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**CONTRACT BETWEEN
COUNTY OF GLOUCESTER
AND
BENEVATE, INC.
DBA NEIGHBORLY SOFTWARE**

THIS CONTRACT is made effective the 12th day of May, 2024, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **BENEVATE, INC. DBA NEIGHBORLY SOFTWARE**, with a mailing address of Atlanta Tech Village, 3423 Piedmont Road, NE, Atlanta, GA 30305, hereinafter referred to as "Contractor".

RECITALS

WHEREAS, the County of Gloucester has determined that there is a need for a software Maintenance Portal, including 2 admin licenses to access funding information for the Emergency Rental Assistance (ERA) Program; and

WHEREAS, the Contractor represents that it is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this contract.

NOW THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Contractor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM.** This Contract shall be effective from May 12, 2024, to May 11, 2025.
2. **COMPENSATION.** The Contract is for a total amount of \$4,800.00.

The Contractor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized and include a detailed description of all services. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by the Contractor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

3. **DUTIES OF CONTRACTOR.** The specific duties of the Contractor shall be as set forth in Attachment A.

The Contractor agrees that it has or will comply with, and where applicable should continue throughout the period of this contract to comply with, all of the requirements of the bid

documents.

4. FURTHER OBLIGATIONS OF THE PARTIES. During the performance of this Contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. The Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service.

The Contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. LICENSING AND PERMITTING. If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Contractor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension,

revocation and/or change in status) of license or certification held by Contractor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the County specifications, which are specifically referred to and incorporated herein by reference.

B. If the Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Contractor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

E. Notwithstanding the above, the Contractor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the County from the Contractor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **PROPERTY OF THE PARTIES.**

A. County shall own all rights, title, and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.

B. Contractor shall own and retain all rights, title and interest in and to (a) the Services and Software, all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions, or other technology developed in connection with implementation of services or support, and (c) all intellectual property rights related to any of the foregoing.

- C. ny of the foregoing.
- D. Contractor shall have the right to collect, use, and disclose quantitative data derived from County's use of the Software for industry analysis, benchmarking, analytics, marketing, and other business purposes in support of the provision of the Software. For clarity, any such data collected, used, and disclosed will be in anonymized, aggregate form only and shall not include any confidential information or disclose any personally identifiable information.

8. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Contractor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Contractor's failure to provide for the safety and protection of its employees, or from the Contractor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **INSURANCE.** The Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. The Contractor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If the Contractor is a member of a profession that is subject to suit for professional malpractice, then the Contractor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. The Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. The Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. **SET-OFF.** Should the Contractor either refuse or neglect to perform the service that the Contractor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Contractor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

12. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Contractor shall be suspended without liability for the period during which the County is so prevented.

13. **METHODS OF WORK.** The Contractor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

14. **NON-WAIVER.** The failure by the County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by the Contractor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

15. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

16. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

17. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

18. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

19. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that the Contractor is an independent contractor and is not an agent of the County.

20. **CONFLICT OF INTEREST.** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

21. **CONFIDENTIALITY.** The Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.


22. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

23. **CONTRACT PARTS.** This contract shall consist of this document and Attachment A. If there is a conflict between this Contract and Attachment A, then this Contract shall control.

IN WITNESS WHEREOF, pursuant to N.J.S.A. 40A:11-3, and authorized by Resolution, the County has caused this instrument to be signed by its Chief Financial Officer, and attested by its Purchasing Agent, and Contractor has caused this instrument to be signed and attested by its properly authorized representatives.


THIS CONTRACT is dated this 12th day of May, 2024.

ATTEST:



Kimberly Larter,
Qualified Purchasing Agent

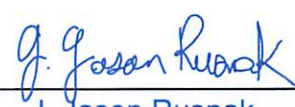
COUNTY OF GLOUCESTER



Tracey N. Giordano,
Treasurer/CFO

ATTEST:

BENEVATE, INC.
DBA NEIGHBORLY SOFTWARE



Name: J. Jason Rusnak
Title: President

ATTACHMENT A

1. **DEFINITIONS.**

- a. "Authorized User" or "User" means those individuals designated and authorized by the County to use one of the purchased subscriptions to access the Software and Services, using his or her login credentials (email address and password), which may only be used by that single, named user.
- b. "Customer Data" means all non-public information or data that is contained in the County's ERAP Maintenance Portal.
- c. "Documentation" means the applicable training materials, user guides, publicly available marketing and/or proposal materials, and other similar information, or other documents disseminated under or governed by confidentiality obligations which pertain to the Software or Services provided by Contractor, which may be updated by Contractor at any time without notice to include information about new features and incorporate feedback to help Contractor's customers understand how to use the Software and Services.
- d. "Professional Services" means non-standard customization and services available at an additional fee, including, but not limited to, data migration services, in-person trainings, Power BI services, geographical data services, non-standard professional developer services, etc.
- e. "Services" means the Maintenance Portal services and functionality outlined in Paragraph 2 of Attachment A.
- f. "Software" means the proprietary web-based products, including, but not limited to, the source code, object code or underlying structure, ideas, know-how or algorithms, documentation, or data related to the Services provided by Contractor, or its licensors and subsequently made available to County by Contractor in accordance with this Contract.

2. SOFTWARE AND SERVICES.

- a. During the Term of this Agreement, Contractor will provide County access to, and use of, the Software, Services, and Documentation by transitioning the County's Emergency Rental Assistance Program (ERAP) Portal to an ERAP Maintenance Portal. The ERAP Maintenance Portal includes the following:
 - Hosting/Security in Microsoft FedRAMP Data Center
 - Data Storage, Backup, and Recovery
 - Technical Support (Monday – Friday: 8:00 a.m. to 8:00 p.m. EST)
 - Access to all Tenant, Landlord, and Vendor (e.g. utility) cases and documents
 - Access to the ERAP dashboard and Treasury reporting, including all required updates to Treasury reports
 - Access to Report Builder for ad hoc reporting

The following changes will apply to the Maintenance Portal:

- Tenants and Landlords do not have ability to create new applications or edit existing cases ("Read Only" Access)

- Tenants do not have the ability to submit Additional Funding Requests
 - New funding cannot be added or disbursed (Funding Tab will have “Read Only” Access)
 - Approval functionality is disabled
 - Support is provided by a general pool of Client Support Specialists; no assigned CSM
 - Only the Users identified in Exhibit B will have continued access to the Maintenance Portal
 - All other Users will be deactivated (Users can be added at any time)
- b. This Contract does not contemplate any customized products, services, work-for-hire, or code developed exclusively for County. In the event that the Parties agree that Contractor shall provide such non-standard Professional Services, the description of the services and applicable ownership rights with respect to such Professional Services will be set forth in a separately executed Professional Services Agreement. This Contract does not contemplate any IP rights beyond the terms provided herein.
- c. Contractor will make available to County all updates and any documentation for such updates to the Services. Contractor will use commercially reasonable efforts to ensure that (i) new features or enhancements to existing features are synchronized with the previous version, and (ii) updates will not degrade the performance, functionality, or operation of the Services. General maintenance of the system is completed on a regular basis to ensure optimal performance of the Services.
- d. Service Levels. Contractor will use commercially reasonable efforts to maintain the availability of the Services at a level of 99.5%. For further specifications regarding the Service Levels, refer to Service Level Terms attached as Exhibit “A” to this Attachment.
- e. Technical Support. With the exclusion of Federal Holidays, Technical Support is available from 8:00 a.m. to 8:00 p.m. EST, Monday - Friday. (“Support Hours”). County shall initiate a helpdesk ticket during Support Hours by sending an email to support@neighborlysoftware.com. Contractor will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.
- f. Data Storage. All Customer Data will be stored, processed, and maintained solely in data centers located in the United States.
- g. Backup and Recovery of Customer Data. Contractor is responsible for maintaining a backup of the Customer Data and for an orderly and timely recovery. Contractor shall maintain a contemporaneous backup of Customer Data that can be recovered within a reasonable period of time.

3. COUNTY RESTRICTIONS AND RESPONSIBILITIES.

- a. County will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation, or data related to the Services (“Software”); (ii) modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by

Contractor or authorized within the Services); nor (iii) use the Services or any Software for timesharing or service bureau purposes.

- b. County represents, covenants, and warrants that County will use the Software in compliance with all applicable laws and regulations. County hereby agrees to hold harmless Contractor against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of the foregoing.
- c. County shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like.
- d. At no time is it permissible for an Authorized User to share their login credentials. The number of Authorized Users hereunder is specified in the Order Form or as formally requested and approved, in writing, during the Term. County is solely responsible for maintaining the status of its Authorized Users and the confidentiality of all login credentials and other Portal access information under its control. County will notify Contractor immediately if Portal information is lost, stolen, or disclosed to an unauthorized person or any other breach of security in relation to its passwords, usernames, or other Portal access information that may have occurred or is likely to occur.

4. RETURN OF CUSTOMER DATA.

- a. At termination or expiration of Contract, Contractor shall disable access to the ERAP Maintenance Portal. Contractor shall provide County with thirty (30) days after termination to facilitate the return of the Customer Data.
- b. Contractor shall return the Customer Data via the Secure File Transfer Protocol to the person(s) identified by the County. It is the County's sole responsibility to ensure that the Customer Data is downloaded, stored, and reviewed. All Customer Data will be deleted sixty (60) days from the date that the Customer Data is returned.
- c. If County fails to cooperate in facilitating the return of the Customer Data, Contractor reserves the right to delete the Customer Data ninety (90) days after the termination of the Contract.
- d. County acknowledges and agrees that Contractor has no obligations whatsoever with regard to the Customer Data following the final destruction. Upon request, Contractor will provide County with a Certification of Data Destruction. This Section shall survive the termination of this Contract.
- e. Optional Data Retention. If County desires Contractor to retain the Customer Data beyond sixty (60) days from the date the Customer Data is provided, County must make that request, in writing (via email), and receive an acknowledgement of said request. Requests that do not receive an acknowledgement or requests that are made after the sixty (60) day window are not considered valid. Additional fees will be assessed for extended data retention.

5. WARRANTY AND DISCLAIMER

- a. **Contractor Warranty.** Contractor represents and warrants the following: (a) the Documentation sufficiently describes features, functionality, and operation of the Software as applicable; (b) the Software, as applicable, conforms to the Documentation and is free from defects in material and workmanship; (c) the Software does not contain any viruses or other malicious threats, programs, features, or devices ("Viruses") that could harm Customer, and Contractor uses commercially reasonable efforts to prevent and eradicate such Viruses. Furthermore, consistent with prevailing industry standards, Contractor shall maintain the Software in a manner which minimizes errors and interruptions and shall perform the Services in a professional and workmanlike manner. Notwithstanding the foregoing, the Software may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond Contractor's reasonable control, but Contractor shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
- b. **Security and Loss of Data.** Contractor maintains appropriate technical and organizational measures to protect Customer Data from accidental loss and from unauthorized access, use, alteration, or disclosure. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of Customer Data, Contractor shall, as applicable: (i) notify County as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (ii) cooperate with Customer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law; and (iii) perform or take any other actions required to comply with applicable State law as a result of the occurrence.
- c. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE AND SERVICES. COUNTY ACKNOWLEDGES AND AGREES THAT CONTRACTOR IS PROVIDING A SOFTWARE TOOL TO ASSIST IN THE PROVISION OF SERVICE. COUNTY FURTHER ACKNOWLEDGES AND AGREES THAT CONTRACTOR HAS NO CONTROL OVER PROGRAM DESIGN AND/OR PROGRAM ADMINISTRATION. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO COUNTY IN CONNECTION WITH THE PROVISION OF THE SOFTWARE AND SERVICES.

6. LIMITATION OF LIABILITY.

- a. Except for liability resulting from a Party's indemnification obligations in no event shall either party's aggregate liability arising out of or related to this Contract exceed the amounts paid/or due from the County under this Contract during the twelve (12) months immediately preceding the event giving rise to the claim.
- b. Except for liability resulting from a Party's indemnification obligations, neither party shall be liable for any indirect, punitive, special, exemplary, implied, incidental, consequential (including loss of revenue, profits, or use) arising out of or relating this Contract.

- c. Notwithstanding the foregoing, nothing in this Section shall exclude or limit the liability of a party for any other liability that cannot be excluded or limited as a matter of applicable law.

EXHIBIT A

Service Level Terms

This Exhibit A outlines the Contractor's commitments to provide Support Services and problem resolution regarding the performance of the Software and/or Services.

1. Definitions.

- a. "Error" means a failure of the Software to perform in accordance with the Documentation, resulting in the inability to use, or material restriction in the use of, the Software.
- b. "Scheduled Downtime" means any period of time during which the Software or Services are unavailable due to the Contractor's planned maintenance and support of the Software or Services. Scheduled Downtime is excluded from the 99.5% Service Availability calculation.
- c. "Support Services" means technical support assistance provided by Contractor personnel to County's designated administrators for problem resolution, bug reporting, and/or technical assistance.
- d. "Unscheduled Downtime" means any time the Software is not available due to an event or circumstance excluding Scheduled Downtime or Force Majeure and the amount of time required by Contractor to resolve or provide a work around for the failure of any documented feature required to complete a primary function of the Software in accordance with the Documentation.
- e. "Update" means any error correction, bug fix, patch, enhancement, improvement, update, upgrade, new version, release, revision or other modification to the Software or Services provided or made available by the Contractor pursuant to the Agreement, including, without limitation, any update designed, intended, or necessary to make the Software, Services, or County's use thereof compliant with applicable law.

2. Service Availability.

- a. Contractor will use commercially reasonable efforts to maintain the availability of the Software to the County at 99.5%. All Updates will be completed outside of standard business hours (same as Support Hours). Notification of Updates will not be provided unless downtime is expected. If major Updates are required during standard business hours due to necessity, Contractor will provide notification to County as soon as reasonably possible. Updates during Scheduled Downtime and are excluded from the 99.5% Service Availability calculation.

3. Technical Support.

- a. Availability. With the exclusion of Federal Holidays, Technical Support is available from 8:00 a.m. to 8:00 p.m. EST, Monday - Friday. ("Support Hours").
- b. Procedure. County must initiate a helpdesk ticket during Support Hours by sending an email to support@neighborlysoftware.com. Contractor will use commercially reasonable efforts to respond to all Help tickets in the manner set forth in Paragraph 4.
- c. Conditions for Providing Support. Contractor's obligation to provide Software or Services in accordance with the stated Service Availability is conditioned on County providing Contractor with sufficient information and resources to correct the Error, as well as access to the personnel, hardware, and any additional systems involved in discovering the Error.

4. Ticket Resolution. Contractor will use all commercially reasonable efforts to resolve support tickets in the process described below. Response metrics are based on issues being reported during Support Hours.

- a. Standard Ticket: Issue does not significantly impact the operation of the software or there is a reasonable workaround available.

- (i) **Response Metric:** Contractor will use commercially reasonable efforts to respond and resolve all Standard tickets within eight (8) business hours of notification.
 - b. **Priority Ticket:** Software is usable, but some features (not critical to operations) are unavailable.
 - (i) **Response Metric:** Contractor will use commercially reasonable efforts to respond to all Priority tickets within two (2) hours and resolve Priority tickets within six (6) business hours of notification.
 - c. **Emergency Ticket:** Issue has rendered software unavailable or unusable, resulting in a critical impact on business operations. The condition requires immediate resolution.
 - (i) **Response Metric:** Contractor will use commercially reasonable efforts to respond to all Emergency tickets within one (1) hour and resolve Emergency tickets within two (2) business hours of notification.
5. **Remedies.** If County reasonably believes that Contractor has failed to achieve its Service Availability commitments in any given month, the Contractor shall, following County's written request, provide a report that contains true and correct information detailing Contractor's actual Service Availability performance. County must have reported an issue with the Service Availability within the calendar month and must request the report within ten (10) days of the end of the calendar month. The sole remedies for failure to meet the Service Availability level of commitment is a service refund based on the following:
- a. less than 99.5% but equal to or above 97%, Contractor shall provide County with a root cause analysis and a written plan for improving Contractor's Service Availability to attain the 99.5% Service Availability and Contractor shall promptly implement such plan;
 - b. between 96.9% and 95%, Contractor shall provide County with a service refund in an amount equal to 10% of the prorated amount of the fees for one month;
 - c. between 94.9% and 92%, Contractor shall provide County with a service refund in an amount equal to 25% of the prorated amount of the fees for one month;
 - d. Less than 92%, Contractor shall provide County with a service refund in an amount equal to 100% of the prorated amount of the fees for one month.
6. **Exclusions.** Contractor shall have no liability for, and shall make no representations or warranties respecting Service Availability or lack of availability of the Software due to: (1) outages caused by the failure of public network or communications components; (2) outages caused by a Force Majeure event; (3) outages or Errors caused by the County's use of any third-party hardware, software, and/or services; (4) Errors caused by the individual Authorized User's desktop or browser software; (5) Errors caused by the County's negligence, misconduct, hardware malfunction, or other causes beyond the reasonable control of the Contractor; and/or (6) County has not paid fees under the Agreement when due.