

Solutions Agreement

This Solutions Agreement (the "**Agreement**"), effective as of the latest date shown on the signature block below (the "**Effective Date**"), is entered into between Superior LLC, a Delaware Limited Liability Company ("**Superion**") and **Alachua County, FL** ("**County**"), together with Superior, the "**Parties**", and each, a "**Party**".

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

WHEREAS, County desires to license and/or gain access to certain Solutions and/or receive professional services described herein, and Superior desires to grant and provide County 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.	ALACHUA COUNTY
1000 Business Center Dr. Lake Mary, FL 32746	12 SE 1 ST Street, Gainesville, FL 32601
By:	By:
Print Name: Tom Amburgey	Print Name: Charles S Chestnut
Print Title: General Manager	Print Title: Chair
Date Signed:	Date Signed:

1. Solution: Public Administration

2. Term.

- 2.1. Initial Term. The Initial Term of this Agreement commences as of the Effective Date and will continue in effect for five (5) years from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").
- 2.2. Renewal Term. This Agreement may be renewed for additional successive one (1) year terms, through written amendments, 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 six (6) months prior to the expiration of the current contract term.

3. Fees. In consideration of the rights and services granted by Superior to County under this Agreement, County shall make payments to Superior 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 County's employees, consultants, contractors, and agents who are authorized by County to access and use the Solutions under the rights granted to County 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 Superior's warranty services and maintenance, but without any other modification whatsoever.
- 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. "**County Data**" means information, data, and content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly from County, an Authorized User or end-users by or through the Solutions, provided the data is not personally identifiable and not identifiable to County.
- 4.7. "**Custom Modification**" means a change that Superior has made at County's request to any Component System in accordance with a Superior-generated specification, but without any other changes whatsoever by any Person.
- 4.8. "**County Systems**" means the County's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated by County 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 County has given Superior enough information to enable Superior to replicate the deviation on a computer configuration that is both comparable to the County Systems and that is under Superior's control. Further, with regard to each Custom Modification, Defect means a material deviation between the Custom Modification and the Superior-generated specification and documentation for such Custom Modification, and for which Defect County has given Superior enough information to enable Superior to replicate the deviation on a computer configuration that is both comparable to the County Systems and that is under Superior's control.
- 4.10. "**Documentation**" means any manuals, instructions, or other documents or materials that Superior provides or makes available to County 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 County 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 Superior.
- 4.19. **"Representatives"** means, with respect to a party, that party's employees, officers, directors, agents, subcontractors, and legal advisors.
- 4.20. **"Superior Personnel"** means all individuals involved in the performance of Support Services and Professional Services as employees, agents, Subcontractors or independent contractors of Superior.
- 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 Superior 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 Superior to deliver Solutions, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Superior 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 County 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 Superior.

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, Superior hereby grants to County 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 County and their Authorized Users' compliance with the terms and conditions of this Agreement, Superior hereby grants County a non-exclusive, non-transferable right to access and use the Solutions, solely by Authorized Users. Such use is limited to County's internal use.
- 5.3. Delivery. Superior shall deliver by (a) electronic delivery, by posting it on Superior'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-Superior'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 Superior provides County with access to download the Solutions. The date of such delivery shall be referred to as the **"Delivery Date."**
- 5.4. Documentation License. Superior hereby grants to County a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for County'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. Superior has and will retain sole control over the operation, provision, maintenance, and management of the Solutions; and
 - 5.5.2. County has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the County Systems, and sole responsibility for access to and use of the Solutions by any Person by or through the County Systems or other means controlled by County 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. County must provide Superior with such facilities, equipment and support as are reasonably necessary for Superior to perform its obligations herein, including if required, remote access to County Systems. Superior is not responsible or liable for delay or failure of performance caused in whole or in part by County delay or County's failure to perform any obligations under this Agreement.



- 5.7. **Exceptions.** Superior 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 County 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 County's use in the Documentation;
 - 5.7.3. any negligence, abuse, misapplication, or misuse of the Solutions other than by Superior personnel, including any County use of the Solutions other than as specified in the Documentation or expressly authorized in writing by Superior;
 - 5.7.4. any County's failure to promptly install any New Releases that Superior has previously made available to County;
 - 5.7.5. the operation of, or access to, County's or a third party's system, materials or network;
 - 5.7.6. any relocation of the Solutions other than by Superior personnel;
 - 5.7.7. any beta software, software that Superior makes available for testing or demonstration purposes, temporary software modules, or software for which Superior does not receive a fee;
 - 5.7.8. any breach of or noncompliance with any provision of this Agreement by County 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 Superior and the respective rights holders.
- 5.9. **Changes.** Superior 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 Superior's services to its Countys, the competitive strength of or market for Superior'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 Superior issued Add-On Quote signed by the County, or a written change order or amendment to this agreement signed by both parties.
- 5.10. **Subcontractors.** Superior 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. County acknowledges and agrees that: (a) Superior may use these and other lawful measures to verify compliance with the terms of this Agreement and enforce Superior's rights, including all Intellectual Property Rights, in and to the Solutions; (b) Superior may deny any individual access to and/or use of the Solutions if Superior, in its reasonable discretion, believes that person's use of the Solutions would violate any provision of this Agreement, regardless of whether County designated that person as an Authorized User; and (c) Superior 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.** County 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, County 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 Superior'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 Superior's detriment or commercial disadvantage or otherwise access or use the Solutions beyond the scope of the authorization granted under this Section.

7. County Obligations.

- 7.1. County Systems and Cooperation. County shall at all times during the Term: (a) set up, maintain, and operate in good repair all County Systems on or through which the Solutions are accessed or used; (b) provide Superior Personnel with such access to County's premises and County Systems as is necessary for Superior to perform the Support Services in accordance with the Support Standards and Specifications; and (c) provide all cooperation as Superior may reasonably request to enable Superior to exercise its rights and perform its obligations under and in connection with this Agreement.
- 7.2. Effect of County Failure or Delay. Superior is not responsible or liable for any delay or failure of performance caused in whole or in part by County's delay in performing, or failure to perform, any of its obligations under this Agreement.
- 7.3. Corrective Action and Notice. If County becomes aware of actual or threatened activity prohibited by Section 6, County 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 Superior of any such actual or threatened activity.

8. Professional Services.

- 8.1. Compliance with County Policies. While Superior Personnel are performing services at County's site, Superior will ensure that such personnel comply with County's reasonable security procedures and site policies that are generally applicable to County's other suppliers providing similar services and that have been provided to Superior in writing or in advance. County shall promptly reimburse Superior for any out-of-pocket costs incurred in complying with such procedures and policies.
- 8.2. Contributed Material. In the process of Superior's performing Professional Services, County may, from time to time, provide Superior 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**"). County grants to Superior 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 Superior, Superior's Affiliates and Superior'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, Countys, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing, Confidential Information of Superior 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. Superior will implement commercially reasonable administrative, technical and physical safeguards designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access or use of County Data. Superior will review and test such safeguards on no less than an annual basis.
- 10.2. County 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, County shall maintain reasonable procedures with such Authorized Users that adequately protect the confidentiality and Intellectual Property Rights of Superior in the Solutions and Documentation, and disclaim any liability or responsibility of Superior with respect to such Authorized Users.

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

- 11.1. County 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 Superior 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. County shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to Superior so that Superior may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on County's behalf, which may include Superior processing and transferring the relevant personal data or personal information outside the country where County and the Authorized Users are located in order for Superior to provide the Solutions and perform its other obligations under this Agreement; and
- 11.3. Superior shall process personal data and information only in accordance with lawful and reasonable instructions given by County 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. Superior warrants to County that for a period of twelve (12) months from the Execution Date, the Solutions (as delivered to County by Superior 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. Superior represents, warrants, and covenants to County that during the Term, Superior 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 County reasonably believes that any Professional Services were performed in violation of this warranty, it will notify Superior within twenty (20) days of service performance describing the issue, together with adequate supporting documentation and data. Upon receipt of such notice, Superior'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. Superior represents, warrants, and covenants to County that during the Term, Superior 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 County 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 COUNTY 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 WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN COUNTY 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 Superior: **Superion**
 1000 Business Center Dr.
 Lake Mary, FL.
 Phone: 407-304-3235 email: info@Superion.com
 Attention: Contracts Department / General Counsel

If to County: **Alachua County**
 Human Resources Department
 12 SE 1st St., 1st Floor
 Gainesville, FL 32601
 Phone: * _____ email: _____
 Attention: _____

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. Indemnification.

15.1. Superion Indemnification. Superion shall indemnify, defend, and hold harmless County and County'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 County) that County'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 County 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 County'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 County 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. County Indemnification

- 15.2.1. County hereby agrees to indemnify the Superion for claims brought against the Superion only to the extent that they are attributable to the proportionate negligence of the County, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the County.
- 15.2.2. This indemnification shall not be construed as a waiver of the County's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the County could be liable under the common law interpreting the limited waiver of sovereign immunity.



15.2.3. Any claims against the County must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of § 129, Florida Statutes, and Article VII, section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes.

15.2.4. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the County to only those damages caused and attributable to the County's negligence, and specifically not include any attorney's fees or costs associated therewith.

15.3. **Sole Remedy.** THIS SECTION SETS FORTH COUNTY'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 County, if County'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.** Superior acknowledges that continued performance and funding is dependent upon amounts being budgeted, appropriated, or otherwise legally available to the County in the future. County represents and warrants to Superior that it has appropriated sufficient funds due to Superior 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, County agrees to notify Superior as soon as commercially reasonable. If Superior and County cannot resolve the funding issue within ninety (90) days, the Agreement will terminate, with County to pay Superior 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 County hereunder will immediately terminate and County shall immediately cease all use of and other activities with respect to Superior's Confidential Information relating to the Solutions, and within thirty (30) days deliver to Superior, or at Superior's request destroy and erase Superior's Confidential Information from all systems County directly or indirectly controls; and

17.2. all licenses, access or subscription fees, services rendered but unpaid, and any amounts due by County to Superior 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 County Data.** If County requests in writing at least 10 days prior to the effective date of expiration or earlier termination of this Agreement, Superior shall within 60 days following such expiration or termination, deliver to County in Superior's standard format the then most recent version of County Data maintained by Superior, provided that County 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) County no longer purchasing certain Solutions (including those indicated to be Third-Party Materials), if County requests assistance in the transfer of County Data to a different vendor's applications ("**Deconversion**"), Superior will provide reasonable assistance. Superior and County will negotiate in good faith to establish the relative roles and responsibilities of Superior and County in effecting Deconversion, as well as the appropriate date for completion. Superior shall be entitled to receive compensation for any additional consultation, software and documentation required for Deconversion on a time and materials basis at Superior's then standard rates.

18. Assignment. County 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 Superior's prior written consent, which consent Superior 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 County (regardless of whether County is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Superior's prior written consent is required. No delegation or other transfer will relieve County 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. Project Records: The parties agree that F.S. Chapter 119, otherwise known as the "Public Records Law", to the extent not preempted by Federal law applies to the parties under this Agreement. The parties agree that they will coordinate for the handling of public records requests and resolution of issues surrounding the question of what are public records for purposes of this Agreement in accordance with the requirements of Chapter 119, Florida Statutes.

21. 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.

21.1. 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.

22. 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 in and for Alachua 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.

23. 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.

24. LIMITATIONS OF LIABILITY.

24.1. 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 COUNTY 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.

24.2. 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.

24.3. BASIS OF THE BARGAIN. COUNTY 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.

- 25. Third-Party Materials.** County is hereby advised that Superior 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. Superior 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 Superior 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 County on behalf of the third party for as long as such third party authorizes Superior to do so. As a condition precedent to installing or accessing any Third-Party Materials, County may be required to execute a click-through, shrink-wrap EULA or similar agreement provided by the Third-Party Materials provider.
- 26. 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 County 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 Superior letterhead issued by authorized Superior representatives and signed by County shall constitute an amendment to this Agreement.
- 27. 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.
- 28. 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.
- 29. Cooperative Purchases.** This Contract may be used by other government agencies. Superior 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 Superior and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The County will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.
- 30. Incorporated Exhibits to this Agreement:**
- 30.1. Exhibit 1 – Project Cost Summary
 - 30.2. Exhibit 2 - Maintenance & Support Standards



EXHIBIT 1

Project Cost Summary

Annual Access Fees:

Term	Annual Access Fees
Year 1	\$ 24,180.00
Year 2	\$ 24,905.00
Year 3	\$ 25,622.00
Year 4	\$ 26,422.00
Year 5	\$ 27,215.00

	Applications and/or Services	Start-Up Fee	Annual Access Fee
Existing NaviLine Products (Currently Licensed) Read	Payroll/Personnel, Human Resources	\$ 5,000.00	\$ 24,180.00
Horizon Cloud Services	Hardware and software will be hosted and managed by Superior. Site to Site VPN, Setup, Implementation,	Included in Start-Up Fee	Included in Annual Access Fee
Terminating	Q-Rep Catalogs PR, HR	N/A	N/A
Shared Partition - Read ONLY			
	Total Proposed System:	\$ 5,000.00	\$ 24,180.00

PAYMENT TERMS:

ONE TIME FEES

- a. Start-Up Fees are due: 100% on the Execution Date.

RECURRING FEES

- b. The Annual Access Fee is due: on the Execution Date, and annually thereafter on the anniversary of the Execution Date.

ANCILLARY FEES

- c. Reimbursement of travel and living expenses will be pursuant to Florida Statutes 112.061 and will be invoiced monthly in arrears and due within thirty (30) days from date of invoice.
- d. County 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 County is exempt from the payment of any such taxes, County must provide Superior valid proof of exemption; otherwise, Superior will invoice County and County will pay to Superior all such tax amounts.
- e. If County fails to make any payment when due, then Superior 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, Superior may suspend performance or access until past due amounts have been paid.

Note: Pricing for Professional Services is a good faith estimate based on the information available to Superior at the time of execution of this Agreement. The total amount that County 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 Superior's then-current list price rates for the services at issue.

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 and 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 County receives the Solutions, excluding Sundays between 12:00 AM and 12:00 PM Eastern Time for scheduled maintenance. During this time, Countys may experience intermittent interruptions. Superion will make commercially reasonable efforts to minimize the frequency and duration of these interruptions and will notify the County 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 County (“**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 County, 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 County.
 - 2.3.1.2. paid, installed and maintained by the County.
 - 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 County 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 County within sixty (60) days of the failed Target. Superion’s failure to meet the relevant service level commitment. County shall not be entitled to offset any monthly Solutions fee payments, nor withhold fee payments, on account of a pending credit. County shall not be eligible for credits for any period where County 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 County 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 Superior environment and subsequently departs the Superior environment. Any point of communications outside of the Superior protected network environment shall be deemed as "out-of-network." Superior is not responsible for Internet connectivity and/or performance out-of-network.

4. System Maintenance.

4.1. Solutions maintenance and upgrades. Superior will provide all hosted systems and network maintenance as deemed appropriate and necessary by Superior. Maintenance and upgrades will be scheduled in advance with the County'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 County's standard business hours of operation and the County 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. Superior will attempt to notify the County promptly, however if no contact can be made, Superior 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 County. Superior 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 County connectivity to all of the Solutions or results in loss, corruption or damage to County'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 County'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 County'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. Superior shall track and report on response and resolution time for application and hosting support issues identified by the County.

6. Disaster Recovery. Superior 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 County's data center inaccessible or rendered non-functional, Superior will provide the ability to connect to the appropriate data center using software provided by Superior. This will allow the County 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 County's facilities.

7. Exceptions. Superior 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 County's environment, County's systems, or due to County corrupt, incomplete, or inaccurate data reported to the Solutions, or documented Defect.

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

7.3. material changes made to the usage of the Solutions by County where Superior has not agreed to such changes in advance and in writing or the modification or alteration, in any way, by County 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 County 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, Superior 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, Superior will prioritize these requests, and determine if extra time is needed to order equipment or software.
- 10. **Non-Production Environments.** Superior will make commercially reasonable efforts to provide non-production environment(s) during County 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	County 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 3 rd 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 Superior's location	X	
ASP Router at County's location	X	
County's network up to the router at County's location		X
County 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 County's desired system configuration requires the use of a VPN concentrator, including router, this will be provided by Superior. It will reside at County's location but is, and shall remain the property of Superior.
- 13. County Cooperation.** County may be asked to perform problem determination activities as suggested by Superior. Problem determination activities may include capturing error messages, documenting steps taken and collecting configuration information. County may also be requested to perform resolution activities including, for example, modification of processes. County agrees to cooperate with such requests, if reasonable.
- 14. Training.** Outside the scope of training services purchased, if any, County 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 Superior 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. Superior retains all Intellectual Property Rights in development work performed and County may request consulting and development work from Superior as a separate billable service.

16. Telephone Support & Support Portal

- 16.1. Hours.** Superior shall provide to County, Monday through Friday, 8:00 A.M. to 5:00 P.M. County's Local Time within the continental United States, excluding holidays ("5x9"). Superior shall provide to County, during the Support Hours, commercially reasonable efforts in solving errors reported by the County as well as making available an online support portal. County shall provide to Superior reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist Superior in its efforts to diagnose, reproduce and correct the error. This support shall be provided by Superior at County location(s) if and when Superior and County 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 Superior, then County shall pay for Superior's investigation and related services at Superior's standard professional services rates. County must provide Superior with such facilities, equipment and support as are reasonably necessary for Superior to perform its obligations under this Agreement, including remote access to the Specified Configuration
- 16.2. Releases.** County shall promptly install and/or use any Release provided by Superior 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 Superior 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 Superior support representative has been directly contacted by County either by phone, email, in person, or through Superior's online support portal, and b) when Superior's support representative assigns a case number and conveys that case number to the County.

