



License and Support Agreement

Nevada County, California
Environmental Health Department

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LICENSE AND SUPPORT AGREEMENT

THIS AGREEMENT (“Agreement”) made as of the latest signature date in *Section 20. Acceptance*.

BETWEEN:

HEDGEROW SOFTWARE US, INC. (“Hedgerow”), a Delaware corporation.

and

NEVADA COUNTY, CALIFORNIA (“Agency”)

WHEREAS Hedgerow is the developer and owner of a certain set of commercial-off-the-shelf (COTS) software products described in this Agreement as Licensed Programs.;

AND WHEREAS Agency has determined Licensed Programs are the best solution for Agency’s purposes;

AND WHEREAS Agency desires to obtain from Hedgerow a non-exclusive and non-transferable license to use Licensed Programs;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the parties agree as follows:

This Agreement contains the following Appendices:

Appendix A	Modifications to Standard Terms and Conditions
Appendix B	Dates and Term
Appendix C	Prices and Payment Terms
Appendix D	Cloud Hosting Service Level Agreement

In the event of a conflict between the main body of the Agreement and an Appendix to the Agreement, the terms of the Appendix shall prevail.

1. Definitions

Item	Term	Definition
1.1.	Agency Data	Includes all data stored and accessed by Licensed Programs, including documents, notes, images, logos, and any other information, created by Agency staff using the Licensed Programs.
1.2.	Billable Services	Includes those services provided by Hedgerow as described in Section 8. <i>Billable Services</i> for which a fee is charged.
1.3.	Effective Date	The date defined in <i>Appendix B. Dates and Term</i> .
1.4.	FTE	Full-time equivalent inspectors and supervisors.
1.5.	Go-Live	The point in time when Agency Data is being used for production purposes and Agency is operational for ten (10) consecutive business days.
1.6.	Initial Recurring License Fees Date	The date defined in <i>Appendix B. Dates and Term</i> .
1.7.	Initial Term	The date defined in <i>Appendix B. Dates and Term</i> .
1.8.	Licensed Materials	The computer programs, in object form, and all related documentation and materials provided to Agency under the terms of this Agreement. Licensed Materials shall not include Source Code.
1.9.	Licensed Programs	The object code version of the software, as well as all updates, enhancements, and releases. Licensed Programs are a sub-set of the Licensed Materials. Licensed Programs in this Agreement refer to the software collectively known as the Hedgehog Application Suite.
1.10.	Proprietary Technology	The software, inventions, concepts, templates, development tools, methodologies, processes, techniques or other proprietary material or information.
1.11.	Services	Collectively, any services related to the support and use of the Licensed Materials covered by this Agreement.
1.12.	Source Code	The full source language statement of the programs owned by Hedgerow used to prepare the Licensed Programs, including any updates, enhancements, revisions, and modifications thereto that are provided to Agency under this Agreement. Source Code shall not include any source language statements for any portion of the Licensed Programs owned by or sublicensed from third parties.
1.13.	Version	An issue of Licensed Programs, which has been made available to the Agency.
1.14.	Work Order	The document required to authorize Billable Services.

2. License

- 2.1. Hedgerow hereby grants to Agency, and Agency hereby accepts from Hedgerow, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable license ("License") to use the Licensed Materials solely for Agency's own purposes. The License shall be restricted for use with one (1) production server database with a single set of master code tables.
- 2.2. The License also authorizes Agency to maintain a backup copy of the Licensed Programs for use with databases for back up and testing purposes only. Agency agrees to receive prior written approval from Hedgerow before copying any portion of the Licensed Programs for any other purpose, which Hedgerow may, at its sole and unfettered discretion, grant or not grant.
- 2.3. Agency may not assign, sublicense or otherwise transfer, in whole or in part, the License, this Agreement, or any of its rights or obligations hereunder, whether voluntarily, by operation of law or otherwise, without the prior written consent of Hedgerow.

3. Ownership of Licensed Materials

- 3.1. Hedgerow is the lawful owner of all proprietary rights whatsoever in the Licensed Materials including any changes, additions, and enhancements in the form of new or partial programs or documentation, but not as to limit the generality thereof, all copyright interests in the Licensed Materials. All copies of the Licensed Materials provided to, or reproduced by, Agency pursuant to this Agreement are, and remain, the property of Hedgerow. No rights in the Licensed Materials are granted to anyone other than those set forth in this Agreement. Agency shall use its commercially reasonable best efforts to prevent any violations of Hedgerow's property rights in the Licensed Materials; and shall, under no circumstances, sell, lease, sublease, sublicense, assign, barter, or otherwise transfer the Licensed Materials or use of the Licensed Materials for the processing of data for others for consideration.
- 3.2. Agency shall have no right to modify, enhance or otherwise change or supplement the Licensed Materials in any way without the prior written consent of Hedgerow, however, Agency shall be entitled to merge the Licensed Materials into other materials to form a system, provided that upon termination of the License granted by this Agreement, the Licensed Materials will be completely removed from the system and treated as though permission to merge had never been granted. Use of the Licensed Materials in a system shall remain subject to all other terms of this Agreement.
- 3.3. The Licensed Materials and all other data or materials supplied by Hedgerow to Agency are confidential and proprietary to Hedgerow, protected by law and of substantial value to Hedgerow, and their use and disclosure must be carefully and continuously controlled.
- 3.4. The Licensed Materials and the Source Code are protected by the Copyright Laws of the USA.
- 3.5. All logos, trademarks and trade names of Hedgerow are proprietary to Hedgerow and may only be used as authorized in writing by Hedgerow.
- 3.6. Agency shall notify Hedgerow immediately of the unauthorized possession, use or knowledge of any item supplied to Agency pursuant to this Agreement.
- 3.7. In the event Agency breaches or attempts to breach any of the provisions of this *Section 3. Ownership of Licensed Materials*, Hedgerow shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate. The provisions of this *Section 3.7.* shall survive termination of this Agreement until the Licensed Materials are completely removed from Agency's hardware. Upon request, Agency will furnish Hedgerow with an Officer Certificate certifying that the original and all copies, in whole or in part, of the Licensed Materials have been removed from Agency's hardware and either returned to Hedgerow or destroyed by Agency.

- 3.8. Each party will retain all its rights in any Proprietary Technology that it owned or developed prior to the Effective Date of this Agreement; and in the case of Hedgerow, acquires or develops thereafter other than in connection with this Agreement or the performance of Services under this Agreement. Any enhancements, improvements or changes developed or made to Proprietary Technology of either party in performing the Services shall be owned by the owner of the Proprietary Technology to which those enhancements, improvements or changes were developed or made.

4. Ownership of Agency Data

- 4.1. Agency owns all Agency Data.
- 4.2. If Agency is using Licensed Programs in a cloud-hosted environment, Agency shall notify Hedgerow, and Hedgerow shall comply as a Billable Service, if Agency wants a copy of such Agency Data. Agency Data will be provided to Agency in an MS SQL or MS SQL backup file format.
- 4.3. Hedgerow shall not, with respect to any Agency Data, programs, documents, information and other material that are the property of the Agency: (a) copy or duplicate them except to the extent that it is necessary for the performance of the Services or for back-up purposes; or (b) use them except as required for the performance of the Services; or (c) provide or make them accessible to its contractors, officers, employees or agents except as required for the performance of the Services; or (d) subject to exceptions contained in clauses (a), (b), and (c), provide or make them accessible to anyone without the prior written consent of Agency.

5. Prices, Adjustments, Taxes, and Non-Payment

- 5.1. Prices and payment terms for recurring license and support fees are contained in *Appendix C. **Error! Reference source not found.*** Agency shall make payments based on invoices from Hedgerow.
- 5.2. Agency is responsible for knowing all Federal, State and Local tax rules, paying all applicable taxes on Hedgerow fees, or providing Hedgerow with written notification that Agency is not subject to taxes.
- 5.3. For each month a payment is 30 days past due, Hedgerow will assess, and Agency shall pay, a late fee of two percent (2%), or the highest amount allowed by law.
- 5.4. Agency shall make a Hedgerow invoice dispute known within thirty (30) days of receipt of the disputed invoice and pay the undisputed amounts. If a dispute cannot be resolved by negotiations, it shall be submitted to Dispute Resolution as described in *Section 18. Dispute Resolution*.
- 5.5. Hedgerow reserves the right to withhold services for non-payment of fees.

6. Included Services

The following services are included in the Agency's annual license and support fees:

- 6.1. Telephone Support: Hedgerow provides support via a toll-free number for Agency's usability questions and/or problem resolution. Telephone support is provided during Hedgerow's regular business hours (6:30 A.M. to 4:30 P.M. Mountain Standard Time, Monday through Friday, with Federal and State holidays excluded.) Issues can be reported and tracked through the Hedgerow Client Support Portal (Portal) twenty-four (24) hours a day via Portal, e-mail, or telephone. A Hedgerow representative will contact Agency during standard business hours the next day, should a request come in during non-business hours.
- 6.2. Web-Based Support: Clients have twenty-four (24) hour access to Portal to log and track issues via an online helpdesk.

- 6.3. Licensed Programs Maintenance: Hedgerow will provide Licensed Programs maintenance, which includes defect fixes, and any other required modifications to keep the Licensed Programs in conformance with the specifications contained in the Hedgerow Licensed Materials. Hedgerow will amend the specifications only to remove documentation errors, provide consistency of interpretation or describe improvements to the Licensed Programs. Hedgerow will correct any error or malfunction in the Licensed Programs that prevents it from operating in conformance with the Licensed Materials, or Hedgerow will, within a period of time acceptable to Agency, acting reasonably, provide a commercially reasonable alternative that will have the same functionality as the Licensed Materials and will conform to the specifications of the Licensed Materials.
- 6.4. If Agency's system is inoperable due to a reproducible error or malfunction, and Agency is in compliance with the conditions listed in *Section 9.2.*, Hedgerow will provide continuous effort to correct the error or malfunction.

7. Incident Reporting & Response

The following table provides a general guideline to the categories of support requests:

Category	Problem Description	Best Method of Contact
Category 1	System Crisis: Any or all functions of the system are not operating. Problem affects more than 1 staff member. Financial impact on the client or client harm is possible if the problem is not solved within 10 hours or less.	Phone (or Support Portal)
Category 2	System Problem: A report or function is not performing as expected. Operation is highly impacted and affects the way business operates. Staff can continue to work. Problem involves more than 1 staff member.	Phone (or Support Portal)
Category 3	System Concern: A report or function is not providing expected results. Operation not critical or can be tolerated. Problem limited to 1 or no critical staff.	Support Portal
Category 4	System Request: New feature request.	Support Portal

The following provides a guideline to the response times an Agency can expect:

Category	Target Response Time	Type of Response
Category 1	15 Minutes	Ticket logged in Customer Support Portal. Client Services call back. Preliminary analysis of the problem.
	30 Minutes	Second level support reviews the problem. Management team notified.
	1 hour	Systems Development reviews the problem. Ticket logged in Development Portal.
	10 hours	Development and release.

Category	Target Response Time	Type of Response
Category 2	1 hour	Client Services call back. Preliminary analysis of the problem.
	4 hours	Second level support added if necessary. Management team notified.
	8 hours	Systems Development reviews the problem.
	16 hours	Client Services responds with a target Release date.
Category 3	1 hour	Confirmation of receipt.
	4 hours	Client Services call back. Preliminary analysis of problem.
	12 hours	Client Services recommends a solution/work around and/or create a development ticket for a future release.
Category 4	2 hours	Confirmation of receipt. Ticket logged in Customer Support Portal.

8. Billable Services

The following services are not included in Agency's annual license and support fees; and will be provided on a fee basis after completion and approval of a Work Order.

- 8.1. Included Services, as stated in *Section 6. Included Services*, initiated outside of Hedgerow's normal service hours, unless under the continuous effort clause in *Section 6.4*.
- 8.2. Professional services requested by Agency for assistance with migration to a new Version.
- 8.3. General professional services, including, but not limited to, business analysis, data conversion and data migration, custom programming, custom report development.
- 8.4. Data correction or restoration, unless caused by Hedgerow's negligence while working on Agency's system.
- 8.5. Disclosure Site branding, maintenance of static information and testing of new program areas after Agency has gone live with Hedgehog Disclosure Site.
- 8.6. Providing copies of Hedgerow-hosted Agency Data to Agency.
- 8.7. Report Writer training and support. Support calls specifically related to Hedgehog's integrated DevExpress© report writing tool that exceed thirty (30) minutes will be billable at Hedgerow's standard professional services rate.
- 8.8. Additional training to Agency staff.
- 8.9. Error or defect fixes determined, after investigation by Hedgerow, to have occurred as a result of Agency not being in compliance with one or more of the reasons listed in *Section 9.2*. Agency shall reimburse Hedgerow, at Hedgerow's then prevailing professional services rates, for all costs incurred in investigating such error or defect.
- 8.10. Work Order costs are based upon time and effort. The payment terms and conditions for Work Orders are contained in ***Error! Reference source not found., Section Error! Reference source not found. Error! Reference source not found.***

9. Warranty and Limitation of Hedgerow's Liability

- 9.1. Hedgerow warrants that the Licensed Materials to be delivered hereunder have been tested for viruses using a commercially available virus scanning utility which is generally used in the industry and are to the best of its abilities free of any time bombs, back doors, worms, Trojan horses and any other similar device or mechanism designed to disable or adversely affect the functionality of the Licensed Programs.
- 9.2. Hedgerow represents and warrants that the Licensed Programs will perform substantially in accordance with its Licensed Materials, at no additional cost to Agency, provided that: (a) the Licensed Programs have not been modified by anyone other than Hedgerow, or as authorized by Hedgerow in writing; (b) Agency is operating a supported version of the Licensed Programs; (c) Agency's computer hardware is in good operating order and is installed in a suitable operating environment; (d) Agency's computer hardware configuration used in the operation of the Licensed Programs meets Hedgerow's approved specifications found in the Licensed Programs installation guides and new build release notes if necessary; (e) the error or defect is not caused by Agency or its agents, employees or contractors; (f) Agency promptly notifies Hedgerow of the error or defect after it is discovered; (g) all fees then due to Hedgerow have been paid; and (h) Agency is not otherwise in breach of its material obligations under this Agreement. In such event, Hedgerow shall use its best efforts to cause the Licensed Programs to perform substantially in accordance with its Licensed Materials within a period of time acceptable to Agency, acting reasonably.
- 9.3. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, THE LICENSED MATERIALS OR ANY UPDATES, ENHANCEMENTS OR RELEASES THERETO, OR ANY OTHER SERVICES OR GOODS PROVIDED BY HEDGEROW TO AGENCY IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AGENCY'S SOLE AND EXCLUSIVE REMEDIES AND HEDGEROW'S ONLY OBLIGATIONS UNDER THE WARRANTY SET FORTH IS TO CAUSE THE LICENSED PROGRAMS TO OPERATE SUBSTANTIALLY IN ACCORDANCE WITH HEDGEROW'S LICENSED MATERIALS OR CORRECT THE LICENSED MATERIALS.
- 9.4. HEDGEROW DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS SHALL MEET AGENCY'S REQUIREMENTS OR SHALL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR SYSTEMS WHICH AGENCY SELECTS FOR USE, OR THAT THE OPERATION OF THE LICENSED PROGRAMS SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS AND DEFECTS HAVE BEEN IDENTIFIED AND CORRECTED BY HEDGEROW.
- 9.5. HEDGEROW SHALL NOT BE LIABLE FOR ANY LOSS, COST, EXPENSE OR DAMAGE TO AGENCY IN AN AMOUNT EXCEEDING TWO (2) TIMES THE TOTAL AMOUNT PAID BY AGENCY TO HEDGEROW IN THE TWELVE (12) MONTHS PRIOR TO A CLAIM, WHETHER ARISING AS A RESULT OF: (A) ANY BREACH OF THIS AGREEMENT BY HEDGEROW; (B) ANY ACT OR FAILURE TO ACT OF HEDGEROW; OR (C) ANY CLAIM MADE AGAINST AGENCY BY ANY OTHER PARTY, EVEN IF HEDGEROW HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM. AGENCY AGREES THAT IT SHALL NOT ASSERT ANY CLAIMS AGAINST HEDGEROW BASED ON ANY THEORY OF STRICT LIABILITY.

10. Indemnification for Copyright Infringement

- 10.1. Hedgerow represents and warrants that it is the owner of the Licensed Materials and that it has the right to grant the License granted hereunder. Hedgerow agrees to defend Agency against, and indemnify and save harmless Agency from and against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any or alleged infringement of any copyright, patent, trademark, trade secret or other industrial or intellectual property right, and to pay the amount of any adverse final judgment (or settlement to which

Hedgerow consents) resulting from third party claim(s) (hereinafter "Indemnified Claims") that the Agency's use of the Licensed Materials infringe any copyright or patent; provided Hedgerow is notified promptly in writing of the Indemnified Claims and has sole control over its defense or settlement, and Agency provides reasonable assistance in defense of same. In the event that a deliverable, or any part thereof, is held to constitute an infringement and the use thereof is enjoined, Hedgerow shall, at its expense, either: (a) procure for Agency the right to continue using the deliverable or infringing parts; or (b) replace the deliverable or infringing parts with a non-infringing product or parts; or (c) modify the deliverable or infringing parts to Agency's satisfaction so they become non-infringing.

11. Force Majeure

- 11.1. Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay both: (a) is caused by any of the following: acts of war, terrorism, civil riots or rebellions; quarantines, embargoes and other similar unusual governmental action; extraordinary elements of nature or acts of God; and (b) could not have been prevented by the non-performing party's reasonable precautions or commercially accepted processes, or could not reasonably be circumvented by the non-performing party through the use of substitute services, alternate sources, work-around plans or other means by which the requirements of a buyer of services substantively similar to the Services hereunder would be satisfied. Events meeting both of the criteria set forth in clauses (a) and (b) above are referred to individually and collectively as "Force Majeure Events". The parties expressly acknowledge that Force Majeure Events do not include vandalism, regulatory acts of governmental agencies, labor strikes, or the non-performance of third parties or subcontractors relied on for the delivery of Services, unless such failure or non-performance by a third party or subcontractor is itself caused by a Force Majeure Event, as defined above. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail, and such party continues to attempt to recommence performance or observance to the greatest extent possible without delay.
- 11.2. If a Force Majeure Event causes a material failure or delay in the performance of any Services for more than ten (10) consecutive business days, Agency may, at its option, and in addition to any other rights Agency may have, procure such Services from an alternate source until Hedgerow is again able to provide such Services, and Hedgerow shall be liable for all payments made and costs incurred by Agency required to obtain the Services from such alternate source during such period. Agency shall continue to pay Hedgerow the charges established hereunder during such period, but Hedgerow shall not be entitled to any additional payments as a result of the Force Majeure Event. If a Force Majeure Event causes a material failure or delay in the use of the Licensed Programs, or the performance of any Services, for more than thirty (30) consecutive days, Agency may, at its option, and in addition to any other rights Hedgerow may have, immediately terminate this Agreement without liability to Hedgerow.

12. Agency Responsibilities

Agency is responsible for the following:

- 12.1. Timely payment of Hedgerow invoices.
- 12.2. Provision of appropriate operating environment for hardware, Agency employees, and Hedgerow staff when at Agency's location.
- 12.3. Provision of knowledgeable, competent operators with an understanding of Agency's operations.

- 12.4. For Agency self-hosted systems, ensuring that Agency has knowledgeable, competent staff or contracted network support personnel to install the Licensed Programs and resolve problems with Agency infrastructure/environment.
- 12.5. Scheduled training to properly prepare Agency's staff to use Licensed Programs.
- 12.6. Daily, or whenever they change, backups of files and Licensed Programs kept in a secure place.
- 12.7. Notification to Hedgerow of a problem as soon it appears.
- 12.8. Upon request, but not more than once a year, Hedgerow may request, and Agency shall supply, the PDF output of the "Hedgehog User Listing" report run from Agency's production environment. An importable copy of the report template will be provided if it is missing from Agency's production environment.

13. Version Upgrades

- 13.1. Hedgerow will, as and when it develops new versions of Licensed Programs upgrades and enhancements, with corresponding supporting Licensed Materials, make those available to Agency, with no increase in license fees. Hedgerow will provide the necessary instructions so Agency can install the upgrades and modifications.
- 13.2. If Agency is using an older version that is no longer commercially viable to continue supporting, Hedgerow will notify Agency of its intent to terminate support of that version. Such notice will be provided to Agency at least twelve (12) months in advance of Hedgerow's intent to terminate support so Agency has adequate time to upgrade to a supported version.
- 13.3. Hedgerow will also periodically offer new Licensed Programs, with, corresponding Licensed Materials, that have an additional billable price. New billable Licensed Programs are optional, and Agency will not be required to purchase them to comply with the support conditions in *Section 9. Warranty and Limitation of Hedgerow's Liability*.

14. Termination

- 14.1. Agency may, at any time, terminate this Agreement without cause by giving Hedgerow at least ninety (90) days written notice specifying the effective date of termination.
- 14.2. If Agency terminates this Agreement before the end of the term identified in *Appendix B. Dates and Term*, Agency will pay an early termination fee of five percent (5%) of the quarterly license fee for each quarter remaining in the term.
- 14.3. Hedgerow may terminate this Agreement without cause with one (1) year written notice to Agency, or at the end of the term identified in *Appendix B. Dates and Term*.
- 14.4. Without restricting any other remedies available, Agency may, at its sole option, immediately terminate this Agreement, without incurring a penalty, if (a) Hedgerow violates any material term or condition of this Agreement and such violation remains uncorrected sixty (60) days after written notice specifying the violation has been provided to Hedgerow; or (b) if Hedgerow is dissolved or becomes bankrupt or insolvent; or (c) if Hedgerow, its contractors, agents, officers or employees breach any of the confidentiality provisions of this Agreement.
- 14.5. If Agency violates any material term or condition of this Agreement, Hedgerow will notify Agency in writing of its intent to terminate this Agreement for cause, with the cause(s) specifically identified. Agency will have sixty (60) days to correct the cause(s), and if the corrections are not made, Hedgerow will have the right to terminate this Agreement. During this correction period, all rights

and obligations of this Agreement shall remain in force. There will be no early termination penalty for Hedgerow initiated termination.

15. Actions Upon Termination

- 15.1. Agency will cease using Licensed Materials immediately upon termination.
- 15.2. Within thirty (30) days after termination for any reason, Agency will furnish Hedgerow an Officer Certificate certifying that the original and all copies, in whole or in part, of the Licensed Materials have been removed from Agency's hardware and either returned to Hedgerow or destroyed by Agency.
- 15.3. Agency will pay all amounts due Hedgerow.

16. Confidentiality

- 16.1. Both Hedgerow and Agency have made and will continue throughout the term of this Agreement make available to the other party confidential personal and proprietary materials and information ("Confidential Information"). All materials and information provided by one party to the other relating to the business, policies, procedures, customs and forms of the providing party or any of its affiliates, including but not limited to Agency Data, as well as information previously divulged or delivered regarding the aforementioned subject matter, is hereby designated as confidential and proprietary and shall be considered to be Confidential Information ("Agency Materials"). Except for Confidential Information included in Agency Materials, the parties agree that the obligations set forth in this *Section 16. Confidentiality* do not apply to materials or information that: (a) are already, or otherwise become, generally known by third parties as a result of no act or omission of the receiving party; or (b) subsequent to disclosure hereunder are lawfully received from a third party having the right to disseminate the information and without restriction on disclosure; or (c) are generally furnished to others by the disclosing party without restriction on disclosure; or (d) were already known by the receiving party prior to receiving them from the disclosing party and were not received from a third party in breach of that third party's obligations of confidentiality; or (e) are independently developed by the receiving party without the use of Confidential Information of the disclosing party.
- 16.2. Hedgerow shall not, without the prior written consent of Agency, process, store, or transmit personal information which may be present in the Agency Materials in or to a country other than the United States.
- 16.3. If, to provide the Services, Hedgerow must disclose or make accessible any Agency Materials to a third party Hedgerow shall, before doing so obtain from the third party a written agreement in favor of Hedgerow and Agency, in a form satisfactory to Agency, under which the third party agrees to be bound by the obligations contained in this *Section 16. Confidentiality* applicable to Hedgerow.
- 16.4. Hedgerow agrees to permit Agency to have access to Hedgerow's premises, records and employees at any reasonable time to perform reviews and audits that Agency considers advisable to ensure that Hedgerow is meeting the requirement of this *Section 16. Confidentiality*. Hedgerow further agrees to provide its full cooperation for the purpose of such reviews and audits. Officers and employees of Hedgerow, its contractors and agents will be subject to the same electronic monitoring as government employees while on Agency's premises.
- 16.5. Hedgerow shall immediately report to Agency if Hedgerow or an affiliated company of Hedgerow is served with an order, demand, warrant or any other document purporting to compel the production of any Agency Materials.

- 16.6. The parties hereto agree not to disclose or make available to anyone not entitled to the benefit of this Agreement any specific financial information, including but not limited to prices, contained in this Agreement without the written consent of the other party.
- 16.7. Agency agrees not to disclose or make available to anyone not entitled to the benefit of this Agreement any information divulged by Hedgerow, the disclosure of which would be harmful to the business operations of Hedgerow, without the written consent of Hedgerow.
- 16.8. The provisions of this *Section 16. Confidentiality* shall not prevent either party from disclosing any Agency Data, documents, or information as necessary to comply with any applicable statute or other law requiring such disclosure, including for the provision of legal services.
- 16.9. Hedgerow may, for the purposes of marketing, disclose Agency's name and a general description of the Services provided to Agency pursuant to this Agreement, but shall not indicate in any way that Agency endorses Hedgerow's Services.
- 16.10. Hedgerow shall return to Agency all Agency Materials, except to the extent that Agency agrees in writing to the destruction by Hedgerow of any of Agency Materials in which case Hedgerow shall confirm in writing to the Agency that such Agency Materials have been destroyed: (a) when they are no longer required by Hedgerow to provide Services; and (b) as soon as possible but not later than fifteen (15) days of the date of termination or expiration of the agreement.
- 16.11. This *Section 16. Confidentiality* shall survive the expiry or termination of this Agreement.

17. General Provisions

- 17.1. Hedgerow shall not assign or transfer this Agreement, or subcontract any of the rights or obligations under this Agreement, without first obtaining written permission from Agency. No assignment, transfer or subcontract of this Agreement will relieve Hedgerow of any obligations under this Agreement, except to the extent they are properly performed by Hedgerow's permitted assigns and subcontractors.
- 17.2. Time is of the essence with respect to the Services to be provided by Hedgerow to Agency under this Agreement.
- 17.3. If any provision of this Agreement is for any reason invalid, that provision will be considered separate and severable from this Agreement, and the other provisions of this Agreement will remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.
- 17.4. Those provisions of this Agreement which are intended to survive the termination or expiration of this Agreement will survive, including, without limitation, *Section 3. Ownership of Licensed Materials*, *Section 9. Warranty and Limitation of Hedgerow's Liability*, and *Section 16. Confidentiality*.
- 17.5. Any delay, neglect or forbearance by a party in enforcing against the other party any term, condition or obligation of this Agreement shall not constitute a waiver of such or in any way prejudice any rights or remedies of that party. Any waiver of any term, condition or obligation of this Agreement must be in writing to be effective and shall apply only to the extent set forth in writing.
- 17.6. This Agreement shall be governed by and construed in accordance with the laws of the State wherein Agency's administrative headquarters are located.
- 17.7. This Agreement constitutes the full and complete understanding of the parties to the subject matter contained herein; and supersedes all prior and contemporaneous understandings and agreements. This Agreement can only be changed by the written mutual consent of both Hedgerow and Agency.
- 17.8. This Agreement may be executed electronically and by counterparts, each of which shall be deemed an original but taken together constitute one instrument. Counterparts may be exchanged by electronic transmission. This Agreement and the attached Appendices, and any Work Order signed

by both parties represent the entire agreement between the parties and can only be modified by mutual written agreement of the parties. Agency's use of the services under this Agreement is not acceptance of any additional terms or conditions. The parties agree this is a non-exclusive agreement.

- 17.9. Hedgerow is not an employee, partner, agent, or representative of the Agency. Hedgerow is an independent contractor.
- 17.10. Hedgerow agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement.

18. Dispute Resolution

- 18.1. Any dispute that cannot be resolved by the parties will be resolved with a three-step dispute resolution process. The three-step process shall (a) begin with informal negotiations conducted in good faith; (b) be followed, if necessary, by mediation, initiated by written demand of one party served on the other, and if the mediator determines that the dispute cannot be resolved by mediation, then: (c) the dispute shall be submitted to binding arbitration in accordance with the rules of a mutually agreeable arbitrator located in the United States.
- 18.2. In the event litigation is required by either party to enforce the terms and conditions of this Agreement, the prevailing party shall be reimbursed attorney fees, expert witness costs, and court costs by the party prevailed upon to the extent so ordered by the court.

19. Notice

- 19.1. Any notice, request, demand, consent, or other communications provided or permitted hereunder shall be in writing and given by personal delivery, transmitted by facsimile, or sent by ordinary mail, postage paid, addressed to the party for which it is intended at its address as follows:

For **Hedgerow Software US, Inc.**

Attention:
Darryl Booth
US Operations Manager

Suite 210
700 Van Ness Avenue
Fresno CA 93721
Phone: (559) 259-8472
Email: johndodson@hedgerowsoftware.com

For **Agency**

Attention:
Amy Irani
Environmental Health Director

950 Maiden Avenue
Nevada City, CA 95959
Phone: (530) 265-1464
Email: Amy.Irani@NevadaCountyCA.gov

20. Acceptance

Hedgerow and Agency have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below:

Hedgerow Software US, Inc.
Darryl Booth, US Operations Manager

Agency: County of Nevada, California
Craig Griesbach
Purchasing Administrator

Date

Date

Address: 700 Van Ness Avenue, Suite 210
Fresno, CA 93721

Address: 950 Maiden Avenue
Nevada City, CA 95959

Appendix A. Modifications to Standard Terms and Conditions

A.1 Additional Provisions

1. Access shall be restricted by IP to only allow traffic from the Agency and authorized Hedgerow Support staff.
2. **Artificial Intelligence Technology (AI Technology)** includes any machine learning, deep learning, or artificial intelligence ("AI") technologies, such as statistical learning algorithms, models (including large language models), neural networks, and other AI tools or methodologies, as well as all software implementations and related hardware or equipment capable of generating content (e.g., text, images, video, audio, or computer code) based on user-supplied prompts.

Agency Data includes all information, data, materials, text, prompts, images, or other content provided to the Contractor under this Agreement or any other agreements between the Contractor and the Agency.

3. **Responsibilities and Training:**

Contractor is responsible for all information in the machine learning model, intellectual property rights associated with the information, and software and coded instructions used to generate AI content. Agency is responsible for the accuracy, utility and formulation of prompts and other inputs used to access the AI services and for decisions made, advice given, actions taken, and failures to take action based on AI content generated from AI services, except for AI content that is generated from erroneous or non-existing information in Contractor's machine learning models or from malfunctioning AI service software.

Contractor shall not use, or permit any third party to use, Agency Data to train, validate, update, improve, or modify any AI Technology, whether for Contractor's benefit or that of a third party, without the Agency's prior written authorization, which the Agency may grant or withhold at its sole discretion.

4. Implementation of SSO to be included in contract price and to be executed as soon as SSO integration with Entra ID (as a component of MSAL = Microsoft Authentication Library) becomes available.
5. Data Location: The Contractor must notify the Agency in writing within 48 hours of any location changes to Contractor's data center(s) that will process or store Agency data. Notice should be made to all parties referenced in the "Notices" section of the Agreement.
6. Cyber Risk insurance protection needed- Risk Management and Agency Counsel to determine amount.
7. Current Microsoft-supported versions of Windows must be supported by Hedgerow.

A.2 Paragraph 15.4 of Section 15 Actions Upon Termination is revised to add language as follows:

- 15.4 Hedgerow will return Agency Data in a MSL SQL format which will not be subject to additional fees.

A.3 Section 17, General Provisions is revised to add language as follows:

17.11 Insurance. During the performance of this Agreement, Contractor shall maintain in full force and effect the following insurance coverages. The coverage requirements specified in this Section are the required coverage limits for insurance and are not intended, nor will they be construed, to limit or expand any liability or indemnity obligation of Contractor under the Contract. Notwithstanding the preceding sentence, if Contractor maintains insurance limits for any line of insurance in an amount greater than any limitation of liability in this Agreement (“excess limits”), the presence of any “excess limits” shall not be construed to expand any limitation of liability in this Contract. The minimum amount of insurance may be maintained through primary and umbrella or excess coverage. Except for any statutory required insurance, coverage and limits required herein may be met through the combination of primary, local admitted and global insurance policies maintained by Contractor:

17.11.1 Commercial General Liability Insurance: (County Resolution No. 90674) Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- a. Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of \$2,000,000.
- b. An endorsement naming County as an additional insured for liabilities assumed in this Agreement under said policy, with respect to claims or suits arising from Seller's product(s) and/or the services provided under this contract.
- c. A provision that said insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with Contractor's insurance; and
- d. A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium) however, in the event that an Insurer will not provide the notice required in the preceding clause, such notification obligation shall fall to the Contractor.. Upon receipt of such notice, County will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

17.11.2 Cyber Liability Insurance: Without limiting any of the obligations or liabilities of Contractor, Contractor shall carry and maintain, at its own expense including any applicable deductibles or retentions, as long as respective, applicable statute(s) of limitation or repose are in effect relating to the specific purposes of this Agreement, Cyber Liability insurance with limits of not less than \$2,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

17.11.3 Automobile Liability Insurance: (County Resolution No. 90676) For each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- a. Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount of \$1,000,000.
- b. An endorsement naming County as an additional insured for liabilities assumed in this Agreement under said policy, with respect to claims or suits arising from the Services provided under this Agreement.

c. A provision that said insurance shall be primary and other insurance maintained by the Buyer shall be excess only and not contributing with Seller's insurance; and,

d. A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days' notice for non-payment of premium). however, if an Insurer will not provide the notice required in the preceding clause, such notification obligation shall fall to the Contractor. Upon receipt of such notice, County will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

17.11.4 Worker's Compensation: (County Resolution No. 90674) Before commencing to utilize employees in providing Services under this Agreement, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor. CONTRACTOR shall maintain said policy or self-insurance as required by law and shall promptly provide proof of such insurance evidenced by a certificate of insurance.

17.11.5 Miscellaneous Insurance Provisions: (County Resolution No. 90675) All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement and shall be payable on a "per occurrence" basis, except for professional liability/errors and omissions and cyber liability insurance. If the Contractor changes "claims made" insurance carriers during the term of this Agreement or any extensions hereof, then Contractor shall carry prior acts coverage.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph or be in material breach of this Agreement. Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Agreement, or both.

Appendix B. Dates and Term

Agency Fiscal Year ends June 30..

Effective Date is the date it is signed by Agency in *Section 20. Acceptance*.

Initial Recurring Fees Billing Date is the earlier of six (6) months from the Effective Date or Go-Live.

Invoicing for Agency's recurring fees will begin at Initial Recurring Fees Billing Date, with the first License Fees invoice prorated to the end of the first billing cycle as selected in *Appendix C.3. Billing and Payment Schedule*.

The Initial Term begins with the Effective Date and ends five (5) full fiscal years after Agency's Initial Recurring Fees Billing Date.

In the event the Agreement is not terminated as provided for in the Agreement, before the expiry of the Initial Term, or any successive term, and neither party notifies the other party of its intent to terminate the Agreement at least ninety (90) days prior to the end of the then current term, the Agreement shall automatically renew for successive one (1) year terms on the same conditions in effect during the then current term, with the exception of price increases as allowed in *Appendix C.4 Option to Increase Prices*

Appendix C. Prices and Payment Terms

C.1 Number of Inspectors and Supervisors

Hedgehog annual license and support fees are based on FTEs (See Definitions 1.4.)

Agency agrees to report, and pay for, additional FTEs as they are added to Hedgehog at Hedgerow's then prevailing rates. If the number of FTEs decreases Hedgerow will decrease costs proportionately.

Number of FTEs: 13

C.2 Licensed Programs and Recurring Fees

The following Licensed Programs included in this Agreement and their recurring fees are:

Item	# of Units	Quarterly Cost	Annual Cost
Licensed Programs Fees			
X Hedgehog (per FTE)	13	\$ 5,850.00	\$ 23,400.00
X Hedgehog Portal (including online billing and payment processing)	1	\$ 1,775.00	\$ 7,100.00
Interface Maintenance Fees			
X CERS Exchange	1	\$ 875.00	\$ 3,500.00
Licensed Programs Hosting Fees			
X Licensed Programs Hosting Fee	1	\$ 3,000.00	\$ 12,000.00
Total		\$ 11,500.00	\$ 46,000.00

C.3 Billing and Payment Schedule

Recurring Fees are invoiced, due and payable in advance of the Billing Cycle selected.

Recurring Fees Billing Cycle
Quarterly
X Annually

All invoices are payable net thirty (30) days.

C.4 Option to Increase Prices

At the end of Agency's then current term, and with at least ninety (90) days prior written notice to Agency, Hedgerow has the option to increase prices for the successive term by an amount up to the cumulative California Cost of Living increase since the price was last set.

Appendix D. Cloud Hosting Service Level Agreement (SLA)

D.1 Hosting Particulars

Agency has chosen to deploy Licensed Programs in a Microsoft® Azure® cloud-based environment. The Agency will receive the following as part of the application hosting fees:

Data Center	<p>Agency Data will be hosted in an Azure® private cloud environment in a tier 1 data center in the United States.</p> <p>The data center is a secure 24/7 manned onsite network operations site staffed with professional security officers, equipped with biometric access controls, monitored by extensive video surveillance, and restricted to only authorized representatives.</p>
App Service	<p>One (1) Production and One (1) UAT Hedgehog application will reside within a single App Service Plan with a public IP address.</p> <p>Network and storage will be fully isolated with the Agency's own subnet, private IP range, and specific Domain Name Server (DNS) to ensure absolute separation from other Azure® Agencies.</p> <p>One (1) Hedgehog Portal application will reside within the same App Service Plan, with its own unique public IP address.</p>
Database(s)	<p>Hedgehog Database, Hedgehog Portal, and Hedgehog Disclosure Site</p> <p>One (1) Production, one (1) User Acceptance Testing/ Testing (UAT) Hedgehog database, and one (1) Hedgehog Portal Disclosure Site will reside within a single Microsoft® Azure SQL Server.</p>
Azure Storage	<p>1 TB of storage is included in application hosting fees for data and attachments. If needed, additional disk space can be acquired in 1 TB units for an additional monthly fee.</p>
Availability	<p>Hosting site availability targets for the Production environment are:</p> <p>99.95% Network Uptime 99.95% Server Uptime 99.95% Application Availability</p> <p>If downtime is required for after-hours maintenance, an email notification will be sent to the Agency with a minimum 24-hour notice unless emergency escalation is required. If the maintenance timing is not convenient for Agency, Hedgerow and Agency will attempt to find a mutually agreeable time. Email details will include:</p> <ul style="list-style-type: none">• Reason for the downtime.• Date and time of downtime.• Expected duration.

Security / Privacy	All data passed to/from the Azure® cloud environment is encrypted during transmission.
Virtual Machine (VM) Backup	Azure® performs a full weekly backup and a daily incremental backup of Agency's virtual machines (VMs). Backups are stored in the Azure® Recovery Services vault.
Database Backup	Automated daily backup of Agency database is performed, and backup is stored on the database server.
Backup Retention	All backups retained for 14 days.
Patches and Upgrades	Hedgerow will notify Agency of all releases via email. Hedgerow staff will coordinate with designated Agency staff to determine the timeframe for the release to be applied to Agency's Azure® environments.
Access Control	<p>Designated Hedgerow staff will have secure, authenticated access to Agency's Azure® servers. These designated staff members will request written permission from the Agency to access the Agency's Azure® servers which may be necessary from time to time for the following reasons:</p> <ul style="list-style-type: none"> • General server maintenance. • General database administration. • Performance, usage and/or security monitoring. • Licensed Programs patches and upgrades. • General troubleshooting. <p>Hedgerow is notified via email of all log-in attempts to Agency's VM(s).</p>
System Monitoring	<p>24/7 monitoring of the Agency's Azure® cloud environment is provided.</p> <p>Hedgerow has rotating on-call staff to provide emergency after hours support related to Agency's Azure® cloud environment.</p> <p>Designated Hedgerow staff receive email notifications for all server log in attempts.</p> <p>Hedgerow will make Azure® activity logs available to Agency upon request.</p>

D.2 Hosting Incident Reporting & Response

Agencies can report incidents to Hedgerow via phone, email or the Customer Support Portal. Support categories for Agency-reported hosting incidents are as follows:

Level	Problem Description	Best Method of Contact
Category 1	System Crisis: Production environment is inaccessible.	Phone (or Portal)
Category 2	System Problem: UAT environment is inaccessible during standard support hours.	Phone (or Portal)
Category 3	System Concern: All environments are accessible; however, a degradation of service is noticeable on a platform that meets the posted Hedgerow minimum hardware and software requirements (e.g., system running slow). <i>Note: This issue may be Agency initiated.</i>	Portal
Category 4	System Issue: All environments are accessible and day-to-day work is not affected. Environment(s) require service outside of general maintenance (e.g., operating system patch).	Portal

Expected response times to each Category are as follows:

Level	Expected Response Time	Type of Response
Category 1	15 Minutes	Ticket logged in Customer Support Portal or Agency has called the emergency support number. Preliminary analysis of problem. Incident update email or phone call to Agency.
	30 Minutes	Incident update email or phone call to Agency.
	45 Minutes	Hedgerow 2 nd tier support is initiated. Vendor support may be initiated. Management team notified.
Category 2	30 Minutes	Ticket logged in Customer Support Portal.
	1 Hour	Incident update email or phone call to Agency.
	2 Hours	Hedgerow 2 nd tier support is initiated. Vendor support may be initiated. Management team notified.
Category 3	30 Minutes	Ticket logged in Customer Support Portal.
	1 Hour	Hedgerow 2 nd tier support is initiated. Vendor support may be initiated. Management team notified.
Category 4	1 Hour	Ticket logged in Customer Support Portal.

Appendix E. Unused

This exhibit is intentionally left blank.

Appendix F. INFORMATION TECHNOLOGY SECURITY

1. Notification of Data Security Incident

For purposes of this section, “Data Security Incident” is defined as unauthorized access to the Contractor’s business and/or business systems by a third party, which access could potentially expose County data or systems to unauthorized access, disclosure, or misuse. In the event of a Data Security Incident, Contractor must notify Agency **in writing as soon as possible and no later than 48 hours after Contractor determines a Data Security Incident has occurred**. Notice should be made to all parties referenced in the “Notices” section of the Agreement. Notice must reference this contract number. Notice under this section must include the date of incident, Contractor’s systems and/or locations which were affected, and Agency services or data affected. The duty to notify under this section is broad, requiring disclosure whether any impact to Agency data is known at the time, to enable Agency to take immediate protective actions of its data and cloud environments.

Failure to notify under this section is a material breach, and Agency may immediately terminate the Agreement for failure to comply.

2. Data Location

2.1 Contractor shall not store or transfer non-public County of Nevada data outside the United States. This prohibition includes backup data and Disaster Recovery locations. The Contractor will permit its personnel and contractors to access County of Nevada data remotely only as required to provide technical support. Remote access to data from outside the continental United States is prohibited unless expressly approved in advance and in writing by the Agency.

2.2 The Contractor must notify the Agency **in writing within 48 hours** of any location changes to Contractor’s data center(s) that will process or store Agency data. Notice should be made to all parties referenced in the “Notices” section of the Agreement.

3. Data Encryption

- 3.1 The Contractor shall encrypt all non-public Agency data in transit regardless of the transit mechanism.
- 3.2 The Contractor shall encrypt all non-public Agency data at rest.
- 3.3 Encryption algorithms shall be AES-128 or better.

4. Cybersecurity Awareness and Training

The Agency maintains a robust Cybersecurity Awareness and Training program intended to assist employees and contractors with maintaining current knowledge of changing cybersecurity threats and countermeasures. Any contractor that is assigned a Agency network account will be assigned User Awareness training and must complete it within the time period it is assigned. Training completion progress is monitored by sponsor departments and non-compliant users may have their account suspended or restricted.

The Agency conducts email Phish testing on a regular basis to expose account holders to the types of potential threats.

Contractor will maintain a Cybersecurity Awareness and Training program for training staff at a minimum of once a year. Contractor will maintain records of the program for review by the Agency when requested.