

## SOFTWARE MAINTENANCE AGREEMENT

BETWEEN

**Superion, LLC**  
a Delaware Limited Liability Company

with headquarters at:

1000 Business Center Drive  
Lake Mary, FL 32746

("Superion")

AND

**City of Redlands**  
35 Cajon St., Suite 30  
Redlands, CA 92373

(for purposes of this Agreement, "Customer")

By the signatures of their duly authorized representatives below, Superion and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Exhibits, Supplements, Schedules, Appendices, and/or Addenda to this Agreement.

**City of Redlands, CA**

BY: 

PRINT NAME: Paul W. Foster

PRINT TITLE: Mayor

**Superion, LLC**

DocuSigned by:  
BY:   
AAAB56CFC387424...

PRINT NAME: Danilo Gargiulo

PRINT TITLE: SVP, Business Transformation & Strategy

**T** HIS AGREEMENT is entered into between Superion and Customer on the Execution Date, and Superion's obligations hereunder will commence on Execution Date.

Superion and Customer have entered into a Software License and Services Agreement dated June 1, 2000 (the "License Agreement") for the Software. Customer desires that Superion provide Maintenance and Enhancements for and new releases of the Baseline Software identified in Exhibit 1 on the terms and conditions contained in this Agreement, and for the Custom Modifications identified in Exhibit 1 on the terms and conditions of this Agreement. Accordingly, the parties agree as follows:

1. **Definitions.**

"Exhibit 1" means, collectively: (i) The schedule attached to this Agreement which is

marked as "Exhibit 1," including all attached Software Supplements; and (ii) any schedule also marked as "Exhibit 1" (also including any attached Software Supplements) that is

attached to any amendment to this Agreement. Other appendices to this Agreement are numbered sequentially and are also "Appendices."

"Baseline" means the general release version of a Component System as updated to the particular time in question through both Superior's warranty services and Superior's Maintenance Program, but without any other modification whatsoever.

"Component System" means any one of the computer software programs which is identified in Exhibit 1 as a Component System, including all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to and all Intellectual Property Rights for such Component System.

"Confidential Information" means trade secret information of the disclosing party which is designated as trade secret prior to or at the time of disclosure to the Recipient. Confidential Information of Superior includes the Software, all software provided with the Software, and algorithms, methods, techniques and processes revealed by the Source Code of the Software and any software provided with the Software. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; or (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

"Discloser" means the party providing its Confidential Information to the Recipient.

"Documentation" means the on-line and hard copy functional and technical specifications that Superior provides for a Baseline Component System, and that describe the functional and technical capabilities of the Baseline Component System in question.

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

"Equipment" means a hardware and systems software configuration meeting the "Equipment" criteria set forth in Exhibit 1.

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

"Software" means the Component Systems listed in Exhibit 1.

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

"Recipient" means the party receiving Confidential Information of the Discloser.

"Software Supplement" means, with respect to a Component System, the addendum provided as part of Exhibit 1 that contains additional terms, conditions, limitations and/or other information pertaining to that Component System. If any terms of a Software Supplement conflicts with any other terms of this Agreement, the terms of the Software Supplement will control.

"Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments and other programmer documentation.

"Contract Year" means, with respect to each Baseline Component System and Custom Modification, the period identified in Exhibit 1.

"Custom Modification" means a change that Superior has made at Customer's request to any Component System in accordance with a Superior-generated specification, but without any other changes whatsoever by any person or entity. Each Custom Modification for which Superior will provide Customer with Improvements is identified in Exhibit 1.

"Defect" means a material deviation between the Baseline Component System and its Documentation, for which Defect Customer has given Superior enough information to enable Superior to replicate the deviation on a computer configuration that is both comparable to the Equipment and that is under Superior's

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

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

"Improvements" means, collectively, Maintenance, Enhancements and New Releases provided under this Agreement.

"Maintenance" means using reasonable efforts to provide Customer with avoidance procedures for or corrections of Defects. The hours during which Maintenance will be provided for each Component System, the targeted response times for certain defined categories of Maintenance calls for each Component System and Custom Modification, and other details and procedures (collectively, the "Maintenance Standards") relating to the provision of Maintenance for each Component System and Custom Modification are described in attached Exhibit 2.

"New Releases" means new editions of a Baseline Component System or Custom Modification, as applicable.

"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.

## 2. Services.

(a) Types of Services. During the term of this Agreement, Superior will provide Customer with Maintenance for, Enhancements of, and New Releases of each Baseline Component System and each Custom Modification identified in Exhibit 1.

(b) Limitations. All Improvements will be part of the applicable Baseline Component System/Custom Modification, and will be subject to all of the terms and conditions of the License Agreement and this Agreement. Customer must provide Superior with such facilities, equipment and support as are reasonably necessary for Superior to perform its obligations under this Agreement, including remote access to the Equipment.

## 3. Payment and Taxes.

(a) Maintenance Fees. For the Improvements, Customer will pay Superior the amount provided for in Exhibit 1 as the "Payment Amount" for the first Contract Year. For second Contract Year increase shall not exceed seven (7) percent, upon conclusion of second term this Agreement shall terminate.

(b) Additional Costs. Customer will also reimburse Superior for actual travel and living expenses that Superior incurs in providing Customer with Improvements under this Agreement, with reimbursement to be on an as-incurred basis. Such travel and living expenses will be governed by Superior's Corporate Travel and Expense Reimbursement Policy and will be invoiced on a monthly basis in arrears and due within thirty (30) days from the date of invoice. In no event shall travel expenses exceed those established in IRS per diem.

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

4. Term. This Agreement will remain in full force and effect through December 31, 2021 upon which time this Agreement shall terminate.

5. Disclaimer of Warranties. Customer

agrees and understands that **SUPERION MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY IMPROVEMENTS AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT SUPERION EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, SUPERION EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER IF THE COMPONENT SYSTEM OR CUSTOM MODIFICATION HAS BEEN MODIFIED BY ANYONE OTHER THAN SUPERION, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT.**

6. Termination. A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, then the party seeking to terminate this Agreement can effect such termination by providing the other party with a termination notice that specifies the effective date of such termination. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

7. Confidential Information. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own

Confidential Information of equal importance. Except in connection with the Software and any software provided with the Software, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item and provided the public records exception continues to be met.- However, Customer's obligations to maintain both the Software and any software provided with the Software as confidential will survive in perpetuity.

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

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

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

Superion transfers any of its rights in the Software.

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

12. Choice of Law; Severability. This Agreement will be governed by and construed under the laws of the State of Ohio, without reference to the choice of laws provisions thereof. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

13. LIMITATIONS OF LIABILITY.

(a) LIMITED LIABILITY OF SUPERION. SUPERION'S LIABILITY IN CONNECTION WITH THE IMPROVEMENTS OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES THAT CUSTOMER ACTUALLY PAID TO SUPERION FOR THE IMPROVEMENTS FOR THE YEAR THAT SUCH LIABILITY ARISES.

(b) EXCLUSION OF DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR

OTHERWISE, IN NO EVENT WILL SUPERION BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SUPERION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(c) BASIS OF THE BARGAIN. CUSTOMER ACKNOWLEDGES THAT SUPERION HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

14. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

## EXHIBIT 1

Customer: City of Redlands

## CONTRACT TERM:

Application	QTY	Partial Term 1/1/20-4/7/20	Partial Term 4/7/20-12/31/20	Annual Term 1/1/21-12/31/21
OS-Remote Service Processing	1	\$ 32,141.85	\$ 96,425.55	\$ 138,637.08
OS - Querix qx	1	\$ -	\$ -	\$ -
ONESolution Cash Receipts	1	\$ -	\$ -	\$ -
OS-Hassle Free Support	1	\$ -	\$ -	\$ -
OS-Human Resources	1	\$ -	\$ -	\$ -
OS-Image Enabler	1	\$ -	\$ -	\$ -
OS-Job Project Ledger	1	\$ -	\$ -	\$ -
OS-Netsight	1	\$ -	\$ -	\$ -
OS-Nucleus	1	\$ -	\$ -	\$ -
OS-Open Link	1	\$ -	\$ -	\$ -
OS-Payroll	1	\$ -	\$ -	\$ -
OS-Person/Entity Database	1	\$ -	\$ -	\$ -
OS-Purchasing	1	\$ -	\$ -	\$ -
OS-MicroFocus Development 600000457440	1	\$ -	\$ -	\$ -
OS-MicroFocus Development 600000457441	1	\$ -	\$ -	\$ -
OS-MicroFocus Net Express Runtime Bundles 600000457442	1	\$ -	\$ -	\$ -
OS-MicroFocus Net Express Runtime Bundles 600000457443	1	\$ -	\$ -	\$ -
OS-Employee Online	1	\$ -	\$ -	\$ -
OS-Stores Inventory	1	\$ -	\$ -	\$ -
OS-Work Order Management	1	\$ -	\$ -	\$ -
OS-Accounts Receivable/Cash Receipts	1	\$ -	\$ -	\$ -
OS-Bank Reconciliation	1	\$ -	\$ -	\$ -
OS-Bid & Quote Management	1	\$ -	\$ -	\$ -
OS-Bid Management	1	\$ -	\$ -	\$ -
OS-Budget Item Detail	1	\$ -	\$ -	\$ -
OS-Click, Drag & Drill (Report Writer)	1	\$ -	\$ -	\$ -
OS-Accounts Payable/Encumbrances	1	\$ -	\$ -	\$ -
OS-Easy Laser Forms	1	\$ -	\$ -	\$ -
OS-Fixed Assets	1	\$ -	\$ -	\$ -
OS-General Ledger	1	\$ -	\$ -	\$ -
<b>Total</b>		<b>\$ 32,141.85</b>	<b>\$ 96,425.55</b>	<b>\$ 138,637.08</b>

\*Improvements fees for current Contract Year are subject to change and will be specified by Superion in an annual invoice. Please note that for the term beginning in 2021, a 7% increase will be applied to your maintenance. The fees provided above are estimates only and shall not exceed a 7% increase.

Improvements fees for the partial term of January 1, 2020 through April 7, 2020 is due upon execution with the April 7, 2020 through December 31, 2020 due prior to April 7<sup>th</sup>. Second Annual term of January 1, 2021 through December 31, 2021 shall be due prior to January 1, 2021.

**APPLICABLE TAXES ARE NOT INCLUDED IN THIS EXHIBIT 1, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT IN THE PAYMENT INVOICE(S) BEING SENT SEPARATELY TO THE CUSTOMER.**

Improvements Surcharge Imposed In Certain Instances: At the commencement of any Contract Year where Customer is operating on a version of a Baseline Component System that is more than two (2) general release

versions behind the then-current release for any Component System, Superior will assess a ten percent (10%) surcharge over and above the Improvements fee for that Contract Year, with such surcharge to be imposed on a prorated basis for the portion of the Contract Year that Customer remains on a general release version that is more than two (2) releases behind the then-current release of the Component Systems in question. Once Customer is using a release that is no more than two (2) general release versions behind the then-current release, the Improvements surcharge will be removed on a prospective basis, as of the date that Customer is using the release that is no more than two (2) general release versions behind the then-current release.

**EXHIBIT 2**  
**Maintenance Standards**

- I. **Hours During Which Superior's Telephone Support Will be Available to Customer in Connection with the Provision of Maintenance:** Unless otherwise noted in Exhibit 1, 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 ("5x11").
- II. **Targeted Response Times.** With respect to Superior's Maintenance obligations, Superior will use diligent, commercially reasonable efforts to respond to Notifications from Customer relating to the Baseline Component Systems/Custom Modifications identified in Exhibit 1 of this Agreement 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*
<b>Urgent</b> 1	A support issue shall be considered <b>Urgent</b> when it produces a Total System Failure; meaning Superior's Component Systems are 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.
<b>Critical</b> 2	A support issue shall be considered <b>Critical</b> when a critical failure in operations occurs; meaning Superior's Component Systems are 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.
<b>Non-Critical</b> 3	A support issue shall be considered <b>Non-Critical</b> when a non critical failure in operations occurs; meaning Superior's Component Systems are 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.	
<b>Minor</b> 4	A support issue will be considered <b>Minor</b> 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, 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.