

Software Subscription and Service Level Agreement

This Software-as-a-Service ("**SaaS**") Subscription and Service Level Agreement (this "**Agreement**"), effective as of [] (the "**Effective Date**"), is by and between Envision Sustainability Tools Inc., a private, for profit corporation incorporated in Canada ("**Envision**"), with principal offices located at 510 – 1111 Melville Street, Vancouver BC V6E 3V6 and the City of Santa Fe (the "**Customer**"), with principal offices located at Office of Economic Development Director, 500 Market Street Suite 200, Santa Fe, New Mexico 87504. Envision and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

MetroQuest® online survey software ("**Software**") is an internet application that is developed and provided by Envision. The Software is provided through a SaaS subscription model.

The provision of the SaaS subscription provided by Envision is dictated by this Agreement.

Definitions

"**Authorized User**" means Customer's respective employees, consultants, contractors, and agents who are authorized by Customer to access and use the Software under the rights granted to Customer pursuant to this Agreement.

"**Channel**" refers to the different combinations of hardware and software through which a Survey can be made available to Respondents.

"**Customer Data**" means information, data, and other content, in any form or medium, created by or in any way originating from Customer and all data that is submitted, uploaded, entered in, residing in, produced by, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through use of the Software.

"**Respondent**" means the public and other persons that use the Software to provide input about a project or initiative that the Customer is undertaking and is seeking input on.

"**Survey**" an instance of the Software configured by the Customer specifically for a project or initiative that the Customer is undertaking and is seeking input on.

Software

The Software is a SaaS internet application, meaning that it is delivered to the Customer via the internet and utilized via a web browser. The Software is housed on secure web server(s) and made up of two distinct components:

- i. An online survey platform that can be used by Customer to configure Surveys that can then be made available Respondents, to gather input, the ("**Survey Platform**"); and
- ii. A set of administration tools used to create and manage Surveys and access input data provided by Respondents, the ("**Administration Tools**").

The Survey Platform, any Survey, the Administration Tools and all associated services are collectively the "**Software**."

Software Support

"Support" refers to the Customer's ability to contact Envision in the event of any questions or problems with the survey or participant data. This includes live survey events and survey events still collecting public input outside of the licence period. Support does not end with the Agreement but with the survey close. Customer can continue to use Envision's support email.

Envision will provide the following Support for the Software:

For Customers:

- (a) Support will be available to the Customer between the hours of 7:00 am to 5:00 pm Monday to Friday ("**Support Days**") Pacific Time, excluding New Years Day, Good Friday, Labor Day, and Christmas Day, via email, not including priority responses for system outages.
- (b) Support email requests from the Customer ("**Customer Service Request**") must be sent via email to support@metroquest.com.
- (c) In the event of a Customer Service Request, Envision will:
 - acknowledge the Customer Service Request upon receipt, via email;
 - resolve or develop a resolution plan within 4 hours upon receipt of the first Customer Service Request; and
 - prior to the Customer Service Request being closed, confirm with the Customer that the Service Request has been resolved.

For Respondents:

- (a) Support will be available to the Respondents on Support Days.
- (b) Support email requests from Respondents ("**Respondent Service Request**") must be sent via email to support@metroquest.com.
- (c) In the event of a Respondent Service Request, Envision will:
 - acknowledge the Respondent Service Request by the Respondent upon receipt via email;
 - notify the appropriate Customer of the Respondent Service Request;
 - work with the Customer to resolve or develop a resolution plan for the Respondent Service Request; and
 - prior to the Respondent Service Request being closed, confirm with the Customer that the Respondent Service Request has been resolved.

Software Availability

Envision will ensure the Software is available 99.5% of the time, measured on a twenty four (24) hour clock, monthly. The Software is hosted by Microsoft Windows Azure, a cloud based server technology which delivers a 99.95% monthly service level.

(<https://azure.microsoft.com/en-us/support/legal/sla/>). Microsoft Azure is one of the largest and most reliable hosting platforms in the world.

“Downtime” is defined as a system outage or the time(s) when the Software is unavailable as measured from the time a severity level 1, 2 or 3 incident is reported, to the time that incident is resolved.

The following table indicates the response and resolution time the Customer can expect, based on the type of incident, defined by “Severity Level” once Envision has been notified of an incident, as well as the remedy that will be provided in the unlikely event that service levels fall below 99.5%.

Severity Level	Software Component	Incident Type	Response Time	Resolution Time	Rebate
1	Survey Platform	Full System Outage /or a reproducible error that causes the Survey Platform to crash for a Respondent	1 hour	1 day	1 day credit for each 1 hour of Downtime
1	Administration Tools	Full System Outage /or a reproducible error that causes the Administration Tools to crash for a Customer	1 hour	1 day	1 day credit for each 1 hour of Downtime
2	Survey Platform	Partial System Outage/ a reproducible error that has a workaround and does not cause the Survey Platform to crash for a Respondent; or content or other information that are not displaying as agreed upon	4 hours	2 days	N/A
2	Administration Tools	Partial System Outage/ a reproducible error that has a workaround and does not cause the Administration Tools to crash for a Customer	4 hours	2 days	N/A
3	Either	Minor Incident / General Support	24 hours	5 days	N/A

Supported Browsers

Respondents can complete a Survey using the following browsers:

Desktop	
Microsoft Edge	Latest stable version supported
Mozilla Firefox (all platforms)	Latest stable version supported
Google Chrome (Windows and Mac)	Latest stable version supported
Safari (Mac)	Latest stable version on latest OS release supported
Mobile	
Mobile Safari (iOS)	Latest stable version supported
Chrome (Android and iOS)	Latest stable version supported

Authorized Users can utilize the Survey Platform and Administration Tools using the following browsers:

Desktop	
Google Chrome (Windows and Mac)	Latest stable version supported
Safari (Mac)	Latest stable version on latest OS release supported

Roles and Responsibilities for Survey Respondents

Three elements are required to enable Survey Respondents to provide Usage Data via a Survey:

- i. A Survey created by an Authorized User that has completed testing by Envision, ("**Pre-Launch**") and made available for public input;
- ii. A Channel, either:
 - a. a Respondent's device and the web browser on that device, ("**Web Channel**");
 - b. a Respondent's smart phone and the web browser on that smart phone, ("**Smart Phone Channel**");
 - c. a device and the web browser running on that device provided by Customer directly to a Respondent, ("**Peer-to-Peer Channel**");
- iii. A connection to the internet.

The following table explains who is responsible for providing each element.

Elements	Responsibility by Channel		
	Web	Smart Phone	Peer-to-Peer
Survey	Envision	Envision	Envision
Input Device	Respondent	Respondent	Customer
Internet Connection¹	Respondent	Respondent	Customer

1. Internet Connection is the sole responsibility of the Respondent or Customer. In the case of the Peer-to-Peer Channel, the Customer will provide an active internet connection that is available while the Peer-to-Peer Channel is required.

Data Ownership and Integrity

The Software utilizes two (2) types of Customer Data:

- i. Content provided by the Customer to create a Survey, such as text, images, numeric information, ("**Content Data**");
- ii. Information collected from Respondents by the Software based on Respondents providing input to a Survey, ("**Usage Data**").

Content Data Ownership and Use

Envision agrees that the Customer is the owner of all Customer Data, including any content, Content Data and Usage Data uploaded to the Survey Platform. Envision acknowledges that all Content Data is and remains the property of the Customer or the respective owner of the Content Data in the case where the Content Data belongs to another party. The Customer acknowledges that it has the right to use the Content Data that is uploaded to the Survey Platform as part of a public Survey or has obtained permission from the respective owner to use the Content Data as part of a public Survey. Envision shall not be responsible for any copyright infringement claims by third parties relating solely to the use of Content Data provided by the Customer.

Usage Data Ownership, Reporting and Delivery

Envision acknowledges that all Usage Data is and remains the property of the Customer or their client in the case where the Usage Data is being collected on behalf of the Customer's client. Envision reserves the right to utilize all non-personal Usage Data collected for the sole purpose of determining trends and patterns in usage. For purpose of clarification, Envision may not use any Respondent or Customer names, email addresses, phone numbers, comments or questions uploaded by or related to a Respondent. Envision represents and warrants that it has or will obtain permission from the respective owner to use the Usage Data as required by applicable laws, including applicable data security and privacy laws.

Usage Data is based on Respondent activity and Respondent responses collected during a "**Respondent Session**". A Respondent Session is defined below for each Channel:

- i. A Web session is defined as all interaction with a Survey from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to a Survey in this new window constitutes a new session;
- ii. A Smart Phone session is defined as all interaction with a Survey from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to a Survey in this new window constitutes a new session;
- iii. A Peer-to-Peer session is defined as all interaction with a Survey from an individual once the Customer provides access to a Survey via the Customer's device for a Respondent, until the Respondent stops providing input.

At the “**Closing of the Survey**”, defined at the point in time when a Survey is no longer available to receive Respondent input, all Usage Data collected can be accessed via the Administration Tools. The Usage Data can be downloaded via the Administration Tools in Microsoft Excel format.

The Customer may request that Envision delete all Usage Data collected for a particular Survey after the Closing of the Survey. Envision agrees to comply with such a request within thirty (30) business days.

Backups and Recovery

Envision will use reasonable endeavours to backup all data required to recover from a disaster within 5 business days. As Envision uses Microsoft Azure as its platform provider, this will involve backing up data both within the data center where the data resides (primary data center), as well as one other Azure data center within the United States. The data center to data center backup will occur daily.

In the event of a disaster, defined as a Severity Level 1 service outage for more than 12 hours in the primary data center, Envision will undertake a disaster recovery. Software availability will be restored within 5 business days of the start of the disaster recovery commencing.

Use of Personal Information

For some Surveys the Survey Platform may be setup by the Customer and subsequently used to collect Personal Information such as names and email addresses. The decision to use the Software to collect Personal Information rests entirely with the Customer. In the event that Personal Information is collected, Envision warrants that it will never, under any circumstances, use this information for any purpose without the express written consent of the Customer. This information will only be provided to the Customer. The Customer may request that Envision delete all Personal Information collected from a particular Survey after the Closing of the Survey. Envision agrees to comply with such a request within thirty (30) business days.

System Security

The MetroQuest servers are hosted by Microsoft Windows Azure, one of the largest and most secure hosting platforms in the world. Our servers are located in at least two (2) of Microsoft’s data centers located in the continental United States. MetroQuest is backstopped by Microsoft’s commitment to security, privacy and data integrity (<https://www.microsoft.com/en-us/trust-center>)

Envision will notify Customer immediately upon discovering any breach or compromise of Envision’s security protocols or measures or any unauthorized access to any personal information, and Envision shall promptly conduct an investigation and submit an oral report of its findings to Customer within forty-eight (48) hours, to be followed by a written report within seven (7) days. Envision will cooperate with Customer in connection with the investigation and incident management of any such event.

Envision logs all access to the Administration Tools and Survey Platform. In addition, it maintains audit logs for all direct database access.

Administration Tools Security

Envision utilizes Azure Active Directory to provide authentication services for authorized users of the Administration Tools.

Warranties

Envision warrants that during the term of this Agreement the Software (i) will be provided in compliance with all applicable laws and (ii) does not contain any virus or other malicious code. Envision further represents and warrants that it has, and throughout the term of this Agreement and any additional periods during which Envision does or is required to provide the Software, it will have, the unconditional and irrevocable right, power, and authority to provide the Software and grant and perform all rights and licenses granted or required to be granted by it under this Agreement.

Envision does not warrant that:

- (a) The Software will be uninterrupted or error free;
- (b) The Software will meet Customer's requirements, other than as expressly set out in this Agreement; or
- (c) The Software will be free from external intruders (hackers), denial of services attack, or other persons having unauthorized access to the services or systems of the Customer.

Nothing in the above warranty exclusions negates any of Envision's representations expressly set forth in this Agreement.

Publicity, Publication and Usage Statistics

In order to improve the Software, Envision computes general usage statistics. As part of promoting its product and services, Envision promotes certain customer Surveys as examples of how to use the Software. Envision may not use Customer's logos or trademarks without Customer's prior written approval and then only to the extent granted in the approval.

Software Intellectual Property Rights and Ownership

The Customer acknowledges that Envision will use the Software to provide the service under this Agreement and the Customer will use the Software to access Usage Data. The Customer acknowledges and agrees that all intellectual property contained in the Software is and will remain the property of Envision and that no part of this Agreement assigns any right, title or interest in the Software to the Customer.

MetroQuest® is a Registered Trademark of Envision Sustainability Tools, Inc.

Other General Terms

Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

Amendment and Modification

No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

No Waiver

A party's failure or delay to enforce a provision under this Agreement is not a waiver of its right to do so later.

Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of New Mexico applicable therein.

Subscription

The Software is provided via an annual subscription.

Subscription Start Date is defined as the Effective Date or the date this agreement is executed, whichever is later

Subscription Expiry Date is defined as 365 days following the Subscription Start Date.

Last Survey Launch Date is defined as the last date that Survey submitted by Customer for Pre-Launch. Once a Survey is launched, it can remain open for public use indefinitely.

Limited Use

The use of MetroQuest to initiate and launch a MetroQuest Site, and to receive assistance and support from MetroQuest, is limited to the employees of the City of Santa Fe.

Subscription Fee

An invoice will be issued upon execution of this agreement for the entire Subscription Fee as described in Appendix A. Payment of the Subscription Fee is due on the Subscription Start Date.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Envision Sustainability Tools Inc.

City of Santa Fe

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

City of Santa Fe (Customer) and Envision Sustainability Tools, Inc. (Envision)

ADDENDUM

TERMINATION

This Agreement may be terminated by the Customer upon 30 days written notice to the Envision.

INDEMNIFICATION

ENVISION shall indemnify, hold harmless and defend the CUSTOMER from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from ENVISION's performance under this Agreement as well as the performance of ENVISION's employees, agents, representatives and subcontractor.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the CUSTOMER in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The CUSTOMER and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CUSTOMER for the performance of this Agreement. If sufficient appropriations and authorization are not made by the CUSTOMER, this Agreement shall terminate upon written notice being given by the CUSTOMER to ENVISION. The CUSTOMER's decision as to whether sufficient appropriations are available shall be accepted by ENVISION and shall be final.

RELEASE

ENVISION, upon acceptance of final payment of the amount due under this Agreement, releases the CUSTOMER, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. ENVISION agrees not to purport to bind the CUSTOMER to any obligation not assumed herein by the CUSTOMER unless ENVISION has express written authority to do so, and then only within the strict limits of that authority.

PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party

obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim;

and

- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to

become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the CUSTOMER and the ENVISION. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Confirmation

The **City of Santa Fe** agrees to acquire the services of Envision Sustainability Tools Inc. as described above.

On behalf of **Envision Sustainability Tools Inc.**

Signature 

Print Name Mike Walsh

Date 9-April-2021

CRS # 03-519991-00-1

Business License # 226767

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

Jarel LaPan Hill

Jarel LaPan Hill (Apr 26, 2021 11:54 MDT)

JAREL LAPAN HILL, CITY MANAGER

DATE: Apr 26, 2021

ATTEST:

Kristine Mihelcic

Kristine Mihelcic (Apr 26, 2021 22:26 MDT)

KRISTINE BUSTOS MIHELICIC, CITY CLERK

CITY ATTORNEY'S OFFICE: XIV

Marcos Martinez

Marcos Martinez (Apr 8, 2021 10:23 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

ORG CODE/LINE ITEM

1002750.530710

Appendix A – Subscription Details

Quote Number 39943602

Item	Description	Subscription Fee
1-Year MetroQuest Unlimited Subscription	Use of MetroQuest for 1-year to create an unlimited number of surveys in up to 2 languages (includes support for an unlimited period of public access for each MetroQuest Survey via computer web browser, mobile and peer to peer tablet; hardware not included)	\$23,000/Year

All figures shown are in USA Dollars. Any applicable taxes are not included and will be borne by the Client.

Additional Languages: The process to create and launch a survey in an additional language requires the client to first complete a survey in English. MetroQuest will provide client with a Translation Table of all words/phrases for the client to translate. MetroQuest will utilize the translation to create the additional language survey.