

**SUBSCRIPTION AND SUPPORT AGREEMENT**  
**FOR**  
**Town of Miami Lakes, Florida**

This Subscription and Support Agreement (the "Agreement"), is made hereby entered into as of **December 1, 2020** (the "Effective Date") by and between The Town of Miami Lakes located at 6601 Main Street, Miami Lakes, Florida 33014 ("Client") and Healthy Outcomes, Inc., DBA Engaged Public, ("Engaged Public"), located at 1700 Lincoln Street, 17<sup>th</sup> Floor, Denver, CO, 80203 ("Balancing Act"). Client and Engaged Public are collectively referred to as "the Parties" and individually referred to as "Party."

**WHEREAS**, Engaged Public is in the business of developing web software and sites capable of hosting public policy simulations and related projects promoting an exchange of information and ideas for use by governmental and other entities;

**WHEREAS**, Client desires to subscribe to access Engaged Public's proprietary web application known as Balancing Act to be used for public education and engagement, and

**NOW, THEREFORE**, in consideration of the foregoing recitals and mutual covenants contained herein, the parties agree as follows:

**1. SCOPE OF ENGAGEMENT.**

- A. Subscription Agreement. Engaged Public shall provide Client with access to the Balancing Act web application and agrees to provide all of the technical, administrative, and professional support services necessary to perform this Agreement. Client is granted a non-exclusive, non-transferable, and revocable license to access and use the Balancing Act website. Client shall have the right to test and approve the application prior to it going live.
- B. Support Services. Engaged Public shall perform and provide certain support services to Client in accordance with the terms and conditions of this Agreement and the SOW (the Services described under "Support Services", the "Support Services"). If Client hereafter requests additional services not described on Exhibit A ("Additional Services"), and Consultant is willing and able to provide those Additional Services, the parties shall mutually agree upon and execute one or more additional SOWs that contain the terms and conditions of the Additional Services to be performed. Each such SOW shall be attached to and incorporated into this Agreement as an Exhibit. Except as otherwise provided, any Additional Services to be performed by Consultant shall be subject to the terms of this Agreement.

- C. Fees. Client shall pay Engaged Public pursuant to the Fee Schedule selected by Client and attached hereto as Exhibit “A.”

**2. FEE PAYMENT AND TIMING.**

- A. Fees. In consideration of Consultant’s granting of access to the Site and performance of the Services, hereunder, Client shall pay Consultant fees, and reimburse Consultant for expenses, each in the amounts and in accordance with the payment terms and conditions specified in this Agreement and on Exhibit B attached hereto (collectively, the “Fees”).
- B. Late Payment. Except with respect to amounts disputed in good faith, all amounts due under this Agreement, if not paid within 45 days from the date the Town of Miami Lakes receive the invoice via mail or e-mail, shall be considered late and shall accrue interest at the rate of one and one-half percent per month or the highest amount allowed by applicable law, whichever is less. Should collection activities become necessary, Client agrees to pay all fees relating to said activity.
- C. Client’s Failure to Pay. Client’s incurring of a late payment (as determined in accordance with Section 2(B)) shall be considered a material breach of this Agreement. As such, until such breach is cured by way of full payment, Consultant may (i) refuse to deliver the reports, materials, and other deliverables that it would otherwise be obligated to deliver hereunder, (ii) cease performance of any Services, (iii) issue a notice of non-payment to Client, which, if not satisfied within 15 days after the receipt thereof, shall constitute grounds for Consultant to terminate this Agreement or the SOW applicable to the Services. These rights are not exclusive and Consultant reserves its right to seek any other rights or remedies provided in law or equity.
- D. Taxes. All amounts payable to Consultant as specified herein are in United States dollars. Client shall be responsible for any taxes imposed on the transactions contemplated by this Agreement, including all sales, use, value-added, excise and other similar taxes (but specifically excluding taxes in, or measured by, Consultant’s income).

**3. CLIENT OBLIGATIONS.**

Client shall be responsible for the accuracy of all data utilized by Engage Public under this Agreement and shall comply with all laws and governmental regulations affecting its use, including all open and public records laws. Engaged Public shall have no responsibility to

advise Client about the applicability of any laws or regulations that may apply to this Agreement.

#### 4. SERVICE LEVEL AGREEMENT

##### A. Support Services.

- (i) Engaged Public's web platform will be operational and available to Client at least 99.5% of the time in any calendar month (the "Balancing Act Application SLA"). If Balancing Act does not meet the Balancing Act Application SLA, Client will be eligible to receive the Support Service Credits described below:

Uptime Percentage	Support Service Credit (Days)
< 99.5% - >= 99.0%	3
< 99.0% - >= 95.0%	7
< 95.0%	15

- (ii) **Service Credit Request.** In order to receive any of the Support Service Credits described above, Client must notify Engaged Public within 30 days from the time Client becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit.
- (iii) **Maximum Service Credit.** The aggregate maximum number of Support Service Credits to be issued by Engaged Public to Client for all Downtime that occurs in a single calendar month shall not exceed fifteen days of Service added to the end of Client's term for the Service. Support Service Credits may not be exchanged for, or converted to, monetary amounts.
- (iv) **Application SLA Exclusions.** The Engaged Public Application SLA does not apply to any services that expressly exclude this Engaged Public Application SLA or any performance issues: (i) caused by factors described in the "Force Majeure" section of the Agreement; or (ii) that resulted from Client's equipment or third party equipment, or both (not within the primary control of Engaged Public).

#### 5. TERM AND TERMINATION.

- A. Term. This Agreement shall commence on the Effective Date and be effective **December 1, 2020 through December 1, 2023** ("Initial Term"), unless terminated

by either of the parties. Unless terminated by either party, this Agreement shall thereafter be automatically extended for an additional three years at the same cost as the initial contract.

- B. Termination. In the event of termination by Client, Client shall immediately pay all Fees remaining due under this Agreement.
- C. Effect of Termination. Upon termination, Client agrees that it will immediately cease using the Balancing Act services and website and Engaged Public may take steps to change, remove or otherwise block Client's access to the Balancing Act website.

## **OWNERSHIP AND USE OF THE MATERIALS, USER CONTENT.**

- A. Creative Materials. The Parties acknowledge and agree that an integral part of the services is the creation of the Balancing Act application for Client, which includes the development of certain information, content, text, graphics, logos, photos, videos, software and other items, as well as their selection and arrangement ("Creative Materials"). Such Creative Materials are protected by copyrights, trademarks, patents, trade secrets and other intellectual property and proprietary rights, and Engaged Public shall be considered the author of such Creative Materials and retains all right, title and interest in and to such Creative Materials. Client's rights to use the Creative Materials are limited to use solely in connection with this Agreement, and the rights and obligations granted hereunder. Any rights granted to Client under this Agreement to use the Creative Materials shall cease upon the termination of this Agreement.
- B. User Content. The Parties acknowledge and agree that the user content generated on the Balancing Act website by others who are not parties to this Agreement is not owned by either Engaged Public or Client, but can be used by either Party for promotional purposes or any other purpose during and after the term of this Agreement. Engaged Public acknowledges that the Client can and will retain the right to use any user content and the deliverables under this Agreement for any and all purposes related to the general business of the Client.

## **2. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES AND LIABILITY FOR ACTIONS OF THIRD PARTIES.**

- A. Other than the obligations under this Agreement, neither Party shall be liable to the other Party under this Agreement for any indirect, incidental, special, punitive or

consequential damages for any claim, whether in contract, tort or otherwise. In no event will the total aggregate liability against a Party for any claims, losses or damages arising out of this Agreement exceed the total amount of fees and other consideration actually paid under this Agreement.

- B. Except for the terms and conditions set forth in this Agreement, Engaged Public makes no express or implied warranties about the performance of Balancing Act, including warranties of merchantability or fitness for a particular purpose.
  - C. Neither party shall be liable for false or defamatory statements, either orally or in writing, made by others who are not parties to this Agreement.
3. **ASSIGNMENT.** Either Party may assign all or a portion of its rights or obligations under this Agreement but only with the express written consent of the other Party.
  4. **CONFIDENTIALITY.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, (a) the Deliverables under this Agreement, (b) all business, financial and technical trade secrets, (c) any written information which is marked "Confidential", and (d) any information which is orally disclosed, identified as confidential at the time of disclosure and confirmed in writing as being confidential within 30 days thereafter. Confidential Information shall not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party, or (c) is published or otherwise made known to the public by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. Except as required by law, the Receiving Party may not disclose the Disclosing Party's Confidential Information to any third party, other than its affiliates or representatives who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement, and only if such persons are informed of and are subject to the provisions of this Agreement. The Receiving Party remains liable for any unauthorized use or disclosure of the Confidential Information by any such representative or affiliate.
  5. **WEB SOFTCARE AND SITE TERMS OF USE AND PRIVACY POLICY.** Engaged Public shall include on the Balancing Act website its privacy policy ("Privacy Policy") that applies to the activities of Engaged Public and the users of Balancing Act, including the

use of users' personal information. Client represents that it has read and is familiar with the Privacy Policy and, to the extent applicable, shall govern itself in accordance therewith.

6. **INDEPENDENT CONTRACTOR.** Client and Engaged Public intend at all times to be independent contractors. Neither party is an employee, joint venture, agent or partner of the other, nor is either party authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name of the other. The employees, methods, facilities and equipment of each Party shall at all times be under the exclusive direction and control of that Party.
7. **GOVERNING LAW AND VENUE.** This agreement shall be construed in accordance with and governed by the laws of the State of Colorado and any claim or lawsuit brought to enforce the terms of this Agreement shall be brought in the City and County of Denver, Colorado.
8. **FULL AUTHORITY.** The person agreeing to the terms and conditions of this Agreement states and affirms that they have the full authority of Client to enter into and execute this Agreement.

*[Remainder of This Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, CLIENT and ENGAGED PUBLIC have executed this Agreement as of the Effective Date.

**CLIENT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



11/12/20

Signature  
Edward Pidermann  
Town Manager  
Printed Name / Title

\_\_\_\_\_  
Date

**Engaged Public:**

1700 Lincoln Street, 17<sup>th</sup> Floor  
Denver, CO, 80203



9/4/2020

Signature  
Chris Adams, President  
Printed Name / Title

\_\_\_\_\_  
Date



**EXHIBIT A**  
**SUBSCRIPTION AND SUPPORT**

**FOR SUBSCRIPTION, SUPPORT AGREEMENT BETWEEN ENGAGED PUBLIC AND  
Town of Miami Lakes, Florida DATED **December 1, 2020**.**

1. **Client Information.**

Name: Town of Miami Lakes, FL  
Contact Person: German Cure  
Phone: (305) 364-6100 x 1122  
Email: cureg@miamilakes-fl.gov

2. **SUPPORT SERVICES**

A. Engaged Public staff will provide two (2) training sessions via web conference for client staff.:

- i) The first training session will cover: Setting up site, general orientation, strategic advice
- ii) The second session will be a follow up session to cover any pending items from the first session and/or address general questions or clarifying any doubts the client staff may have.

3. **SUBSCRIPTION AGREEMENT**

A. Design and Launch of the Site (s)

- i) Client will have access to design and launch Site (s) beginning on the date of execution of the agreement.

B. Live Site (s)

- i) The Site (s) shall include the Taxpayer Receipt Program,
- ii) Client is responsible for selecting and uploading categories, subcategories, supporting information, additional details and all costing of budget items.
- iii) Client is solely responsible for the time and cost associated with content creation and inputting.

C. Option to Renew

- iv) Miami Lakes will have the option to to renew its subscription for Taxpayer Receipt (in 2023) for an additional three at the same rate listed in Exhibit B.



Additional products such as the Budget Simulation are not subject to this agreement.

#### **4. SUPPORT SERVICES**

##### Administration and Site Support

Engaged Public will provide up to two (2) hours per live site each month of Site administration, maintenance and support, including Client and user support during the Term. Support Services include, but may not be limited to the following:

- General user support (password reset, site navigation issues, site utilization questions, etc.)

Any Support Services requested by Client other than Site administration, maintenance and support will be considered custom development and billed to client at an hourly rate of \$150/hour.

#### **5. LICENSES**

- i. Engaged Public will provide two licenses for Taxpayer Receipt with the ability to select from installed languages, including Spanish. Client will be responsible for specific translation of categories and sub-categories.

**EXHIBIT B**

**FEES**

**FOR SUBSCRIPTION AND SUPPORT AGREEMENT BETWEEN Miami Lakes, Florida AND Engaged Public DATED December 1, 2020.**

The following is a summary of the Fees associated with the Services provided by Engaged Public hereunder.

1. Annual Licensing Fee for Taxpayer Receipt is \$2,000. This is a discounted price based on a three-year term (fiscal-year term Town of Miami Lakes: Oct 1<sup>st</sup> thru September 30<sup>th</sup>).
  - a. Invoice for the yearly licensing fee will be sent as follows:
    - i. 1<sup>st</sup> Invoice (10 months partial): Dec 1<sup>st</sup>, 2020 thru September 30<sup>th</sup>, 2021 will be sent on approximately November 15<sup>th</sup>, 2020
    - ii. 2<sup>nd</sup> Invoice (full fiscal year): October 1<sup>st</sup>, 2021 thru September 30<sup>th</sup>, 2022 will be sent on approximately August 15<sup>th</sup>, 2022
    - iii. 3<sup>rd</sup> Invoice (full fiscal year): October 1<sup>st</sup>, 2022 thru September 30<sup>th</sup>, 2023 will be sent on approximately August 15<sup>th</sup>, 2023
    - iv. 4<sup>th</sup> Invoice (2 months partial): October 1<sup>st</sup>, 2023 thru December 1<sup>st</sup>, 2023 will be sent on approximately August 15<sup>th</sup>, 2023.

**2. General**

- a. Except as otherwise provided herein or in an applicable SOW, all Fees due to Engaged Public will be payable within 45 days max of receipt of the applicable invoice.
- b. All payments of the Fees must be made by check or cash equivalent to Engaged Public at 1700 Lincoln Street, 17<sup>th</sup> Floor Denver, CO, 80203.

**2020 ENGAGED PUBLIC RATE SCHEDULE AND REIMBURSEMENT SCHEDULE FOR “ADDITIONAL SERVICES” AND CUSTOM DEVELOPMENT**

**Effective January 1, 2020**

**HOURLY RATE SCHEDULE**

Description	Rate
Principal Staff	\$180 / hour
Design & Development Staff	\$150 / hour
Support Staff	\$50 / hour

These rates listed above are valid for the initial Term of this Agreement, and Engaged Public may, as a condition to agreeing to any extension of the Term, require that the rates be adjusted.