



SOFTWARE AS A SERVICE (SaaS) MASTER SUBSCRIPTION AGREEMENT

This **Software as a Service (SaaS) Master Subscription Agreement ("Agreement")** is made as of _____, 2016 ("**Effective Date**") by and between **Vena Solutions USA Inc.**, a Delaware corporation, having its principal place of business at 1971 Western Avenue, #1125, Albany, NY 12203 ("**Vena**") and **Santa Clara Valley Water District**, an independent special district created by the Legislature of the State of California, having its principal place of business at 5750 Almaden Expressway, San Jose, CA 95118 ("**Subscriber**").

1. DEFINITIONS

"**Anniversary Date**" means each anniversary date of the Effective Date of this Agreement or related Appendix.

"**Agreement**" means this Software (SaaS) Master Subscription Agreement together with any Order Form, and Appendices executed by Vena and the Subscriber.

"**Applicable Privacy Laws**" means all applicable data protection legislation, regulations and rules related to data security, data integrity and the safeguarding of personal information and those data protection laws applicable to Vena and Subscriber in the United States of America.

"**Content**" means: i) information obtained or developed by Vena related to the Service and provided to Subscriber, including all products specified and agreed upon pursuant to this Agreement; (ii) the Documentation, as defined within this Agreement; and (iii) Updates.

"**Documentation**" means, collectively, technical information and materials, in written or electronics form, delivered with the Service by Vena to Subscriber and that are intended for Use in connection with the Service.

"**Fees**" means the fees and charges specified in an Order Form, including both recurring and one-time charges.

"**License Term(s)**" means the period(s) during which a specified number of Users are licensed to Use the Service pursuant to this Agreement.

"**Modification**" means a change to the Service that changes the delivered source code or an enhancement to the Service that is made using Vena tools, software or utilizing or incorporating Vena Proprietary Information.

"**Named End Users**" means any combination of Users licensed under this Agreement.

"**Order Form**" means any validly executed Order Form between Vena and the Subscriber.

"**Service Concepts**" means the concepts, techniques, ideas, and know-how embodied and expressed in any computer programs included in the Service, including their structure, sequence and organization.

"**Proprietary Information**" means (i) with respect to Vena, Service, and Documentation and any complete or partial copies thereof, the Service Concepts, Third-Party Database, and any benchmark or survey results; (ii) information relating to the respective technologies, Service, strategies, trade secrets, internal operating environments, products, Subscriber lists and business of either party; (iii) other documents or information customarily regarded as being proprietary or confidential; and (iv) information reasonably identifiable as the confidential, personal identifiable or proprietary information of Vena or Subscriber.

"**Service**" means (i) all products and Service specified and agreed upon in this Agreement and Appendices hereto, delivered to Subscriber hereunder, including the Content, but excluding the third-party database and third-party



products other than those required by Vena to support the Service; (ii) any releases, versions, or correction levels of the Service as contemplated by this Agreement; and (iii) any complete or partial copies of any of the foregoing.

"Subscriber Data" means any data, information or material provided or submitted by Subscriber or Users to the Service in the course of using the Service.

"Term" means the term specified in the Order Form and each subsequent renewal.

"Updates" means all upgrades, modified versions, updates, additions to the products and Service, whether provided to the Subscriber by Vena through maintenance and support services or otherwise at any time.

"Use" means to directly or indirectly load, execute, access, employ, utilize, store, or display the Service.

"User(s)" means Subscriber employees or contractors who are authorized to Use the Service and have been supplied user identifications and passwords by Subscriber (or by Vena at Subscriber's request).

2. LICENSE GRANT

2.1 Subject to the terms and conditions of this Agreement (including the obligation to pay License Fees specified in a valid Order Form), Vena hereby grants Subscriber a non-exclusive, non-transferable, worldwide right to Use the Service, solely for Subscriber's internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to Subscriber are reserved by Vena and its licensors.

3. RESTRICTIONS ON USE

3.1 Subscriber is responsible for all activity occurring under the Service and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Subscriber's Use of the Service, including those related to applicable privacy laws, international communications and the transmission of technical or personal data.

3.2 Subscriber acknowledges that the Service and its structure, organization and source code constitute valuable trade secrets of Vena and/or its licensors. Accordingly, Subscriber agrees:

- (a) Not to modify, adapt, alter, translate, or create derivative works from the Service (except as expressly permitted by the Documentation);
- (b) Not to merge the Service with other Service or Software; or sublicense, lease, rent, loan, or otherwise transfer the Service to any third party. For avoidance of doubt, the aforementioned caveat is not intended to in any way limit Subscriber's ability to interface or integrate the Service with other software currently used or contemplated to be used at any time during the Term by Subscriber in the ordinary course of its business (or replacements thereof), and intended for use with the Service, by Subscriber;
- (c) To not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Service;
- (d) Not to provide services to third parties using the Service (e.g. business process outsourcing, Service Bureau applications or third party training) or otherwise Use or copy the Service;
- (e) To notify Vena immediately of any known unauthorized Use of any password or account or any



other known or suspected breach of security;

- (f) To report to Vena immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Subscriber or Subscriber's Users;
 - (g) To not remove, alter, or obscure any proprietary notices (including copyright notices) of Vena and/or its licensors incorporated with the Service; and
 - (h) Not provide false identity information to gain access to or Use the Service.
- 3.3 Subscriber shall not license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to (i) any third party the Service in any way; or (ii) "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iii) reverse engineer or access the Service in order to:
- (a) build a competitive product or Service;
 - (b) build a product using similar ideas, features, functions or graphics of the Service; or
 - (c) copy any ideas, features, functions or graphics of the Service.
- 3.4 User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer Use the Service.
- 3.5 Subscriber may use the Service only for internal business purposes and shall not knowingly: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or that violates any third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

4. VENA PROPRIETARY RIGHTS; SUBSCRIBER DATA SECURITY AND DATA BACKUPS.

- 4.1 Vena alone (and its Licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Service (specifically excluding all Subscriber Data) and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Subscriber or any other party relating to the Service. This Agreement is not a sale and does not convey to Subscriber any rights of ownership in or related to the Service or the Intellectual Property Rights owned by Vena. The Vena name, logo, and product names associated with the Service are trademarks of Vena or third parties, and no right or license is granted to Use them.
- 4.2 Vena, in its discretion, reserves the right to supply new application source code of the Service and all copies thereof in Subscriber's possession or control whenever a future Update provides for like functionality in an object code format. Other than as specified herein, any tools licensed with or included in the Service may not be copied, in whole or in part, without the express written consent of Vena.
- 4.3 Subscriber Data Backups. Vena is responsible for maintaining a backup of Subscriber Data and for an orderly and timely recovery of such data in the event that the use of the Service may be interrupted. Unless otherwise agreed between the parties in writing, Vena shall maintain daily backups of all Subscriber Data that can be recovered within four (4) hours during the following business day. Additionally, Vena shall use



commercially reasonable efforts to maintain the security of Subscriber Data, the security requirements of which are further described herein.

- 4.4 Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Subscriber Data or the physical, technical, administrative, or organizational safeguards put in place by Vena that relate to the protection of the security, confidentiality, or integrity of Subscriber Data, Vena shall, as applicable: (a) notify Subscriber as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; and (b) reasonably cooperate with Subscriber in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Subscriber; (c) perform or take any other actions reasonably required to comply with applicable law as a result of the occurrence; (d) without limiting Vena's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Subscriber for any and all Claims (as defined herein), including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Subscriber in connection with the occurrence; (e) use commercially reasonable efforts to be responsible for recreating lost Subscriber Data in the manner and on the schedule set by Subscriber without charge to Subscriber; and, (f) provide to Subscriber a detailed plan within ten (10) calendar days of the occurrence describing the measures Vena will undertake to prevent a future occurrence.

5. **CONFIDENTIALITY**

- 5.1 During the Term and for a period of three (3) years thereafter, each party shall keep confidential, shall not use for itself or the benefit of others, and shall not copy or allow to be copied, in whole or in part, any Proprietary Information other than as reasonably necessary to fulfill the terms of this Agreement or as permitted under the applicable privacy laws. Neither party shall, without the other party's prior written consent, disclose, provide, or make available any of the Proprietary Information of the other party in any form to any person, except to its bona fide employees, officers, or directors whose access is necessary to enable such party to exercise its rights hereunder.
- 5.2 Each party agrees to take all reasonable steps to protect the Proprietary Information of the other party from disclosure to third parties.
- 5.3 The obligations of confidentiality imposed upon the parties by the foregoing paragraph shall not apply with respect to any alleged Proprietary Information which:
- (a) is known to the recipient thereof prior to receipt thereof from the other party hereto;
 - (b) is disclosed to said recipient by a third party who has the contractual right to make such disclosure;
 - (c) is or becomes a part of the public domain or public knowledge through no fault of said recipient;
 - (d) is independently developed by the recipient without reference to the disclosing party's Proprietary Information; or
 - (e) is required to be disclosed under operation of law (including the California Public Records Act), as long as the party affected has the opportunity to apply to the applicable legal entity for a protective order.
- 5.4 Each party will use the same degree of care to protect the other's Proprietary Information as it uses to protect its own Proprietary Information of like nature, but in no circumstances less than reasonable care. In accordance with the applicable privacy laws, Vena shall implement appropriate physical, organizational, and technological measures to ensure the security and confidentiality of all Subscriber Information in its



possession from time to time, including, protecting against any anticipated threats or hazards to the security or integrity of the Subscriber Data, and protecting against unauthorized access to or use of the Subscriber Data that could result in substantial harm or inconvenience to Subscriber. Each party will take appropriate action to address incidents of unauthorized access to the other's Proprietary Information, including promptly notifying the other of the unauthorized access.

- 5.5 Upon the expiration or termination of the Agreement, or on completion of a party's obligations under the Agreement, each party shall use its commercially reasonable best efforts to return, or upon request of the other party, destroy or cause to be returned or destroyed in a prompt manner, all materials in any medium that contain, refer or relate to the Proprietary Information of that other party.

6. PAYMENT, TAXES AND RENEWALS.

Subscriber shall pay all undisputed fees or charges to Subscriber's account in accordance with the fees, charges, and billing terms set forth in the Order Form hereto. Subscriber is responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used.

Subscriber shall pay all applicable current and future federal, provincial and municipal/county taxes on the Fees, including duties and tariffs, imposed upon this Agreement, the possession or use of the Service, and the Service provided hereunder. All Fees are exclusive of taxes. If applicable laws require the withholding of taxes under this Agreement, Vena shall notify Subscriber, make the applicable withholding and remit the required tax to the appropriate government authority. Subscriber agrees to provide Vena with complete and accurate billing and contact information. This information includes Subscriber's legal name, street address, e-mail address, and name and telephone number of an authorized billing contact. Subscriber agrees to update this information and to notify Vena of any change within thirty (30) days of any change of address.

7. TERM AND TERMINATION

- 7.1 This Agreement becomes effective when: (i) it is executed by both Parties, and (ii) at or around this Agreement is executed, both Parties executed the Standard Consultant Agreement for the configuration and implementation of the Service. No contract between the Parties is formed until both items described in this Section 7.1 have been accomplished.
- 7.2 Subscriptions shall start on the Effective Date of this Agreement and continue for the Term specified on the Order Form. Vena shall memorialize the date the Service is made available to Subscriber by sending the Subscriber a welcome email which shall contain a link to the Subscriber's credentials to be able to access the Service. At the end of each Term, this Agreement and applicable subscriptions shall be automatically renewed for an additional one-year term subject to the current version of the Agreement then in effect.
- 7.3 Either party may elect to not renew the subscription by giving at least thirty (30) days' written notice to the other party prior to the end of the then-current Term.
- 7.4 Vena may terminate this Agreement at any time prior to the expiration of the then-current Term if:
- (a) Subscriber defaults in any payment due to Vena and such default continues unremedied for at least sixty (60) business days after receipt by Subscriber of written notice thereof;
 - (b) Subscriber is in default with respect to any other provision of this Agreement and such failure or default continues unremedied for at least sixty (60) days after receipt of written notice; or

- (c) The Subscriber breaches any obligation related to Sections 2 -5 or its obligations related to the protection of Vena's Proprietary Information as provided for here. In such instance, Vena, in its sole discretion, may terminate Subscriber's password, account or Use of the Service upon Subscriber's breach of Sections 2 - 5. Notwithstanding the foregoing, nothing in this Section 7.4 (c) shall in any way limit or infringe upon the continued access rights that Subscriber shall have to retrieve its data, as provided for within Section 7.6 below.
- (d) Subscriber agrees and acknowledges that Vena has no obligation to retain the Subscriber Data, and may delete such Subscriber Data, if Subscriber has materially breached this Agreement, and such breach has not been cured within sixty (60) days of notice of such breach; however, and for avoidance of doubt, Subscriber shall, in the event of any termination, including termination for uncured breach, have the right to retrieve any and all Subscriber Data, as provided for within Section 7.6 below.

7.5 The Subscriber may terminate this Agreement at any time prior to the expiration of the then-current Term if:

- (a) Vena is in default with respect to any provision of this Agreement and such failure or default continues unremedied for at least thirty (30) days after receipt of written notice;
- (b) Vena breaches any obligation related to the protection of Subscriber's Proprietary Information as provided for herein;
- (c) **Termination for convenience.** Subscriber shall have the right to terminate this Agreement, with thirty (30) days' written notice to Vena, for convenience at any time during the Term. In the event that Subscriber elects to terminate this Agreement for convenience, Subscriber will not be required to pay any early termination fees, but Subscriber shall not be entitled to any refunds of any subscription fees paid to Vena for the first two time periods of the Term or any professional services fees for deliverables or work performed prior to notice of termination being received by Vena ;
- (d) Vena fails to satisfy the Service Level Terms in Appendix B that provides Subscriber with an option to terminate this Agreement.
- (e) **Termination for failed implementation.** In the event of a failed implementation, which for the purposes of this Agreement is defined as "failure to complete the production implementation of any of the three (3) phases (i.e. budget solution phase, capital planning solution phase, and forecasting solution phase) by July 31, 2017", Subscriber shall have the option to terminate this Agreement upon written notice to Vena, with no further financial obligation to Vena (aside from the obligation to remit any remaining fees owed for professional services satisfactorily delivered to Subscriber by Vena) and Vena shall refund to Subscriber any Service subscription fees paid for the First and Second Time Periods.

In the event that any of the three (3) phases are not completed by July 31, 2017, Subscriber may elect: (1) to receive a refund for the incomplete phase(s); and (2) to convert from a enterprise license to a named user license at a rate of \$500 per named user, per year. For avoidance of doubt, Subscriber shall not have the ability to terminate this Agreement (and shall not be entitled to any refunds of any subscription fees already paid), due to a failed implementation in the event that:

- Subscriber has, in whole or in part, contributed to the failed implementation due to a failure to provide the resources or work effort as agreed between the parties within the Standard Consultant Agreement and applicable Schedule(s); or
- The scope of work of the Standard Consultant Agreement is amended resulting in extending the Project Schedule beyond July 31, 2017; or
- Subscriber's internal infrastructure does not meet the minimum specifications for



hardware, data integration and Internet bandwidth requirements provided for within the Documentation, and recommended by Vena for optimal performance of the Service;

- (f) **Termination for Vena's failure to provide agreed resources or Deliverables.** Subscriber shall also have the right to terminate this Agreement, as well as the Standard Consultant Agreement, upon written notice to Vena and with no further financial obligation to Vena (with the exception of the remittance of fees owed for services satisfactorily delivered by Vena prior to the date that notice of such termination is received by Vena) in the event that Vena fails to provide the agreed resources or Deliverables as agreed between the parties in the Standard Consulting Agreement and the Schedule(s), and such failure continues unremedied for more than thirty (30) days following notification to Vena of such failure.

7.6 This Agreement terminates automatically, with no further action by either party, if:

- (a) A receiver is appointed for either party or its property;
- (b) Either party makes an assignment for the benefit of its creditors;
- (c) Any proceedings are commenced by, for, or against either party under any bankruptcy, insolvency, or debtor's relief law for the purpose of seeking a reorganization of such party's debts, and such proceeding is not dismissed within 90 calendar days of its commencement; or
- (d) Either party is liquidated or dissolved.

7.7 Upon termination of this Agreement, Subscriber's access to the Service shall be revoked and subject to the limited access rights described below, Subscriber shall immediately cease using the Service. Termination of this Agreement shall not relieve Subscriber from its obligations arising hereunder before termination, including but not limited to the responsibility for paying previously accrued fees and the responsibility for not disclosing the Service. Following any termination of this Agreement, Subscriber shall have forty-five (45) calendar days to access the Service solely to retrieve the Subscriber Data and Vena hereby disclaims any and all liability, express or implied, should Subscriber fail to retrieve its Subscriber Data during such time period. In the event that Subscriber has been unable to fully retrieve its Data within the aforementioned forty-five (45) day period, Subscriber shall have the option to request an extension in writing, which shall not exceed an additional ten (10) business days, in order to retrieve the Data, and Vena agrees not to unreasonably withhold consent or access to the Service once said request has been received by Vena. Termination of this Agreement shall not relieve either party from its obligations arising hereunder before termination relating to the other party's Proprietary Information and the protection of Vena's proprietary rights.

8. **INDEMNIFICATION**

8.1 Subscriber shall indemnify and hold Vena, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Subscriber Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Subscriber of Subscriber's representations and warranties; or (iii) a claim arising from the breach by Subscriber or Subscriber's Users of this Agreement, provided in any such case that Vena: (a) gives written notice of the claim promptly to Subscriber; (b) gives Subscriber sole control of the defense and settlement of the claim (provided that Subscriber may not settle or defend any claim unless Subscriber unconditionally releases Vena of all liability and such settlement does not affect Vena's business or Service); (c) provides to Subscriber all available information and assistance; and (d) has not compromised or settled such claim.



- 8.2 Vena shall indemnify and hold Subscriber, its officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, any patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Vena of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Vena; provided that Subscriber: (a) promptly gives written notice of the claim to Vena; (b) give Vena sole control of the defense and settlement of the claim (provided that Vena may not settle or defend any claim unless it unconditionally releases Subscriber of all liability); (c) provides to Vena all available information and assistance; and (d) have not compromised or settled such claim. Vena shall have no indemnification obligation, and Subscriber shall indemnify Vena pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Subscriber's Subscriber Data, products, Service, and hardware or business process not intended by Vena.
- 8.3 If any suit is brought against Subscriber based on a claim that the unmodified version of the Service originally provided by Vena, or any unmodified upgrades infringe any existing registered patent, copyright, or other intellectual property right, Vena agrees that it will:
- (a) defend the suit at its expense, as long as Vena is notified promptly in writing and is given complete authority and information required to defend the suit; and
 - (b) pay all damages and costs finally awarded against Subscriber or any settlement amount, provided that Vena will not be responsible for any cost, expense, or compromise made by Subscriber without Vena's written consent.
- 8.4 Should the Service or any part thereof become or, in Vena's opinion, be likely to become, the subject of a claim for infringement, Vena may, at its own expense and option, either
- (a) procure for Subscriber the right to continue using such Service; or
 - (b) replace the same with non-infringing Service or modify the Service so that it becomes non-infringing. If neither of these options is commercially reasonable, Vena may terminate this Agreement and require that use of the Service be terminated and, if the Agreement has been in effect for less than three (3) years, refund a portion of the Subscription Fee prorated over a three year period. Vena shall have no obligation for any such claim based on Subscriber's modification of the Service, its combination, operation, or use with equipment, data, or Service not approved by Vena or as a result of any use of such combination with or use of the Subscriber Data. Sections 8.2, 8.3 and 8.4 of this Agreement states Vena's entire obligation regarding infringement or the like.
- 8.5 Subscriber shall indemnify Vena from all claims, losses, and damages arising from the use by: (i) the Subscriber or Users of the Service in a manner other than that provided in this Agreement or otherwise authorized by Vena; and or the Subscriber's failure to take reasonable precautions to protect its User names and passwords. Subscriber shall have the right to participate in the defense of any such claim at its own expense.

9. **REPRESENTATIONS AND WARRANTIES**

- 9.1 Vena represents and warrants that:
- (a) it has title to the Service and has acquired the right to license to Subscriber those portions of the Service it does not have title, and Vena has full power and authority to grant to the Subscriber the rights granted hereunder, including the right to use the Service;
 - (b) it has not placed, nor is Vena aware of, any disabling code or any viruses in the Service which would

alter, destroy, or inhibit the Service, or its use by Subscriber;

- (c) to its knowledge, the Service does not infringe upon any copyright, registered patent, trademark, software mark or trade name owned by a third party; and
 - (d) Vena personnel will exercise due care in the provision of any services, including the Service.
 - (e) Vena warrants, for the Term (the "Warranty Period"), beginning the Go-live Date, that the Service, when used as permitted under this Agreement and in accordance with the instructions in the Documentation, will operate and perform without material errors or defects and as described in the Documentation in all material respects. Subscriber shall have the option, in the event of any breach of this warranty, to provide Vena with a reasonably detailed description of any material issues or defects that may arise. Vena shall, upon receipt of such notice, review the objections together with Subscriber and shall have at least thirty (30) days to attempt to remedy the non-conformity. If, following expiry of the aforementioned thirty (30) day period, Vena has not satisfactorily been able to remedy the issue, Vena shall be granted one (1) subsequent additional thirty (30) day remediation period, and, if following expiry of the second remediation period, Vena has been unable to satisfactorily remedy the issue, this Agreement and Subscriber's right to use the Service may be terminated by Subscriber, upon written notice to Vena.
- 9.2 Subscriber represents and, warrants to Vena as follows: (i) Subscriber exists under the laws of its own jurisdiction and to its knowledge, is not under any contractual obligation that would preclude it from entering into this Agreement or would interfere with the use of the Subscriber Data provided under this Agreement; (ii) Subscriber owns or has properly licensed all rights in the Subscriber Data at all times during the Term; (iii) to its knowledge, the Subscriber Data is not, nor will be, in violation of any laws or third party intellectual property rights; (iv) to its knowledge, all Subscriber Data and Subscriber's use of the Service does and will comply with all applicable laws, including applicable privacy laws; and (v) to its knowledge, neither this Agreement nor the performance of or exercise of rights under this Agreement will violate, conflict with, or result in the breach of any term, condition, or provision of any agreement or legal obligation (whether or not existing at the effective date) to which Subscriber is a party or by which it may be bound, or constitute a default thereunder.
- 9.3 THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY VENA WITH RESPECT TO THE SERVICE AND ANY PART THEREOF. VENA MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. VENA DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL OPERATE CONTINUOUSLY OR WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY ERRORS WILL BE CORRECTED. SUBSCRIBER ALSO MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.
- 9.4 The representations and warranties set forth in the Agreement hereto shall not apply: (i) if the Service is not used in accordance with the Documentation; or (ii) if Subscriber's internal system does not employ industry standard latency levels, with the minimum recommended specification required by Vena for optimal performance by the Service, being a 10Mbps internet connection ; or (iii) to the extent that a defect is caused by or is contributed to by Subscriber or a Subscriber third party; or (iv) if the defect is caused by a Subscriber Third-Party Database or other Subscriber third party software malfunction.

10. LIMITATION OF LIABILITY

- 10.1 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL,



LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, OF THE OTHER PARTY EVEN IF SUCH PARTY RECEIVED ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY (EXCEPT AND EXPRESSLY STATED HEREIN), WHETHER OR NOT ANY OF THE MATTERS AFORESAID ARISES IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR MISREPRESENTATION OR BREACH OF STATUTORY DUTY OR ANY DUTY UNDER GENERAL LAW OR ANY OTHER LEGAL THEORY.

10.2 VENA'S ENTIRE LIABILITY TO THE SUBSCRIBER UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR MISREPRESENTATION OR BREACH OF STATUTORY DUTY OR ANY DUTY UNDER GENERAL LAW OR ANY OTHER LEGAL THEORY, (EXCEPT FOR THE VENA'S DUTY TO INDEMNIFY AGAINST INFRINGEMENT AS PROVIDED HEREIN) WILL NOT EXCEED THE TOTAL AMOUNT OF INSURANCE HELD BY VENA, AS SPECIFIED WITHIN SECTION 10.3.

10.3 At all times during the term of this Agreement, Vena shall maintain insurance coverage rated A "Excellent" by A.M. Best for the following risks in the following minimum amounts:

- Commercial General Liability (CGL) with a limit of \$5,000,000.00 per occurrence for bodily injury, including death resulting therefrom, personal injury, property damage and advertising injury. Such coverage shall include contractual liability coverage recognizing this Agreement, products and/or completed operations liability and premises liability. Such coverage shall also cover Subscriber as an additional insured;
- Commercial Automobile Liability with a \$2,000,000.00 combined single limit for bodily injury, including death resulting therefrom, and property damage, covering all non-owned and hired automobiles. Such coverage shall also cover Subscriber as an additional insured.

CGL and Commercial Auto Liability shall include Subscriber, its officers and directors, employees and agents as additional insureds, and shall also state that the insurer waives subrogation against Subscriber, that the policy will be primary and non-contributory as to Subscriber's insurance coverage, and will provide a Cancellation Endorsement (Cancellation Endorsement) from the insurer stating that the insurance will not be cancelled without 30 days advanced notice to Subscriber.

- Workers' Compensation coverage as required by statute for the state in which the Services shall be performed, covering all employees, including Employer's Liability coverage with limits of \$500,000 for each employee, and each accident. Workers' Compensation insurance shall also include a waiver of subrogation and Cancellation Endorsement.
- Professional Liability coverage concerning the acts, errors, and omissions of Vena and Vena's liability for its employees, agents and subcontractors with a limit of not less than \$5,000,000.00 per claim. This Professional Liability Policy shall include an endorsement which expressly includes claims related to cyber liability protection and any other theft, loss or unauthorized disclosure of confidential information or third party corporate information that is in the care, custody or control of Vena, as well as network and information security and communications and media. The definition of "professional services" within the policy of professional liability insurance must include the services provided by Vena, its employees, agents, and subcontractors under the terms of this Agreement. Professional Liability insurance shall include a Cancellation Endorsement.



11. **NOTICE**

- 11.1 Vena may give notice to Subscriber (such notice shall be deemed given when received by Subscriber) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Subscriber at the following addresses: 5750 Almaden Expressway, San Jose, CA 95118-3686 addressed to the attention of the: Chief Financial Officer, with a copy to Subscriber Counsel. Subscriber may give notice to Vena (such notice shall be deemed given when received by Vena) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Vena at the following addresses: 1971 Western Avenue, #1125, Albany, NY 12203 addressed to the attention of: **Mr. Don Mal, CEO**.

12. **VENA NOT RESPONSIBLE**

- 12.1 Vena will not be responsible under this Agreement for: (i) any alteration of the Service made by Subscriber to fit a particular requirement of Subscriber not intended by Vena; or (ii) the correction of any defects resulting from Subscriber Modifications; or (iii) the results of misuse of the Service by Subscriber or its affiliates; or (iv) preparation or conversion of data into the form required for Use with the Service. VENA AND/OR ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SERVICE AND/OR THIRD-PARTY SERVICE LICENSED HEREUNDER.

13. **DISPUTE RESOLUTION**

- 13.1 Any controversy or claim arising out of or relating to this Agreement or involving any dispute regarding the interpretation or breach of this Agreement shall be resolved as follows:
- (a) Upon written request of either party, both parties shall appoint a designated representative whose task it will be to meet for the purpose of resolving such dispute.
 - (b) Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
 - (i) The designated representatives concluding in good faith that amicable resolution through continued negotiations does not appear likely; and
 - (ii) The expiration of the 30 day period immediately following the initial request to negotiate the Dispute.

14. **GENERAL**

- 14.1 **Amendments.** The parties may amend this Agreement in a writing signed by each party's authorized representative.
- 14.2 **Assignment.** This Agreement may not be assigned by Subscriber or by operation of law to any other person, persons, firms, or corporations without the express written approval of Vena, which consent shall not unreasonably be withheld.
- 14.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California and the federal laws of the United States of America applicable therein. This Agreement shall be governed without regard to conflict of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods and shall exclude the application of the Uniform Computer Information Transactions Act. The parties attorn to the non-exclusive jurisdiction of



the courts of San Jose, California in respect of any disputes arising under this Agreement.

- 14.4 **Force Majeure.** Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, terrorism, epidemics, failure of suppliers to perform, governmental regulations, power failure, earthquake, or other disasters. If the anticipated or actual delay or non-performance exceeds thirty (30) calendar days, the other party may immediately terminate the Agreement by giving notice of termination and such termination will be in addition to the other rights and remedies of the terminating party under the Agreement, at law or in equity.
- 14.5 **Survival of Certain Provisions.** The obligation to pay all accrued undisputed Fees, Vena's proprietary rights, limitation of liability and the confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.
- 14.6 **Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.
- 14.7 **Entire Agreement.** This Agreement, forms the entire agreement between the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the subject matter hereof. No representations or statements of any kind made by either party that are not expressly stated herein shall be binding on such party. No provisions in the Subscriber's purchase orders or other business forms will supersede the terms and conditions of this Agreement, and no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by a duly authorized representative of each party to this Agreement.
- 14.8 **Waiver.** The waiver by either party of a breach of any provisions of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by such party.
- 14.9 **Compliance with Laws.** By accessing the Service, Subscriber confirms to its knowledge that this Agreement and the performance of any rights and obligations hereof:
- (a) are not restricted by or contrary to any law or regulation applicable to the Subscriber;
 - (b) do not require registration or approval under the applicable laws governing Subscriber; and
 - (c) will not require termination payments or compulsory licensing under the applicable laws of Subscriber.
- 14.10 **Counterparts.** Any Order Form or other document relating to this Agreement may be executed in counterparts, each of which may be original or electronic and shall together constitute one and the same binding instrument.



IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement by their respective duly authorized officers to become effective as of the date first abovewritten.

Accepted by:

Vena Solutions USA Inc.

By: _____

Name: _____

Title: _____

Date: _____

Accepted by:

Santa Clara Valley Water District

By: _____

Name: _____

Title: _____

Date: _____



ORDER FORM NUMBER ONE

This Order Form Number One is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Order Form contradict or are inconsistent with the provisions of the Agreement, the provisions of this Order Form shall prevail and govern solely with respect to the subject matter hereof.

1. FEES

DESCRIPTION	QTY	ANNUAL COST	TOTAL
Enterprise License Option ("ELA")			
Annual SaaS subscription for Vena Cloud "tenant" application, and a maximum of seven hundred (700) named users (may be any combination of admin, manager, modeler, contributor, view only) within the Vena Cloud application.	700	\$99,750	\$99,750
Sub-total First Time Period Vena Cloud Annual SaaS Subscription Fees:			\$99,750
Standard support and maintenance Fees:			Included
Total First and Second Time Periods (combined) Vena Cloud Annual SaaS Subscription and Support & Maintenance Fees:			\$199,500

** Term – means a Service Subscription term comprised of the following 2 time periods:

- First Time Period – 16 months
- Second Time Period– 12 months

** Subscriber will be invoiced \$199,500 as of the Effective Date of this Agreement for use of First and Second Time Periods (combined) of the Vena Cloud Annual SaaS Subscription and Support & Maintenance Fees, and the fees shall be due and payable with 30 days of receipt of the invoice by Subscriber. Additionally, the First Time Period of Subscriber's Term shall be for a period of sixteen (16) months, and the Second Time Period of the Term (as well as any subsequent additional renewal terms) shall be for twelve (12) month periods.

In the event that Subscriber chooses to renew this Agreement beyond the initial two (2) year Term, the parties agree that the increase to the renewal fee for the third and fourth time periods shall not exceed more than four percent (4%) per year.

Notes:

- All pricing stated within this Order Form is valid provided that this Agreement is signed on or before October 31st, 2016.



Appendix A MAINTENANCE AND SUPPORT TERMS

These Maintenance and Support terms are incorporated by this reference into the Master Subscription Agreement executed by Vena and Subscriber. Vena and Subscriber may hereinafter be referred to collectively as the “Parties,” or individually as each “Party.”

In this Appendix A, the following definitions have the meanings set forth below:

1. **Defined Terms.** In addition to the terms defined above, the following terms shall have the following meanings whenever used in this Agreement with initial letters capitalized. Any capitalized term used in this Agreement that is not defined herein shall have the meaning attributed to such term as set forth in the Agreement:
 - (a) “Help Desk Support” shall mean the Vena location which initially processes questions and issues raised by authorized users or Subscriber Contact(s) regarding the availability or functionality of the Service.
 - (b) “Service” or “System” shall mean (i) all products and Service specified and agreed upon in this Agreement and Appendices hereto, delivered to Subscriber hereunder, including the Content, but excluding the third-party database and third-party products other than those required by Vena to support the Service; (ii) any releases, versions, or correction levels of the Service as contemplated by this Agreement; and (iii) any complete or partial copies of any of the foregoing.
 - (c) “Subscriber Contact” shall mean that individual(s) authorized by Subscriber to be the primary interface with Vena regarding the Service, and Subscriber shall provide Vena with the necessary contact information for this individual.
2. **Help Desk Support.** Vena personnel will be available to help Subscriber Contact(s) by phone or email to answer questions regarding the use of the Service and to help identify, verify, and resolve problems with the Service. Telephone and Email Support are available Monday through Friday, 8:00 a.m. to 6:00 p.m., Pacific time.

Upon receipt of notice of an error, Vena will assign a severity level according to the following criteria:

- Severity A – severe: an error that results in the Service being substantially non-functional or inoperative.
- Severity B – high: an error that results in a decrease in the performance in any functionality of the Service, but does not prevent the Subscriber from continuing to use the Service as substantially specified in the Documentation.
- Severity C – minor: an error that results in the Service operating or performing other than as described in the Documentation, but has minimal effect on the performance of the Service.

Vena will use, its best efforts, but no less than commercially reasonable efforts, to correct reported errors or provide a work-around solution for each severity level subject to the following response and resolution times:

Severity A - within three (3) hours (during the business day) of being notified of a Severity A defect, Vena shall



acknowledge its receipt of such notice to Subscriber. Vena will use its best efforts, but no less than commercially reasonable efforts, to resolve all Severity A defects as soon as possible and will use its best efforts, but no less than every commercially reasonable effort, to attempt to provide Subscriber with such Correction within one (1) business day, or as otherwise agreed to by the parties.

Severity B - within five (5) hours (during the business day) of being notified of a Severity B defect, Vena shall acknowledge its receipt of such notice to Subscriber, and Vena will use its best efforts, but no less than all reasonable commercial means to attempt to provide Subscriber with such Correction within four (4) business days, or as otherwise agreed to by the parties.

Severity C - corrections for Severity C defects will be available at Vena's reasonable discretion; however, Vena will use its best efforts, but no less than all commercially reasonable efforts, to provide corrections for Severity C defects within thirty (30) calendar days of being informed of the problem.



Appendix B

SERVICE LEVEL TERMS

Service Commitment. Vena will use commercially reasonable efforts to make the Software available with a monthly uptime percentage of at least 99.5%, in each case during any monthly cycle (the "Service Commitment"). In the event that Vena does not meet the Service Commitment, Subscriber will be eligible to receive a Service Credit and other remedies as described below.

Service Commitments and Service Credits:

Service Credits are calculated as a percentage of the proportional monthly subscription value of the total subscription fees paid by Subscriber for the Software (which was unavailable) in accordance with the schedule below.

Monthly uptime percentage is based on the number of minutes the system is unavailable outside of planned maintenance windows in a calendar month.

- System is unavailable between 90-360 minutes-10%
- System is unavailable for more than 360 minutes-40%

Vena will apply any Service Credits only against future payments which may at any time in the future be owed to Vena for additional professional services or subscription fees.

Scheduled Maintenance:

Vena shall use all commercially reasonable efforts not to schedule maintenance on Monday through Friday, 8:00 a.m. to 6:00 p.m., Pacific time. Vena shall provide Subscriber with at least forty-eight (48) hours prior notice of any Scheduled Maintenance. "Scheduled Maintenance" is defined as any non-emergency maintenance to the Service or System for which (a) Vena has a published set schedule outside of normal business hours; or (b) Vena has provided Subscriber with advance written notice. Any required maintenance which may take longer than one hundred and twenty (120) minutes shall typically occur on a Saturday or Sunday, and Subscriber shall be given forty-eight (48) hours' notice of any such maintenance windows which may impact Subscriber's ability to use Service or System.

Termination:

Subscriber may terminate this Agreement according to the provisions of Section 7.5 (d) of the Agreement and without any liability in the event any of the following occurs during the term of this Agreement: (i) Subscriber's use of the Service is affected by more than two (2) Downtime incidents per month in two (2) consecutive months outside of any Scheduled Maintenance period; (ii) four (4) Downtime incidents during any calendar month outside of any Scheduled Maintenance period; or (iii) Vena fails to meet the Warranted Uptime Percent in any three (3) months during any consecutive twelve (12) month period, outside of any Scheduled Maintenance period. For avoidance of doubt, Subscriber shall not be charged any early termination fees or other fees in the event that Subscriber terminates the Agreement for the reasons specified within this paragraph.

Security:

- a. Physical Security: The systems on which the Service operate are under Vena's control and are located at a secure facility. Access to such systems is limited to authorized personnel only.
- b. Data Security: All Subscriber Data resident on the systems on which the Service operates has daily backups of Subscriber Data as well as an incremental transaction log backup. All backups are stored off-site at a secure third party location.
- c. Network Security: Vena implements commercially available network security software, hardware and techniques



to eliminate non-authorized use of the Service or systems on which the Service operates. These include firewalls, intrusion detection software tools, and monitored use of the Service by authorized personnel.

Disaster Recovery:

In the event of a force majeure occurrence which causes the Service to be unavailable, Vena will follow its existing business continuity plan to minimize the impact of such occurrence and to restore the Service as quickly as possible which includes an off-site disaster recovery facility. The disaster recovery plan shall provide for the following:

1. Daily schedule
 - a. Backups of database files or incremental of transaction history
 - b. Incremental backup of changes to system and non-data areas
 - c. Backup system rotated for following evening activity
 - d. Daily backups shall be maintained on a rolling 60-day period
2. Weekly / Monthly Schedule
 - a. Backup files are archived to Amazon's Glacier Storage System
 - b. Monthly backups shall be maintained on a rolling 12-month period
3. Off-Site Storage
 - a. Weekly and monthly backups are stored within Amazon's Glacier Storage System.
4. Disaster Recovery Testing
 - a. On a monthly basis, Vena shall complete a full test of the backup and disaster recovery plan.
5. Vena shall ensure the Service satisfies the following performance measures:

Requirements	Description	Objectives
Recovery Time Objective	System Recovery Time in case of cloud-based servers failure or database failure	24 hours
	File Recovery Time in the event of user accidentally deleting a file or system corrupting or losing a file	4 hours (Jan-May) 24 hours (June-December)
	Point-in-time transaction recovery	4 hours (Jan-May) 24 hours (June-December)
Data Refreshing Time Objective	In the event that Subscriber request Vena to refresh the Subscriber Data with a copy of production Subscriber Data.	8 hours
Recovery Testing	System and Subscriber Data recovery testing	Twice a month

System Performance Objective	Data entry: <u>instantaneous</u> . Equivalent performance as keying into Excel.	instantaneous
	Simple queries and reports	0-5 seconds
	Complex queries and reports	0-30 seconds
	Data upload through templates	0-30 seconds
Internet and network bandwidth required		Vena recommends 10 MB/s up and 10 MB/s down for optimum performance.
Production Backup Files	Backup files will be accessible to the Subscriber staff with all instructions needed.	Available and accessible.