

Mesquite Independent School District's AYO TERMS OF USE AGREEMENT

THIS TERMS OF USE AGREEMENT (the "Agreement") is between Mesquite Independent School District (MISD), as licensor, and You, _____ ISD, as licensee, for the access and use of the AYO and any other media resources; mobile applications; or modules related, linked, or otherwise connected thereto (AYO).

By using AYO at your district, you consent to and agree to be bound by all of the provisions of this Agreement without limitation or qualification. You acknowledge and agree that your use of AYO shall constitute your assent to this Agreement and is intended to and shall contractually bind You to the terms of this Agreement, in the same manner and to the same extent as a contractual writing memorialized and executed by You and MISD in a non-electronic medium.

On the continuing condition that You comply with all obligations of this Agreement, and for the duration of your access to AYO, MISD hereby grants You a limited, revocable, nonexclusive, license to deploy, access, and use AYO at your district. By entering into this Agreement, you represent and warrant that You have the authority to bind the district to this Agreement. If You do not have such authority, or if You do not agree to the terms herein, you must not accept this Agreement or use AYO.

A. DEFINITIONS

The following terms, as used herein, have the following meanings:

"AYO Application Data" means the information introduced and processed via the AYO application, including the data resulting from utilization of the AYO application.

"Personally Identifiable Information" means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.

"Software" means individually each, and collectively all, of the computer code that constitutes the AYO application, database, and System Upgrades and interfaces made available to users by MISD in connection with AYO.

"System Upgrades" means corrections, bug fixes, patches, improvements, new releases, new versions, updates, enhancements, or other modifications to the Software.

B. SCOPE OF USE

By agreeing to this Agreement, You are licensed to:

- Deploy a copy of AYO to your own Google Cloud Platform (GCP) environment;
- Configure your copy of AYO to pull data from your data points;
- Integrate with other applications at your district;
- Build new features and/or customize existing ones;
- Customize the look and feel of the application and any connected resources; and
- Provide access to the AYO application and any connected resources to your staff, students, and their parents.

To perform AYO deployment, configuration, and customization, you may use your in-house engineering team, in conjunction with core implementation partner, SoftServe, Inc. (SoftServe).

C. OPERATION

You agree not to permit access to, or use of, AYO by any persons outside of your district.

You acknowledge and agree that MISD owns all legal right, title, and interest in and to AYO, including any intellectual property rights (whether those rights happen to be registered or not, and wherever in the world those rights may exist). MISD reserves all rights to AYO and all accompanying applications; improvements; derivative works; media resources; and modules related, linked, or otherwise connected thereto. You do not acquire any intellectual property title or ownership rights, express or implied, in or relating to AYO.

You represent and warrant that You will not rent or commercially sublicense, in whole or in part, AYO or otherwise market AYO to third parties without MISD's express written permission.

You represent and warrant that You will not, directly or indirectly, reverse engineer, disassemble, decompile, or attempt to imitate, derive, or discover, the source code of AYO that was licensed to you by MISD.

D. PRIVACY

Your AYO Application Data is under your full control in your own GCP environment. You acknowledge and agree that You are responsible for managing Personally Identifiable Information and any other information in your AYO Application Data in compliance with applicable law (including but not limited to laws regarding privacy, conduct, and intellectual property), and MISD shall have no obligation to do so on your behalf.

Your AYO meta data showing some general platform usage patterns, accumulated insights, user feedback, and customized features and enhancements to AYO may be shared with MISD for further product improvement and merging with the core application.

E. SECURITY AND DIGITAL INTEGRITY

AYO includes security technology that limits your tampering with core platform source code as it was shared by MISD and ensures that you shall use AYO in compliance with the usage rules outlined in this Agreement.

You agree not to violate, circumvent, or otherwise tamper with any of the security technology related to usage rules for any reason, or to attempt or assist another person to do so. You shall not access or attempt to access any AYO Application Data other than your own Application Data and the code that was implemented by You or by Your request.

F. ACCEPTABLE USE

You agree to and are responsible at all times for using AYO in a manner that is ethical and in compliance with all applicable local, state, and federal laws and regulations.

You are solely responsible for, and MISD shall have no responsibility for, monitoring Your district end users of AYO to ensure compliance with all applicable laws, regulations, duties, and this Agreement.

G. PROHIBITED ACTIVITIES

You are granted a non-exclusive, non-transferable, revocable license to deploy, customize, and use AYO at your district strictly in accordance with this Agreement. Under no circumstances, shall You:

- License or sub-license AYO or any of its parts;
- Build your own solution on top of AYO for commercial purposes;
- Share AYO source code and/or access to the application with users outside of your district;
- Tamper with any security, privacy, or compliance features provided with the core application;
- Transmit, store, or upload any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane, or otherwise objectionable content;
- Upload, store, email, or otherwise transmit any materials that You do not have a right to transmit under any law or under a contractual relationship;
- Use AYO for any unlawful or discriminatory purpose.

YOUR AGREEMENT TO ABSTAIN FROM THE PROHIBITED ACTIVITIES SET OUT IN THIS AGREEMENT SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

H. TERMINATION

This Agreement will remain in effect until terminated by You or MISD. MISD reserves the right to modify, suspend, or discontinue AYO at any time with or without cause and with or without notice to You. In the event MISD decides to discontinue AYO application support, you will still have a copy of the AYO application at your district and may continue maintaining and using it at your discretion, at your sole cost and expense, subject to the Prohibited Activities set out in Section G of this Agreement. MISD may immediately terminate Your access to AYO if you violate the Prohibited Activities set out in Section G of this Agreement or if you otherwise breach this Agreement.

In the event of termination of Your access to the application, MISD still retains sole possession and ownership of all intellectual property rights of AYO and any accompanying applications; improvements; derivative works; media resources; and modules related, linked, or otherwise connected thereto.

I. MODIFICATION OF THIS AGREEMENT

MISD reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of AYO. MISD may provide You with notices regarding AYO by email, including modifications to this Agreement. Such modifications and/or additional terms and conditions will be effective immediately and incorporated into this Agreement. Your continued use of AYO will be deemed acceptance thereof. The most current version of this Agreement will be available on the AYO application website.

J. DISCLAIMER OF WARRANTIES

AYO, AND ANY VARIATIONS THEREOF ARE PROVIDED BY MISD "AS IS." MISD MAKES NO PROMISES, WARRANTIES, OR REPRESENTATIONS OF ANY KIND, AND MISD SPECIFICALLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

MISD DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF AYO WILL BE UNINTERRUPTED OR ERROR-FREE. MISD ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY OF THE FOLLOWING: (I) ERRORS OR OMISSIONS IN THE CONTENT DELIVERED ON AYO APPLICATION USER INTERFACES; (II) RECOMMENDATIONS OR ADVICE OF ANY MISD EMPLOYEES OR AGENTS; (III) ANY FAILURE OR INTERRUPTION IN THE AVAILABILITY OF AYO APPLICATION OR OTHER WEBSITES OR USER INTERFACES; (IV) DELIVERY OR DISPLAY OF ANY CONTENT CONTAINED ON AYO APPLICATION, USER INTERFACE, OR OTHERWISE THROUGH AYO; AND (V) ANY LOSS OR DAMAGES ARISING FROM THE USE OF THE CONTENT PROVIDED BY MISD OR OTHERWISE THROUGH AYO, INCLUDING ANY LOSSES OR DAMAGES ARISING FROM DOWNLOADING OF RELATED SOFTWARE, DOWNLOADING AND/OR

USE OF ANY OTHER SOFTWARE, OR ANY CONDUCT BY USERS OF THE AYO APPLICATION SOFTWARE, WEBSITE, OR USER INTERFACES.

K. LIMITATION OF LIABILITY

You agree that You are solely responsible for the confidentiality of your AYO Application Data and that MISD shall not be liable for loss, corruption, or compromise of the confidentiality of your AYO Application Data.

MISD does not represent or guarantee that AYO will be free from loss, interruption, corruption, attack, viruses, interference, hacking, or other security intrusion, and You agree that MISD shall have no liability to You relating thereto. In no event shall MISD, its board of trustees, administration, employees, agents, contractors, or licensors be liable for any indirect, incidental, punitive, special, or consequential damages related to your use of AYO, including, without limitation, damages for loss of profits, loss of data, business interruption, harm to your computer system, or any other material damages or losses, regardless of the theory of liability (e.g., contract, tort, or otherwise), even if MISD has been advised of the possibility of such damages.

L. INDEMNIFICATION

To the extent permitted by Texas law, You agree to defend, indemnify, and hold harmless MISD, its board of trustees, administration, employees, agents, contractors, and licensors from all claims, demands, actions, loss, liability, damages, attorney fees, and costs arising out of or in any way connected with this Agreement or your use of AYO. MISD reserves the right at its own expense to assume the exclusive defense and control of any matter otherwise subject to indemnification by You.

M. GOVERNING LAW; EXCLUSIVE VENUE

This Agreement and your use of AYO are governed by and construed in accordance with the laws of the State of Texas. You expressly agree that courts of competent jurisdiction located in Dallas, Texas shall have personal jurisdiction over You for any action by or against MISD arising out of or in connection with this Agreement and/or your use of AYO, and courts of competent jurisdiction located in Dallas, Texas shall be the sole and exclusive venue for any such action.

N. MISCELLANEOUS

You agree that MISD's failure to act with respect to a breach of this Agreement by You or others does not waive MISD's right to act with respect to that breach or subsequent breaches. MISD will not be responsible for failures to fulfill any obligations due to causes beyond its control.

Nothing in this Agreement shall constitute, create, authorize, require or in any way be interpreted as a joint venture, partnership, or formal business organization of any kind between You and MISD.

This Agreement shall supersede and replace all prior agreements and understandings, oral or written, between MISD and You regarding the subject matter hereof. This Agreement may not be modified by You except by written agreement signed by You and MISD.

If any part of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions of the Agreement shall remain in full force and effect.

All notices to be provided by You to MISD under this Agreement must be delivered in writing (i) by nationally recognized overnight delivery service ("Courier") or U.S. mail to the following address:

Attn: Superintendent
Mesquite Independent School District
3819 Towne Crossing Blvd.
Mesquite, TX 75150

All notices to MISD shall include Your contact information for response.

I, _____, on behalf of _____ ISD hereby fully accept the AYO Terms of Use.

LICENSOR

LICENSEE

Mesquite Independent School District

Date: _____

Signature: _____
