenance**" means optimization, error correction, modifications, and updates to Vendor Systems to correct any known Defects and improve performance. Maintenance will be provided for each Component System, the hours and details of which are described in Exhibit 2 ("**Support Standards**").

4.15. "**New Releases**" means new editions of a Baseline Component System or Custom Modification.

4.16. "**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

4.17. "**Personal Information**" means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "Personal Data" as defined in the EU General Data Protection Regulation (GDPR 2018), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.

4.18. "**Professional Services**" means installation, implementation, development work, training or consulting services including custom modification programming, support relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by Superion.

4.19. "**Representatives**" means, with respect to a party, that party's employees, officers, directors, agents, subcontractors, and legal advisors.

4.20. "**Superion Personnel**" means all individuals involved in the performance of Support Services and Professional Services as employees, agents, Subcontractors or independent contractors of Superion.

4.21. "**Solution(s)**" means the Component Systems, Documentation, Custom Modifications, development work, Vendor Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, provided or used by Superion or any Subcontractor in connection with Professional Services or Support Services rendered under this Agreement.

4.22. "**Vendor Systems**" means the information technology infrastructure used by or on behalf of Superion to deliver Solutions, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Superion or through the use of third-party services.

4.23. **"Support Services"** means Maintenance, Enhancements, implementation of New Releases, and general support efforts to respond to incidents reported by Customer in accordance with the detailed Support Standards outlined in Exhibit 2.

4.24. "**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, related services, equipment, or components of or relating to the Solutions that are not proprietary to Superion.

5. License, Access & Services.

5.1. License Grant. Subject to and conditioned on the payment of Fees and compliance with all other terms and conditions of this Agreement, Superion hereby grants to Customer a non-exclusive, non-sublicenseable, and non-transferable license to the current version of the Solutions outlined in Exhibit 1 at the time of this Agreement's execution.

5.2. Access and Scope of Use. Subject to and conditioned on Customer and their Authorized Users' compliance with the terms and conditions of this Agreement, Superion hereby grants Customer a non-exclusive, non-transferable right to access and use the Solutions, solely by Authorized Users. Such use is limited to Customer's internal use.

5.3. Delivery. Superion shall deliver by (a) electronic delivery, by posting it on Superion's network for downloading, or similar suitable electronic file transfer method, or (b) physical shipment, such as on a disc or other suitable media transfer method. Physical shipment is on FOB-Superion's shipping point (except with respect to Third-Party Materials, which are FOB-applicable third party shipping point), and electronic delivery is deemed effective at the time Superion provides Customer with access to download the Solutions. The date of such delivery shall be referred to as the "**Delivery Date**."

5.4. Documentation License. Superion hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Solutions.

5.5. Service and System Control. Except as otherwise expressly provided in this Agreement:

5.5.1. Superion has and will retain sole control over the operation, provision, maintenance, and management of the Solutions; and

5.5.2. Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for access to and use of the Solutions by any Person by or through the Customer Systems or other means controlled by Customer or any Authorized User, including any reports or results obtained from any use of the Solutions, and conclusions, decisions, or actions based on such use.

5.6. Limitations. Customer must provide Superion with such facilities, equipment and support as are reasonably necessary for Superion to perform its obligations herein, including if required, remote access to Customer Systems. Superion is not responsible or liable for delay or failure of performance caused in whole or in part by Customer delay or Customer's failure to perform any obligations under this Agreement.

5.7. Exceptions. Superion has no obligation to provide Support Services relating to any Defect with the Solutions that, in whole or in part, arise out of or result from any of the following:

5.7.1. software, or media on which provided, that is modified or damaged by Customer or third party;

5.7.2. any operation or use of, or other activity relating to, the Solutions other than as specified in the Documentation, including any incorporation, or combination, operation or use of the Solutions in or with, any technology (software, hardware, firmware, system, or network) or service not specified for Customer's use in the Documentation;

5.7.3. any negligence, abuse, misapplication, or misuse of the Solutions other than by Superion personnel, including any Customer use of the Solutions other than as specified in the Documentation or expressly authorized in writing by Superion;

5.7.4. any Customer's failure to promptly install any New Releases that Superion has previously made available to Customer;

5.7.5. the operation of, or access to, Customer's or a third party's system, materials or network;

5.7.6. any relocation of the Solutions other than by Superion personnel;

5.7.7. any beta software, software that Superion makes available for testing or demonstration purposes, temporary software modules, or software for which Superion does not receive a fee;

5.7.8. any breach of or noncompliance with any provision of this Agreement by Customer or any of its Representatives or any Force Majeure Event (including abnormal physical or electrical stress).

5.8. Reservation of Rights. Except for the specified rights outlined in this Section, nothing in this Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to the Support Services, Professional Services, Solutions, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in the Solutions, and the Third-Party Materials are and will remain with Superion and the respective rights holders.

5.9. Changes. Superion reserves the right, in its sole discretion, to make any changes to the Support Services and Solutions that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of Superion's services to its customers, the competitive strength of or market for Superion's services, or the Support Services' cost efficiency or performance; or (b) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to particular Support Services, Professional Services or their product suite of Solutions. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in either a Superion issued Add-On Quote signed by the Customer, or a written change order or amendment to this agreement signed by both parties.

5.10. Subcontractors. Superion may from time to time in its discretion engage third parties to perform Professional Services or Support Services (each, a "**Subcontractor**").

5.11. Security Measures. The Solutions may contain technological measures designed to prevent unauthorized or illegal use of the Solutions. Customer acknowledges and agrees that: (a) Superion may use these and other lawful measures to verify compliance with the terms of this Agreement and enforce Superion's rights, including all Intellectual Property Rights, in and to the Solutions; (b) Superion may deny any individual access to and/or use of the Solutions if Superion, in its reasonable discretion, believes that person's use of the Solutions would violate any provision of this Agreement, regardless of whether Customer designated that person as an Authorized User; and (c) Superion may collect, maintain, process, use and disclose technical, diagnostic and related non-identifiable data gathered periodically which may lead to improvements in the performance and security of the Solutions.

6. Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Solutions except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

6.1. copy, modify, or create derivative works or improvements of the Solutions, or rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Solutions to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

6.2. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Solutions, in whole or in part;

6.3. bypass or breach any security device or protection used by Solutions or access or use the Solutions other than by an Authorized User through the use of his or her own then valid access;

6.4. input, upload, transmit, or otherwise provide to or through the Vendor Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

6.5. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Vendor Systems, or Superion's provision of services to any third party, in whole or in part;

6.6. remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Documentation or Solutions, including any copy thereof;

6.7. access or use the Solutions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable law;

6.8. access or use the Solutions for purposes of competitive analysis of the Solutions, the development, provision, or use of a competing software service or product or any other purpose that is to Superion's detriment or commercial disadvantage or otherwise access or use the Solutions beyond the scope of the authorization granted under this Section.

7. Customer Obligations.

7.1. Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair all Customer Systems on or through which the Solutions are accessed or used; (b) provide Superion Personnel with such access to Customer's premises and Customer Systems as is necessary for Superion to perform the Support Services in accordance with the Support Standards and Specifications; and (c) provide all cooperation as Superion may reasonably request to enable Superion to exercise its rights and perform its obligations under and in connection with this Agreement.

7.2. Effect of Customer Failure or Delay. Superion is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.

7.3. Corrective Action and Notice. If Customer becomes aware of actual or threatened activity prohibited by Section 6, Customer shall, and cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Solutions and permanently erasing from their systems and destroying any data to which any of them gained unauthorized access); and (b) notify Superion of any such actual or threatened activity.

8. Professional Services.

8.1. Compliance with Customer Policies. While Superion Personnel are performing services at Customer's site, Superion will ensure that such personnel comply with Customer's reasonable security procedures and site policies that are generally applicable to Customer's other suppliers providing similar services and that have been provided to Superion in writing or in advance. Customer shall promptly reimburse Superion for any out-of-pocket costs incurred in complying with such procedures and policies.

8.2. Contributed Material. In the process of Superion's performing Professional Services, Customer may, from time to time, provide Superion with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solutions, the Documentation or any other deliverables ("**Contributed Material**"). Customer grants to Superion a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of any kind and without the right of attribution, for Superion, Superion's Affiliates and Superion's licensees to make, use, sell and create derivative works of the Contributed Material.

9. Confidentiality.

9.1. Confidential Information. "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing, Confidential Information of Superion includes the Solutions, all software provided with the Solutions, algorithms, methods, techniques, and processes revealed by the Source Code of the Solutions and any software provided with the Solutions. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**").

9.2. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to being disclosed or made available to the

Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was or is independently developed by the Receiving Party without reference or use of any Confidential Information.

9.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

9.3.1. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

9.3.2. not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (iii) are bound by written confidentiality or restricted use obligations at least as protective of the Confidential Information as the terms in this Section;

9.3.3. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care;

9.3.4. ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section.

9.4. Compelled Disclosures. If the either Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by law, that Party shall: (a) promptly, and prior to such disclosure, notify the other Party in writing of such requirement so that they can seek a protective order or other remedy or waive its rights under Section .3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

9.5. Trade Secrets. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

10. Security.

10.1. Superion will implement commercially reasonable administrative, technical and physical safeguards designed to ensure the security and confidentiality of Customer Data, protect against any anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access or use of Customer Data. Superion will review and test such safeguards on no less than an annual basis.

10.2. Customer shall maintain, in connection with the operation or use of the Solutions, adequate technical and procedural access controls and system security requirements and devices necessary for data privacy, confidentiality, integrity, authorization, authentication, non-repudiation, virus detection and eradication.

10.3. To the extent that Authorized Users are permitted to have access to the Solutions, Customer shall maintain reasonable procedures with such Authorized Users that adequately protect the confidentiality and Intellectual Property Rights of Superion in the Solutions and Documentation, and disclaim any liability or responsibility of Superion with respect to such Authorized Users.

11. Personal Data. If Superion processes or otherwise has access to any personal data or personal information on Customer's behalf when performing Superion's obligations under this Agreement, then:

11.1. Customer shall be the data controller (where "**data controller**" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and Superion shall be a data processor (where "**data processor**" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own);

11.2. Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to Superion so that Superion may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Customer's behalf, which may include Superion processing and transferring the relevant personal data or personal information outside the country where Customer and the Authorized Users are located in order for Superion to provide the Solutions and perform its other obligations under this Agreement; and

11.3. Superion shall process personal data and information only in accordance with lawful and reasonable instructions given by Customer and as set out in and in accordance with the terms of this Agreement; and

11.4. each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.

12. Representations and Warranties.

12.1. Software Warranty. Superion warrants to Customer that for a period of twelve (12) months from the Execution Date, the Solutions (as delivered to Customer by Superion and when properly used for the purpose and in the manner specifically authorized by this Agreement), will perform as described in the Documentation in all material respects, including being free from any viruses or Harmful Code.

12.2. Professional Services Representation and Warranty. Superion represents, warrants, and covenants to Customer that during the Term, Superion will perform Professional Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. If Customer reasonably believes that any Professional Services were performed in violation of this warranty, it will notify Superion within twenty (20) days of service performance describing the issue, together with adequate supporting documentation and data. Upon receipt of such notice, Superion's obligation will be to re-perform the particular Professional Services affected as soon as commercially reasonable at no additional charge.

12.3. Support Services Representation and Warranty. Superion represents, warrants, and covenants to Customer that during the Term, Superion will perform the Support Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with both generally recognized industry standards for similar services, and the specific guidance for support found in Exhibit 2, and will devote adequate resources to meet its obligations under this Agreement. If Customer reasonably believes that any Support Services failed to meet this warranty, they will follow their preferred escalation path outlined in the Support Standards below, including receipt of service credit.

12.4. DISCLAIMER OF WARRANTIES. **EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE, SUPERION MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE SOLUTIONS, PROFESSIONAL SERVICES, SUPPORT SERVICES, AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT SUPERION DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. FURTHER, SUPERION EXPRESSLY DOES NOT WARRANT THAT ANY SOLUTIONS, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER IF THE SOLUTIONS OR CUSTOM MODIFICATION HAS BEEN MODIFIED BY ANYONE OTHER THAN SUPERION PERSONNEL, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER. THIS AGREEMENT DOES NOT AMEND, OR MODIFY SUPERION'S WARRANTIES UNDER ANY AGREEMENT OR ANY CONDITIONS, LIMITATIONS, OR RESTRICTIONS THEREOF.**

13. 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 or email confirmed by United States first class mail, or sent by overnight courier. Notices must be sent to a Party at its address shown below, or to such other place as the Party may subsequently designate for its receipt of notices in writing by the other Party.

If to Superion:

Superion
1000 Business Center Dr.
Lake Mary, FL.
Phone: 407-304-3235 **email:** info@Superion.com
Attention: Contracts Department / General Counsel

If to Customer:

City of Fresno
2600 Fresno Street
Fresno, CA 93721-3608
Phone: * 559-621-7117 **email: *** dennis.jones@fresno.gov
Attention: * Dennis Jones

14. Force Majeure.

14.1. No Breach or Default. Neither Party will be liable to the other for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation) when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including Acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, national or regional emergency, riot or other civil-unrest, labor disruption, acts and omissions of third parties, governmental and judicial action (including embargoes, export or import restrictions) not the fault of the Party failing or delaying in performance.

14.2. Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. Mutual Indemnification.

15.1. Superion Indemnification. Superion shall indemnify, defend, and hold harmless Customer and Customer's officers, elected officials, directors, employees, agents, successors, and assigns from and against any and all losses incurred by or resulting from any Action by a third party (other than an Affiliate of Customer) that Customer's use of the Solutions in accordance with this Agreement infringes or misappropriates such third party's US Intellectual Property Rights, US patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

15.1.1. Third-Party Materials or Customer Data;

15.1.2. access to or use of the Solutions in combination with any hardware, system, software, network, or other materials or service not provided or specified for Customer's use in the Documentation;

15.1.3. modification of the Solutions other than: by or on behalf of Superion or with Superion's written approval in accordance with Superion's written specification;

15.1.4. failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Superion; or

15.1.5. act, omission, or other matter described in Section 15.2 below, whether or not the same results in any Action against or losses by any Superion Indemnitee.

15.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless Superion and its officers, directors, employees, agents, successors, and assigns from and against any and all losses incurred by Superion resulting from any Action by a third party (other than an Affiliate of Superion) that arise out of or result from, or are alleged to arise out of or result from:

15.2.1. Breach of the Parties Section 10 safeguards and security obligations attributable to Customer's acts or omissions;

15.2.2. Gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

15.3. Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified. The party seeking indemnification shall cooperate with the other party at that party's sole cost and expense. The indemnitor shall promptly assume control of the defense and shall employ counsel of its choice that is reasonably acceptable to the indemnitee to handle and defend the same.

15.4. Sole Remedy. THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND SUPERION'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOLUTIONS OR SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

16. Termination. This Agreement may be terminated:

16.1. For cause by either Party. By written notice to the other Party, if the other Party materially breaches this Agreement and: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

16.2. For lack of payment. By written notice to Customer, if Customer's failure to pay amounts due under this Agreement has continued more than ninety (90) days after delivery of written notice of non-payment.

16.3. Budgetary Appropriations**.** Superion acknowledges that continued performance and funding is dependent upon amounts being budgeted, appropriated, or otherwise legally available to the Customer in the future. Customer represents and warrants to Superion that it has appropriated sufficient funds due to Superion under this Agreement and hereby certifies that it will make appropriate requests for budget appropriations to meet continued obligations herein in subsequent fiscal years. If a funding or budgetary issue arises, Customer agrees to notify Superion as soon as commercially reasonable. If Superion and Customer cannot resolve the funding issue within ninety (90) days, the Agreement will terminate, with Customer to pay Superion any amounts owed for goods and services provided prior to termination of the Agreement.

17. Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

17.1. all rights, licenses, and authorizations granted to Customer hereunder will immediately terminate and Customer shall immediately cease all use of and other activities with respect to Superion's Confidential Information relating to the Solutions, and within thirty (30) days deliver to Superion, or at Superion's request destroy and erase Superion's Confidential Information from all systems Customer directly or indirectly controls; and

17.2. all licenses, access or subscription fees, services rendered but unpaid, and any amounts due by Customer to Superion of any kind are immediately payable and due no later than thirty (30) days after the effective date of the termination or expiration, including anything that accrues within those thirty days.

17.3. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature (including but not limited to: Use Restrictions, Confidential Information, Warranty Disclaimers, Mutual Indemnifications & Limitations of Liability), should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

17.4. Return of Customer Data. If Customer requests in writing at least 10 days prior to the effective date of expiration or earlier termination of this Agreement, Superion shall within 60 days following such expiration or termination, deliver to Customer in Superion's standard format the then most recent version of Customer Data maintained by Superion, provided that Customer has at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination.

17.5. Deconversion. In the event of (i) expiration or earlier termination of this Agreement, or (ii) Customer no longer purchasing certain Solutions (including those indicated to be Third-Party Materials), if Customer requests assistance in the transfer of Customer Data to a different vendor's applications ("**Deconversion**"), Superion will provide reasonable assistance. Superion and Customer will negotiate in good faith to establish the relative roles and responsibilities of Superion and Customer in effecting Deconversion, as well as the appropriate date for completion. Superion shall be entitled to receive compensation for any additional consultation, software and documentation required for Deconversion on a time and materials basis at Superion's then standard rates.

18. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Superion's prior written consent, which consent Superion may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or

disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Superion's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

19. **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.

20. **Arbitration of Disputes.** Any dispute, controversy or claim arising out of or relating to this Agreement, including the breach, termination, or validity thereof, shall be resolved by final and binding arbitration.

    20.1. Arbitration Procedure. The claimant shall commence the arbitration by delivering a notice of arbitration to the respondent setting out the nature of the claim(s), the relief requested, and the proposed location. Within thirty (30) days of the receipt of the notice, the respondent shall deliver its answer any counterclaim(s), relief requested, and any proposed change to location. The tribunal shall consist of three (3) arbitrators, appointed as follows: The claimant shall appoint an arbitrator in the request for arbitration and the respondent shall appoint an arbitrator in the answer. The two arbitrators so appointed shall, within thirty (30) days of delivery of the answer, appoint a third arbitrator who shall act as the chair of the tribunal. The tribunal shall decide the procedures in the arbitration after consultation with the parties. The tribunal may make its decisions by a majority. The tribunal shall have the power to grant any provisional or final remedy or relief it deems appropriate, including conservatory measures and an award of attorneys' fees. The parties agree that judgment may be entered upon the award by any court having jurisdiction.

21. **Jurisdiction and Governing Law.** This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida excluding choice of law. Each party irrevocably (i) agrees that a County or Circuit Court in the Eighteenth Judicial Circuit, in and for Seminole County, Florida, or the United States District for the Middle District of Florida, shall have exclusive jurisdiction to settle any dispute, controversy or claim arising, directly or indirectly, out of or in connection with this Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims) and that such court shall be the proper venue therefor; (ii) waives the right to trial by jury, (iii) consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice and (iv) agrees that the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and other legal expenses from the other party.

22. **Severability**. 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.

23. **LIMITATIONS OF LIABILITY.**

    23.1. **LIMITED LIABILITY OF SUPERION. SUPERION'S LIABILITY IN CONNECTION WITH THE SERVICES, IMPROVEMENTS OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES THAT CUSTOMER ACTUALLY PAID TO SUPERION IN CONNECTION WITH THIS AGREEMENT FOR THE INITIAL TERM OR RENEWAL TERM WHEN THE RELEVANT ACTIONS LEADING TO SUCH LIABILITY AROSE. IN ANY EVENT, SUPERION SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM THE CRIMINAL ACTS OF THIRD PARTIES.**

    23.2. **EXCLUSION OF DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL SUPERION, SUPERION PERSONNEL, SUBCONTRACTORS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY (I) LOSS OF DATA, BUSINESS, REVENUE, PROFIT, GOODWILL, OR REPUTATION, (II) BUSINESS INTERRUPTION, INCREASED COSTS, DIMINUTION IN VALUE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE; AND WHETHER OR NOT SUPERION, SUPERION PERSONNEL, SUBCONTRACTORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.**

    23.3. **BASIS OF THE BARGAIN. CUSTOMER ACKNOWLEDGES THAT SUPERION 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.**

24. **Third-Party Materials.** Customer is hereby advised that Superion provides front-line support services for third parties, but these third parties assumes all responsibility for and liability in connection with the Third-Party Materials. Superion is not authorized to make any representations or warranties that are binding upon the third party or to engage in any other acts that are binding upon the third party, excepting specifically that Superion is authorized to represent the fees for the Third-Party Materials as the same is provided for in the Agreement and to accept payment of such amounts from Customer on behalf of the third party for as long as such third party authorizes Superion to do so. As a condition precedent to installing or accessing any Third-Party Materials, Customer may be required to execute a click-through, shrink-wrap EULA or similar agreement provided by the Third-Party Materials provider.

25. **Entire Agreement; Amendment and Modification**. 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, agreement, or other ordering document issued by Customer at any time for any reason, will not modify or affect this Agreement nor have any other legal effect notwithstanding the inclusion of any additional or different terms or conditions in any such ordering document and shall serve only the purpose of identifying the products or services ordered. 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. Notwithstanding any language to the contrary herein, numbered Add-On Quotes on Superion letterhead issued by authorized Superion representatives and signed by Customer shall constitute an amendment to this Agreement.

26. **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

27. **Counterparts**. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

28. **Cooperative Purchases.** This Contract may be used by other government agencies. Superion has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the compensation may be negotiated between Superion and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The Customer will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.

29. Incorporated Exhibits to this Agreement:

    29.1. Exhibit 1 – Project Cost Summary

    29.2. Exhibit 2 - Maintenance & Support Standards

    29.3. Exhibit 3 – Travel Expense Guidelines

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EXHIBIT 1

Project Cost Summary

Term	Annual Access Fees
April 1, 2019 - December 31, 2019 (Partial Term)	$150,611.24
January 1, 2020 - December 31, 2020	$195,895.58
January 1, 2021 - December 31, 2021	$200,792.96
January 1, 2022 - December 31, 2022	$208,824.68
January 1, 2023 - December 31, 2023	$217,177.67

	Applications and/or Services	Annual Access Fee
Renewal Services		**$ 200,815.00**
Existing NaviLine Products (Currently Licensed)	Customer Information System (CX), Cash Receipts (CR), Land Management (LX) , Click2Gov Core Module (K1), Click2Gov CIS (K2), BP/Voice Response Interface (V1), CIS/Voice Response Interface (V2), Credit Card Interface, Document Management Systems (DX), One Point Point-of-Sale (KM), OnePoint Core (KL), Fusion API's, Fusion Proprietary, Web Enablement, NaviLine User Interface, Click2Gov Test Server	Included in Annual Access Fee
Existing NaviLine Products (Read Only)	Building Permits (BP), Code Enforcement (CE), Planning/Engineering (PZ), Occupational Licenses (OL), Accounts Receivable(MR), Work Orders/Faciltiy Management (WF)	Included in Annual Access Fee
Terminating NaviLine Products	Click2Gov Building Permits (K3)	N/A
Terminating NaviLine Products Effective 12/31/19	QRep Catalogs (BP, CE, CR, CX, LX, OL, PZ, MR, WF)	Included in Annual Access Fee
Existing Third Party Products (Currently Licensed)	Cognos Admin (1), Cognos End User(9)	Included in Annual Access Fee
Terminating Third Party Products Effective 12/31/19	Cognos Admin (1), Cognos End User(9)	Included in Annual Access Fee
Retrofit Modifications	85 Mods	Included in Annual Access Fee
Horizon Cloud Services	Hardware and software will be hosted and managed by Superion. Site to Site VPN, Setup, Implementation, Disaster Recovery Plan for Superion applications, Blended Web Learning	Included in Annual Access Fee
NaviLine Test Environment	Up to 4 refreshes per year; $600 per additional refresh.	Included in Annual Access Fee
	Total Proposed System:	**$ 200,815.00**

* **Terminated Products:** The Customer is terminating the Click2Gov Building Permits (K3), QRep Catalogs (BP, CE, CR, CX, LX, OL, PZ, MR, WF), and Third Party Products Cognos Admin (1), Cognos (9 user) effective December 31, 2019.

Each party hereby releases, acquits and discharges the other party of and from any and all claims, debts, demands, rights of indemnification, and causes of action of whatsoever nature, whether in contract or otherwise, whether arising under or by virtue of any statute or regulation, whether known or unknown, suspect or unsuspected, or whether having arisen or hereafter to arise for any losses or damages of which have accrued or may ever hereafter accrue to the other party, arising out of or on account of the Terminated Products.

Neither the fact of compromise, settlement and release, nor the payment, acceptance, or relinquishment of any consideration hereunder or under the Agreement, nor the execution of this Agreement shall be construed or taken in any way as an admission of fault, liability or responsibility on the part of Superion and Customer, including its

Note: Pricing for Professional Services is a good faith estimate based on the information available to Superion at the time of execution of this Agreement. The total amount that Customer may pay for these services can vary based on the actual number of hours required to complete the services. If required, additional services will be provided on a time and materials basis at hourly rates equal to Superion's then-current list price rates for the services at issue.

employees and agents, agree to so state in any communications, characterizations, and/or dissemination concerning this matter with any third party other than its attorney.

PAYMENT TERMS:

RECURRING FEES

a. The Annual Access Fee is due: April 1, 2019 and January 1st annually thereafter.

ANCILLARY FEES

b. Reimbursement of travel and living expenses will be governed by Exhibit 3 ("**Travel Expense Guidelines**") attached hereto and will be invoiced monthly in arrears and due within thirty (30) days from date of invoice.
c. Customer is responsible for paying all taxes relating to 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 Superion valid proof of exemption; otherwise, Superion will invoice Customer and Customer will pay to Superion all such tax amounts.
d. If Customer fails to make any payment when due, then Superion may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law; and If such failure continues for 90 days following written notice thereof, Superion may suspend performance or access until past due amounts have been paid.

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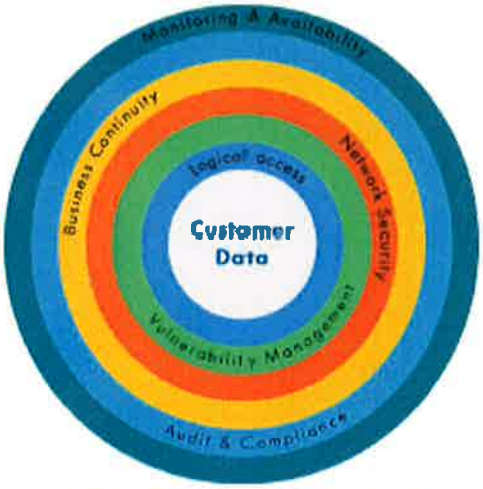
EXHIBIT 2
Support Standards

1. Superion Cloud Security Program

1.1. Access & Continuity. Logical access restrictions include VLAN data segregation, extensive deny-by-default access control lists, and Multi-Factor authentication required for System Administration. Business continuity is prioritized via daily encrypted backup stored offsite, virtual tape backup technology to counter loss of physical media, and full replication to disaster recovery site, with redundancy an availability through multiple carriers.

1.2. Security & Monitoring. SSL and IPSEC VPN with 256 bit encryption, web application firewalls, multi-layered infrastructure model with recorded internal and external CCTV, card access control, best of breed HVAC/fire suppression/physical security, and backed by 24-7 x 365 monitoring by a staffed operations facility for: Intrusion detection & prevention, DDOS mitigation, and automated network incident creation and escalation.

1.3. Testing, Audits & Compliance. 3rd party internal, external, perimeter vulnerability and penetration testing. Centrally managed patching, OS hardening program, and endpoint protection on all servers. Industry standard compliance includes annual completion of: SSAE18/ISAE Data Center Audit, SSAE18 Operations Audit, PCI-DSS Compliance Audit, Vulnerability Testing & CVSS Audit, and Control Self-Assessment Audit.



2. Service Level Commitments

2.1. Target. In each Service Period, the target for availability of the Solutions is 99.9% ("Availability Target"). ("**Service Period**") means 24 hours per day Monday through Sunday each calendar month that Customer receives the Solutions, excluding Sundays between 12:00 AM and 12:00 PM Eastern Time for scheduled maintenance. During this time, Customers may experience intermittent interruptions. Superion will make commercially reasonable efforts to minimize the frequency and duration of these interruptions and will notify the Customer if the entire maintenance window will be required.

2.2. Support Terms. Beginning on the Execution Date and continuing in twelve (12) month increments, each a **("Support Term"),** Superion shall provide ongoing Support Services described herein, subject to and conditioned on sustained payment of Fees and compliance with all terms and conditions of this Agreement.

2.3. Measurement. Service availability is measured as the total time that the Solutions are available during each Service Period for access by Customer ("**Service Availability**"). Service Availability measurement shall be applied to the production environment, and the points of measurement for all monitoring shall be the servers and the Internet connections at Superion's hosted environment. Superion has technology monitoring,

measuring, and recording Service Availability. The Customer, at their discretion, may also employ monitoring tools, not to override Superion's measurements for the purposes of calculating Service Availability. Additionally, the use must be:

2.3.1.1. mutually agreed upon by Superion and the Customer.

2.3.1.2. paid, installed and maintained by the Customer.

2.3.1.3. non-invasive and may not reside on Superion's systems.

2.4. Calculation. Service Availability for a given month shall be calculated using the following calculation:

2.4.1. The total number of minutes which the service was NOT available in a given month shall be subtracted from the total number of minutes available in the given month. The resulting figure is divided by the total number of minutes available in the given month.

2.4.2. Service Availability Targets are subject to change due to the variance of the number of days in a month.

2.4.3. The total number of minutes which the service was NOT available in a given month shall exclude minutes associated with scheduled or emergency maintenance.

2.5. Remedy. If the Service Period target measurement is not met then the Customer shall be entitled to a credit calculated as follows:

Service Availability in the relevant Service Period	Percentage Reduction in Monthly Fee for the Subsequent Service Period
Less than 99.9% but greater than or equal to 99.0%	5%
Less than 99.0% but greater than or equal to 95.0%	10%
Less than 95%	20%

2.6. If not directly reported by Superion, Credit entitlement must be requested by the Customer within sixty (60) days of the failed Target. Superion's failure to meet the relevant service level commitment. Customer shall not be entitled to offset any monthly Solutions fee payments, nor withhold fee payments, on account of a pending credit. Customer shall not be eligible for credits for any period where Customer is more than thirty (30) days past due on their account. Superion will provide reporting, showing performance and service levels.

3. Server Performance & Capacity.

3.1. Superion shall provide sufficient server capacity for the duration of this hosting Agreement to meet the reasonable performance requirements for the number of concurrent system users provided for in this Agreement. If the Customer requests, at some later date, to add additional Solutions, increase user licenses, increase storage or processing requirements, and/or request additional environments, these requests will be evaluated and if additional resources are required to support modifications, additional fees may apply.

3.2. "In-network" is defined as any point between which the data packet enters the Superion environment and subsequently departs the Superion environment. Any point of communications outside of the Superion protected network environment shall be deemed as "out-of-network." Superion is not responsible for Internet connectivity and/or performance out-of-network.

4. System Maintenance.

4.1. Solutions maintenance and upgrades. Superion will provide all hosted systems and network maintenance as deemed appropriate and necessary by Superion. Maintenance and upgrades will be scheduled in advance with the Customer's primary contact if they fall outside of the designated hours set aside for this function of Sundays from 12:00AM to 12:00 PM.

4.2. Hardware maintenance and upgrades. Hardware maintenance and upgrades will be performed outside of the Customer's standard business hours of operation and the Customer will be notified prior to the upgrade.

4.3. Emergency maintenance. Emergency situations will be handled on a case-by-case basis in such a manner as to cause the least possible disruption to overall system operations and availability without negatively affecting system stability and integrity. Superion will attempt to notify the Customer promptly, however if no contact can be made, Superion management may deem it necessary to move forward with the emergency maintenance.

5. **Incident Response.** Incidents are defined as interruptions to existing service and can range in priority from urgent to low depending on the impact to the Customer. Superion will make commercially reasonable efforts to respond to Solutions incidents for live production systems using the following guidelines:

Priority Level	Impact	Description	Performance Target	Minimum Performance Goal %
1	Urgent	An Incident that results in loss of Customer connectivity to all of the Solutions or results in loss, corruption or damage to Customer's Data.	Superion will respond within 1 hour of the issue being reported.	95%
2	Critical	An Incident that has an adverse material impact on the performance of the Solutions or materially restricts Customer's day-to-day operations.	Superion will respond within 2 hours of the issue being reported.	95%
3	Non-Critical	An Incident that does not result in a failure of the Solutions but a fault exists that restricts the Customer's use of the Solutions.	Superion will respond within 4 hours of the issue being reported.	95%
4	Minor	An Incident that does not affect or which has minimal adverse impact on the use of the Solutions.	Superion will respond within 24 hours of the issue being reported.	95%

5.1. Measurement. Superion shall track and report on response and resolution time for application and hosting support issues identified by the Customer.

6. **Disaster Recovery.** Superion provides disaster recovery services for Solutions. The costs for these disaster recovery services are included in the monthly fees. In the event that a disaster renders the Customer's data center is inaccessible or rendered non-functional, Superion will provide the ability to connect to the appropriate data center using software provided by Superion. This will allow the Customer to connect to their systems from a remote site to the previously identified critical functions, however functionality may be diminished due to lack of access to hardware and/or software located in the Customer's facilities.

7. **Exceptions.** Superion shall not be responsible for failure to carry out its service and maintenance obligations under this Agreement if the failure is caused by adverse impact due to:

7.1. defectiveness of the Customer's environment, Customer's systems, or due to Customer corrupt, incomplete, or inaccurate data reported to the Solutions, or documented Defect.

7.2. denial of reasonable access to Customer's system or premises preventing Superion from addressing the issue.

7.3. material changes made to the usage of the Solutions by Customer where Superion has not agreed to such changes in advance and in writing or the modification or alteration, in any way, by Customer or its subcontractors, of communications links necessary to the proper performance of the Solutions.

7.4. a force majeure event, or the negligence, intentional acts, or omissions of Customer or its agents.

8. **Incident Resolution.** Actual response times and resolutions may vary due to issue complexity and priority. For critical impact level and above, Superion provides a continuous resolution effort until the issue is resolved.

9. **Service Requests.** Service requests are new requests that will take less than 8 hours to accomplish. For new requests that require additional time, Superion will prioritize these requests, and determine if extra time is needed to order equipment or software.

10. **Non-Production Environments.** Superion will make commercially reasonable efforts to provide non-production environment(s) during Customer business hours. Non-production environments are not included under the metrics or service credit schedules discussed in this Exhibit.

10.1. Maintenance. All forms of maintenance to be performed on non-production environments will follow the exact structure and schedules outlined above in Section 3 for regular System Maintenance.

10.2. Incidents and service requests. Non-production environment incidents are considered priority 3 or 4, dictated by circumstances and will be prioritized and scheduled similar to production service requests.

11. Responsibility Summary Matrix.

Responsibility Summary Matrix		
Description	Superion Responsibility	Customer Responsibility
ASP Server Hardware management	X	
ASP Server File system management	X	
ASP Server OS upgrades and maintenance	X	
ASP Database product upgrades and maintenance	X	
ASP 3rd Party product upgrades and maintenance	X	
Application Update Installation		
Request to install application updates		X
Installation of application updates	X	
ASP Backup Management	X	
Data and or File restoration		
Request to restore data and or files		X
Restoration of data and or files	X	
Network		
ASP Network up to and including the router at Superion's location	X	
ASP Router at Customer's location	X	
Customer's network up to the router at Customer's location		X
Customer Workstations		X
System Performance	X	X
Add/Change users		
User add/change requests		X
User add/change implementation for System Access	X	
User add/change implementation for Solutions		X
Add/Change Printers		
Printer add/change requests		X
Printer add/change implementation on ASP network	X	
Printer add/change implementation for Solutions		X
Disaster Recovery	X	
Password Management	X	X
Application Management		
Application Configuration		X
Application Security Management		X
Accuracy and Control of Data		X
Security		
Intrusion and Penetration Testing	X	

12. **Virtual Private Network (VPN) Concentrator.** If Customer's desired system configuration requires the use of a VPN concentrator, including router, this will be provided by Superion. It will reside at Customer's location but is, and shall remain the property of Superion.

13. **Customer Cooperation.** Customer may be asked to perform problem determination activities as suggested by Superion. Problem determination activities may include capturing error messages, documenting steps taken and collecting configuration information. Customer may also be requested to perform resolution activities including, for example, modification of processes. Customer agrees to cooperate with such requests, if reasonable.

14. **Training.** Outside the scope of training services purchased, if any, Customer is responsible for the training and organization of its staff in the operation of the Solutions.

15. **Development Work.** The Support Standards do not include development work either (i) on software not licensed from Superion or (ii) development work for enhancements or features that are outside the documented functionality of the Solutions, except such work as may be specifically purchased and outlined in Exhibit 1. Superion retains all Intellectual Property Rights in development work performed and Customer may request consulting and development work from Superion as a separate billable service.

16. Telephone Support & Support Portal

16.1. Hours. Superion shall provide to Customer, Monday through Friday, 8:00 A.M. to 5:00 P.M. Customer's Local Time within the continental United States, excluding holidays ("5x9"). Superion shall provide to Customer, during the Support Hours, commercially reasonable efforts in solving errors reported by the Customer as well as making available an online support portal. Customer shall provide to Superion reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist Superion in its efforts to diagnose, reproduce and correct the error. This support shall be provided by Superion at Customer location(s) if and when Superion and Customer agree that on-site services are necessary to diagnose or resolve the problem. If a reported error did not, in fact, exist or was not attributable to a defect in the Solutions or an act or omission of Superion, then Customer shall pay for Superion's investigation and related services at Superion's standard professional services rates. Customer must provide Superion with such facilities, equipment and support as are reasonably necessary for Superion to perform its obligations under this Agreement, including remote access to the Specified Configuration

16.2. Releases. Customer shall promptly install and/or use any Release provided by Superion to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solutions shall be furnished by means of new Releases of the Solutions and shall be accompanied by updates to the Documentation whenever Superion determines, in its sole discretion, that such updates are necessary.

16.3. Case Number. Measured from the moment a Case number is created. As used herein a "Case number" is created when a) a Superion support representative has been directly contacted by Customer either by phone, in person, or through Superion's online support portal, and b) when Superion's support representative assigns a case number and conveys that case number to the Customer.

SUPERION A CENTRALSQUARE COMPANY

EXHIBIT 3

Travel Expense Guidelines

Superion will adhere to the following guidelines when incurring travel expenses:

All arrangements for travel are to be made through the Superion Corporate Travel Agent unless other arrangements have been made with the Customer and are documented in writing.

AIR TRAVEL – Superion will use the least expensive class of service available with a minimum of seven (7) day, maximum of thirty (30) day, advance purchase. Upon request, Superion shall provide the travel itinerary as the receipt for reimbursement of the airfare and any fees. Fees not listed on the itinerary will require a receipt for reimbursement.

Trips fewer than 250 miles round are considered local. Unless a flight has been otherwise approved by the Customer, Customer will reimburse the current IRS approved mileage rate for all local trips.

LODGING –Superion will use the most reasonable accommodations possible, dependent on the city. All food items, movies, and phone/internet charges are not reimbursable.

RENTAL CAR – Compact or Intermediate cars will be required unless there are three or more Superion employees sharing the car in which case the use of a full size car is authorized. Gas is reimbursable however, pre-paid gas purchases will not be authorized and all rental cars are to be returned with a full tank of gas. Upon request, receipts for car rental and gas purchases will be submitted to Customer. Superion shall decline all rental car insurance offered by the car rental agency as staff members will be covered under the Superion auto insurance policy. Fines for traffic violations are not reimbursable expenses.

OTHER TRANSPORTATION – Superion staff members are expected to use the most economical means for traveling to and from the airport (Airport bus, hotel shuttle service). Airport taxi or mileage for the employee's personal vehicle (per IRS mileage guidelines) are reimbursable if necessary. Upon request, receipt(s) for the taxi will be submitted to Customer. Proof of mileage may be required and may be documented by a readily available electronic mapping service. The mileage rate will be the then-current IRS mileage guideline rate (subject to change with any change in IRS guidelines).

OTHER BUSINESS EXPENSES – Parking at the airport is reimbursable. Tolls to and from the airport and while traveling at the Customer site are reimbursable. Tipping on cab fare exceeding 15% is not reimbursable. Porter tips are reimbursable, not exceeding $1.00 per bag. Laundry is reimbursable when travel includes a weekend day or Company Holiday and the hotel stay is four nights or more. Laundry charges must be incurred during the trip and the limit is one shirt and one pair of pants/skirt per day. With the exception of tips, receipts shall be provided to Customer upon request for all of the aforementioned items.

MEALS – Standard per Diem. Subject to change due to cost of living.