



REPORT TO CITY COUNCIL

Approved by:

Gino Chiaramonte
Dino Lawson, Chief of Police

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: February 19, 2020

Agenda Number: B-5

SUBJECT:

Consideration of Adopting a Resolution Approving an Amendment to the Tyler Technologies License And Services Agreement for \$35,015 for the Brazos eCitation System to include Equipment, Licensing and Software Access and Authorizing the Mayor to Execute the Amendment on Behalf of the City.

RECOMMENDATION:

Staff recommends that the City Council (Council) adopt the resolution approving the contract amendment with Tyler Technologies, Inc. to purchase the Brazos eCitation system to include hardware, software, and services.

SUMMARY:

One of the responsibilities of the Madera Police Department (MPD) is enforcement of traffic law violations. MPD has a dedicated traffic motor unit (motorcycle officers) dedicated to traffic enforcement. The motor unit currently uses three-part, hand-written traffic citation booklets to issue traffic tickets. Once issued, the tickets are manually entered into the MPD system by Records Division staff. MPD has researched modern ticket writing devices and is recommending the City move from hand-written tickets to electronically printed tickets. After review of available systems, it is recommended the City proceed with the Brazos eCitation system. If approved, this will include hardware, software, training, and support services.

DISCUSSION:

The Police Department received a grant award of \$110,000 from the State of California Office of Traffic Safety (OTS) in October 2019. The grant allocated \$25,000 for the purchase of an electronic citation data collection system.

In an effort to improve efficiencies, staff evaluated options currently available on the market for an electronic citation data collection system. Currently, MPD manually writes traffic infractions which are then provided to Records staff which manually input information into the City's system.

Based on this review, the Brazos eCitation system was identified as the best product to meet MPD's needs. Another benefit is that the Brazos system was recently purchased by Tyler Technologies, the provider of the City's Enterprise Resource System. The Brazos eCitation system by Tyler Technologies, Inc. integrates with both our records management system (Alliance) and the City's financial system (Tyler Munis). After exhaustive research, it appears that this is the most compatible system that integrates with our records management system (Alliance).

A benefit of moving to an electric system is that the program will directly download citations to the MPD record management system eliminating the need for manual data entry by Records staff. MPD averages 400 citations a month, each of which is entered manually which absorbs a tremendous amount of staff time. Not only will the eCitation system result in significant time savings for Records staff, it will also reduce the time an officer spends on an enforcement stop by being able to scan a driver's license, allowing the system to auto populate the driver's personal information and vehicle registration data.

The City has an existing agreement with Tyler Technologies, Inc. In order to proceed with the purchase of the Brazos eCitation system, the City is required to execute an amendment to the agreement to add the Brazos system.

All equipment provided by Tyler Technologies, Inc. is warranted for one year and includes parts and labor.

FINANCIAL IMPACT:

The total cost of the system is \$35,015. The OTS grant will cover \$25,000 of the purchase. The remaining balance of \$10,015 will be paid using funds in the approved Fiscal Year 2019-20 Measure K budget.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The requested action is not in conflict with the Vision Madera 2025 Plan.

ALTERNATIVES:

Potential Council options include:

1. Approve the request as outlined above.
2. Council may direct the MPD to continue to issue handwritten citations on triplicate forms.
3. Council may direct staff to review alternative systems.

ATTACHMENTS:

1. Resolution

- a. Exhibit 1: Tyler Technologies First Amendment To License And Services Agreement
 - i. Exhibit 1: Investment Summary
 - ii. Exhibit 2: Hosting Services
 - 1. Schedule 1: Service Level Agreement

RESOLUTION NO. 20-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MADERA, CALIFORNIA, APPROVING AN AMENDMENT TO THE TYLER
TECHNOLOGIES LICENSE AND SERVICES AGREEMENT FOR \$35,015 FOR THE
BRAZOS eCITATION SYSTEM TO INCLUDE EQUIPMENT, LICENSING AND
SOFTWARE ACCESS AND AUTHORIZING THE MAYOR TO EXECUTE THE
AMENDMENT ON BEHALF OF THE CITY**

WHEREAS, the City of Madera Police Department (MPD) is tasked with enforcement of traffic laws within the City of Madera; and

WHEREAS, MPD has a need for equipment and related software to aid in the issuance of citations for traffic violations; and

WHEREAS, the City has an existing agreement with Tyler Technologies, Inc. for the City's Enterprise Resource System; and

WHEREAS, Tyler Technologies, Inc. offers eCitation equipment and related software that integrates with current equipment and the City's existing software systems; and

WHEREAS, the City wishes to purchase eCitation equipment from Tyler Technologies, Inc, and implement the related software for the efficient and effective enforcement of traffic violations; and

WHEREAS, the parties wish to amend the existing agreement to include eCitation equipment and services.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Amendment to the Tyler Technologies License And Services Agreement between the City of Madera and Tyler Technologies, Inc., attached hereto as Exhibit 1 and incorporated by reference, is approved.
3. The Mayor is authorized to execute the amendment on behalf of the City of

Madera.

4. The resolution is effective immediately.

* * * * *



FIRST AMENDMENT TO LICENSE AND SERVICES AGREEMENT

This First Amendment to License and Services Agreement ("Amendment") is effective as of the date of signature of the last party to sign as indicated below ("Amendment Effective Date"), by and between Tyler Technologies, Inc. with offices at One Tyler Drive, Yarmouth, Maine 04096 ("Tyler") and the City of Madera, CA, with offices at 205 West Fourth Street; Madera, CA 93637 ("Client").

WHEREAS, Tyler and the Client are parties to a License and Services Agreement dated August 18, 2015 ("Agreement"); and

WHEREAS, Tyler and Client desire to amend the terms of the Agreement as provided herein.

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and the Client agree as follows:

1. The items set forth in the sales quotation attached as Exhibit 1 to this Amendment are hereby added to the Agreement as of the Amendment Effective Date. Payment of fees and costs for such items shall conform to the following terms:
 - a. **License Fees.** License fees will be invoiced when Tyler makes the software added to the Agreement pursuant to this Amendment available for download (for the purpose of this Amendment, the "Available Download Date").
 - a. **Maintenance Fees.** Year 1 annual maintenance and support fees are due on the Available Download Date. Subsequent annual maintenance fees are invoiced annually in advance of each anniversary thereof. Your fees for each subsequent year will be set at our then-current rates.
 - b. **Services Fees & Expenses.** Services added to the Agreement pursuant to this Amendment, along with applicable expenses, shall be invoiced as provided and/or incurred.
 - c. **Hardware Fees.** Fees for Hardware are due on delivery of the respective Hardware.
 - d. **Hosting Fees.** Hosting Fees are invoiced annually in advance, beginning on the Amendment Effective Date. Subsequent annual Hosting Fees are invoiced annually in advance of each anniversary thereof. Your fees for each subsequent year will be set at our then-current rates.
2. **Hosting Services.** We will host the Tyler Software in accordance with the terms and conditions set forth in the Hosting Services Exhibit, attached hereto as Exhibit 2, and the Service Level Agreement, attached hereto as Schedule 1 to Exhibit 2.
3. This Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.
4. Except as expressly indicated in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.



IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below.

Tyler Technologies, Inc.

City of Madera, CA

By: 

By: _____

Name: Rob Kennedy-Jensen

Name: _____

Title: Director of Contracts

Title: _____

Date: 02/04/2020

Date: _____





Exhibit 1
Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

In the event a comment in the following sales quotation conflicts with a provision of this Amendment, the provision in this Amendment shall control.

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Quoted By: Seth Dinehart
 Quote Expiration: 2/30/2020
 Quote Name: City of Madera Police Department - Brazos eCitation
 Quote Number: 2018-54707-6
 Quote Description: 5 Brazos eCitation Licenses, eParking Module, Interface to Munis, Install on Zebra ZQ70x HH Devices, Zebra ZQ520 Printers, Charging Hardware, Interface to Cyrun RMS and Sustain CMS

Sales Quotation For
 Sgt. Tom Burns
 City of Madera Police Department
 330 S C St
 Madera , CA 93638-3727
 Phone: +1 (559) 675-4200

Tyler Software

Description	Quantity	License	Software Total	Year One Maintenance
Brazos				
Interface: RMS	1	\$3,250	\$3,250	\$683
Interface: Sustain Technologies - Prosecutor's Case Mgmt System	1	\$3,250	\$3,250	\$683
eCitation - Brazos Rapid Extension Framework - PDA	5	\$4,250	\$4,250	\$893
Interface: Tyler Munis Enterprise Resource Planning (financial) System	1	\$0	\$0	\$0
Task: eParking: Standard (non-customized) Parking Task	1	\$3,250	\$3,250	\$683
<i>Sub-Total:</i>			\$14,000	\$2,942
<i>Less Discount:</i>			\$3,250	
TOTAL:			\$10,750	\$2,942

Tyler Software and Related Services - Annual

Description	Quantity	Unit Price	Annual Fee
Brazos			
Brazos Hosting Fee	1	\$980	\$980
TOTAL:			\$980

Professional Services

Description	Quantity	Unit Price	Extended Price
Brazos Project Mgmt (plus per diem as needed if not remote)	1	\$1,000	\$1,000
Set Up & Config	1	\$10,000	\$10,000
Training	2	\$1,000	\$2,000
Munis Interface: Set Up & Configuration	1	\$0	\$0
TOTAL:			\$13,000

Third Party Hardware, Software and Services

Description	Quantity	Unit Price	Unit Discount	Total Price	Maintenance
AC18177-5 / Zebra, ZQ500/RW QUAD Battery Charger	2	\$305	\$0	\$610	\$0
P1031365-059 / Zebra, ZQ520, Battery	5	\$64	\$0	\$320	\$0
LD-R4KN5B / Zebra, ZQ520/RW420, Paper, 36 rolls per case	1	\$92	\$0	\$92	\$0
ZQ52-AUE0000-00 / Zebra, Printer, ZQ520	5	\$588	\$0	\$2,940	\$0
BTRY-TC7X-46MAH / Zebra EVM, TC7X Battery	5	\$57	\$0	\$285	\$0
SAC-TC7X-4BTYPP / Zebra EVM, TC7X, 4 Slot Battery Charger	2	\$122	\$0	\$244	\$0
CRD-TC7X-SE5EU1-01 / Zebra EVM, TC7X, 5 Bay Ethernet Cradle	1	\$472	\$0	\$472	\$0
CBL-DC-382A1-01 / Zebra EVM, TC7X, MC67, US DC Line Cord, Multi-Slot CRD	1	\$19	\$0	\$19	\$0
PWR-BGA12V50W0WW / Zebra EVM, TC7X, Power Supply for Battery Charger	2	\$34	\$0	\$68	\$0
PWR-BGA12V108W0WW / Zebra EVM, TC7X, Power Supply, Multi-Slot CRD	1	\$67	\$0	\$67	\$0
CBL-DC-375A1-01 / Zebra EVM, US DC Line Cord for Battery Charger	2	\$9	\$0	\$18	\$0
TC700K-02B22B0-US / Zebra EVM, TC70X	5	\$1,220	\$0	\$6,100	\$0
23844-00-00R / Zebra EVM, US AC Line Cord, grounded	3	\$10	\$0	\$30	\$0
TOTAL:				\$11,265	

Summary

	One Time Fees	Recurring Fees
Total Tyler Software	\$10,750	\$2,942
Total Tyler Annual	\$0	\$980
Total Tyler Services	\$13,000	\$0
Total Third Party Hardware, Software and Services	\$11,265	\$0
Summary Total	\$35,015	\$3,922
Contract Total	\$38,937	

Comments

Brazos Proposal Includes:

5 eCitation Licenses installed on Zebra TC70x HH Devices

Task: eParking

Task: AB953 Module (Automatically included as part of eCitation package)

Interface: Tyler Munis

Interface: Cyrun RMS

Interface: Sustain CMS

5 Zebra TC70x Android HH Devices with charging accessories

5 Zebra ZQ520 printer with charging accessories

Agency is responsible for paying applicable CA state taxes



Exhibit 2 Hosting Services

Tyler Hosting Services (also referred to as SaaS Services) for the Tyler Software will be provided subject to the following terms and conditions.

SECTION A – DEFINITIONS

- **“Data”** means your data necessary to utilize the Tyler Software.
- **“Data Storage Capacity”** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **“Defined Users”** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary.
- **“Hosting Fees”** means the fees for the SaaS Services identified in the Investment Summary. Hosting Fees may also be referred to as SaaS Fees.
- **“SaaS Services”** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services may also be referred to as Hosting Services. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **“SLA”** means the Service Level Agreement. A copy of our current SLA is attached hereto as Schedule 1.

SECTION B – SAAS SERVICES APPLICABLE TO TYLER SOFTWARE

1. **Rights Granted.** We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Exhibit C of the Agreement. The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the

terms and conditions of this Agreement including, without limitation, Section B(1). We will make any such software available to you for download.

2. Hosting Fees. You agree to pay us the annual Hosting Fees. Those amounts are payable as set forth in Section D below and in accordance with our Invoicing and Payment Policy. The Hosting Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section I(1) of the Agreement. In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. Ownership.
 - 3.1. We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement.
 - 3.2. The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
 - 3.3. You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.
4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.
5. SaaS Services.
 - 5.1. Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 18. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information.
 - 5.2. You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and

inaccessible to our other customers.

- 5.3. Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event any of your Data has been lost or damaged due to an act or omission of Tyler or its subcontractors or due to a defect in Tyler's software, we will use best commercial efforts to restore all the Data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any Data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which your Data may be lost, measured in relation to a disaster we declare, said declaration will not be unreasonably withheld.
- 5.4. In the event we declare a disaster, our Recovery Time Objective ("RTO") is twenty-four (24) hours. For purposes of this subsection, RTO represents the amount of time, after we declare a disaster, within which your access to the Tyler Software must be restored.
- 5.5. We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.
- 5.6. We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.
- 5.7. We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.
- 5.8. We provide secure Data transmission paths between each of your workstations and our servers.

- 5.9. Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.
- 5.10. Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at <https://www.tylertech.com/about-us/compliance>, and in the event of any change in our status, will comply with applicable notice requirements.

SECTION C – SAAS TERM AND TERMINATION of SAAS SERVICES

1. Term. The term for Tyler SaaS Services will commence on the Amendment Effective Date and will remain in effect for one (1) year. Thereafter, the term will renew automatically for additional one (1) year terms at our then-current Hosting Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current term. Your right to access or use the SaaS Services will terminate at the end of the term for SaaS Services.
2. Failure to Pay Hosting Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of the Hosting Fees. If you fail to timely pay the Hosting Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

SECTION D – PAYMENT OF HOSTING FEES

1. Hosting Fees. Hosting Fees are invoiced annually in advance, beginning on the Amendment Effective Date. Subsequent annual Hosting Fees are invoiced annually in advance of each anniversary thereof. Your fees for each subsequent year will be set at our then-current rates.

SECTION E – PROFESSIONAL (E&O) LIABILITY/CYBER LIABILITY

1. Tyler shall maintain Professional Liability, Technology Errors & Omissions Liability and Network Security & Privacy Liability insurance with limits of two million (\$2,000,000) per claim and in the aggregate. Tyler will list Client as an additional insured party under this insurance policy. Coverage shall include: (i) Failure to prevent unauthorized access to, use of or tampering with computer systems/networks, including denial of service, unless directly caused by a

mechanical or electrical failure, (ii) Unauthorized disclosure of personal or confidential information, (iii) liability arising out Xylem' professional errors and/or omissions resulting in the introduction of a computer virus or other malicious code causing damage to Customer's computer system, network or similar related property and the data, software and programs thereon, (iv) liability for intellectual property infringement claims and for indemnification and legal defense of any claims of intellectual property infringement, including infringement of copyright, or trade mark, brought against Client for the Brazos System, (v) government investigations and associated fines/penalties, if insurable by law, resulting from the alleged or actual disclosure of personal or confidential information or security breach, (vi) liability for Client's non-physical business interruption due to a security failure of a Tyler computer system, network, hardware or software or Tylers' professional services. The policy will have a retroactive date of no later than the effective date of this Amendment and coverage shall be maintained for an additional period of three (3) years following termination of the Amendment.



Exhibit 2
Schedule 1
SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Attainment: The percentage of time the Tyler Software is available during a calendar quarter, with percentages rounded to the nearest whole number.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during which the Tyler Software is not available for your use. Downtime does not include those instances in which only a Defect is present.

Service Availability: The total number of minutes in a calendar quarter that the Tyler Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

III. Service Availability

The Service Availability of the Tyler Software is intended to be 24/7/365. We set Service Availability goals and measures whether we have met those goals by tracking Attainment.

a. **Your Responsibilities**

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support incident number.

You must document, in writing, all Downtime that you have experienced during a calendar quarter. You must deliver such documentation to us within 30 days of a quarter's end.

The documentation you provide must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). We will also work with you to resume normal operations.

Upon timely receipt of your Downtime report, we will compare that report to our own outage logs and support tickets to confirm that Downtime for which we were responsible indeed occurred.

We will respond to your Downtime report within 30 day(s) of receipt. To the extent we have confirmed Downtime for which we are responsible, we will provide you with the relief set forth below.

c. Client Relief

When a Service Availability goal is not met due to confirmed Downtime, we will provide you with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 5% of one quarter of the then-current SaaS Fee. The total credits confirmed by us in one or more quarters of a billing cycle will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, we will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following Client relief will apply, on a quarterly basis:

Targeted Attainment	Actual Attainment	Client Relief
100%	98-99%	Remedial action will be taken.
100%	95-97%	4% credit of fee for affected calendar quarter will be posted to next billing cycle
100%	<95%	5% credit of fee for affected calendar quarter will be posted to next billing cycle

You may request a report from us that documents the preceding quarter's Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

IV. Applicability

The commitments set forth in this SLA do not apply during maintenance windows, Client Error Incidents, and Force Majeure.

We perform maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we

will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

V. Force Majeure

You will not hold us responsible for not meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, we will file with you a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting our request for relief pursuant to this Section. You will not unreasonably withhold its acceptance of such a request.