Purchase Order
Standard Terms and Conditions for the Purchase of Software as a Service (SAAS)

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL PURCHASES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **Offer and Acceptance:** The Purchase Order is an offer by the City of Madera ("City") to enter into a contract; and any of the following acts constitute Vendor's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Vendor's execution and delivery to City of Vendor's acknowledgment form; (b) Vendor's delivery of software, license keys, or access credentials; (c) Vendor's commencement of services; or (d) Vendor's acceptance of any payment from City.
2. **Scope of Services:** Vendor shall provide the hosted software, cloud services, subscription access, implementation, support, maintenance, and related services identified in the Purchase Order.
3. **Service Availability:** Vendor shall maintain commercially reasonable measures to ensure continuous availability and operation of the hosted services. Unless otherwise stated in the Purchase Order, Vendor shall maintain a minimum monthly uptime availability of ninety-nine and nine-tenths percent (99.9%), excluding scheduled maintenance.
4. **Scheduled Maintenance:** Vendor shall provide reasonable advance notice of scheduled maintenance that may impact availability of services and shall perform such maintenance during non-business hours whenever reasonably possible.
5. **Restrictions on Vendor Terms:** Any click-through agreement, browse-wrap agreement, shrink-wrap agreement, online terms of use, end user license agreement ("EULA"), or similar terms presented by Vendor shall be of no force or effect unless expressly accepted in writing by the City.
6. **Subscription Fees and Pricing:** All fees and pricing shall remain fixed for the term identified in the Purchase Order unless otherwise expressly approved in writing by City. Vendor represents and warrants that the prices set forth in the Purchase Order are at least as low as those currently being quoted by Vendor to commercial or government users for the same software, licenses, maintenance, and services under similar circumstances.
7. **Taxes:** This purchase is subject to all applicable California sales and use taxes unless otherwise exempt by law.
8. **Terms of Payment:** Payment terms shall be net thirty (30) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by City, whichever occurs last. City may set off any amount owed by Vendor to City against any amount owed by City to Vendor under the Purchase Order. City shall endeavor to pay each invoice within thirty (30) days but shall not be responsible to Vendor for additional charges, interest or penalties due to failure to pay within that period.
9. **Ownership of Data:** All data entered into, generated by, transmitted through, or stored within the software by City ("City Data") shall remain the sole and exclusive property of City. Vendor shall not access, use, disclose, sell, mine, analyze, or otherwise exploit City Data except as necessary to perform under the Purchase Order.
10. **Data Location and Storage:** Vendor shall disclose the general geographic location where City Data will be stored and processed. Vendor shall not transfer City Data outside the United States without City's prior written consent.
11. **Data Security:** Vendor shall maintain an information security program containing administrative, technical, and physical safeguards designed to:
    a) Protect the confidentiality, integrity, and availability of City Data;
    b) Prevent unauthorized access, use, disclosure, alteration, or destruction of City Data; and
    c) Protect against reasonably anticipated threats or hazards.
12. **Security Incidents and Breach Notifications:** Vendor shall notify City immediately, and no later than seventy-two (72) hours after discovery, of any actual or suspected unauthorized access, disclosure, breach, or compromise involving City Data or systems used to provide services to City. Vendor shall cooperate fully with City in investigating and mitigating any such incident.
13. **Backup and Disaster Recovery:** Vendor shall maintain appropriate backup, disaster recovery, and business continuity procedures designed to minimize service interruption and prevent loss of City Data.
14. **Data Return and Transition Assistance:** Upon expiration or termination of the Purchase Order, Vendor shall provide City with a complete copy of all City Data in a commercially reasonable and industry-standard format. Vendor shall provide reasonable transition assistance to facilitate migration of City Data and services to City or another provider.
15. **Data Deletion:** Following confirmation of successful transfer of City Data, Vendor shall permanently delete all City Data from Vendor systems, except where retention is required by law.
16. **Confidentiality:** Vendor shall maintain the confidentiality of all confidential or proprietary information provided by City and shall not disclose such information except as required to perform under the Purchase Order or as required by law.
17. **Compliance with Laws:** Vendor shall comply with all applicable federal, state, and local laws, regulations, ordinances, and standards in the performance of the Purchase Order, including all laws relating to privacy, cybersecurity, accessibility, and intellectual property.
18. **Accessibility Compliance:** Software and related services provided to City shall comply with applicable accessibility requirements, including Section 508 of the Rehabilitation Act and applicable California accessibility standards, to the extent required by law.
19. **Audit Rights:** Upon reasonable notice, City may audit Vendor's compliance with the terms of the Purchase Order relating to data security, confidentiality, licensing, and performance obligations.
20. **Subcontractors:** Vendor shall not subcontract any material portion of the services involving access to City Data without prior written consent of City. Vendor shall remain fully responsible for all acts and omissions of subcontractors.
21. **Warranty - Software:** Vendor warrants that:
    a) The software shall perform substantially in accordance with all specifications, documentation, proposals, demonstrations, and representations provided by Vendor;
    b) The software shall be free from material defects in workmanship, programming, and design;
    c) The software shall not contain viruses, malware, disabling devices, time bombs, back doors, or other harmful code;
    d) Vendor has full authority to license the software and all related intellectual property;
    e) The software shall comply with all applicable federal, state, and local laws and regulations; and
    f) The software shall not infringe upon or violate any patent, copyright, trademark, trade secret, or other proprietary right.
    g) Vendor shall correct any nonconformity, defect, or failure at no additional cost to City.
22. **Warranty - Services:** Vendor warrants that:

a) The services shall perform substantially in accordance with applicable documentation and specifications;
b) The services shall be performed in a professional and workmanlike manner;
c) The hosted services shall not contain malicious code, viruses, or disabling devices; and
d) Vendor has full authority to provide the services.

23. **Intellectual Property Indemnification:** Vendor shall defend, indemnify, and hold harmless the City, its officers, employees, agents, and volunteers from and against any claims, damages, liabilities, costs, or expenses arising from any claim that the software, services, or related materials infringe upon any patent, copyright, trademark, trade secret, or other proprietary right.
24. **Indemnification:** Vendor shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Vendor's performance of its obligations under this agreement or out of the operations conducted by Vendor, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Vendor's performance of this agreement, the Vendor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.
25. **Limitation of Liability:** Any limitation of liability proposed by Vendor shall be void and unenforceable unless expressly approved in writing by the City.
26. **Insurance:** Vendor shall provide insurance coverage as listed in Attachment A to this document.
27. **Suspension of Services:** Vendor shall not suspend services for payment disputes or alleged breaches without providing City prior written notice and a reasonable opportunity to cure.
28. **Assignment:** Vendor shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.
29. **Waiver:** Failure of City to enforce any provision of the Purchase Order shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of the Purchase Order.
30. **Severability:** If any provision of the Purchase Order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the particular provision held to be invalid.
31. **Change Orders:** City shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on City; and City is not required to compensate Vendor for goods not authorized by written Change Order. Vendor's receipt of City's written Change Order without response received by City within ten (10) days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall constitute Vendor's acceptance of the change without any price or other adjustment.
32. **Termination for Convenience:** City may terminate the Purchase Order, in whole or in part, at any time upon written notice to Vendor. Vendor shall be compensated only for software, services, and deliverables accepted by City prior to the effective date of termination.
33. **Termination for Cause:** City may terminate the Purchase Order immediately upon written notice if Vendor breaches any material term or condition of the Purchase Order.
34. **Breach of Contract:** Should Vendor breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Vendor and obtain such goods from another source. If a greater price than that named in the Purchase Order is paid for such goods, the excess price shall be charged to and collected from the Vendor. City shall have any and all remedies provided under the Uniform Commercial Code in the event of a breach of contract by Vendor.
35. **Return of Data:** Upon expiration or termination of the Purchase Order, Vendor shall promptly return all City Data to City in a commercially reasonable, industry-standard format and permanently delete all copies in Vendor's possession, except as otherwise required by law.
36. **Governing Law; Public Records:** The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.
37. **Work to be Completed on City Premises by Vendor:** In the event that Vendor is required, as part of its fulfillment of the terms of the Purchase Order, to install goods or perform any other work on City premises, Vendor assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death) or damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of the performance of such work by Vendor.
38. **Force Majeure:** Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.
39. **Entire Agreement:** The Purchase Order, which includes any and all additional documents incorporated therein by reference, sets forth the entire agreement between Vendor and City with respect to the purchase of the goods.
40. **Additional or Inconsistent Terms:** Any term or condition set forth in any acknowledgment form provided to City by Vendor which is in any way different from, inconsistent with, or in addition to the terms and conditions of the Purchase Order will not become a part of the Purchase Order nor be binding on City. If Vendor objects to any term or condition set forth therein, this objection must be in writing and received by City's Buyer identified on the Purchase Order prior to Vendor's delivery of product(s). Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.
41. **Notices:** All notices relating to the Purchase Order shall be sent to:
City of Madera
Purchasing Division
205 West 4th Street
Madera, CA 93637

ATTACHMENT "A"

INSURANCE REQUIREMENTS FOR SOFTWARE-AS-A-SERVICE (No on-site services provided)

Without limiting Vendor's indemnification of City, and prior to commencement of Work, Vendor shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Vendor shall maintain limits no less than:

- $2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, $4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and must name the City and its officers, officials, employees and agents as additional insureds under such policies; blanket additional insured forms or language will not be accepted.
- $2,000 000 **Professional Liability (Errors & Omissions)/Cyber Liability** Vendor shall maintain Professional Liability, Technology Errors & Omissions Liability and Network Security & Privacy Liability insurance with limits of no less than two million ($2,000,000) per claim and in the aggregate. Said policies shall be endorsed to name the City and its officers, officials, employees, and agents as additional insureds under such policies. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Service Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information or personally identifiable information (PII), alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations. The policy will have a retroactive date of no later than the effective date of this Agreement and coverage shall be maintained for an additional period of three (3) years following termination of the Agreement.

Maintenance of Coverage
Vendor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Vendor, his agents, representatives, employees, subcontractors, or subconsultants as specified in this Agreement.

Proof of Insurance
Vendor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all

times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Primary/Non-Contributary
Service Provider's insurance shall allow and be endorsed as primary and not seek contribution from the City's coverage.

Umbrella or Excess Liability
The limits of liability for commercial general liability may be provided through a combination of primary and umbrella or excess liability policies provided each policy complies with the requirements set forth in this agreement. Policies shall be follow-form to the underlying policies shall include City and its officers, officials, employees, agents, and volunteers as additional insured. Umbrella or excess policies that do not provide a follow-form acknowledgement from the insurer/broker shall be required to provide any endorsements required on the primary policy that the Umbrella or excess policy is supplementing to meet coverage minimums.

Acceptable Insurers
All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation
All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City of Madera or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors. Broad coverage or blanket coverage forms will not be accepted; waiver of subrogation endorsement must name City of Madera.

Enforcement of Contract Provisions (non estoppel)
Vendor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Vendor of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting
Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Vendor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Vendor.

Notice of Cancellation
Vendor agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions
Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims
Vendor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Vendor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance
Vendor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.