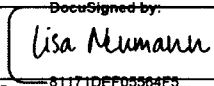


ASP Order

By the signatures of their duly authorized representatives below, the Superion, LLC as successors in interest to SunGard Public Sector LLC entity identified below ("Superion") and the customer identified below ("Customer"), intending to be legally bound, agree to all of the provisions of this Order (the "Order"), and agree that this Order represents a separate contract between such SunGard entity and Customer, with an order execution date of the latest date shown on the signature page below ("Order Execution Date") and order effective date of October 1, 2017 ("Order Effective Date"). This Order incorporates and is governed by all of the terms of the Superion Standard Terms and Conditions version 2016 January, to be attached hereto as Exhibit 3 ("SST") as if the entity was "Superion" and Customer was "Customer" thereunder.

Capitalized terms not defined in this Order have the meaning given them in the SST.

Superion, LLC		City of Cocoa	
1000 Business Center Dr. Lake Mary, FL 32746		65 Stone Street Cocoa, FL 32922	
By:		By:	
Print Name: Lisa Neumann		Print Name: John A. Titkanich, Jr., AICP,	
Print Title: Controller		Print Title: City Manager	
Date Signed: August 8, 2017		Date Signed: 8/22/2017	

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CM

SUPERION ORDER # 1262LG - 170021-1

SOLUTION AND RELATED INFORMATION

1. **SOLUTION:** Superion NaviLine Public Administration applications identified in Exhibit 1.
2. **TRANSMISSION OF CUSTOMER SUPPLIED DATA:** The Solution will be operated by the Customer via workstations. Customer must provide remote access to its facility using a Superion approved remote access client so that Superion can perform the support obligations and/or services under this Order; and will provide appropriate security access and accounts for Superion staff and each session participant. In addition, and subject to a separate written agreement between the parties, including agreement upon the additional fees payable in that respect to cover dedicated communication costs, Superion may provide WAN/VPN connectivity to Customer for accessing the hosted environment for custom application and interfaces.
3. **DOCUMENTATION:** Superion's standard user manuals for the Solution listed above.
4. **INITIAL TERM:** Thirty-six (36) months commencing on the Order Effective Date of October 1, 2017.

RENEWAL RIGHTS: Upon expiration of the Initial Term set forth above the services may be renewed by written agreement of the parties and Customer pays the then current Monthly Access Fee, increase not to exceed five (5) percent above previous year's rate.

5. **SCOPE OF USE**
 - a. **DESIGNATED LOCATION(s):** Customer's offices in Cocoa, FL. Customer's Authorized Users may access the Solution from anywhere in the United States, subject always to the Export Laws and the total number of Authorized Users licensed hereunder.

6. **FEES**

- A. **ANNUAL ACCESS FEES:** SEE EXHIBIT 1

- a. **ADDITIONAL AUTHORIZED USERS FEES:** Customer acknowledges that the Annual Access Fee set forth above has been determined based on the number of Authorized Users licensed on the Order Effective Date. If Customer desires at

any time during the term of this Order to increase the number of Authorized Users beyond the number of Authorized Users set forth above, Customer shall provide Superion with advance written notice and Superion may increase the Access Fee payable under this Order accordingly.

b. **OTHER FEES:** If Customer's use of the Solution increases in any way which would reasonably cause Superion to incur additional hardware costs to maintain such increased usage, Superion shall provide, at minimum, 30 days' advanced notice of the need to procure such additional hardware. Superion and Customer shall further negotiate any additional hardware purchases and the allocation of this expense.

B. PROFESSIONAL SERVICES FEES- SEE COST SUMMARY - EXHIBIT 1

C. THIRD PARTY PRODUCTS FEES: SEE COST SUMMARY - EXHIBIT 1

7. **THE LIABILITY CAP:** Superion's liability in connection with the application services, the software, any consulting services, or any other matter relating to this Agreement will not exceed one million and zero/100's dollars (\$1,000,000.00). This liability limitation shall not apply to the intellectual property and general indemnities provided by Superion pursuant to the SST.

8. PAYMENT TERMS:

- a. The Annual Access Fee is due upon the Order Effective Date and annually thereafter on the anniversary date thereof.
- b. Professional Services Fees are due as follows: 100% on the Execution Date.
- c. Third Party Products Services Fees are due as follows: 100% on the Execution Date.
- d. Travel and Living Expenses: Travel and living expenses are in addition to the prices quoted above and will be invoiced as incurred and shall be governed by the Superion Corporate Travel Expense Guidelines attached hereto as Exhibit 2.

9. ADDRESSES

- a. **CUSTOMER ADDRESS FOR INVOICES:** 65 Stone St., Cocoa, FL 32922
- b. **CUSTOMER ADDRESS FOR NOTICES:** 65 Stone St., Cocoa, FL 32922
- c. **CUSTOMER ADDRESS FOR SOFTWARE SHIPMENT:** 65 Stone St., Cocoa, FL 32922
- d. **SUPERION'S ADDRESS FOR NOTICES:**

Superion, LLC
Attn: Legal Counsel
1000 Business Center Drive
Lake Mary, FL 32746

10. OTHER TERMS:

- a. Customer shall procure the Specified Configuration set forth in Annex 1 in accordance with Section 2 of the SST.
- b. Superion shall provide the access to the Solution during the hours described in Annex 2 attached hereto, and provide the Solution Support described in Annex 2.
- c. Superion shall provide and install new releases of the Solution at no additional charge. However Customer shall be responsible for the payment of consulting fees on a time and material basis in respect of any professional services provided by Superion for the upgrade of any customizations to the Solution made by Superion at Customer's request; provided the parties enter into a professional services schedule in respect of any such upgrade which shall stipulate the applicable then-current professional fee rates in respect thereof.

- d. As and when Customer is required to upgrade to a new release, Superion shall make such new release available to Customer in a test environment for a period of at least sixty (60) days (the "**Parallel Run Period**"). Unless Customer reports to Superion any material errors in such new release, Customer shall accept modifications, revisions and updates in the Solution and Documentation, including changes in programming languages, rules of operation and screen or report format, as and when they are implemented by Superion. If material errors are discovered during the Parallel Run Period, the Parallel Run Period shall automatically be extended by the number of days between the date that any material errors were reported and the date that Superion has remedied such errors. Customer acknowledges that modifications, revisions and updates in the Solution permitted by this Order may result in changes in the form, timing or other features of on-line services, reports and other Solution provided under this Order.
- e. If Customer's use of the Solution increases in any way which would reasonably cause Superion to incur additional hardware costs to maintain such increased usage, Superion shall provide, at minimum, 30 days' advanced notice of the need to procure such additional hardware. Superion and Customer shall further negotiate any additional hardware purchases and the allocation of this expense.
- f. **Conversion:** Conversion, if provided for herein, or if requested by the Customer after contract execution, will be controlled by the Superion Systems Change Request (SCR) form which will be prepared for the Customer by the Superion Conversion Team Manager. There will be a Two Hundred Fifty dollar (\$250.00) non-refundable Access Fee for preparation of each SCR requested by the Customer. Superion will proceed on the SCR when the signed SCR is returned with the Customer's authorization along with fifty percent (50%) payment, which includes the non-refundable Access Fee. The final fifty percent (50%) payment is due upon completion. Data must be given to Superion in an IBM compatible format on a specified magnetic media and must match data field definition. Input data file clean up shall be the responsibility of the Customer. Additional conversion, if necessary, will be invoiced at the prevailing rate per hour. It is agreed that no two systems and file structures are exactly alike and there may be a need for some manual conversion efforts to take place along with the electronic conversion. SCR form(s) for any conversion services included in this Order are attached for Customer signature and return to Superion along with this Order.
- g. If after the expiration of the term of this Order Customer converts to a different vendor's applications, Superion will provide, upon payment of Superion's then-current standard deconversion fee, reasonable assistance and documentation for such deconversion in order to assist Customer in removing its information and placing said information in Superion's standard format for input to the other vendor's applications. In the event Customer requests a non-standard deconversion, Superion shall be entitled to receive compensation for consultation, software and documentation provided to assist in the deconversion on a time and materials basis at the standard prevailing rate then charged by Superion for such services.

11. OTHER TERMS APPLICABLE TO THIS ORDER: (If applicable)

- **COGNOS THIRD PARTY PRODUCTS SUPPLEMENT**
- **SUPPORT STANDARDS SUPPLEMENT**
- **SUPERION TRAVEL EXPENSE GUIDELINES (EXHIBIT 2)**
- **SUPERION STANDARD TERMS AND CONDITIONS - (EXHIBIT 3)**
- **ANNEX 1 – SPECIFIED CONFIGURATION**
- **ANNEX 2 – SOLUTION AVAILABILITY AND SUPPORT**

EXHIBIT 1 – ACCESS AND SERVICES FEES**A. ACCESS FEES – INITIAL TERM**

Term	Monthly Access Fees
October 1, 2017 - September 30, 2018	\$ 21,253.50
October 1, 2018 - September 30, 2019	\$ 21,466.04
October 1, 2019 - September 30, 2020	\$ 21,680.70

Notwithstanding, Customer shall be responsible for all payments and Monthly Access Fees due for the Months of March 1, 2017 through September 30, 2017 for a total of \$148,774.50 which shall be due upon execution of this Order Form. Access Fees for any Year subsequent to the Initial Term are subject to change and will be specified by Superior in an annual invoice.

APPLICABLE TAXES ARE NOT INCLUDED IN THIS ORDER FORM, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT IN THE PAYMENT INVOICE(S) BEING SENT SEPARATELY TO THE CUSTOMER.

B. OTHER FEES - COST SUMMARY (Professional Service Fees, Monthly Access Fees)

	Applications and/or Services	Professional Services Fees	Monthly Access Fees
Existing Products (Currently Licensed)	GMBA with Extended Reporting - (GM), Purchasing/Inventory - (PI), Payroll/Personnel - (PR), Cash Receipts - (CR), Accounts Receivable - (MR), Asset Management II - (A2), Human Resources - (HR), Procurement Card Tracking Module - (PC), Work Orders/Facilities Management - (WF), Land/Parcel Management - (LX), Building Permits - (BP), Business Licenses - (OL), Planning & Engineering - (PZ), NaviLine m.Mobile User License - (M8), NaviLine m.Building Inspections - (M5), NaviLine m.Code Enforcement - (M7), Customer Information Systems - (CX), Contact Management - (CZ), Fires Management - (FI), Fires Incident - (FI), Fires Prevention System - (FP), Fires Resource Activity Tracking - (FR), Click2Gov Core Module - (K1), Click2Gov Building Permits - (K3), Click2Gov Business Licenses - (K6), Click2Gov Planning & Engineering - (K7), Click2Gov Applicants - (KA), Click2Gov Employee Self Service - (KI), OnePoint Point-of-Sale - (KL), OnePoint eCheck, OnePoint Credit Card Activation, Document Management Services - (DX), Delinquency Call Out Listing Interface - (DL), Imaging Interface for CIS - (IU), Imaging Interface Financials - (IE), Imaging Interface Community - (IL), Rec Trac Interface to GM - (VG), Rec Trac Interface CR - (VI), Time Keeping Interface - (TC), Web Enablement - (WB), SPS FUSION - (FUSION-NL-UTIL), Qrep Catalogs: GM, PI, PR, CR, MR, A2, HR, PC, WF, LX, BP, OL, PZ, CX, CZ, FR, FS, FI, FP, KA, - (CJ)	N/A	\$ 21,253.50
Terminating Naviline Products	Click2Gov Customer Information System - K2, IVR Credit Card Interface - CY, Code Enforcement - CE, Click2Gov Code Enforcement - K0, QRep Catalog (CE)-CJ	N/A	N/A
Existing 3rd Party Products (Currently Licensed)	QRep Admin (1) - (CG-Admin), QRep End User (20) - (CG), ACOM Software and Annual Maintenance to include EZPayManager, Document Design for AP, Payroll, Direct Deposit, Mobile Server Framework - (M0), Cognos BI: Base Bundle Multi-Data Source- (BICOREMDS), Cognos BI: Café (Analysis for Excel)- (COGNOS-C)	N/A	Included in Monthly Access Fee
Retrofit Maintenance	20 Objects @ \$100 per object or \$2000 per year	N/A	Included in Monthly Access Fee
New Products (Not currently Licensed)	NaviLine EDGE User Interface - (UN)	Included in Professional Services Fee	Included in Monthly Access Fee
New 3rd Party Products (Not currently Licensed)	NaviLine EDGE - (UL)	Included in Professional Services Fee	Included in Monthly Access Fee
Hardware Allocation	Click2Gov Hardware and Software will be hosted and managed by Superior. Site to Site VPN option to include management and configuration of VPN tunnel.	N/A	Included in Monthly Access Fee
Services	Setup, Implementation, HELP Card, Disaster Recovery Plan for Superior applications	N/A	Included in Monthly Access Fee
Professional Services	NaviLine EDGE Project Management - \$1280 NaviLine EDGE Training - \$2560	\$ 3,840.00	N/A
Professional Services	Optimization Process Review (one product suite annually)	No Charge	N/A
Total Proposed System:		\$ 3,840.00	\$ 21,253.50

Terminated NaviLine Programs: The Customer is terminating the Click2Gov Customer Information System (K2) and the IVR Credit Card Interface (CY), Code Enforcement (CE), Click2Gov Code Enforcement (K0) and QRep Catalog for CE. Customer agrees to destroy or return the Terminated Programs to Superion.

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

Neither the fact of compromise, settlement and release, nor the payment, acceptance, or relinquishment of any consideration hereunder or under the Agreement, nor the execution of this Order shall be construed or taken in any way as an admission of fault, liability or responsibility on the part of Superion and Customer, including its employees and agents, agree to so state in any communications, characterizations, and/or dissemination concerning this matter with any third party other than its attorney.

EXHIBIT 2

SUPERION TRAVEL EXPENSE GUIDELINES

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

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

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

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

LODGING –Reasonable lodging accommodations are reimbursable, up to \$125 per night. If, depending on the city, reasonable accommodations cannot be secured for \$125 per night, Customer's prior approval will be required. Upon request by Customer, the hotel receipt received upon departure will be submitted for reimbursement. All food items, movies, and phone/internet charges are not reimbursable.

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

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

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

Effective

\$57.00 per day Standard Per Diem

\$11.40 – Breakfast

\$14.25 – Lunch

\$31.35 – Dinner

EXHIBIT 3
SUPERION STANDARD TERMS AND CONDITIONS

Superion Standard Terms and Conditions version 2016 January (10 pages in total) are inserted immediately following this Cover Page.

ANNEX 1 - SPECIFIED CONFIGURATION

Hardware. Customer is responsible for providing the DMS server. The DMS server is owned by Customer and shall reside at Customers site for ease of management. The Click2Gov Server shall reside at a Superion data center. The Click2Gov Server is owned by Superion and is not the property of the Customer. The VPN Concentrator Option includes a router, which will be provided by Superion to Customer. The router is, and shall remain, the property of Superion.

ANNEX 2 - SOLUTION AVAILABILITY AND SUPPORT

1. Superion's Responsibilities

Superion undertakes all responsibilities as outlined under Parts 1 and 2 of this Annex 2.

2. Customer Responsibilities

Superion will not be liable for a failure to perform its responsibilities under this Annex 2 to the extent such failure is directly caused by the Customer not complying with its obligations under this Agreement.

- A. Customer will designate named contacts for contacting support. These named contacts will have undertaken specific training under the supervision of Superion in order to log faults and interact with support services.
- B. Customer may be asked to perform problem determination activities as suggested by Superion. Problem determination activities may include capturing error messages, documenting steps taken and collecting configuration information. Customer may also be requested to perform resolution activities including modifying processes. Customer agrees to cooperate with such requests, if reasonable.
- C. Customer is responsible for the training and organization of its staff.
- D. Superion is not required to provide any services relating to problems arising out of any alterations of or additions to the Solution performed or authorized by parties other than Superion (including its contractors, or third parties under Superion's control). The Solution does not include development work on software not licensed from Superion or development work for enhancements or features that are outside the documented functionality of the Solution except such work described in Exhibit 1. Customer may request consulting and development work from Superion as a separate billable service.
- E. Customer will appoint a vendor liaison manager who will be Customer's primary contact with Superion on all commercial matters related to the Solution.

3. Disagreement procedure

In case the parties are in disagreement as to whether Superion has fulfilled its obligations under this ASP Order the parties shall use all reasonable efforts to amicably settle such dispute within five (5) working days. If the disagreement remains following such five working day period, the parties shall escalate the problem to the following representatives for the respective company to resolve the dispute:

Superion: The process for escalation shall be:

Superion: Director of Operations (first level);
VP of Services (escalation – 1st level);
General Manager (escalation – 2nd level)

Customer: _____

The disagreement procedure proposed herein shall not limit either party's right to bring a claim as provided for in the Agreement. Notwithstanding any dispute under this Annex 2, the parties have a duty to continue fulfilling all their other obligations under this Agreement.

PART 1 – SERVICE LEVEL COMMITMENT AND ASP PROCEDURES

Hosted Standards Sheet

Service Level Commitments

The following Service Level commitments apply to the Customer's production systems. This does not include testing or training systems.

A. Availability

1. SERVICE LEVELS FOR THE APPLICATION SERVICES

Superion shall provide access to the Solution (the "Application Services") in accordance with the following service level commitment provisions.

1. Overall System Availability

1.1 Target. In each Service Period, the target for availability of the Application Services is 99.9% ("Availability Target"). "Service Period" means 24 hours per day Monday through Sunday each calendar month that Customer receives the Application Services, excluding scheduled and emergency maintenance times. Superion will notify the Customer of all such maintenance windows.

1.2 System Backups.

- Daily data backups would begin at 12 a.m. (Customer local time) Monday through Saturday. These backups consist of all objects that have been changed since the last full backup, which includes customer data. Retention of backups: daily backups – 2 weeks; weekly backups – 5 weeks; monthly backups – 1 year; yearly backups – 3 years. The system will be available during the daily backup.
- Weekly system backups will begin on Sunday at 12 a.m. (Customer local time). At this time a full system backup will be performed. These backups consist of all objects on the system, including the OS, customer data, program files, source files, and other necessary Customer data.
- All backups are saved to a backup appliance and continuously replicated to an off-site Superion Cloud Solutions data center

1.3 Measurement. Service availability is measured as the total time that the Application Services are available during each Service Period for access by Customer ("Service Availability"). Unless otherwise specified, the measurement period for Service Availability is each Service Period and Service Availability shall be calculated at the end of each Service Period. Service Availability measurement shall be applied to the production environment and the points of measurement for all Application Services monitoring shall be the servers and the Internet connections at Superion's hosted environment.

If Superion's monitoring tool for Service Availability indicates that the Availability Target was not met or otherwise indicates that the Service Availability was lower than anticipated but Superion can otherwise show, by reasonable evidence and supporting documentation, the actual Service Availability was in fact different, then the Service Availability indicated by such other evidence and supporting documentation shall apply for the purposes of this Part 1 – Service Level Commitment and ASP Procedures.

1.4 Calculation. The standard Actual Service Availability in the relevant Service Period will be calculated on a monthly basis using the following calculation:

Total number of minutes available during the monthly Service Period less the total amount of minutes in which Customer does not receive the services, excluding events covered under Section G, "Exceptions." The resulting figure is divided by the total number of

minutes available during the monthly Service Period excluding events covered under Section G “Exceptions” to calculate the Actual Service Availability in the relevant Service Period.

Service Availability Targets are subject to change monthly. In an average 30 day month, the Service Availability Target of 99.9% provides 43 minutes, 12 seconds of potential downtime.

1.5 **Remedy.** If following the target measurement at the end of each Service Period, the Availability Target is not met with the result that the Customer’s use of the Application Services is severely interrupted then the Customer shall be entitled to a credit calculated as follows:

Actual Service Availability in the Relevant Service Period	Percentage Reduction in Monthly Fee Payable by Customer in the Immediately Subsequent Service Period
Less than 99.9% but greater than or equal to 99.0%	10%
Less than 99.0% but greater than or equal to 95.0%	25%
Less than 95.0%	50%

If during the term of this Order, Superion fails to meet the service level commitment targets specified above, the Customer’s sole and exclusive remedy in relation to such failure shall be the applicable credits specified. In no event shall Superion be obliged to provide any refund in relation to any credit, but rather the credit shall be applied to the next following invoice due to the Customer. Superion will utilize monitoring software to track and report actual service availability in the relevant service period. If the actual service availability during the relevant service period does not achieve the Availability Target, Superion will automatically apply a service credit per the specifications above. However, any credit entitlement that is not reported by Superion, must be requested by the Customer within six (6) months of its availability shall no longer be available and the Customer will be deemed to have waived any rights in relation thereto and (for the avoidance of doubt) Superion’s failure to meet the relevant service level commitment. In no event will credits due in any given month exceed fifty percent (50%) of that month’s fees. Customer shall not be entitled to offset any monthly Application Services fee payments nor withhold fee payments on account of a pending credit. Customer shall not be eligible for credits for any period where Customer is more than thirty (30) days past due on their account. The amount of any unused credit shall be paid in cash to Customer upon termination of the Agreement.

Superion will provide reporting, as provided in Section F, showing performance and monthly service levels.

B. Server Performance

Superion shall provide sufficient server capacity for the duration of this Order to meet the reasonable performance requirements of the number of concurrent system users provided for in this Order.

Superion shall provide hardware resources sized for the number of users and software modules licensed in the Order Form Exhibit

1. If the Customer requests, at some later date to add additional software modules, increase user licenses, and/or request additional environments, the hardware and third party software requirements of such additions will be evaluated. If additional resources are required to support such modifications, additional fees may apply.

If the addition of users, unusually heavy use, or other factors require additional resources for support of the Customer (e.g., hardware, software, people, data communications link, etc.), Superion and the Customer will confer on the matter until a mutually agreeable solution is identified.

Performance monitoring and tuning will be performed as necessary to maintain an average in network interactive response time. "In network" is defined as any point between which the data packet enters the Superion environment and subsequently departs the Superion environment. Any point of communications outside of the Superion protected network environment, shall be deemed as "out of network."

Superion is not responsible for Internet connectivity and/or performance outside the internal Superion host site infrastructure.

C. Server Performance Stress Test

At the request of the Customer, Superion will coordinate a performance stress test with the Customer at an agreed upon time during implementation and, upon request, after go-live. Superion will work with the Customer to identify critical application screens to benchmark during the performance stress test and coordinate with the Customer to create an accurate test scenario with the Customer's End Users. Customer agrees to provide the resources necessary to simulate the desired load. Superion agrees to monitor and provide reports showing system utilization. Upon completion of the performance stress test, Superion and the Customer will mutually agree to the performance benchmarks for the identified critical screens taking into consideration Internet latency, End User workstations limitations, and the Customer's Local Area Network.

D. Scheduled and Emergency Maintenance for Application Services

Scheduled maintenance

System maintenance

Superion will provide all necessary hosted systems and network maintenance as deemed appropriate and necessary by Superion. All necessary maintenance will be completed outside of the Customer's standard business hours of operation, unless requested by Customer.

Superion application maintenance and upgrades

Software maintenance and upgrades will be performed outside of the Customer's standard business hours of operation, unless requested by Customer. Software maintenance and upgrades will be scheduled in advance with the Customer's primary contact.

Hardware maintenance and upgrades

Hardware maintenance and upgrades will be performed outside of the Customer's standard business hours of operation, unless requested by Customer. The primary Customer contact will be notified via the on file e-mail address prior to hardware upgrades being performed.

E. Incident Response

Incidents are defined as interruptions to existing service and can range in priority from urgent to low depending on the impact to the Customer. Incident priorities are defined as the following:

Priority Level	Impact	Description
1	Urgent	An Incident that (a) results in loss of Customer connectivity to all of the Application Services or (b) results in loss, corruption or damage to Customer's Data.
2	Critical	An Incident that has an adverse material impact on the performance of the Application Services or materially restricts Customer's use of the Managed IT Services as part of Customer's day-to-day operations.
3	Non-Critical	An Incident that does not result in a failure of the Application Services but a fault exists in the Managed IT Services that restricts Customer's use of the Managed IT Services.

4	Minor	An Incident that does not affect or which has minimal adverse impact on the use of the Application Services.
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Superion will make commercially reasonable efforts to respond to Application Services incidents for live production systems using the following guidelines:

Priority Level	Performance Target	Minimum Performance % Goal
Priority 1 (Urgent)	Superion will respond within 1 hour of the issue being reported.	95%
Priority 2 (Critical)	Superion will respond within 2 hours of the issue being reported.	95%
Priority 3 (Non-Critical)	Superion will respond within 4 hours of the issue being reported.	95%
Priority 4 (Minor)	Superion will respond within 24 hours of the issue being reported.	95%

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

Superion will make every effort to meet the response times detailed above. The customer may, at their discretion, escalate as follows for any reason and at any time.

The escalation process will be as follows:

Escalation Level 1 – Support Manager – Manager On Call – 800-695-6915 option 1,7

Escalation Level 2 – Account Manager – 800-727-8088

Escalation Level 3 – Director of Product Support – 800-727-8088

Escalation Level 4 – Chief Operations Officer – 800-727-8088

Escalation Level 5 – Chief Executive Officer – 800-727-8088

F. Reporting

Superion shall measure its performance against the performance metrics as set forth herein and shall provide a report of such performance on a monthly basis. Such report(s) shall be delivered via an agreed upon method and within ten (10) days following the end of the applicable monthly measurement period. Superion will schedule a performance review with the Customer upon request.

G. Exceptions.

Notwithstanding anything herein, Superion shall not be responsible for failure to carry out any of its obligations under this Part 1 – Service Level Commitment and ASP Procedures.(including liability to apply any credit for any failure to meet a service level commitment target) if the failure is caused by:

- (a) scheduled downtime in order to carry out maintenance or suspensions in the Application Services that Customer has been notified of in advance that occurs outside of Normal Business Hours provided that in event of any critical or urgent system issue that does not reasonably permit advance notice to Customer, Superion shall provide notice as and when commercially reasonable with respect to such urgent issue, or as otherwise reasonably agreed between Customer and Superion. The system is reserved for maintenance on Sundays from 12 a.m. – 5 p.m., customer local time;
- (b) adverse impact due to the defectiveness of the Customer's environment or Customer's systems or due to Customer data supplied to the Application Services;

- (c) adverse impact as a result of denial of reasonable access by Superion personnel to relevant portion of Customer's systems or premises that prevents Superion from addressing and provided that no other commercially reasonable method is available to attain such information;
- (d) adverse impact due to material changes made to the usage of the Application Services by Customer where Superion has not agreed to such changes in advance and in writing;
- (e) adverse impact due to the modification or alteration in any way by Customer or its subcontractors of communications links necessary to the proper performance of the Application Services;
- (f) a force majeure event, or the negligence or intentional acts or omissions of Customer or its agents.

H. ASP Procedures

A. Incident Resolution

Performance targets vary due to issue complexity and priority. For critical requests, Superion provides a continuous resolution effort until the issue is resolved.

B. Service Requests

Service requests are new requests that will take less than 8 hours to accomplish. The Superion Cloud Solutions management team will perform the prioritization for these requests. There will be a targeted resolution goal of up to five (5) days with extra time being allowed if equipment or software needs to be ordered or multiple products have to be analyzed. However, more complex requests may take longer to complete. Any new service requests requiring more than 8 hours to accomplish may constitute a project and must be scheduled.

C. Test/Training Environments

Superion will make commercially reasonable efforts to provide test/training environments during Customer business hours. For avoidance of doubt, the aforementioned test/training environments are not included under the SLA metrics period(s) hereunder.

Scheduled Maintenance

System maintenance

Superion will provide all necessary hosted systems and network maintenance for test/training environments as deemed appropriate and necessary by Superion Cloud Solutions. All necessary maintenance will be scheduled with the Customer and may be completed during business hours.

Superion application maintenance and upgrades

Software maintenance and upgrades for test/training environments may be performed during the Customer's standard business hours. Software maintenance and upgrades will be scheduled in advance with the Customer's primary contact.

Hardware maintenance and upgrades

Hardware maintenance and upgrades for test/training environments may be performed during the Customer's standard business hours. The primary Customer contact will be notified via the on file e-mail address prior to hardware upgrades being performed.

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. The primary Customer contact will be notified, when possible, via the on file e-mail address, prior to emergency maintenance being performed. If no contact is made, emergency maintenance will move forward as deemed necessary by Superion Cloud Solutions management. Emergency maintenance performed without prior notification will be included as downtime in the monthly Actual Service Availability calculation only in cases where an error or omission on the part of Superion is determined to be the reason for the outage.

Incidents and service requests.

Test/training environment incidents will be considered priority 3 and priority 4 incidents and handled as such. Service requests will be prioritized and scheduled similar to production service requests.

Test/training environment refreshes

Test/training environment refreshes will be provided in accordance with the terms of this Order, which indicates the number of refreshes provided in a calendar year. Upon written receipt of a Customer's refresh request, Superior will schedule and complete the refresh within 4 weeks of the request.

I. Responsibility Summary Matrix

Responsibility Summary Matrix		
Description	Superion Responsibility	Customer Responsibility
ASP Server Hardware management	X	
ASP Server File system management	X	
ASP Server 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 Superion's location	X	
ASP Router at Customer's location	X	
Customer's network up to the router at Customer's location		X
Customer Workstations		X
System Performance	X	X
Add/Change users		
User add/change requests		X
User add/change implementation for System Access	X	
User add/change implementation for Software Applications		X
Add/Change Printers		
Printer add/change requests		X
Printer add/change implementation on ASP network	X	
Printer add/change implementation for Software Applications		X
Disaster Recovery	X	
Password Management	X	X
Application Management		
Application Configuration		X
Application Security Management		X
Accuracy and Control of Data		X

PART 2 – ERROR CORRECTION

1. Superion shall provide to Customer, during Superion's support hours as set forth in the Support Standards below ("Support Hours"), telephone assistance regarding Customer's proper and authorized use of a new edition of a Solution (the "Release"), as applicable.
2. Superion shall provide to Customer, during the Support Hours, commercially reasonable efforts in solving errors reported by Customer in accordance with this Order. Customer shall provide to Superion reasonably detailed documentation and explanation, together with underlying data, to substantiate any error and to assist Superion in its efforts to diagnose, reproduce and correct the error. These support services shall be provided by Superion at Customer location(s) if and when Superion and Customer agree that on-site services are necessary to diagnose or resolve the problem. If a reported error did not, in fact, exist or was not attributable to a defect in the Solution or an act or omission of Superion, then Customer shall pay for Superion's investigation and related services at Superion's standard professional services rates. Customer must provide Superion with such facilities, equipment and support as are reasonably necessary for Superion to perform its obligations under this Order, including remote access to the Specified Configuration.
3. Customer shall promptly install and/or use any Release provided by Superion to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solution shall be furnished by means of new Releases of the Solution and shall be accompanied by updates to the Documentation whenever Superion determines, in its sole discretion, that such updates are necessary.

Support Standards

I. Support Hours: Hours During Which Superior's Telephone Support Will be Available to Customer in Connection with the Provision of Maintenance: Unless otherwise noted in the Order as to Support Type, support hours are Monday through Friday, 8:00 A.M. to 5:00 P.M. Customer's Local Time within the continental United States, excluding holidays ("5x9").

II. Targeted Response Times.

"Notification" means a communication to Superior's help desk by means of: (i) Superior's web helpline; (ii) the placement of a telephone call; or (iii) the sending of an e-mail, in each case, in accordance with Superior's then-current policies and procedures for submitting such communications.

With respect to Superior's support obligations, Superior will use diligent, commercially reasonable efforts to respond to Notifications from Customer relating to the Solution identified in the Order in accordance with the following guidelines with the time period to be measured beginning with the first applicable Superior "Telephone Support" hour occurring after Superior's receipt of the Notification:

Priority	Description	Response Goal*	Resolution Goal*
Urgent 1	A support issue shall be considered Urgent when it produces a Total System Failure; meaning Superior's Solution is not performing a process that has caused a complete work stoppage.	Superior has a stated goal to respond within 60 minutes of the issue being reported and have a resolution plan within 24 hours.	Although resolution times vary depending on the exact issue and customer environment, Superior has a stated goal to resolve an urgent issue within 24 hours or provide a resolution plan with urgent issues within 24 hours of the issue being reported.
Critical 2	A support issue shall be considered Critical when a critical failure in operations occurs; meaning SunGard's Solution is not performing a critical process and prevents the continuation of basic operations. Critical problems do not have a workaround. This classification does not apply to intermittent problems.	Superior has a stated goal to respond within two hours of the issue being reported.	A resolution plan details the steps necessary to understand and possibly resolve the issue.
Non-Critical 3	A support issue shall be considered Non-Critical when a non-critical failure in operations occurs; meaning Superior's Solution is not performing non-critical processes, but the system is still usable for its intended purpose or there is a workaround.	Superior has a stated goal to respond within four hours of the issue being reported.	
Minor 4	A support issue will be considered Minor when the issue causes minor disruptions in the way tasks are performed, but does not affect workflow or operations. This may include cosmetic issues, general questions, and how to use certain features of the system.	Superior has a stated goal to respond within 24 hours of the issue being reported.	

* Measured from the moment a Case number is created. As used herein a "Case number" is created when a) Superior's support representative has been directly contacted by Customer 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 Customer. Customer must provide remote access to its facility using a Superior approved remote access client so that Superior can perform the support obligations and/or services under this Order; and will provide appropriate security access and accounts for Superior staff and each session participant.

Customer must provide remote access to its facility using a Superior approved remote access client so that Superior can perform the support obligations and/or services under this Agreement; and will provide appropriate security access and accounts for Superior staff and each session participant.

COGNOS THIRD PARTY PRODUCTS SUPPLEMENT

1. Additional Definitions. "Cognos Component Systems" means any of the software provided to Superion by Cognos Corporation ("Cognos") and identified under the name "Cognos" in Exhibit 1.
2. Ownership. Cognos owns the Cognos Component Systems.
3. Restrictions on Use of Cognos Component Systems. Customer's use of the Cognos Component System(s) is subject to the following additional terms and conditions:
 - (a) Customer has the right to use the Cognos Component System(s) only in Object Code form, and only with the Superion Licensed Software.
 - (b) Customer acknowledges that the Cognos Component System(s) are proprietary to Cognos and are supplied by Superion under license from Cognos. Title to the Cognos Component System(s) shall at all times remain vested in Cognos or its designated successor. Except for the right of use that is expressly provided to Customer under the Agreement, no right, title or interest in or to the Cognos Component System(s) is granted to Customer;
 - (c) Customer agrees that Cognos shall not be liable for any damages, whether direct, indirect, incidental, special, or consequential, arising from the Customer's use of the Cognos Component System(s) or related materials;
 - (d) Customer acknowledges and agrees that Cognos is a third party beneficiary of this Agreement;
 - (e) Customer acknowledges and understands that the Cognos Component System(s) may only be used by the number of users for the specific functions for which the license has been granted, as otherwise specified in Exhibit 1; and
 - (f) Customer acknowledges and understands that it is licensing the Cognos Component System(s) on a "restricted use" basis. "Restricted use" means the use of the Cognos Component System(s) only with the following Component Systems, to the extent licensed as set forth in Exhibit 1. Such restricted use shall include Customer's right to extract, analyze, and report data from disparate systems, provided that such data is extracted, analyzed and reported by the software applications system(s) set forth in Exhibit 1.
 - (g) In lieu of the warranty provided in Section 7 of the Agreement, Customer shall be provided with the limited, thirty (30) day warranty from Cognos as set forth below. Cognos warrants to Customer that (a) for a period of thirty (30) days following the initial delivery/download/access of the Cognos Component System(s) to or by Customer, the Cognos Component System(s) will perform in accordance with its related documentation, and (b) the media on which the Cognos Component System(s) is provided, if applicable, is free from defects in materials and workmanship under normal use. Subject to applicable law, all other warranties, express or implied, or otherwise, are excluded. Customer's only remedy against Cognos if this warranty is breached will be, at the option of Cognos, (a) to repair or replace the Cognos Component System(s) or (b) to refund the amounts paid in respect of the defective Cognos Component System(s). This remedy is void if Customer misuses the Cognos Component System(s) contrary to its related documentation.

Superion Standard Terms

These Superion Standard Terms ("SST") may be incorporated into one or more orders referencing these SST (each, an "Order"). Each Order, together with these SST, shall form a separate agreement (this "Agreement"), by and between the Person identified on the Order ("Customer") and the Superion company identified on the Order ("Superion"), applicable to the proprietary solution identified on the Order (the "Solution"), as such Solution may be modified, revised and updated from time to time. Only the Customer and Superion entities that execute the Order will be liable for the obligations under that Order. Each Order will be effective upon the latest date shown on the signature page of the Order ("Order Execution Date").

1. Scope. Customer may use the Solution only in the ordinary course of Customer's internal business operations for the benefit of Customer and only in accordance with the terms on the Order, the Documentation, this Agreement, including the Scope of Use. Customer shall be liable for any breach of the terms of this Agreement by any persons given access to the Solution by Customer. Notwithstanding this Section 1, Customer and Superion agree that Customer's clients who make inquiries regarding their own utility customer information or other personal information maintained by the Customer may be allowed by Customer to have use of the input and/or output sensory displays of or from the Solution under the provisions of Section 5.5 hereunder.

2. Specified Configuration. Customer shall, at its expense, procure and maintain the computer hardware, systems software and other items required for use of, or access to, the Solution, including those described in the Order and Documentation (the "Specified Configuration") and for updating the Specified Configuration in accordance with Superion's published updates. If not yet completed, Customer shall complete its procurement and installation of the Specified Configuration prior to the scheduled start of implementation. Customer shall devote all equipment, facilities, personnel and other resources reasonably necessary to begin using the Solution in production on a timely basis as contemplated by this Agreement and satisfy any Customer requirements necessary for Superion to complete the professional services described in Section 6. Superion is not responsible for any delays or additional fees and costs associated with Customer's failure to timely perform its obligations under this Section 2.

3. Payments.

3.1. Fees. Customer shall pay to Superion the fees stated in the Order, in accordance with the payment terms stated on the Order. Superion shall invoice all other fees, as and when incurred. All invoices shall be sent to Customer's address for invoices stated on the Order. Except as otherwise specified on the Order, Customer's payments shall be due within Forty-five (45) days after the invoice date. A late payment fee at the rate of 1% per year (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amounts thirty (30) days past the due date above and unpaid by Customer to Superion, except for Disputed Amounts. Superion may not increase the fees and charges payable under this Agreement, unless otherwise stated in this Agreement or in the Order.

3.2. Taxes. To the extent required by law, Customer is responsible for paying all taxes on services and products provided to Customer by Superion pursuant to this Agreement. Applicable tax amounts (if any) are not included in the fees set forth in this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide Superion with a valid tax exemption certificate; otherwise, absent such proof of Customer's direct payment of such tax amounts to the applicable taxing authority, Superion will invoice Customer for and Customer will pay to Superion all such tax amounts.

3.3. Certain Remedies for Non-payment. If Customer fails to pay to Superion, within forty-five (45) days after Superion makes written

demand therefor, any past-due amount payable under this Agreement (including any applicable late payment fee) that is not a Disputed Amount, in addition to all other rights and remedies which Superion may have, Superion may, in its sole discretion and with at least fourteen (14) business days' further notice to Customer stating the suspension date, suspend performance of any or all of its obligations under this Agreement (other than Section 5). Superion shall have no liability for Customer's use of the Solution until all such past-due amounts and any applicable reinstatement fees are paid in full.

4. Warranties, Covenants and Limitations.

4.1. Compliance with Laws. Superion shall comply with all laws, enactments, orders and regulations applicable to it as the provider of services under this Agreement. Customer shall comply with all laws, enactments, orders and regulations applicable to it as the recipient and user of services under this Agreement.

4.2. No Infringement. (a) Superion shall fully indemnify, defend and hold Customer harmless from and against any and all losses, damages, costs and expenses, and attorney's fees, that Customer incurs because of any and all claims that use of a Solution infringes upon (i) any United States copyright or (ii) any trade secret or other proprietary right of any Person (collectively, "IP Rights"). Superion shall have no obligation under this Section 4.2 unless Customer promptly gives notice to Superion within ten (10) days after the date Customer first receives notice of the applicable infringement claim (provided that later notice shall relieve Superion of its liability and obligations under this Section 4.2 only to the extent that Superion is prejudiced by such later notice) and allows Superion to have sole and reasonable control of the defense or settlement of the claim. Customer may monitor any such litigation or proceeding at its expense, using counsel of its choosing. If any Solution is, or in Superion's opinion becomes or is likely to become the subject of a United States IP Rights infringement claim, then Superion, at its sole option and expense, shall provide the Customer, in addition to the aforementioned indemnity and hold harmless, with a full and complete remedy that will either:

- (a) modify or replace all or the allegedly infringing part of the Solution so that it is no longer allegedly infringing, provided that the functionality does not change in any material adverse respect; or
- (b) procure for Customer the right to continue using the allegedly infringing part of the Solution; or
- (c) remove all or the allegedly infringing part of the Solution, and (i) if Customer has paid a one-time upfront initial license fee for the applicable Solution, refund to Customer the corresponding portion of the license fee paid by Customer to Superion for the applicable Solution, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial license fee for each month of use following the Order Execution Date, or (ii) if Customer is paying for the use of the Solution on a recurring basis, refund to Customer the corresponding portion of the unused recurring fee(s) paid by

Customer to Superion with respect to the applicable Solution, and in each such case this Agreement shall terminate with respect to the Solution or part thereof removed.

(b) **General Indemnity.** To the extent permitted by law, and to the extent provided for under this Agreement, for claims related to bodily injury, death, and damage to real property and tangible personal property, as well as fines, assessments and penalties imposed by any authority, Superion shall indemnify and hold harmless the Customer from and against all direct damages and costs of any kind, including but not limited to reasonable attorney's fees, arising out of or resulting from any negligent acts, or negligent omissions of Superion, regardless of whether such claims are caused in part by any party indemnified hereunder, but not to the extent that the Customer is legally liable for such damages and costs. For purposes of this indemnification only, this includes claims made by the employees of Superion against the Customer, and Superion hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

The indemnification provided above shall obligate Superion to defend at its own expense or to provide for such defense, at the option of the Customer, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the Customer or its mayor, councilmembers, officers, employees, attorneys, agents and representatives which may arise or result from this Agreement. In all events the Customer shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with this indemnification provided herein.

4.3. Harmful Code. Using a recent version of a reputable virus-checking product (to the extent commercially available), Superion will check the Solution, as well as any systems used to deliver the Solution, for any viruses, worms or similar harmful code ("Harmful Code") and will use commercially reasonable efforts to eliminate any such Harmful Code that Superion discovers.

4.4. Exclusion for Unauthorized Actions. Superion is not liable under any provision of this Agreement for any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Solution by or on behalf of Customer, any unauthorized combination of the Solution with other software or services (other than as specified in the Specified Configuration), any use of any version of the Solution other than the Supported Release, a failure to subscribe to support services if then offered for the Solution, any Third-Party Hardware or Third-Party Services, and Third-Party Software or Open Source Software (except as set forth in Sections 4.10 and 4.12), any wrongful act or omission by Customer, its Affiliates or its customers or any breach of this Agreement by Customer.

4.5. Force Majeure. Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations, which shall be suspended only for so long as the force majeure event renders Customer unable by any means to transmit payments when due hereunder) as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or

dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

4.6. Disclaimer. EXCEPT AS STATED IN SECTIONS 4, 6.5 AND 9.5, THE SOLUTION, DOCUMENTATION AND SERVICES ARE PROVIDED "AS IS," AND ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.

4.7. Superion's liability in connection with any matter relating to this Agreement will not exceed One Million and Zero/100 Dollars (\$1,000,000.00). THE LIABILITY LIMITATIONS SET FORTH IN THIS SUBPARAGRAPH DO NO APPLY TO THE INTELLECTUAL PROPERTY AND GENERAL INDEMNITIES PROVIDED BY SUPERION PURSUANT TO PARAGRAPH 4.2 OF THIS AGREEMENT.

4.8. Consequential Damage Exclusion. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY (OR ANY OF ITS AFFILIATES PROVIDING OR RECEIVING THE SOLUTION, SERVICES OR OTHER SOFTWARE UNDER THIS AGREEMENT) BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR LOSSES OR DAMAGES WHICH FALL INTO ANY OF THE FOLLOWING CATEGORIES: (a) LOST REVENUES, (b) LOST PROFITS, (c) LOSS OF BUSINESS, (d) TRADING LOSSES, (e) INACCURATE DISTRIBUTIONS OR (f) ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING ANY OF THE FOREGOING LOSSES OR DAMAGES RESULTING FROM CUSTOMER'S USE OF THE SOLUTION OR SERVICES PROVIDED HEREUNDER, OR ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF THE RELEVANT PARTY HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FOR PURPOSES OF CLARIFICATION, THE FOLLOWING SHALL BE DEEMED "DIRECT DAMAGES" AS BETWEEN CUSTOMER AND SUPERION FOR THE PURPOSES OF THIS AGREEMENT (i) ANY AND ALL DAMAGES, INCLUDING CONSEQUENTIAL AND SIMILAR DAMAGES, AWARDED TO A THIRD PARTY FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTION 4.2; (ii) CUSTOMER'S OUT-OF-POCKET COSTS TO NOTIFY AFFECTED PERSONS AND/OR PAY FOR CREDIT MONITORING SERVICES FOR SUCH PERSONS FOR A ONE-YEAR PERIOD INCURRED AS A RESULT OF SUPERION'S BREACH OF SECTION 5.

4.9. Third-Party Software. To facilitate Customer's access and use of the Third-Party Software, the licensor(s) of such Third-Party Software have agreed to allow Superion to provide the Third-Party Software to Customer subject to the following additional conditions: (i) the Third-Party Software shall be used only in conjunction with any permissible use of the Solution specifically authorized in this Agreement, and (ii) the Third-Party Software shall be used only in accordance with licensor's terms and conditions and documentation for the Third-Party Software which, unless otherwise included in a specific Supplement to the Order, shall be provided to Customer with the receipt of such Third-Party Software. Superion shall use reasonable efforts to provide Customer the benefit of

all indemnities and warranties granted to Superior by the licensor(s) of the Third-Party Software, to the extent possible without additional cost to Superior, as and if permitted by Superior's agreement with the licensor of the Third-Party Software, and to the extent such warranties and indemnities pertain to Customer's use of the Third-Party Software hereunder. In the event of any defect in any Third-Party Software (in the form delivered by Superior and when properly used for the purpose and in the manner specifically authorized by this Agreement), Superior will use commercially reasonable efforts to replace or correct the Third-Party Software without charge. If Superior complies with this provision, it shall face no further liability with respect to any defect in any Third-Party Software.

Unless as otherwise provided in a specific Supplement to the Order, or as provided in the licensor's terms and conditions, Superior shall provide Level 1 support of the Third-Party Software. For purposes herein, Level 1 Support shall mean:

- 1) Taking the first support call from Customer and qualifying the call priority, or if an existing case, obtaining case information;
- 2) Gathering information about the case, defining and describing the problem, and determining if the Third Party Software is the cause of the problem. Analyze problem symptoms, attempt to find root cause if appropriate and document result of such attempts. Determining if the problem is a known Third-Party Software problem by accessing third party online support resources; and
- 3) If it is determined to be a Third-Party Software problem, contacting the Third-Party Software technical support. For new cases, opening a case and selecting a priority. For existing cases, providing the case number and information gathered to the Third-Party Software support engineer.

4.10. Third-Party Hardware and Third-Party Services. Customer is hereby advised that the third party, and not Superior, assumes all responsibility for and liability in connection with the Third-Party Hardware and Third-Party Services, and is solely responsible for delivering the Third-Party Hardware and Third-Party Services to Customer. 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 Hardware or Third-Party Services as the same is provided for in the Order and to accept payment of such amounts from Customer on behalf of the third party.

4.11. Open Source Software Components. The Solution may be provided with or included Open Source Software, including that Open Source Software identified in the Documentation or on the support services website for the Solution. The Open Source Software is licensed under the terms of the open source license that accompanies or is made available with such Open Source Software, including via a website designated by Superior. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for such Open Source Software. Open Source Software shall not be deemed to be part of the Solution under this Agreement and Superior shall have no liability relating to such Open Source Software; provided, however, that Superior shall be responsible for fixing Errors caused by the Open Source Software to the same extent as Superior's ongoing support obligations as set forth in Section 8.5 and 9.3 of this Agreement.

4.12. Open Negotiation. Customer and Superior have freely and openly negotiated this Agreement, including the pricing, with the knowledge that the liability of the parties is to be limited in accordance with the provisions of this Agreement.

4.13. Title and Risk of Loss. In no event will Superior be deemed to have taken title or any similar right or interest in or of any Third-Party Software or Third-Party Hardware in the chain of distribution to Customer, and title, risk of loss, and/or such similar right or interest in or to the Third-Party Software or Third-Party Hardware will be deemed to vest in Customer either at the point of delivery to carrier for shipment or as otherwise provided for in the licensor's terms and conditions.

4.14. Disclaimer. Except as may be provided in Section 4.10 above, Customer agrees and understands that **SUPERION MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE THIRD-PARTY PRODUCTS. ALL WARRANTIES (IF ANY) ARE PROVIDED TO CUSTOMER BY THE LICENSORS, MANUFACTURERS OR PROVIDERS OF SUCH THIRD-PARTY PRODUCTS. SUPERION EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ITS OBLIGATION TO REMIT PAYMENT RECEIVED FROM CUSTOMER TO THE THIRD PARTY PURSUANT TO THIS AGREEMENT, SUPERION WILL HAVE NO LIABILITY WHATSOEVER IN CONNECTION WITH THE THIRD-PARTY PRODUCTS.**

4.16 Other Limitations. The warranties made by Superior in this Agreement, and the obligations of Superior under this Agreement, run only to Customer and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of Customer or any other Person be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement (including any right to be consulted in connection with any variation or rescission of the Agreement agreed between Superior and Customer), even if such Affiliates, customers or other Persons are provided access to the Solution or data maintained in the Solution via the Internet or other networked environment. Except to the extent specified in an Order or this Agreement, and except to the extent required by Chapter 119, Florida Statutes, Superior shall not be deemed Customer's official record keeper for regulatory or other purposes and shall have no obligation to retain any records or data on Customer's behalf after termination or expiration of this Agreement.

5. Confidentiality, Security, Ownership and Use Restrictions.

5.1. Confidentiality. Subject to Chapter 119, Florida Statutes, the party receiving Confidential Information ("**Receiving Party**") of the other ("**Disclosing Party**") shall not, and shall cause its Authorized Recipients not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. Receiving Party will use the same reasonable efforts to: (a) protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. Prior to disclosing the Confidential Information to its Authorized Recipients, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a

reasonable opportunity to contest such disclosure or obtain a protective order.

5.2. Security. Subject to Chapter 119, Florida Statutes:

- (a) Superion will implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Customer Data; and (iii) protect against unauthorized access to or use of Customer Data. Superion will review and test such safeguards on no less than an annual basis.
- (b) If Customer makes the Solution or data maintained by the Solution accessible through the Internet or other networked environment, Customer shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of the Solution, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.
- (c) To the extent that Third-Party Users are permitted to have access to the Solution, Customer shall maintain agreements with such Third Party Users that adequately protect the confidentiality and intellectual property rights of Superion in the Solution and Documentation, and disclaim any liability or responsibility of Superion with respect to such Third Party Users. Notwithstanding this section 5.2, Customer and Superion agree that Customer's clients who make inquiries regarding their own utility customer information or other personal information maintained by the Customer may be allowed by Customer to have use of the input and/or output sensory displays of or from the Solution under the provisions of Section 5.5 hereunder.

5.3. Personal Data. If Superion processes or otherwise has access to any personal data or personal information on Customer's behalf when performing Superion's obligations under this Agreement, then: (i) Customer shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and Superion shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (ii) Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to Superion so that Superion may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Customer's behalf, which may include Superion processing and transferring the relevant personal data or personal information outside the country where Customer and the Authorized Users are located in order for Superion to provide the Solution and perform its other obligations under this Agreement; and (iii) Superion shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by Customer from time to time as set out in and in accordance with the terms of this Agreement; and (iv) 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. To the extent Superion is deemed to be a third-party agent under Section 501.171, Florida Statutes, Superion shall notify the Customer as soon as possible, but no later than five (5) business days following the determination of any breach or potential breach of personal and confidential data held on Customer's behalf. Further, Superion shall at its own cost provide notice to affected parties no later than forty-five (45) days following the determination of any potential breach of personal or confidential data held on Customer's behalf as provided in Section 501.171, Florida Statutes. Superion shall also at its own cost implement measures deemed appropriate by the Customer to avoid or mitigate potential injury to any person due to a breach or potential breach of personal and confidential data. Superion shall cause each of its subcontractors having access to Customer Data to comply with the provisions of this Section.

5.4. SG Solution Details. The SG Solution Details are trade secrets and proprietary property of Superion or its licensors, having great commercial value to Superion or its licensors. Title to all SG Solution Details and all related intellectual property and other ownership rights shall be and remain exclusively with Superion or its licensors, even with respect to such items that were created by Superion specifically for or on behalf of Customer. Superion and its Affiliates may freely use Feedback without attribution or the need for Superion, its Affiliates or any third party to pay Customer or any third party any royalties or other fees of any kind. This Agreement is not an agreement of sale, and no intellectual property or other ownership rights to any SG Solution Details are transferred to Customer by virtue of this Agreement. All copies of SG Solution Details in Customer's possession shall be deemed to be on loan to Customer during the term of this Agreement. Notwithstanding this section 5.4, Customer and Superion agree that Customer's clients who make inquiries regarding their own utility customer information or other personal information maintained by the Customer may be allowed by Customer to have use of the input and/or output sensory displays of or from the Solution under the provisions of Section 5.5 hereunder

5.5. Use Restrictions. Except to the extent specifically authorized by this Agreement, Customer shall not, shall not attempt to, and shall not permit any other Person under its reasonable control to: (a) use any SG Solution Detail for any purpose, at any location or in any manner not specifically authorized by this Agreement; (b) make or retain any Copy of any SG Solution Detail; (c) create or recreate the source code for the Solution, or re-engineer, reverse engineer, decompile or disassemble the Solution except to the extent specifically permitted by applicable law; (d) modify, adapt, translate or create derivative works based upon the Solution or Documentation, or combine or merge any part of the Solution or Documentation with or into any other software or documentation except to the extent specifically permitted by applicable law; (e) refer to, disclose or otherwise use any SG Solution Detail as part of any effort either (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Solution or (ii) to compete with Superion; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any SG Solution Detail, or fail to preserve all copyright and other proprietary notices in any Copy of any SG Solution Detail made by Customer; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, sub-contractor,

consultant or partner, any right to use any SG Solution Detail or allow such other Person to use or have access to any SG Solution Detail, whether on Customer's behalf or otherwise; or (h) use the Solution to conduct any type of application service provider, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise. Notwithstanding this section 5.5, Customer and Superion agree that Customer's clients who make inquiries regarding their own utility customer information or other personal information maintained by the Customer may be allowed by Customer to have use of the input and/or output sensory displays of or from the Solution under the provisions hereunder. Customer is prohibited from using the Software to provide service bureau data processing services or to otherwise provide data processing services to third parties. Customer will not allow the Solution to be used by, or disclose all or any part of the Solution to, any person except Customer Employees. Without limiting the foregoing, Customer is permitted to allow use of the input and/or output sensory displays of or from the Solution by third parties on a strict "need to know" basis, and such use will not be deemed a non-permitted disclosure of the Solution.

5.6. Notice and Remedy of Breaches. Each party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

5.7. Enforcement. Each party acknowledges that any breach of any of the provisions of this Section 5 may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach.

6. Professional Services.

6.1. Professional Services. An Order may identify certain Professional Services.

6.2. Professional Services Fees. Customer shall pay to Superion the professional services fees stated on the Order. In each case where professional services fees are not specified on the Order, then the fees for such services shall be based upon Superion's then standard professional services fee rates.

6.3. Expense Reimbursements. Customer shall reimburse Superion for reasonable travel, living and other out-of-pocket expenses incurred by Superion personnel in connection with all services, including, but not limited to, Professional Services and maintenance and support rendered by Superion. Reimbursable expenses shall be incurred by Superion personnel in accordance with Superion's then current per diem travel expense guidelines, a copy of which will be included in the Order. Superion shall invoice Customer for reimbursement of these expenses on a monthly basis, as incurred.

6.4. Cooperation and Access to Facilities, Data and Employees. To the extent reasonably necessary for Superion to perform its obligations under this Agreement, Customer shall provide to Superion access to Customer's location site, equipment, data and employees, and shall otherwise

cooperate with Superion in its performance hereunder, all as reasonably necessary for Superion to perform its obligations under this Agreement.

6.5. Professional Services Warranty. Superion warrants to Customer that Professional Services will be performed in a good and workmanlike manner by qualified personnel, subject to Section 6.4. Superion shall have no liability under this Section 6.5 unless, within thirty (30) days after Customer discovers a breach of this warranty, Superion receives notice from Customer describing the breach of this warranty, together with adequate supporting documentation and data. Upon receipt of any such notice, Superion is obligated under this Section 6.5 to remedy the breach and reperform the particular Professional Services affected as soon as reasonably practical at no additional charge.

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

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

7. Term and Termination.

7.1. Order Term. The Order may state an initial term for the use of the Solution ("**Initial Term**") and may state renewal terms (each a "**Renewal Term**"). "**Order Term**" means the Initial Term together with any Renewal Terms.

7.2. Termination. (a) A party has the right to terminate this Agreement for convenience and without penalty by providing the other party with at least nine (9) months written notice. In addition, a party has the right to terminate this Agreement for cause if the other party breaches a material provision of this Agreement. To terminate this Agreement for cause, the party seeking termination must give the other party written notice that describes the event or condition of termination in reasonable and sufficient detail in order to afford the other party the ability to generally identify and understand what breach or breaches of this Agreement must be cured. From the date of its receipt of that notice, the other party will have thirty (30) days or such additional time agreed to by the parties in writing, to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to Superion of a suspected defect in the Documentation and *bona fide* payment disputes under this Agreement will not constitute a notice of termination of this Agreement.

(b) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information and indemnity and hold harmless will survive termination of this Agreement.

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

7.3. Effect of Termination. The provisions of Sections 3, 4, 5, 7.3 and 10 shall survive any termination of this Agreement, whether under this Section 7 or otherwise. Customer shall be liable for all payments due to Superion for the period ending on the date of termination. Upon a termination of this Agreement, whether under this Section 7 or otherwise, or upon the expiration or termination of an Order Term, Customer shall: (i) discontinue all use of the affected Solution and Documentation, (ii) promptly return to Superion all copies of the affected Solution and Documentation and any other affected SG Solution Details then in Customer's possession; and (iii) give notice to Superion certifying that all copies of such items have been permanently deleted.

8. Terms Applicable To SaaS, ASP and Hosting. The following provisions in this Section 8 apply solely to Hosting Services and to Orders for and ASP Solution or SaaS Solution.

8.1. SaaS, ASP and Hosting. Superion shall provide the Hosting Services and/or access to the ASP Solution or SaaS solution, as described and for the term specified on the Order.

8.2. Passwords and Solution Access. If Superion provides Customer or its Authorized Users with unique access codes to access the Solution (each, a "Password"), Customer shall hold any such Passwords in strict confidence and shall not assign, share, misuse or abuse the Passwords or attempt to render ineffective the password protection of the Solution. If Customer suspects or learns that a Password is being used to gain unauthorized access to the Solution, Customer will immediately notify Superion so that it can change, or assist Customer in changing, the applicable Password. To the extent the Solution is within Superion's network, Superion may suspend access to the Solution without advance notice if Superion reasonably believes the Solution is being used or accessed in an unauthorized, illegal or disruptive manner, provided that Superion will promptly notify Customer of any such event.

8.3. Customer Data.

(a) Customer shall supply, or cause to be supplied, all Customer Supplied Data. Customer shall transmit the Customer Supplied Data to Superion by communications link or in another manner described on the Order. As between Superion and Customer, Customer shall be responsible for ensuring that the Customer Supplied Data is Accurate and complete. Customer represents and warrant to Superion that Customer has the full legal right for Customer and Superion, its affiliates and agents to use the Customer Supplied Data for processing hereunder.

(b) Within thirty (30) days after termination of Hosting Services or of an Order for an ASP Solution or SaaS Solution, Customer shall give Superion an instruction notice regarding the disposition of any tapes, data, files and other property belonging to Customer and then in Superion's possession. To the extent practicable and at Customer's expense after receipt of such notice, Superion shall use commercially reasonable efforts to comply with the notice, including converting the data on the Solution to machine-readable form.

(c) In order to improve Superion's product and service offerings for its customers, Superion may maintain a database of information residing on the Solution. Superion and its affiliates may use and distribute such data in an aggregated and de-identified format, including as a part of the

development, distribution and licensing of any Superion product or service offering.

8.4. Regulatory Access. To the extent permitted by law, each party will notify the other promptly of any formal request by an authorized governmental agency or regulator to examine Customer Data or other records, if any, regarding Customer that are maintained in Superion facilities under this Agreement. Customer will reimburse Superion for the reasonable out-of-pocket costs Superion incurs, and for time spent, in making such Customer Data or other records, if any, available for examination and audit by the governmental agency or regulatory authority that has jurisdiction over Customer's business.

8.5. Support. Superion shall provide to Customer the ongoing support services as described in the Order.

8.6. Data Backup and Disaster Recovery. If the Solution maintains a database then, unless otherwise stated on the Order:

(a) Superion shall provide an electronic backup of the Customer Data accordance with the backup cycle defined in the Order (and if no backup cycle is defined, at reasonable intervals); and

(b) Superion shall maintain a disaster recovery plan which includes a procedure for the restoration of Customer's production environment at an alternate facility in the event of a disaster. Superion's disaster recovery plan shall be tested at least once each calendar year.

8.7. Interruption to Solution. From time to time, Superion shall be entitled (at its discretion, without incurring liability for so doing) to interrupt the Solution to: (i) perform repairs and other maintenance and install enhancements on Superion's equipment, software and/or other systems that are required for the provision of the Solution, or (ii) make adjustments to its infrastructure (including, for example, in relation to resources shared by its other customers) and thereby cause a disruption in the provision of the Solution. Except in the case of emergency repairs, maintenance or adjustments, Superion will (a) give Customer reasonable prior notice of the interruption; (b) limit such interruptions to outside of Superion's normal business hours; and (c) use commercially reasonable efforts to minimize the impact of the interruption.

8.8. Harmful Code. Using a recent version of a reputable virus-checking product (to the extent commercially available), Customer will check the Specified Configuration for Harmful Code and ensure no Harmful Code is introduced by its end users or from its systems into any systems used in the Solution and will use commercially reasonable efforts to eliminate any such Harmful Code that either Customer or Superion discovers.

8.9. Volume Increases. Customer shall give notice to Superion whenever Customer intends to materially increase the volume of data to be processed on the Solution. Any such increase that results in an increase beyond the Scope of Use requires an additional executed Order and the payment of additional fees.

9. Terms Applicable to Software Licenses. The following provisions in this Section 9 apply solely to an Order that provides the right for Customer to install the Solution at the facility identified on the Order.

9.1. Grant. Except as otherwise provided in an Order, Superion grants to Customer a non-transferable, non-exclusive, term license to use the Solution in accordance with this Agreement and the Scope of Use. The Solution shall be installed in object code form only at Customer's location(s) listed on the Order ("Designated Location(s)"). Customer may,

subject to Section 10.4, use or access the Solution at or from Customer locations worldwide. Customer may change a Designated Location by giving prompt notice thereof to Superion. Customer may copy and use the Solution installed at the Designated Location for inactive back-up and disaster recovery purposes. Customer may copy the Documentation to the extent reasonably necessary for use of the Solution under this Agreement.

9.2. Initial Installation. Superion shall deliver to Customer the initial Copies of the Solution stated on the Order by supplying such initial Copies (a) by physical shipment, such as on a disc or other media, or (b) by electronic delivery, such as by posting it on Superion's network for downloading. Physical shipment is on F.O.B. terms, Superion's shipping point and electronic delivery is deemed effective at the time Superion provides Customer with access to download the Solution. The date of such delivery shall be referred to as the "Delivery Date."

9.3. Support. Beginning on the Order Execution Date and continuing for the duration of the initial support term set forth on the Order ("Initial Support Term"), Superion shall provide the ongoing support services described in that Order; and Customer shall pay to Superion support fees stated on such Order ("Support Fees"). Upon expiration of the Initial Support Term, the ongoing support services shall automatically renew and Customer shall be obligated to pay the Support Fees for additional annual support periods (each a "Renewal Support Term"), until the earlier of:

(a) a party giving the other notice of its intent to terminate ongoing support services (in accordance with Section 10.1) at least sixty (60) days before the end of the Initial Support Term or Renewal Support Term, as applicable, provided that Superion shall not provide such notice of support termination if such termination would be effective prior to whichever is the later of (i) the fifth (5th) anniversary of the Order Execution Date; or (ii) the date which falls at the end of the period equal to two (2) times the Initial Support Term; or

(b) termination of this Agreement.

On an annual basis, Superion may increase the Support Fees payable upon mutual agreement with Customer.

9.4. Support Termination. Upon the effective date of termination of ongoing support services by either party or at any time when Customer has failed to pay Support Fees ("Support Termination Date"): (i) Superion shall discontinue providing all ongoing support services, including Superion's obligations under Section 9.3; (ii) any Superion warranties under this Agreement shall cease to apply for the period after the Support Termination Date; and (iii) Superion shall not be liable for Customer's use of the Solution after the Support Termination Date except for Superion's indemnification obligations for any third-party claims covered by Section 4.2 that arose prior to the Support Termination Date (but only to the extent such claim would not have been remedied by a Release made available by Superion after the Support Termination Date).

9.5. Software Warranty. Superion warrants to Customer that for a period of twelve (12) months from the Delivery Date, the Solution (as delivered to Customer by Superion and when properly used for the purpose and in the manner specifically authorized by this Agreement), will perform as described in the Documentation in all material respects. Superion is obligated to comply with the provisions of Section 9.3 of this Agreement.

9.6. Remote Access of Installed Software. Provided that Superion performs such services in accordance with the confidentiality provisions of this Agreement, Customer shall permit Superion, at Superion's option, to remotely access the Solution installed at the Designated Location for the purpose of providing support services to Customer under Section 9.3 and otherwise implementing the purposes of this Agreement. In remotely accessing such Solution, Superion will comply with Customer's reasonable security procedures and company policies that have been provided to Superion in writing. Customer shall promptly reimburse Superion for any reasonable out-of-pocket costs incurred in complying with such procedures and policies.

9.7. Audit. At Superion's expense and upon written request with reasonable notice, Customer will permit Superion, its personnel or its outside auditors to enter the relevant Customer locations during normal business hours and audit the number of copies of the Solution and Documentation in Customer's possession and information pertaining to Customer's compliance with this Agreement. Such audits shall not occur more than once in any twelve (12) month period (unless Superion believes, in good faith, that there has been a breach of this Agreement by Customer) and shall be performed in a manner not to disrupt Customer's business and operations and will respect the confidentiality of Customer, its suppliers and customers. Customer will, in a timely manner, reasonably cooperate with the auditors and provide the auditors all assistance as they may reasonably request in connection with the audit. Customer may require auditors acting on behalf of Superion to execute reasonable confidentiality agreements and comply with Customer's reasonable security requirements, but the requirement will not apply to Superion's internal auditors otherwise bound by the confidentiality conditions of this Agreement.

10. Other Provisions.

10.1. Notices. All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of: (a) the date of actual receipt; (b) the third business day after being mailed by first class, certified or air mail or (c) the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, or email if notice by one of the foregoing is provided promptly thereafter. Customer's address for notices is City Manager, 65 Stone Street, Cocoa, Florida 32922. Superion's address for notices is stated on the Order. In the case of (i) any notice by Customer alleging a breach of this Agreement or (ii) a termination of this Agreement, Customer shall also mail a written notice to Superion Data Systems Inc., 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: General Counsel and Superion shall also mail a notice to Garganese, Weiss & D'Agresta, 111 N. Orange Avenue, Suite 2000, Orlando, Florida 32801. Such notices of breach and/or termination shall identify the name date, specific parties and Superion Order Number. Either party may change its address for notices by giving written notice of the new address to the other party.

10.2. Defined Terms. As used in this Agreement, the terms below (and their plural forms) have the following meanings:

(a) "affiliate" whether capitalized or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.

- (b) **"Authorized Recipient"** means: (i) with respect to Customer, any Authorized User and any employee of a Customer contractor, provided that the contractor is not a competitor of Superion; and (ii) with respect to Superion, Superion, its foreign and domestic Affiliates and their respective contractors.
- (c) **"Authorized User"** means a Customer employee. Customer employee means: (i) Customer's employees with a need to know; (ii) third party consultants engaged by Customer who have a need to know, who have been pre-approved by Superion, and who, prior to obtaining access to the Software, have executed a Superion-approved non-disclosure agreement. For purpose of clarification, but not limitation, Customer and Superion agree that Customer's clients who make inquiries regarding their own utility customer information or other personal information maintained by the Customer are not Customer Employees but such clients may be allowed by Customer to have use of the input and/or output sensory displays of or from the Software under the provisions of Section 5.5 hereunder.
- (d) **"Confidential Information"** means non-public information of a party to this Agreement which the City is not required by the Florida Public Records Act (Ch. 119, Fla. Stat.) to publicly disclose for inspection and/or copying. Confidential Information of Superion includes the Software and algorithms, methods, techniques and processes revealed by the Software that constitute a trade secret as defined in section 812.081, and as provided for in section 815.04(3), Florida Statutes. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a written non-disclosure obligation.
- (e) **"copy"** whether capitalized or not, means any paper, disk, tape, film, memory device or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.
- (f) **"Customer Data"** means data stored in, or processed by, the Solution; provided that aggregated data that is not personally identifiable data and not identifiable to Customer shall not be deemed Customer Data nor Customer's Confidential Information.
- (g) **"Customer Supplied Data"** means any information or data introduced into the Solution by or on behalf of Customer.
- (h) **"Disputed Amount"** means a good faith dispute by Customer of certain amounts invoiced under this Agreement. An amount will only constitute a Disputed Amount if (i) Customer has given notice of the dispute to Superion promptly after receiving the invoice and (ii) the notice explains Customer's position in reasonable detail. A dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice are Disputed Amounts. Resolution of Disputed Amounts shall occur in accordance with the Florida Local Government Prompt Payment Act.
- (i) **"Documentation"** means the standard user documentation Superion provides for the Solution, as such Documentation may be updated from time to time.
- (j) **"Error"** means a failure of a Supported Release to perform in all material respects in accordance with the Documentation.
- (k) **"Export Laws"** means any laws, administrative regulations and executive orders of the U.S., the United Kingdom and any other jurisdiction where any SG Solution Details will be located or from where any SG Solution Details will be accessed under this Agreement relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property or services, embargo of goods or services or registration of this Agreement including the Export Administration Regulations of the U.S. Department of Commerce and the regulations and executive orders administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury.
- (l) **"Feedback"** means any suggestions or recommendations for improvements or modifications to the Solution made by or on behalf of Customer.
- (m) **"including"** whether capitalized or not, means including but not limited to.
- (n) **"Open Source Software"** means computer software made generally available at no charge by the copyright holder under a license which provides the right to modify and distribute the software to anyone for any purpose at no charge.
- (o) **"person"** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.
- (p) **"Professional Services"** means installation, implementation, training or consulting services including custom modification programming, support services relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by Superion under this Agreement.
- (q) **"Release"** means a modification or update to the Solution, which Superion, in its sole discretion, incorporates into the Solution without requiring its then existing client base to pay a separate fee (other than support fees).
- (r) **"Scope of Use"** means the Designated Computer(s), Designated Location(s), License Term, Platform, Business Purpose, Number of Trades, Number of Work Stations, Number of Developers, Number of Users, Volume Limit, Number of Production Databases, Number of Production Servers, and/or other restrictions or parameters as are stated in Section 5.5 or on the Order. Scope of Use shall not include the processing of any Acquired Business. Customer shall use the Solution in production to process Customer's business; provided that all increases in the Scope of Use require the execution of an amendment amending the Scope of Use.
- (s) **"SG Solution Details"** means any of the following: the Solution and Documentation, the object code and the source code for the Solution, the visual expressions, screen formats, report formats and other design features of the Solution, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Solution or Documentation, all future

modifications, updates, Releases, improvements and enhancements of the Solution or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.

- (t) **"Supported Release"** means, unless otherwise stated in the Order, the latest Release of the Solution that is generally available to Superion's client base.
- (u) **"Third-Party Product"** means Third-Party Software, Third Party Hardware, Third-Party Data or Third-Party Services.
- (w) **"Third-Party Hardware"** means that hardware specified as third party hardware on the Order.
- (x) **"Third-Party Services"** means those services specified as third party services on the Order.
- (y) **"Third-Party Software"** means the software specified as third-party software on the Order.
- (z) **"Third-Party User"** means any of Customer's customers, or their customers, to the extent such persons are provided access to the Solution or Third-Party Data hereunder.

10.3. Parties in Interest.

- (a) This Agreement shall bind, benefit and be enforceable by and against Superion and Customer and, their respective permitted successors and assigns.
- (b) Neither party may assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without the other party's prior written consent, except such consent shall not be required in the case of an assignment of this Agreement (but not of any individual rights or obligations hereunder) to (i) a purchaser of or successor to substantially all of Customer's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of Superion, its parent company or any of its Affiliates) or (ii) an Affiliate of Customer, provided in the case of such an assignment, Customer guarantees the obligations of the assignee and the use of the Solution is not broadened beyond the Scope of Use. Any assignment by Customer in breach of this Section shall be void. Any express assignment of this Agreement, any change in control of Customer (or its Affiliate in the case of an assignment to that Affiliate under this Section 10.3(b) and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Customer for purposes of this Section 0 (**"Customer Assignment"**). In the event of a Customer Assignment, or any acquisition of additional business by Customer, whether by asset acquisition, merger or otherwise by operation of law (collectively with the Customer Assignment, **"Customer Additional Business Acquisition"**), Customer shall give notice to Superion notifying Superion if Customer desires to use the Solution to process any additional business related to such Customer Additional Business Acquisition (**"Acquired Business"**).

10.4. Export Laws. Customer acknowledges that the SG Solution Details and the services provided by Superion hereunder and this Agreement are subject to the Export Laws. Customer shall not violate the Export Laws or otherwise export, re-export or use, directly or indirectly (including via remote access), any part of the Solution, Confidential Information or services in a manner, or to or for any person or entity, for which a license

or other authorization is required under the Export Laws without first obtaining such license or authorization.

10.5. Relationship. The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

10.6. Entire Understanding. This Agreement, which includes and incorporates the Order, and any other schedules, exhibits and addenda hereto states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations, representations (whether negligently or innocently made), agreements and other written or oral communications between the parties with respect to the subject matter of this Agreement. In the event of a conflict between the provisions of the SST and an Order incorporating the SST, the terms of such Order shall prevail. Any written, printed or other materials which Superion provides to Customer that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to Customer. In entering into this Agreement each party acknowledges and agrees that it has not relied on any express or implied representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in this Agreement. Each party waives all rights and remedies which, but for this Section 10.6, might otherwise be available to it in respect of any such representation (whether negligently or innocently made), warranty, collateral contract or other assurance. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

10.7. Modification and Waiver. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without written agreement of the parties with respect to formats and protocols. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

10.8. Severability, Heading and Counterparts. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the parties shall negotiate in good faith on replacement language that will express the intent of the parties in a legally enforceable manner and the remaining provisions of the Agreement will remain in full force and effect. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.9. Omitted.

10.10. Jurisdiction and Governing Law. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or its subject matter. This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida excluding choice of law. Each party irrevocably (i) agrees that a County or Circuit Court in the Eighteenth Judicial Circuit, in and for Brevard 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 (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other party.

10.11 Sovereign Immunity. Notwithstanding any other provision set forth in this Agreement to the contrary, the City (Customer) intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. Superion agrees that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

10.12 Insurance. During the term of this Agreement, Superion shall be responsible for providing and maintaining the types of insurance and limits per claim as set forth below:

(a) Professional liability: Proof of professional liability insurance shall be provided to the Customer for the minimum amount of \$1,000,000 on a per occurrence basis.

(b) Superion shall maintain comprehensive general liability insurance in the minimum amount of \$1,000,000 as the combined single limit for each occurrence to protect the Customer from claims of property damages and personal injury which may arise from any services performed under this Agreement whether such services are performed by Superion or by anyone directly employed by or contracting with Superion.

(c) Superion shall maintain adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing services for the Customer pursuant to this Agreement.

During the term of this Agreement, current certificates of insurance shall be provided and kept on file with the Customer.

10.13 Public Records. Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Superion agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s),

regardless of the physical form, characteristics, or means of transmission, of Superion related, directly or indirectly, to the services provided to the Customer under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the Customer, may be deemed to be a public record, whether in the possession or control of the Customer or the Superion. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission of Superion are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the Customer's designated custodian of public records.

IF SUPERION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SUPERION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE CITY CLERK, AT (321) 433-8484, cshealy@cocoafl.org, 65 Stone Street, Cocoa, Florida 32922.

Superion is required to and agrees to comply with public records laws. Superion shall keep and maintain all public records required by the Customer to perform the services as agreed to herein. Superion shall provide the Customer, upon request from the City Clerk, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Superion shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term. Upon completion of the Agreement, Superion shall transfer to the Customer, at no cost, all public records in possession of the Superion, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Superion shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Superion shall continue to keep and maintain the public records upon completion of the Agreement and shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the City Clerk, in a format that is compatible with the information technology systems of the Customer. Should the Customer not possess public records relating to this Agreement which are requested to be inspected or copied by the Customer or any other person, the Customer shall immediately notify Superion of the request and the Superion shall then provide such records to the Customer or allow the records to be inspected or copied within a reasonable time. If the Superion does not comply with a public records request, the Customer may enforce this Section to the extent permitted by law. Superion acknowledges that if the Superion does not provide the public records to the Customer within a reasonable time, the Superion may be subject to penalties under

Section 119.10, Florida Statutes. The Superion acknowledges that if a civil action is filed against the Superion to compel production of public records relating to this Agreement, the court may assess and award against Superion the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Superion, be open and freely exhibited to the Customer for the purpose of examination, audit, or otherwise. Failure by Superion to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the Customer upon delivery of a written notice of cancellation. If Superion fails to comply with this Section, and the Customer must enforce this Section, or the Customer suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Superion's failure to comply with this Section, the Customer shall collect from Superion prevailing party attorney's fees and costs, and any damages incurred by the Customer, for enforcing this Section against Superion. And, if applicable, the Customer shall also be entitled to reimbursement of all attorneys' fees and damages which the Customer had to pay a third party because of the Superion's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.