

Agreement No. \_\_\_\_\_

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SUPERION, LLC A CENTRALSQUARE TECHNOLOGIES COMPANY**

This Agreement is entered into this 23<sup>rd</sup> day of June, 2021, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Superion, LLC a CentralSquare Technologies Company, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing licenses, access, maintenance, support, migration, installation and other professional services to the Finance Enterprise ("Solutions") software application.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Seven Hundred Thirty-Nine Thousand, Six Hundred Eighty Dollars and Sixty-Two Cents (\$739,680.62) for the initial three year term of this Agreement. Should the County choose to exercise both of its one year contract extension options pursuant to Section 4, the County will incur an additional fiscal obligation of Five Hundred Eleven Thousand One Hundred Eighty Dollars and Seventy-Six Cents (\$511,180.76), such that the County's total fiscal obligation under this Agreement, including the two additional years, shall not exceed One Million Two Hundred Fifty Thousand Eight Hundred Sixty-One Dollars and Thirty-Eight Cents (\$1,250,861.38) as set forth in Exhibit B. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time

of termination or expiration of this Agreement. Contractor is not entitled to payment for work not performed as required by this Agreement.

**4. Term**

Subject to compliance with all terms and conditions and any termination, the initial three year term of this Agreement shall be from July 1, 2021, through June 30, 2024; provided that the County shall have the option, exercisable at the County's sole discretion, to extend the Agreement on the same terms herein for up to two additional one-year terms, the first commencing from July 1, 2024 through June 30, 2025, and the second from July 1, 2025 through June 30, 2026. The County may exercise its option to extend this Agreement on the same terms herein by providing written notice to Contractor at any time prior to the expiration of the then current term.

**5. Termination**

This Agreement may be terminated by Contractor or by the County (including by the County Controller or the Controller's designee) at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement, and Contractor shall refund the County the pro rata balance of any advance fees paid. In the event that County terminates this Agreement without good cause with less than 60 days before an annual payment is due, County shall not be entitled to any rebates or refunds, including any pro-rata refunds of annual fees paid in advance, provided that County will have the option of requiring continued provision of services commensurate with the fees retained by Contractor.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of thirty calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. **Hold Harmless**

a. **General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. **Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section

shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**10. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Contractor agrees to provide thirty (30) days' notice, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000
- (c) Professional Liability..... \$1,000,000
- (d) Cybersecurity Insurance..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**12. Non-Discrimination and Other Requirements**

**a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or

parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

**b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting: Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing,

or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

### **13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

### **14. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause: Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Ocean Sun, Controller Division Manager  
Address: 555 County Center, 4<sup>th</sup> Fl., Redwood City, CA 94063  
Telephone: (650) 363-4637  
Facsimile: (650) 599-1139  
Email: osun@smcgov.org

In the case of Contractor, to:

Name/Title: Senior Counsel / Contracts Department  
Address: 1000 Business Center Dr. Lake Mary, FL 32746  
Telephone: (407) 304-3235  
Facsimile: N/A  
Email: info@centralsquare.com

**18. Electronic Signature**



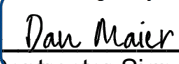
Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Superior, LLC a CentralSquare Technologies Company

DocuSigned by:  _____ Contractor Signature	6/25/2021 _____ Date	Dan Maier _____ Contractor Name (please print)
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COUNTY OF SAN MATEO

By:  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:  
Clerk of Said Board

## Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services to the County:

### Support Standards (CLOUD/ASP)

#### **1. Contractor 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. third-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, County may experience intermittent interruptions. Contractor will make commercially reasonable efforts to minimize the frequency and duration of these interruptions and Contractor will notify the County if the entire maintenance window will be required.
- 2.2. Support Term. Beginning on the commencement of the term of this Agreement under Section 4 in the body of the Agreement and continuing as provided therein, Contractor shall provide the ongoing Support Services described herein for the corresponding Fees outlined in Exhibit B..
- 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 Contractor 's hosted environment. Contractor has technology monitoring, measuring, and recording Service Availability. The County, at their discretion, may also employ monitoring tools, not to override Contractor 's measurements for the purposes of calculating Service Availability. Additionally, the use must be:
  - 2.3.1.1. mutually agreed upon by Contractor 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 Contractor 's systems.

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

2.4.1.1. 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.

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

2.4.1.3. 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 Pro Rata 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 Contractor, Credit entitlement must be requested by the County within sixty (60) days of the failed Target. County shall be entitled to offset Solutions fee payments, or withhold fee payments, to the extent of a pending credit upon prior notice to Contractor. County shall not be eligible for credits for any period where County is more than thirty (30) days past due on their account. Contractor will provide reporting, showing performance and service levels.

### 3. Server Performance & Capacity

3.1. Contractor 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. Contractor shall provide additional server capacity for the duration of this hosting Agreement as following: 1) increase Production Job Server CPU from 4 cores to 8 cores, 2) increase Production App Server RAM from 8GB to 16GB, 3) increase Production DB Server RAM from 32GB to 64GB, and 4) increase Production Report Server RAM from 16GB to 32GB.

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

### 4. System Maintenance

- 4.1. Solutions maintenance and upgrades. Contractor will provide all hosted systems and network maintenance as deemed appropriate and necessary by Contractor. 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. Contractor will attempt to notify the County promptly, however if no contact can be made, Contractor 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. Contractor 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.	Contractor 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.	Contractor 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.	Contractor 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.	Contractor will respond within 24 hours of the issue being reported.	95%

- 5.1. Measurement. Contractor shall track and report on response and resolution time for application and hosting support issues identified by the County.

6. **Disaster Recovery.** Contractor provides disaster recovery services for Solutions. The costs for these disaster recovery services are included in the fees. In the event that a disaster renders the County's data center is inaccessible or rendered non-functional, Contractor will provide the ability to connect to the appropriate data center using software provided by Contractor. 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.** Contractor 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 Contractor from addressing the issue.
  - 7.3. material changes made to the usage of the Solutions by County where Contractor 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 that prevent the proper performance of the Solutions.
  - 7.4. a force majeure event, or the intentional acts, or omissions of County.
- 8. Incident Resolution.** Actual response times and resolutions may vary due to issue complexity and priority. For critical impact level and above, Contractor 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, Contractor will prioritize these requests, and determine if extra time is needed to order equipment or software.
- 10. Non-Production Environments.** Contractor 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	Contractor 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 third-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 Contractor '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 Contractor. It will reside at County's location but is and shall remain the property of Contractor.
- 13. County Cooperation.** County may be asked to perform problem determination activities as suggested by Contractor. 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 Contractor 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 B. Subject to the terms of Section 8(b) in the body of this Agreement, Contractor retains all pre-existing Intellectual Property Rights in development work performed and County may request consulting and development work from Contractor as a separate billable service.

## 16. Telephone Support & Support Portal

- 16.1. Hours. Contractor 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"). Contractor 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 Contractor reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist Contractor in its efforts to diagnose, reproduce and correct the error. This support shall be provided by Contractor at County location(s) if and when Contractor 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 Contractor, then County shall pay for Contractor 's investigation and related services at Contractor 's standard professional services rates. County must provide Contractor with such facilities, equipment and support as are reasonably necessary for Contractor 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 Contractor 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 Contractor 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 Contractor support representative has been directly contacted by County either by phone, in person, or through Contractor 's online support portal, and b) when Contractor 's support representative assigns a case number and conveys that case number to the County.



**Exhibit B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms and conditions of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

**Summary of Fees**

Application	Qty	7/1/2021-6/30/2022	7/1/2022-6/30/2023	7/1/2023-6/30/2024	7/1/2024-6/30/2025	7/1/2025-6/30/2026
ONESolution Finance ASP/RSP Annual Access Fee	1	\$ 128,540.34	\$ 130,211.36	\$ 131,904.11	\$ 133,618.87	\$ 135,355.91
ONESolution Finance ASP/RSP Annual Access Fee	1	\$ 13,451.07	\$ 13,625.93	\$ 13,803.07	\$ 13,982.51	\$ 14,164.28
Cognos BI Base Bundle - ASP Annual Access Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Job/Project Ledger Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Budgeting w/ Budget Item Detail Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Purchasing Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution TRIAD Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Fixed Assets Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Easy Laser Forms Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Documents Online Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Click, Drag, and Drill Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Hassle Free Support Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Contract Management Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Grants Management Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Finance Other Annual Maintenance Fee	1	\$ 91,687.22	\$ 92,879.15	\$ 94,086.58	\$ 95,309.71	\$ 96,548.73
ONESolution General Ledger Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Accounts Payable Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Accounts Receivable Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Bank Reconciliation Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Finance Other Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Person/Entity Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Ad Hoc Reporting Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
ONESolution Cash Receipts Annual Maintenance Fee	1	\$ -	\$ -	\$ -	\$ -	\$ -
Certent Disclosure Management (DM): Base Bundle Annual Maintenance Fee	1	\$ 6,797.49	\$ 7,137.37	\$ 7,494.23	\$ 7,868.95	\$ 8,262.39
Certent Disclosure Management (DM): User Annual Maintenance Fee	1	\$ 672.28	\$ 705.89	\$ 741.19	\$ 778.25	\$ 817.16
ONESolution Hosting Fee Annual Access Fee	1	\$ 1,885.28	\$ 1,979.54	\$ 2,078.52	\$ 2,182.44	\$ 2,291.56
<b>Total</b>		<b>\$ 243,033.67</b>	<b>\$ 246,539.25</b>	<b>\$ 250,107.70</b>	<b>\$ 253,740.72</b>	<b>\$ 257,440.04</b>

**Annual Payment Schedule and Terms:**

- a) Subject to (i) exercise of the County's options to extend the term of the Agreement, and (ii) to any credits to which the County may be entitled under Section 2.5 of Exhibit A to the Agreement, commencing on July 1, 2021 and continuing on each July 1 thereafter through and including July 1, 2025, the County shall pay to Contractor an annual payment ("Annual Payment") for the above summarized fees as follows:
- a. July 1, 2021: \$243,033.67 (notwithstanding this date, if the County Board of Supervisors has not approved this Agreement by July 1, 2021, the first year Annual Payment shall not be due until 30 days after such approval of this Agreement by the County Board of Supervisors)
  - b. July 1, 2022: \$246,539.25
  - c. July 1, 2023: \$250,107.70
  - d. July 1, 2024: \$253,740.72 (Annual Payment due only if County exercises its option to extend the term of the Agreement by first of up to two additional one-year terms pursuant to Section 4 of the Agreement)
  - e. July 1, 2025: \$257,440.04 (Annual Payment due only if County exercises its option to extend the term of the Agreement by second of up to two additional one-year terms pursuant to Section 4 of the Agreement)
- b) The County shall not be required to pay Contractor and shall have no liability for any fees, payments, royalties, or other amounts other than those expressly set forth in this Exhibit B.

- c) If County fails to make any payment when due, then Contractor 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, Contractor may suspend performance until past due amounts have been paid.

\* \* \*