



mygov[®]
Building Better Communities

Subscription Services Agreement

Created for City of Manitowoc, WI

For:

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This agreement is between MyGov, LLC, an Oklahoma corporation (**MyGov**), and the customer agreeing to these terms (**Customer**) and is dated as of the date MyGov signs below. MyGov is the sole source for the software services and integrations listed at <https://www.mygov.us/> and is a wholly owned corporation and a subsidiary of none other.

1. **SOFTWARE-AS-A-SERVICE**

This agreement provides Customer access to and usage of an Internet based software service as specified on a service order (**Service**). As part of using the Service, Customer may invite third parties (*example*, contractors, citizens, users) to use and access the Service. These third parties will be required to agree to the MyGov Terms of Service when they register with the Service.

2. **USE OF SERVICE**

2.1 Customer Owned Data. All data uploaded by Customer remains the property of Customer, as between MyGov and Customer (**Customer Data**). Customer grants MyGov the right to use the Customer Data solely for purposes of performing under this agreement. During the term of this agreement, Customer may export its Customer Data as allowed by functionality within the Service. Additional information regarding data exports is located at www.mygov.us/legal/security-information.

2.2 Contractor Access and Usage. Customer may allow its contractors to access the Services in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.

2.3 Customer Responsibilities. Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify MyGov promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's Online Help Desk and applicable law.

2.4 MyGov Support. MyGov must provide customer support for the Service under the terms of MyGov's Customer Support Policy (**Support**) which is located at www.mygov.us/support-policy and is incorporated into this agreement for all purposes.

2.5 Demo Use. If Customer has registered for a demo use of the Service or uses a demo service, Customer may access the Service for a limited time period. The Service is provided AS IS, with no warranty during this time period. All Customer data will be deleted after the demo period.

3. **SERVICE LEVEL AGREEMENT & WARRANTY**

3.1 Warranty. MyGov warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance windows, force majeure, and outages that result from any Customer or third party technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty

98%

Credit

3% of monthly fee for each full hour of outage (beyond warranty). Max credit is 100% of the fee for such month.

3.2 LIMITED REMEDY. Customer's exclusive remedy and MyGov's sole obligation for its failure to meet the warranty in 3.1 above will be for MyGov to provide a credit for the applicable month as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies MyGov of such breach within 30 days of the end of that month.

3.3 DISCLAIMER. MYGOV DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED

WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE MYGOV TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, MYGOV DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

4. PAYMENT

Customer must pay all fees as specified on the service order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. MUTUAL CONFIDENTIALITY

5.1 Definition of Confidential Information. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). MyGov's Confidential Information includes without limitation the Service (including without limitation the Service user interface design and layout, and pricing information).

5.2 Protection of Confidential Information. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

5.3 Exclusions. Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. MYGOV PROPERTY

6.1 Reservation of Rights. The software, workflow processes, user interface, designs, know-how, and other technologies provided by MyGov as part of the Service are the proprietary property of MyGov and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with MyGov. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. MyGov reserves all rights unless expressly granted in this agreement.

6.2 Restrictions. Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service; or (vi) access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

7. TERM AND TERMINATION

7.1 Term. This agreement continues for one year from the activation date as defined on the service order. Thereafter, the agreement renews for additional 1 year periods unless either party provides the other with written (including email) notice of non-renewal at least 30 days prior to the renewal date.

7.2 Mutual Termination for Material Breach. If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

7.3 Temporary Suspension. MyGov may temporarily suspend access to the Service if amounts past due are not paid within 10 days of notice from MyGov. This notice may be sent via email.

7.4 Return of Customer Data.

- *Upon termination*, MyGov will provide a backup of the data in its native database format to the Customer as provided in Section 2.1 and will retain the data for an additional 30 days past the termination date.
- *After such 30-day period*, MyGov has no obligation to maintain the Customer Data and may destroy it.

7.5 Return MyGov Property Upon Termination. Upon termination of this agreement for any reason, Customer must pay MyGov for any unpaid amounts, and destroy or return all property of MyGov. Upon MyGov's request, Customer will confirm in writing its compliance with this destruction or return requirement.

7.6 Suspension for Violations of Law. MyGov may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. MyGov will attempt to contact Customer in advance.

8. **LIABILITY LIMIT**

8.1 EXCLUSION OF INDIRECT DAMAGES. MyGov is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits), even if it knows of the possibility of such damage or loss.

8.2 TOTAL LIMIT ON LIABILITY. MyGov's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12 month period prior to the event that gave rise to the liability.

9. **INDEMNITY**

9.1 Customer Indemnified. MyGov shall indemnify the Customer, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of the MyGov's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement.

9.2 MyGov Indemnified. Customer shall indemnify MyGov, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Customer's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement.

10. **EXTERNAL SERVICES**

MyGov may enable access to Customer's and/or third-party services and websites (collectively and individually, "External Services"). Customer agrees to use the External Services at their sole risk. MyGov is not responsible for examining or evaluating the content or accuracy of any third-party External Services, and shall not be liable for any such third-party External Services. Customer will not use the External Services in any manner that is inconsistent with the terms of this agreement or that infringes the intellectual property rights of MyGov or any third party. To the extent the Customer chooses to use such External Services, the Customer is solely responsible for compliance with any applicable laws. MyGov

reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to the Customer.

11. GOVERNING LAW AND FORUM

This agreement is governed by the laws of the State where Customer is located (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

12. STATUTORY EXCEPTIONS FOR PUBLIC INSTITUTIONS

If the Customer is a qualified public educational or government institution and any part of this Agreement, such as, by way of example, all or part of the Indemnity or Governing Law section, is invalid or unenforceable against the Customer because of applicable local, national, state or federal law, then that portion shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law.

13. OTHER TERMS

13.1 Entire Agreement and Changes. This agreement and the service order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

13.2 No Assignment. Neither party may assign or transfer this agreement or a service order to a third party, except that this agreement with all service orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.

13.3 Independent Contractors. The parties are independent contractors with respect to each other.

13.4 Enforceability and Force Majeure. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

13.5 Money Damages Insufficient. Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

13.6 No Additional Terms. MyGov rejects additional or conflicting terms of any Customer form-purchasing document.

13.7 Order of Precedence. If there is an inconsistency between this agreement and a service order, the service order prevails.

13.8 Survival of Terms. Any terms that by their nature survive termination of this agreement, for a party to assert its rights and receive the protections of this agreement, will survive.

14. SIGNATURES

City of Manitowoc, WI (Customer)

Name:

Title:

Date:

Address:

City of Manitowoc, WI (Customer)

Name:

Title:

Date:

Address:

Signature:

MyGov, LLC (MyGov)

Name: Richard Butler

Title: CEO & President

Date: Nov 18, 2021

Address: P.O. Box 646003
Dallas, TX 75264-6003

Signature:

