



SAAS SERVICES ORDER FORM

Customer: City of Banning	Contact: Holly Stuart
Address: 99 E. Ramsey Street	Phone: (951) 922-3138
Banning, California 92220	Email: hstuart@banningca.gov
Services: Recyclist Program Tracker (the "Service(s)").	Initial Service Term: 36 Months: May 1, 2023 - April 40, 2024; May 1, 2024 - April 40, 2025; May 1, 2025 - April 40, 2026.
Service Capacity: Management of regulatory compliance and outreach for commercial and multi-family waste generators within the City of Banning service area.	Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.
Service Fees: Base Annual Subscription Fee and Prepaid Data Import Fees billed subject to the terms of Section 4 herein. Additional Data Import Fees billed upon receipt of each data set, subject to the terms of Section 4 herein.	Implementation Fees (one-time): Waived

PROGRAM TRACKER FEES

Product/ Service	May 1, 2023 - April 40, 2024	May 1, 2024 - April 40, 2025	May 1, 2025 - April 40, 2026
Program Tracker- Base Subscription (rural discount)	\$19,701	\$20,686	\$21,720
Discount Applied to Current Pricing	10%	N/A	N/A
Percent Annual Increase	N/A	5%	5%
Prepaid Data Imports: Quantity of 4 per year	\$3,000	\$4,000	\$4,000
Total Annual Subscription Fee	\$22,701	\$24,686	\$25,720

Total Contract Fees: \$73,107

SAAS SERVICES AGREEMENT

This SaaS Services Agreement (“Agreement”) is entered into on this **xx** day of **xxx** **20xx** (the “Effective Date”) between Citizen Communications, LLC dba Recyclist with a place of business at 12242 Business Park Drive, Suite 19, Truckee CA 96161 (“Company”), and the Customer listed above (“Customer”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form unless expressly identifying this Agreement, specifically referencing the provisions of this Agreement to be altered or superseded and signed by the parties after the date hereof.

Citizen Communications, LLC dba Recyclist

City of Banning

Name:

Name:

Title:

Title:

Date:

Date:

TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company's standard practice.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with its intended functionality and all applicable laws and regulations. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer is responsible for maintaining the confidentiality of the passwords assigned to Customer and its users. Customer will immediately notify Company if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. Company will be responsible for any and all activities made pursuant to the licenses granted to Customer's hereunder and any of its users' or Equipment or the access credentials to the Services. Customer shall, and shall ensure its users, use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Company promptly of any unauthorized access or use. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (a) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (b) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new

charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). Notwithstanding the foregoing, all Data Import Fees set forth in the Order Form are estimates only and are, at any time during the Term, subject to reasonable increases based on then-current Company fees for Data Set Imports. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

4.3 Following the Initial Service Term, the annual subscription fee shall automatically increase (and annually thereafter) by an amount equal to the greater of five percent (5%) or one hundred percent (100%) of the percentage increase in the Consumer Price Index, Urban Consumers, All Cities Average 1982-84 Equals 100, (CPI-U) during the prior calendar year as published by the U.S. Department of Labor or any successor index, compounded annually from the Effective Date.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall indemnify Customer from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (a) not supplied by Company, (b) made in whole or in part in accordance with Customer specifications, (c) that are modified after delivery by Company, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (f) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (i) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (ii) obtain for Customer a license to continue using the Service, or (iii) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8. LIMITATION OF LIABILITY

8.1 Customer acknowledges, understands and agrees that Company utilizes third party hardware, software and hosting solutions in connection with the Services ("Third Party Solutions") in order to economically provide the Services to Customer. Customer recognizes that the quality of the Services is dependent upon such Third Party Solutions and that Company does not have nor exercise significant bargaining power with such Third Party Solutions so as to reasonably control the Customer's experience resulting from such Third Party Solutions, and therefore notwithstanding any other provision of this Agreement to the contrary, agrees that Company shall not be liable or in breach of this Agreement to the extent such liability or breach is the result of the acts or omissions of Third Party Solutions or their providers.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS

ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUBJECT TO THE INDEMNIFICATION OBLIGATIONS OF COMPANY HEREUNDER.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

EXHIBIT A
Statement of Work

Implementation of the Recyclist Program Tracker includes:

- Configuring data import process to align with Customer's data and programmatic objectives
- Importing initial compliance records
- Setting up user accounts and permissions
- Customizing database fields to meet reasonable customer needs
- Customizing reports to meet reasonable customer needs

Base subscription includes:

- Commercial and multi-family generator database for tracking:
 - Service levels
 - Contact information
 - AB 1826 & AB 341 compliance
 - SB 1383 compliance (rolling out in phases)
- Log of all outreach activities
- CRM features to schedule and track outreach to commercial generators, including:
 - Site Visits
 - Phone Calls
 - Emails
 - Photos taken
 - Task lists and calendars
 - Task reminders and summaries
- Customization of standard forms and reports to meet reasonable customer needs, such as:
 - Tracking local programs and pilot projects
 - Tracking compliance with state, regional and/or local ordinances
 - Complex customization projects necessitating new forms and/or reports may require additional professional services. Any additional consulting, training, development, configuration, development and/or integration services may be out of scope and subject to Company agreeing to provide such services pursuant to a change order to this SOW.
- Reports in list and/or graph format, with ability to search, sort and filter, and to export to Excel, PDF, or image file
- Cloud-based database that syncs data across all users in real time
- Web-based application, with mobile app for iOS and Android (requires internet connection)
- Secure web hosting with weekly backups
- Support via email, Monday-Friday 9am-5pm PT
- Support via phone by appointment
- Unlimited users

Data Import includes:

- Processing and importing a single-tab Excel worksheet or CSV file
- For service record data imports:
 - Importing new accounts, identifying possibly closed accounts and service-level changes
 - Updating generator compliance statuses to align with new data
- Custom Data Template Surcharge applicable to any Data Imports not delivered in the standard Recyclist Service Record Template